



# OFFICE OF DISCIPLINARY COUNSEL

May 15, 2019

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## CONFIDENTIAL

**BY FIRST-CLASS AND CERTIFIED**  
**MAIL NO. 9414-7266-9904-2144-5137-62**

David L. Lowans, Esquire  
4417 Stanford Street  
Chevy Chase, MD 20815

Re: Lowans/Disciplinary Counsel  
Disciplinary Docket No. 2018-D082

Dear Mr. Lowans:

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

We docketed this matter for investigation following receipt of a notice from Bank of America advising that your attorney trust account was overdrawn on January 2, 2018.

In investigating this matter, Disciplinary Counsel provided you a copy of Bank of America's notice and served you with a subpoena *duces tecum* directing you to provide complete financial and accounting records. In response to our letters and subpoena, you provided some records, but not all, such as client ledgers, a check register, records showing that you reconcile your bank statements, or other contemporaneous documents that fully explain the disbursement of funds from the IOLTA. You admit that the records produced to our office represent all of the documents your firm maintained.

We find as follows:

Rule 1.15(a) requires lawyers to keep "complete records" of entrusted funds and preserve such records for five years after the termination of the representation. In *In re Clower*, 831 A.2d 1030 (D.C. 2003), the Court explained that:

The purpose of maintaining “complete records” is so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled. Financial records are complete only when documents sufficient to demonstrate an attorney’s compliance with his ethical duties are maintained. The reason for requiring complete records is so that an audit of the attorney’s handling of client funds by Bar Counsel can be completed even if the attorney or the client, or both, are not available.

831 A.2d at 1034. Comment [5] of Rule 1.15 further provides that lawyers are to “maintain records such that ownership or any other question about client funds can be answered without assistance from the lawyer or the lawyer’s clients.” Disciplinary Counsel finds that by failing to keep, preserve, and produce to Disciplinary Counsel complete records of the funds in your trust account, you violated Rule 1.15(a).

We also find that you violated Rule 5.1(a), governing Responsibilities of Partners, Managers, and Supervisory Lawyers. Rule 5.1(a) states: “[a] partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or government agency, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm or agency conform to the Rules of Professional Conduct.”

As a partner in Lowans and Kurtz, PLLC, you owed a duty to ensure that all members of the firm comported their behavior to the requirements of the Rules. We find that although your partner, Benjamin Kurtz, handled nearly all of the firm’s clients, collected most of the fees, and monitored the IOLTA online, you had comparable managerial authority as the only other member of the firm and a co-signatory to the IOLTA. You acknowledge receiving the bank account statements at your home address and handling the law firm’s taxes. Neither you nor Mr. Kurtz, however, maintained complete financial records for the firm. As partner in the firm, you failed to assure that the firm was comporting its record-keeping practices to the requirements of Rule 1.15(a).

In issuing you an Informal Admonition, we recognize that you cooperated with Disciplinary Counsel’s investigation, you accept responsibility for the misconduct, including by agreeing to this informal admonition. Also, we took into account that you received little to no remuneration as a member of the partnership. You provided that you removed yourself from the firm’s IOLTA and dissolved the partnership.

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This Informal Admonition is conditioned on contacting the D.C. Bar's Practice Management Advisory Service and attending and successfully completing its "Successful Small Firm Practice" CLE within six months of the issuance of this Informal Admonition. You have agreed to provide immediate proof of completion to Disciplinary Counsel. In the event that you do not meet these conditions, Disciplinary Counsel reserves the right to revoke this Informal Admonition and reopen this matter.

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

Encl.: Attachment to Letter of Informal Admonition

HPF:EK:eaf