



# OFFICE OF DISCIPLINARY COUNSEL

June 16, 2016

## **BY CERTIFIED MAIL**

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1775 Eye Street, N.W.  
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Washington, D.C. 20006

***In re Brenda C. Wagner, Esquire***  
**D.C. Bar Membership No. 267385**  
**Disciplinary Docket No. 2015-D088**

Dear Ms. Wagner:

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 R. XI, §§ 3, 6, and 8.

In June of 2014, you were retained as counsel to the personal representative in an estate matter. After filing a petition with the D.C. Superior Court for abbreviated, unsupervised administration of the estate on behalf of the personal representative, you were required to assist the personal representative in publishing notice of the probate of the estate. After publication, it was also your responsibility to file on behalf of the personal representative, by September 21, 2014, a verification and certificate of notice ("VCNO"), establishing that publication had been achieved, and notice of the appointment of a personal representative had been mailed to interested persons.

In August of 2014, you filed a motion for extension of time to file the VCNO. The court granted your motion, extending your time to file until October 6, 2014. You arranged for publication in two newspapers and attempted to file the VCNO on September 26. However, your filing was rejected because one of the newspapers had made an error in spelling the personal representative's address.

The court scheduled a summary hearing for October 31, 2014 to address the issue. At the hearing, you discussed the error in publication with the court and the court scheduled a further hearing for December 12, 2014, ordering that the hearing would not have to be held if you filed the VCNO by December 5. You then made efforts to have the newspaper correct the spelling of the address and republish. Ultimately, however, the newspaper did not correct its error until months later, when you were no longer serving as counsel to the personal representative.

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Accordingly, you did not file the VCNO by December 5. On December 12, the court held the hearing as scheduled and you failed to appear, although your client did. The court scheduled a further hearing for January 16, 2015, ordering that the hearing would not have to be held if you filed the VCNO by January 9, 2015. The court mailed its order to your address of record. You again did not file the VCNO and failed to attend the scheduled hearing. The court scheduled another hearing for January 30, 2015, and ordered you to appear irrespective of whether the VCNO was filed.

Leading up to the January 30 hearing, your client (the personal representative), attempted to contact you about the matter but your voicemail was full. On January 17, she terminated your services. You did not appear at the January 30 hearing, and the court struck your appearance from the record. The court continued the proceedings based on the personal representative's assertion that she was retaining new counsel.

In December 2014 and January 2015, you were spending the majority of your time outside of the District of Columbia. You did not arrange for mail to be forwarded to you and were therefore unaware of the hearing dates. You state that you expected to receive electronic notices about what was transpiring in the case, and you appear to have had at least some basis for this expectation, as the Court e-mailed an earlier order to you (which granted the motion for extension).<sup>1</sup>

Ultimately, the personal representative did obtain new counsel. The newspaper eventually corrected its error and successor counsel filed the VCNO. As this was an unsupervised matter, that filing effectively ended the court's involvement. The personal representative also asked you to refund approximately 90% of your fees, and you promptly did so.

We find that your failure to stay apprised of the proceedings before the court and attend the required hearings constitutes a violation of Rule 1.1(b), in that it fell short of providing the appropriate "skill and care commensurate with that generally afforded to clients by other lawyers in similar matters." This conduct also violated Rules 1.3(a) and (c), which require that an attorney represent a client zealously and diligently within the bounds of the law, and act with reasonable promptness in representing a client. Irrespective of the fact that the court had previously served you with an order via e-mail, it is the responsibility of attorneys to affirmatively stay abreast of the docket in their clients' cases. *See, e.g., In re W.E.T.*, 793 A.2d 471, 474 (D.C. 2002) ("The duty of an attorney to keep apprised of docket entries is well established."). Further, you have acknowledged your mistakes in not having your mail forwarded to you while you were away from D.C., and in failing to regularly check your voicemail.

We also find that your failure to communicate with the personal representative violated Rule 1.4(a), which requires you to keep a client reasonably informed about the status of a matter. Finally, your failure to attend three successive court hearings constituted conduct that seriously interfered with the administration of justice, in violation of Rule 8.4(d).

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you cooperated with our

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<sup>1</sup> Thereafter, however, the Court sent its orders (including all the orders scheduling hearings) via regular mail.

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investigation and acknowledged your misconduct. You also provided your client a refund of fees upon her request. Significantly, the Court allowed your client to retain her position as personal representative. In addition, in the two-month period in question, you were dealing with considerable stress due to personal matters that you discussed in detail with this office. Finally, we have taken into consideration that you have agreed to consult with the Practice Management Advisory Service about your calendaring, telephone and e-mail systems in order to prevent similar incidents in the future, and have further agreed that if you do not provide written proof of this consultation within 60 days of this letter, this Informal Admonition may be considered null and void and Disciplinary Counsel will re-open this matter.

If you would prefer 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 Disciplinary Counsel, with a copy to the Board on Professional Responsibility, unless Disciplinary Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated and Disciplinary Counsel will institute formal charges pursuant to D.C. Bar R. XI, §§ 8(b) and (c). 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 R. 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,

Wallace E. Skipp, Jr.  
Disciplinary Counsel

WES:JCP

Enclosures: Attachment to letter to Informal Admonition

cc: HC