OFFICE OF DISCIPLINARY COUNSEL

March 13, 2018

CONFIDENTIAL

BY FIRST CLASS AND CERTIFIED MAIL NO. 9414-7266-9904-2091-4448-05

Arinderjit Dhali, Esquire
Dhali, PLLC
1828 L Street, N.W.
Suite 600
Washington, D.C. 20036

Re: *In re Arinderjit Dhali, Esquire*
Disciplinary Docket No. 2016-D411

Dear Mr. Dhali:

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. We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8.

We docketed this matter based upon a complaint by your former client, PLB, who states that after she retained you to represent her in a dispute with her employer, you neglected the matter and, as a result, her employment was suspended for five days.

Relevant Facts

On November 8, 2016, PLB retained you to represent her with regard to a dispute she was having with her employer, the District of Columbia Office of Chief Financial Officer (OCFO). OCFO had threatened disciplinary action against PLB for insubordination, failure to follow instructions and dishonesty. PLB disputed OCFO's claim. You agreed to open communications with OCFO before it took disciplinary action against PLB. You provided PLB with a retainer agreement and accepted her check for $1,200 as a retainer fee.

You never notified OCFO that you represented PLB. You state that shortly after you accepted PLB's check, "[you] were overcome by illness and

[you] could not communicate with her employer." You have provided no evidence indicating for how long you were disabled, or that you were so sick that you could not telephone PLB to inform her of your inability to contact her employer. On November 22, 2016, OCFO's Director of Human Resources served PLB with a copy of OCFO's final decision suspending her from employment for five days.

PLB complained to you regarding your neglect of her case and failure to communicate with her. In a December 6, 2016 e-mail to you, PLB stated:

> I'm fairly certain that if you were not in support of providing me with a letter in response to the Notice of Proposed Five (5) Day Suspension you could have at least called and I could have drafted something. Actually, I remember asking you if you wanted to see what I had drafted as a response. Indeed people get ill, but I was not represented with any response in my "defense". It made me appear as though I supported the action. You said you could get an extension from [the Director of Human Resources] as you have dealt with her before. I guess you didn't get that either?

In response, you acknowledged PLB's complaint, and offered to shred the $1,200 retainer check that she had provided to you. PLB agreed, and you shredded the check and withdrew from representation.

Rule 1.3 – Diligence and Zeal

Rule 1.3(a) requires a lawyer to "represent a client zealously and diligently within the bounds of the law." Rule 1.3(c) requires a lawyer to "act with reasonable promptness in representing a client."

We find that your conduct violated Rules 1.3(a) and 1.3(c). Your failure to either open communications with PLB's employer, as promised, or to notify PLB so she could find a successor lawyer, or to seek an extension of time from PLB's employer constituted a lack of diligence and zeal, and a failure to act with reasonable promptness within the meaning of Rule 1.3.

Rule 1.4 – Communication

Rule 1.4(a) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

You did not keep PLB reasonably informed about the status of her case. You did not tell her that, contrary to your agreement, you had not opened communications with her employer. You

failed to do this despite the fact that you knew disciplinary action against her was imminent. Your failure to keep PLB informed meant she did not have the opportunity to make an informed decision regarding your representation, *i.e.*, whether or not to terminate your representation and retain successor counsel.

Rule 1.16(a) – Declining or Terminating Representation

Rule 1.16(a)(2) requires a lawyer to withdraw from representation if "[t]he lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

Despite that you were too sick to represent PLB, you failed to withdraw from the representation. Based on the information you have provided, it seems that you could have at least made one telephone call to PLB notifying her of your inability to continue with the representation.

Rule 1.6 – Confidentiality of Information

We do not believe you have violated Rule 1.6 because you have not disclosed your client's confidences and secrets. However, during the course of our investigation, we reviewed your retainer agreement with PLB and found that it contains language that may risk your being found in violation of the Rule if and when you disclose client confidences and secrets in the future. Specifically, paragraph 8 of your retainer agreement states as follows:

> Note: In the event there is a withdrawal of representation by the attorney, and the attorney needs to file a Motion of Withdrawal with the applicable tribunal where the case is pending, Client by signing below voluntarily consents to have the attorney provide in its Motion to Withdraw, any and all communications learned during the attorney [-] client relationship, or any other information which the attorney learned during the course of the representation, whether directly from the client or any other source. This consent may also apply where the attorney has been discharged by the Client, a balance of legal fees is due, and the law firm needs to file a complaint for the collection of the legal fees.

Rule 1.6(a) states that "a lawyer shall not knowingly: (1) reveal a confidence or secret of the lawyer's client; (2) use a confidence or secret of the lawyer's client to the disadvantage of the client; (3) use a confidence or secret of the lawyer's client to the disadvantage of the client." However, the Rule provides that a lawyer may reveal confidences or secrets of a client under some limited circumstances. Rule 1.6(e)(1), for instance, states that a lawyer may reveal a client's confidences or secrets "with the informed consent of the client";[1] Rule 1.6(e)(3) states that a lawyer

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[1] Rule 1.0(e) states that "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

may reveal the client's confidences or secrets "to 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 the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer's representation of the client"; and Rule 1.6(e)(5) provides that a lawyer may reveal the client's confidences and secrets "to the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fee."

The problem with the language in your retainer agreement arises for two reasons. First, while your retainer agreement purports to authorize you to disclose "any and all" confidences and secrets of your client to a tribunal when seeking to withdraw from the representation, or when seeking to collect attorney's fees, the provisions of the Rule permit only limited disclosure under proscribed circumstances, e.g., permitting disclosures to collect fees only "to the minimum extent necessary[.]" Rule 1.6 (e)(5). Accordingly, if and when you disclose more confidences and secrets than is permissible under the exceptions to the Rule, you may be found in violation. Second, to the extent that your retainer agreement purports to show that a client who signs it has provided you with consent to disclose "any and all" confidences and secrets without regard to whether the disclosure falls within one of the narrow exceptions to the Rule, the retainer agreement fails to explain the rights and protections the client is surrendering, and the risks the client is undertaking. Accordingly, the retainer agreement fails to obtain the client's "informed consent" within the meaning of Rule 1.6(e)(1). In sum, provision in your retainer agreement pertaining to disclosure of client confidences and secrets should either limit your disclosures to the exceptions in Rule 1.6; obtain your client's "informed consent" to broader disclosures; or be eliminated entirely. The document as currently drafted is unacceptable.

By the foregoing analysis, we are providing you with notice of the deficiency of your retainer agreement. You may wish to remove the disclosure provisions or otherwise revise them to be consistent with Rule 1.6. Should you continue to use and rely on those provisions or your retainer agreement as currently drafted, please be advised that we reserve the right to use information from this investigation – including, but not limited to, this letter – in future disciplinary proceedings to demonstrate that you have disclosed client confidences in reliance on the retainer agreement despite notice that the disclosure could run afoul of the Rule.

Conclusion

In issuing this informal admonition, Disciplinary Counsel has taken into consideration that you have cooperated with Disciplinary Counsel's investigation, that you have no prior discipline, that you shredded PLB's retainer check, and that you have accepted responsibility for your actions by accepting this informal admonition.

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 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 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,

Hamilton P. Fox, III
Disciplinary Counsel

Enclosure: Attachment to Letter of Informal Admonition

HPF:JNB:eaf