



OFFICE OF BAR COUNSEL

October 3, 2011

Wallace E. Shipp, Jr.
Bar Counsel

Elizabeth A. Herman
Deputy Bar Counsel

Senior Assistant Bar Counsel
Judith Metherton
Julia L. Porter

Assistant Bar Counsel
Joseph N. Bowman
Ross T. Dicker
Gayle Marie Brown Driver
Hamilton P. Fox, III
Catherine L. Kello
Becky Neal
William Ross
H. Cloy Smith, III
Traci M. Tall

Senior Staff Attorney
Lawrence K. Bloom
Dolores Dorsainvil
Joseph C. Perry
Mory-Helen Perry

**BY FIRST-CLASS AND CERTIFIED
MAIL NO. 71969008911108746687**

Harry Tun, Esquire
400-5th Street, NW
Washington, DC 20001

Re: *In re Harry Tun, Esquire*
(D.C. Bar Registration No. 416262)
Bar Docket No. 2010-D040

Dear Mr. Tun:

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, §§ 3, 6, and 8.

We docketed this matter for investigation on February 1, 2010, following receipt of a complaint filed by successor counsel for a client whom you represented in a criminal matter. The complainant states that, without your client's permission, you revealed client confidences and secrets at a court hearing when your client was not present. The complainant provided a copy of a transcript from an August 12, 1998 hearing held in the United States District Court for the District of Columbia. The transcript reflects that the District Court scheduled the hearing to consider your motion to withdraw as counsel, after your client entered a guilty plea and prior to his sentencing. Your client was not present during the hearing. At the suggestion of the prosecutor, the court decided that it would delay ruling on your motion until your client was apprehended and returned to custody. Toward the conclusion of the hearing, the District Court Judge advised the parties that your client had recently called his chambers and apparently sought information about the status of his matter. You then revealed a conversation that you had recently had with your client regarding the hearing, and the advice you had given him.

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

515 5th Street NW, Building A, Room 117, Washington, DC 20001 ■ 202-638-1501, FAX 202-638-0862

Thereafter, the court reissued a bench warrant for your client, and continued to another date its consideration of your motion. Your client was subsequently apprehended in early 2000. Following his apprehension, the District Court permitted you to withdraw, although your client was not present at the hearing when your motion to withdraw was granted.

Based on these facts, we conclude that you violated Rule 1.6 in August 1998 when, during the status hearing, you revealed the substance of your recent conversation with your client, who was the subject of a bench warrant.

Rule 1.6(a) prohibits an attorney from disclosing client confidences and secrets. Rule 1.6(b) defines a "confidence" as "information protected by the attorney-client privilege under applicable law," while a "secret" is defined as "information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client."

Your disclosure of a telephone conversation that you had with your client and the advice you gave him constituted a disclosure of information protected by the attorney-client privilege to which your client had not consented. Your disclosure was made in open court before a District Court Judge who had recently issued a bench warrant for your client's arrest and was to sentence your client based on his recent plea of guilty. Your disclosure was likely to be detrimental to your client given his unauthorized departure from the halfway house, and likely to have a negative impact on his status once he was re-captured.

Further, we conclude that your conduct does not fall within any of the exceptions to the Rule 1.6's prohibition of disclosures of client confidences and secrets. Rule 1.6(d)(2)(A) allows an attorney to disclose client confidences and secrets when required by law or court order. During your Court appearance on August 14, 1998, the District Court Judge never ordered, directed, or even asked you to disclose information concerning your communications with the client.

In addition, Rule 1.6(d)(3) permits an attorney to disclose client confidences and secrets "[t]o the extent reasonably necessary to establish a defense to a criminal charge, disciplinary charge, or civil claim, formally instituted against the lawyer, based upon conduct in which the client was involved, or to the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer's representation of the client." You state that you informed the court that you expected your client to raise an ineffective assistance of counsel claim with the court which was the reason you sought to withdraw as counsel. However, the docket sheet makes clear that no allegations or formal complaint regarding your representation had yet been made to the Court when you revealed your communications with your client.

Because your client was not before the court in August 1998, the District Court advised you that it would hold your motion to withdraw in abeyance until after your client was apprehended pursuant to the bench warrant. You did not object or oppose this action when the

Harry Tun, Esquire
Bar Docket No. 2010-D040
Page 3

District Court proposed it. Although you suggest that you were responding to allegations of ethical misconduct that your client intended to make against you, the hearing transcript makes clear that your client had not complained about you to the District Court at the time of the August 1998 hearing.

In deciding to issue this admonition, we note that your client does not allege, and we do not find, that your unauthorized revelation damaged your client in his subsequent dealings with the District Court.

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 to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, 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(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(d). 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.
Bar Counsel

Enclosure: Attachment to Letter of Informal Admonition

cc: Mr. Lawrence Davis
c/o Jennifer Wicks, Esquire

WES:RTD:JCL:act