

# OFFICE OF BAR COUNSEL

December 28, 2004

Brenda C. Wagner, Esquire  
Wagner & Associates  
733 15<sup>th</sup> Street, NW  
Suite 908  
Washington, D.C. 20005

Re: *In re Brenda C. Wagner, Docket No. 2004-D308*  
*In re Brenda C. Wagner, Docket No. 2004-D309*

*Serving the District  
of Columbia Court  
of Appeals and its Board  
on Professional  
Responsibility*

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Dear Ms. Wagner:

This office has completed its investigation of the above-referenced matters. 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, sections 3, 6, and 8.

We docketed these matters for investigation on August 3, 2004, based on two orders from the District of Columbia Court of Appeals dated June 9 and 15, 2004, removing you as court-appointed counsel in *Moon v. United States*, 03-CF-776 and *Gonzalez v. United States*, 01-CF-818, for failing to file a timely brief. The *Moon* order states that after October 27, 2003, when the Court first ordered you to file a brief in this matter, the Court ordered you three more times to file a brief. The *Gonzalez* order states that after January 16, 2003, when the Court first ordered you to file a brief in this matter, the Court ordered you five more times to file a brief.

On August 24, 2004, you responded to the allegations. You state that you were unable to file a timely brief in these matters because you had other cases requiring briefs due at or near the same time. You state that your name has been removed from the court-appointed list and that you have not contested this removal. You further state that you are closing your law practice.

In the *Moon* appeal, we find as follows: On August 12, 2003, the Court appointed you as counsel. On October 27, 2003, the Court ordered the appellant's brief due within 40 days from the date of the order. A brief was not filed. On December 12, 2003, the Court ordered the brief due within 20 days from the date of the order, accompanied by a motion for leave to file the brief out-of-time. The Court stated that the motion should

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set forth good cause for the failure to timely file the brief or to request an extension of time to do so. The Court also warned that failure to comply with this order may result in counsel's appointment being vacated. On December 23, 2003, you filed a motion to extend time to file the brief *nunc pro tunc*, which was granted on January 15, 2004. The Court also ordered that the brief should be filed within 30 days from the date of the order. No brief or motion to extend time to file a brief was filed. On March 25, 2004, the Court again ordered the brief due within 15 days from the date of the order, accompanied by a motion for good cause. On April 27, 2004, the Court again ordered the brief due, with accompanying motion, within 15 days from the date of the order. On June 9, 2004, the Court vacated your appointment for failure to file the brief.

In the *Gonzalez* appeal, we find as follows: On September 21, 2001, the Court appointed you as counsel. On January 16, 2003, the Court ordered the appellant's brief to be filed within 40 days from the date of the order. On March 24, 2003, you filed a motion to extend time to file a brief, which was granted on April 29, 2003. The Court ordered the brief due on September 30, 2003. You failed to file the brief or move for more time to do so. On October 15, 2003, the Court ordered the brief to be filed within 15 days from the date of the order, accompanied by a motion for leave to file the brief out-of-time. The Court stated that the motion should set forth good cause for the failure to timely file the brief or to request an extension of time to do so. The Court also warned that failure to comply with this order may result in counsel's appointment being vacated.

On October 24, 2003, you filed a motion for stay pending the filing of a § 23-110 motion. On November 5, 2003, this motion was denied without prejudice and you were ordered to advise the Court, within 30 days of the date of the order, regarding the steps taken to file the § 23-110 motion in the trial court. On December 11, 2003, the Court again ordered you to file a motion advising the court on the § 23-110 motion along with a motion for leave to file the statement out of time. On December 23, 2003, you filed a motion to extend time to file the brief, which was granted on January 28, 2004. The Court also ordered that the brief must be filed within 30 days from the date of the order and warned that further requests for extensions of time would be looked upon with disfavor and granted only upon a showing of good cause. On March 18, 2004, the Court ordered you to file a brief, accompanied by a motion for leave to file the brief out of time, within 15 days from the date of the order and that your failure to do so may result in the vacation of your appointment. On April 29, 2004, the Court again ordered the brief due, with accompanying motion, within 15 days from the date of the order. On June 15, 2004, the Court vacated your appointment for failure to file the brief.

We find your failure, in the *Gonzalez* and *Moon* cases, to file a brief, to file a motion to extend the time to do so, or to obey the Court's order in the *Gonzalez* appeal for a status report on the filing of a § 23-110 motion inconsistent with Rules 1.1<sup>1</sup> 1.3 (a) and (c)<sup>2</sup> and 8.4(d).<sup>3</sup> In the *Moon* appeal, the Court provided three extensions for you to file a timely brief after the original due date. After failing to take any action to file a brief or file a motion to extend time to file one, you finally filed a motion to extend time to file the brief on December 23, 2003, which was granted. However, you still did not file a brief within the court's deadline.

In the *Gonzalez* appeal, the Court provided five extensions for you to file a timely brief after the original due date. After failing to take action to file a brief or file a motion to extend time to file one, the Court allowed you to provide evidence of your filing of a

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<sup>1</sup> Rule 1.1(a):

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.1(b):

A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

<sup>2</sup> Rule 1.3(a):

A lawyer shall represent a client zealously and diligently within the bounds of the law.

Rule 1.3(c):

A lawyer shall act with reasonable promptness in representing a client.

<sup>3</sup> Rule 8.4(d):

It is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice.

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§ 23-110 motion, but you failed to report to the court on the status of such motion. You also never filed a brief in this matter within the court's deadlines, causing your appointment to be vacated.

Your inaction in both of these cases is not consistent with providing prompt skill and care commensurate with that generally afforded clients by other lawyers in similar matters. Your failure to file the brief or to obey the court's directives is inconsistent with competent, diligent legal representation. You also caused the Court to unnecessarily delay its consideration of the defendants' cases.

In mitigation, we note that you have no disciplinary history although you have practiced law for approximately 24 years; we conclude from your response and cooperation with Bar Counsel that you recognize the seriousness of your misconduct; and we understand from your response that you have decided to cease practicing law. While the ethical violations in this case are serious, we decline to prosecute based upon the facts of this case and the mitigating circumstances described herein.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, sections 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) 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 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,

Wallace E. Shipp, Jr.  
Acting Bar Counsel

Enclosure: Attachment to Letter of Informal Admonition

WES:WLT:snl