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July 1, 2016

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**BY FIRST CLASS AND CERTIFIED
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George A. Teitelbaum, Esquire
Law Office of George A. Teitelbaum
2416 Blueridge Avenue
Suite 200
Wheaton, Maryland 20902

In re George A. Teitelbaum, Esquire
D.C. Bar No. 370926
Disciplinary Docket No. 2013-D262

Dear Mr. Teitelbaum:

The Office of Disciplinary Counsel has completed its investigation of this matter. We find that your conduct reflected a disregard of certain ethics standards under the District of Columbia Rules of Professional Conduct (the Rules). As a result, Disciplinary Counsel issues you this Informal Admonition pursuant to D.C. Bar R. XI, §§ 3, 6, and 8.

Disciplinary Counsel Investigation

The office began its investigation in July 2013 after the Auditor-Master referred a report of his inquiry into your and your client's handling of three estates before the probate division of the Superior Court. The court accepted his report with the exception of several paragraphs. The court found the following facts:

Three brothers owned their deceased father's house in common. Each brother had a 1/3 interest in the real property. By 2010, they had all died: Melvin C. Jones in 1990, Alonzo E. Jones in 1996, and Robert B. Jones in 2010. After Robert died, his son Manford Jones probated all three estates at the same time. Manford hired you to assist him in his capacity as special administrator of one estate and personal representative of the other two.¹

¹ Under D.C. Code § 20-531(a), the court may appoint a special administrator, *inter alia*, when necessary "to protect property prior to qualification of a personal representative."

Although some administrative irregularities occurred during probate (causing the court to convert Manford's personal representative appointment to that of special administrator in Melvin's estate), any material errors were corrected and the Auditor-Master verified that all of the living heirs had received their rightful share of the respective estates by the time all three matters were concluded and the Auditor-Master referred the case to Disciplinary Counsel.

The issue in question centers on a 1995 change to the probate rules regarding compensation for work performed on the estates of decedents who died before July 1995 – a change that you admit you overlooked when probating Melvin's estate. Whether the pre- or post-July 1995 rule applies in any given case is determined by the date the decedent died, not the date probate is opened. Here, Manford Jones paid you more than \$26,000 from funds in all three estates, in connection with your services assisting him to probate each of them. In two of the estates for which Manford served as personal representative, the decedents died **after July 1995**, under the rule where it was *not* necessary to get prior court approval to pay the personal representative and attorney from estate assets. The estates of Melvin's brothers fell under this more recent rule. However, Melvin Jones died, in 1990, *i.e.*, before the more recent rule took effect.

Under the previous rule, for deaths occurring **before July 1995**, court approval was required to compensate a personal representative, a special administrator, and an attorney from estate assets for services rendered, and could only properly occur *after* the court had reviewed their respective requests for compensation:

Reasonable compensation for work performed by a personal representative, special administrator or attorney with respect to administration of the estate pursuant to this title may be paid *upon approval by the Court of a request filed* as provided in subsections (c) through (g).

D.C. Code § 20-751(a)(1981 ed.) (emphasis added).

You failed to advise Manford that because Melvin died before July 1995, you and he needed to submit respective requests for compensation detailing the administrative and legal fees being sought. The court would then determine how much, if not all, of the fees Manford and you were seeking would be approved. Only then was it permissible for your client and you to receive payment from estate assets.

Effective July 1, 1995, D.C. Code § 20-751 was amended to eliminate the requirement that an attorney seek court approval before receiving fees from an unsupervised estate, but the provision was not made retroactive. The Superior Court's probate rules are accessible online for free, and break down by the decedent's date of death which rules are applicable. They are also color-coded for ease of reference. Further, a simple check of the current D.C. Code provision's history – whether on a hard copy version of the D.C. Code or a free electronic version online –

reveals that § 20-751 was revised in 1995, *i.e.*, after Melvin died. Looking up the nature of that change would have revealed that to receive compensation for probating Melvin's estate you and your client had to follow different procedures than for the other two estates.

On the second day of an Auditor-Master hearing designed to address the compensation issues and various other irregularities that had occurred during administration of the three estates, you conceded that "[i]n this case, there is three, [*sic*] three estates that were combined, and it [the payment to you and Manford that came from Melvin's estate without prior court approval] was an oversight obviously." May 4, 2013 Auditor-Master hearing at 59.

Legal Analysis

1. Rule 1.1(a) states that a lawyer "shall provide competent representation to a client. Competent representation requires the *legal knowledge*, skill, *thoroughness*, and preparation reasonably necessary for the representation." (Emphasis added). Competent attorneys practicing in probate court must advise their clients regarding the governing statutes, rules and practices necessary to correctly and efficiently probate decedents' estates. This includes paying attention to important nuances and changes in the law. Competent practice requires attorneys to determine whether the statutes and rules under which they are handling a case have been changed or repealed. Competent attorneys should not accept legal fees paid from estate funds except pursuant to applicable laws and court rules. Here, under the previous version of D.C. Code § 20-751, you and Manford Jones accepted funds from the Melvin Jones estate without the required court approval. Although your client had control of the estate's funds at all times, you were his counsel. By accepting a legal fee paid from Melvin Jones's estate without court approval, you violated Rule 1.1(a).

