

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED  
BY BAR COUNSEL ON  
October 26, 2004**

**BY FIRST-CLASS AND CERTIFIED  
MAIL NO. 7160 3901 9848 0251 7755**

Catherine E. Abbey, Esquire  
c/o Samuel McClendon, Esquire  
1225 Tuckerman Street, N.W.  
Washington, D.C. 20011-1136

Re: *In re Catherine E. Abbey, Esquire*  
Bar Docket No. 087-03

Dear Ms. Abbey:

This office has completed its investigation of the above-referenced matter. We find that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct (the "Rules"). We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8.

This matter was docketed for investigation on March 19, 2003, based upon the ethical complaint filed against you by your former client, Ms. Doris E. Shepherd.

Ms. Shepherd retained you to represent her in connection with a personal injury claim that arose from a car accident that occurred on or about March 4, 2000. On or about October 24, 2000, Ms. Shepherd executed an "Acknowledgment of Lien and Assignment of Records" (the "Lien") with Kaiser. The Lien provided:

I, Doris Shepherd, hereby understand and acknowledge that the itemization provided by Kaiser Permanente is a statement of services rendered to me, my spouse, or my dependent for injuries sustained on or about [March, 4, 2000] and that the amounts set forth therein reflect the lien of Kaiser Permanente against any and all sums recovered from any first and/or third party source, whatsoever, without set off, limitation, or reduction. This lien is established pursuant to the applicable contract governing my enrollment in Kaiser Permanente. Any additional medical charges attributable to the aforesaid injuries and incurred prior to the final settlement of all claims against a first/third party or parties shall create an additional lien to the benefit of Kaiser Permanente. I am hereby assigning all amounts due to Kaiser Permanente pursuant to this lien and direct my attorney to distribute

to Kaiser Permanente said sums upon receipt thereof. Upon payment of the lien amount in full, Kaiser Permanente shall acknowledge full payment and release of the lien.”

You signed the Lien on October 30, 2000.

On December 13, 2000, you received a check from State Farm Insurance Company in the amount of \$4,500 in settlement of Ms. Shepherd’s personal injury claim. Thereafter, you disbursed \$3,000 of the settlement proceeds to Ms. Shepherd, and withheld your legal fees in the amount of \$1,500. You did not promptly notify Kaiser of the settlement or pay it from the proceeds of the settlement because you did not understand that it was a third party entitled to a share of the proceeds of the settlement. You believed that the medical services provided by Ms. Shepherd’s treating physician were covered under the terms of her medical insurance plan with Kaiser and not subject to reimbursement.<sup>1/</sup>

On or about March 4, 2002, in response to an inquiry from Kaiser, you advised it that Ms. Shepherd’s case had settled.

In or about July 2002, Kaiser began sending letters to Ms. Shepherd demanding reimbursement for its payment of medical services based upon the Lien.

In a letter to you dated June 22, 2004, Kaiser acknowledged that under the terms of its insurance contract with Ms. Shepherd, she is not required to reimburse it for the medical bills she incurred in connection with the accident because of her status as a District of Columbia resident. Kaiser has adjusted Ms. Shepherd’s account to reflect a zero balance.

Rule 1.15(b) provides, in relevant part:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer *shall promptly notify* the client or third person . . . . A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive . . . . [Emphasis added.]

By virtue of its Lien, Kaiser was a third-person for purposes of Rule 1.15. Because

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<sup>1/</sup> Consequently, you distributed to Ms. Shepherd the monies Kaiser claimed in its Lien.

you signed the Lien, there is clear and convincing evidence that you were aware of Kaiser's status as a third person with an interest in the proceeds of Ms. Shepherd's settlement.

As set forth above, the Rule requires prompt notification of the receipt of funds to a third person with an interest in them. Kaiser was advised of the settlement of Ms. Shepherd's claim more than two years after you had received the settlement funds. Accordingly, even though you subsequently determined that Kaiser's lien was unwarranted, you were required to notify it promptly of your receipt of funds, hold the disputed amount in trust, and promptly seek to resolve the dispute concerning the third-person's entitlement to those funds consistent with Rule 1.15(c).<sup>2/</sup> See *In re Shaw*, 775 A.2d 1123 (D.C. 2001) (*per curiam*) (public censure ordered where attorney failed to notify health insurer of receipt of funds, and attorney had previously signed a form acknowledging that health insurer had a lien); see also *In re Harvey*, Bar Docket No. 208-98 (informal admonition issued to attorney who distributed funds to his client which were subject to a just claim by a third person with an interest in the funds).

To the extent that Ms. Shepherd's complaint raises other allegations, we do not find clear and convincing evidence of ethical misconduct.

In deciding to issue you this Informal Admonition, we have taken into account that you cooperated with our investigation, that you have no prior record of ethical misconduct, and that your conduct did not involve dishonesty. We also have taken into account that you had a good faith belief that Kaiser Permanente was not entitled to receive any of the settlement funds. Nonetheless, because your conduct in this matter violates the above-discussed Rule, we issue to you this Informal Admonition.

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<sup>2/</sup> Rule 1.15(c) provides:

When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraph (a).

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and is public when issued. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect and your right to have it vacated and have a formal hearing before a Hearing Committee.

If you would like to have a formal hearing, you must submit a written request for a hearing within 14 days of the date of this letter to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, unless Bar Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Bar Counsel will institute formal charges pursuant to D.C. Bar Rule XI, § 8(b). The case will then be assigned to a Hearing Committee, and a hearing will be scheduled by the Executive Attorney for the Board on Professional Responsibility pursuant to D.C. Bar Rule XI, § 8(c). Such a hearing could result in a recommendation to dismiss the charges against you or a recommendation for a finding of culpability, in which case the sanction recommended by the Hearing Committee is not limited to an Informal Admonition.

Sincerely,

Joyce E. Peters  
Bar Counsel

JEP:HCS:cms

Enclosure: Attachment to Letter of Informal Admonition

cc (w/o Encl.): Ms. Doris E. Shepherd