OFFICE OF DISCIPLINARY COUNSEL

October 26, 2016

BY FIRST-CLASS AND CERTIFIED
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Kim Y. Johnson-Ball, Esquire
PO Box 277
Cheltenham, Maryland 20523-0277

In re Kim Y. Johnson-Ball, Esquire
(D.C. Bar Registration No. 451982)
Bar Docket No. 2014-D415

Dear Ms. Johnson-Ball:

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 upon an ethical complaint filed against you by a United States Bankruptcy Judge. The Judge requested an investigation of the circumstances of your breach of the rules and procedures governing electronic filing in the United States Bankruptcy Court for the District of Columbia.

Based upon our investigation, we find as follows:

In 2013, you undertook to represent the debtor, an LLC, in connection with filing a chapter 11 bankruptcy petition. D.S. is the managing and sole member of the debtor, and he orally authorized you to file a chapter 11 petition on behalf of the LLC.

Beginning in December 2013, you commenced the case by filing the following electronic documents on behalf of the LLC:

- On December 27, 2013, you filed the chapter 11 petition, a list of 20 largest unsecured creditors, and a creditor mailing matrix;
- On February 3, 2014, you filed schedules and a statement of financial affairs;

- On February 5, 2014, you filed a statement of no alterations; and
- On March 9, 2014, you filed a list of equity security holders.

Each of the documents listed contained the debtor's typewritten electronic signature ("/s/ D.S.' or "/s/ D.S., Managing Member, [LLC]" or /s/ D.S., Owner, LLC"), confirming the authenticity of the documents under penalty of perjury.

Section II (B) (4) of the Administrative Procedures for Filling, Signing, and Verifying Documents by Electronic Means provides:

> When filing a document, the User must have the paper document containing the original signature of each person (other than the User) who signed the document or proof of authorization under paragraph 3 to affix such signature. The user must retain that paper document (and any document that is proof of authorization under paragraph 3 to affix any signature) **for a period of five (5) years from the filing of the document. The document may be retained in either paper or electronically (i.e., a scanned copy of the originally-signed document).** This requirement does not apply to a document filed with a scanned image of the original signature.

The purpose of this electronic filing requirement is to have actual proof of authorization, without which no perjury prosecution would be possible.

You admitted that you did not obtain or retain documents bearing D.S.'s original signature as required by the Court's procedures, but stated that D.S. authorized you to sign the documents on his behalf. D.S. disputed your statement. Consequently, on November 19, 2014, the court held a hearing to settle the dispute regarding D.S.'s authorization for you to sign and file the documents. Ultimately, the court found significant evidence that D.S. had authorized you to sign and file the bankruptcy case and other corresponding documents on behalf of the LLC.

The court also found, however, that you had violated its electronic filing procedures, in that you failed to obtain and retain D.S.'s signature on documents required under § II (B) (4). The court found that your testimony concerning the circumstances of the filing of the electronic documents was credible, but your failure to comply with the filing requirements "resulted in a substantial waste of judicial resources." Consequentially, the court ordered you to disgorge $1,250 of the fees received for representing the debtor to the trustee in the underlying chapter 11 bankruptcy case. Finally, the court referred this matter to the Committee on Grievances for the United States District Court for the District of Columbia and to the Office of [Disciplinary] Counsel.

On May 26, 2015, the Committee on Grievances issued a letter to you discharging the complaint. In its letter the Committee stated that its decision was based on the Judge's finding that "you cooperated with the court and expressed 'genuine regret' and 'suffered the penalty [of] embarrassment.'" The Committee further noted that you "have fully acknowledged and accepted

responsibility for your actions" and that "[they] trust you will continue to abide by all applicable Court rules as well as rules of professional conduct in the future."

Based upon our investigation of this matter, we find that your conduct violated Rules 1.1(a), 1.1(b), and 8.4(d).

Rule 1.1(a) provides:

> 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) provides:

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

Comment [5] to the Rules provides pertinently that the competent handling of a matter "includes adequate preparation and continuing attention to the needs of the representation to assure that there is no neglect of such needs."

We find that your failure to obtain or retain D.S.'s signature on documents required to be signed under penalty of perjury, prior to their filing with D.S.'s electronic signature, evidenced a lack of thoroughness and preparation to the continuing needs of the representation. You also did not retain the faxed version of the corporate resolution containing D.S.'s signature, thus when asked by the U.S. Trustee to produce the document, you were unable to do so. This also demonstrates a lack of preparation and thoroughness. In sum, your lack of thoroughness and care prior to the electronic filing of the above-described documents constitutes clear and convincing of a violation of Rules 1.1(a) and (b).

Rule 8.4(d) provides that "it is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice." A violation of the Rule is found where it is proven that the attorney's conduct: (1) was improper (2) bore directly upon the judicial process with respect to an identifiable case or tribunal; and (3) tainted the judicial process in more than a *de minimus* way. *In re Hopkins,* 677 A.2d 55, 60-61 (D.C. 1996).

In this matter, the lack of competence you exhibited in failing to obtain and retain copies of documents containing D. S.'s signature prior to the filing of the document electronically was improper and bore directly on an identifiable case pending before the United States Bankruptcy Court. Your incompetence tainted the proceeding in that the time and resources of both the Bankruptcy Court and the Trustee were wasted by the filing of pleadings, the need to conduct an evidentiary hearing, the issuance of an order and the referral of your conduct to disciplinary authorities.

We have also considered whether your conduct violated rule 8.4(c), which prohibits dishonesty, fraud, deceit or misrepresentation. In this matter, we evaluated the evidence to determine whether your submission of documents to the Bankruptcy Court executed "under penalty of perjury", when in fact they were not, was with the intent to mislead the court. Given our investigation and the Judge's finding that you did not intend to mislead the court or the Trustee with your filings, we have insufficient evidence that you violated the Rule.

In deciding to issue you this informal admonition, rather than to bring formal disciplinary proceedings against you, we have taken into account that your conduct did not involve dishonesty, you cooperated with our investigation, you have no prior disciplinary history, and you have satisfied the financial penalties and complied with the other conditions imposed upon you by the Judge.

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 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

Encl.: Attachment to Letter of Informal Admonition

WES:HCS:act