2. Rule 1.5(a) states, in pertinent part, that "[a] lawyer's fee shall be reasonable." Rule 1.5(f) states that "[a]ny fee prohibited . . . by law is *per se* unreasonable." D.C. Code § 20-751 stated that compensation for an attorney's services could not be paid from estate assets without prior court approval. Because you accepted a fee paid from Melvin Jones's estate without such approval, you collected an unreasonable fee in violation of Rule 1.5(a).

3. Rule 8.4(d) states that it is professional misconduct for a lawyer to "[e]ngage in conduct that seriously interferes with the administration of justice." In 1995 the District of Columbia Court of Appeals held that where an attorney's conduct was "contrary to a statute" in providing for attorney's compensation, he engaged in conduct prejudicial to the administration of justice and violated the disciplinary rule. *In re L.R.*, 640 A.2d 697 (D.C. 1994) (Court ordered informal admonition for violating predecessor disciplinary rule in non-estate matter). The Court of Appeals recognized that the "Comment to the rule states that its prohibition includes conduct proscribed by the previous [ethics rule] as 'prejudicial to the administration of justice.'" *Id.* n.1 (D.C. 1999). By accepting your fee without prior court approval in violation of D.C. Code § 20-751, you violated Rule 8.4(d).

In issuing you this Informal Admonition, we take into account that (1) you returned the funds you received and chose to take no fee; (2) you cooperated with both the Probate Division and Disciplinary Counsel; and, (3) the law changed, eliminating any need to petition the court for approval to pay attorney's fees in unsupervised estate matters after July 1, 1995.

This letter constitutes an Informal Admonition pursuant to D.C. Bar R. 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 Disciplinary Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, 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). 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. Shipp, Jr.
Disciplinary Counsel

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Enclosure: Attachment to Letter of Informal Admonition

cc: Hon. Gerald I. Fisher (delivered to chambers)
Auditor-Master, District of Columbia Superior Court

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§ 20-744. Protection of person dealing with personal representative.

(a) In the absence of actual knowledge or of reasonable cause to inquire as to whether a personal representative is improperly exercising power, a person dealing with a personal representative: (1) is not bound to inquire whether the personal representative is properly exercising power; and (2) is protected as if the personal representative properly exercised the power; and

(b) A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-101.

Subchapter VI. Claims by Personal Representatives and Attorneys.

§ 20-751. Compensation.

(a) Reasonable compensation for work performed by a personal representative, special administrator or attorney with respect to administration of the estate pursuant to this title may be paid upon approval by the Court of a request filed as provided in subsections (c) through (g).

(b) If a will provides a stated compensation for the personal representative, additional compensation may be paid if approved pursuant to subsections (c) through (g).

(c) Each personal representative or special administrator shall submit a written request to the Court for compensation for services performed by such personal representative or administrator or any attorney employed by either of them. This request shall be accompanied by verified documentation of the following:

(1) the reasonable relationship of proposed compensation to the nature of the work performed;

(2) a statement by any attorney employed by the personal representative that as soon as feasible the attorney gave to the personal representative an estimate of costs and any change in costs for work to be performed with respect to administration of the estate;

(3) the reasonableness of the time spent, including the number of hours spent and the usual hourly compensation for the work performed;

(4) the results achieved; and

(5) a statement by the personal representative or special administrator that all of the time limitations imposed by the provisions of this title or by the Rules have been met, or, in the event that all of the time limitations were not met, the dates such compliance was due, the actual date of compliance and the reasons for delay.

§ 20-752 PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES

(d) At the time a request for compensation is submitted to the Court, the personal representative or special administrator shall send a copy of the request and the accompanying documentation by certified or registered mail (return receipt requested) to all interested persons. The copy sent to an interested person shall also indicate the manner and time allotted for filing an exception under this section. The personal representative or special administrator shall file with the Register a certification specifying the date and content of this notice.

(e) Within 20 days of mailing of this notice, interested persons may file with the Register a written exception to the request for compensation. The written exception shall include the grounds for contesting the request for compensation.

(f) The Court shall consider the factors set forth in subsection (c), as well as any exception filed to the request for compensation, prior to authorizing such compensation.

(g) Authorization and payment of compensation pursuant to this section may be made in whole or in part before or after the period for presentation of claims has expired but prior to approval of the final account. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Section reference. — This section is referred to in § 20-752. Legislative history of Law 3-72. — See note to § 20-101.

§ 20-752. Expenses of estate litigation.

Without regard to the provisions of section 20-751, when a personal representative or a person nominated as personal representative defends or prosecutes in good faith and with just cause any proceeding relating to the decedent's estate, whether successful or not, such personal representative shall be entitled to receive from the estate any necessary expenses and disbursements relating to such proceeding. (June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Legislative history of Law 3-72. — See note to § 20-101.

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