



OFFICE OF DISCIPLINARY COUNSEL

August 7, 2019

**SENT VIA FIRST-CLASS AND
CERTIFIED MAIL NO. 9414 7266 9904 2144 5097 58**

CONFIDENTIAL

Hamilton P. Fox, III
Disciplinary Counsel

Julia L. Porter
Deputy Disciplinary Counsel

Senior Assistant Disciplinary Counsel
Becky Neal

Assistant Disciplinary Counsel

Joseph N. Bowman

Hendrik deBoer

Dolores Dorsainvil

Jerri U. Dunston

Ebtehaj Kalantar

Jelani C. Lowery

Sean P. O'Brien

Joseph C. Perry

William R. Ross

Clinton R. Shaw, Jr.

H. Clay Smith, III

Caroll Donayre Somoza

Traci M. Tait

Senior Staff Attorney

Lawrence K. Bloom

Manager, Forensic Investigations

Charles M. Anderson

Senior Forensic Investigator

Kevin E. O'Connell

Margaret A. Anthony, Esquire
c/o Abraham C. Blitzer, Esquire
419 7th Street, N.W.
Suite 405
Washington, D.C. 20004

Re: Anthony/Disciplinary Counsel
Disciplinary Docket No. 2018-D175

Dear Ms. Anthony:

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.

This matter was docketed for investigation upon our receipt of an overdraft notification from Bank of America involving your trust account.¹

Bank of America reported that on April 6, 2018, a check for \$60.00 was presented for payment causing an overdraft of the account in the amount of -\$30.63.

In response to our inquiry, you represent that the overdraft was caused by an "unfortunate mistake." You explain that you paid for a special service at your apartment building by inadvertently using a trust account check rather than your personal check. You state that upon learning of the overdraft, you immediately deposited \$60.00 back into your trust account. Finally, you represent that any money in your trust account at the time of the overdraft belonged to you. You report that from 2017-2018, you deposited into your trust account flat fees given to you by three separate clients and that by the date of the overdraft, you had earned the fees.

¹ D.C. Rule X § 20 requires, *inter alia*, that approved depositories for lawyers' trust accounts are required to notify Disciplinary Counsel of any instrument presented to it against insufficient funds.

In response to our supplemental inquiry, you state that you did not maintain a check register or journal during the period in question, nor did you maintain subsidiary client ledgers. You did provide copies of your fee agreements with the three clients. Thereafter, you submitted copies of the files that you generated in connection with each matter. Disciplinary Counsel subpoenaed and received from Bank of America copies of your trust account records for the period beginning January 1, 2017 through June 30, 2018.

Based upon our investigation of this matter, we find that you violated Rule 1.15(a), in that you failed to maintain complete financial records of entrusted funds in your possession.

Rule 1.15(a) provides pertinently that “[a] lawyer shall hold property of clients. . . that is in the lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds of clients. . . (trust funds) shall be kept in one or more trust accounts. . . Complete records of such account funds. . . shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.”

a. Commingling/Misappropriation

Commingling involves an attorney improperly maintaining client funds with her own funds in the same account. *See In re Hessler*, 549 A.2d 700, 701-2 (D.C. 1988). Misappropriation is defined as the unauthorized use of entrusted funds. *In re Harrison*, 461 A.2d 1034, 1036 (D.C. 1983). Misappropriation is proven when the balance of the account into which the attorney has deposited entrusted funds falls below that due to the client, regardless of whether the attorney acted with improper intent. *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010). When a check has been presented against insufficient funds in the attorney’s trust account, Disciplinary Counsel has probable cause to investigate whether there has been a commingling or misappropriation of entrusted funds.

Our review of your account records and case files supports your representation that your trust account contained only funds belonging to you at the time of the overdraft. Accordingly, we do not find clear and convincing evidence of commingling or misappropriation.

b. Failure to Maintain Records

Rule 1.5(e) provides pertinently that “[a]dvances of unearned fees and unincurred costs shall be treated as property of the client. . . until earned or incurred unless the client gives informed consent to a different arrangement.”

In re Mance, 980 A.2d 1196, 1202 (D.C. 2009), the Court held that the Rule applies to “flat fees” explaining that if the lawyer was terminated before the matter was concluded the client may be prevented from receiving a refund. *Id.* at 1204. Citing *In re Hallmark*, 831 A.2d 366, 372 (D.C.

2003), the Court noted that it had previously held that the Rule requires a lawyer to return the unearned portion of a flat fee to her client. 980 A. 2d at 1205.

Inasmuch as flat fees are not earned upon receipt, the Rule requires that the fees be maintained in an escrow account until earned. *In re Mance*, 980 A. 2d at 1203.

In this matter you providently deposited and maintained the flat fees given to you by your clients in your trust account, rather than in your personal account. You did not, however, maintain a ledger or time records regarding the work you performed on each client matter.

We have reviewed the case files that you generated in connection with the matters and interviewed you regarding the matters as well. We are satisfied that you provided substantial legal services to your clients in relation to the total fees charged and note that none of your clients ever requested a refund. Furthermore, our review of your trust account records reveal that you withdrew funds from the account incrementally. Consequently, we cannot prove by clear and convincing evidence that you withdrew funds belonging to any of the clients from the trust account before they had been earned.

Nonetheless, your failure to maintain a billing ledger or time records regarding the work that you performed for each client violates Rule 1.15(a), which requires that an attorney maintain complete records of her handling of entrusted funds.

The purpose of maintaining “complete records” is so that the documentary record itself takes the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligations that client or third-party funds not be misappropriated or commingled. Financial records are complete only where documents sufficient to demonstrate an attorneys’ compliance with the ethical duties are maintained.

In re Clower, 831 A.2d 1030, 1034 (D.C. 2003) (quoting from Board Report).

Your failure to maintain complete financial records pertaining to the representation of your clients constitutes a violation of Rule 1.15(a).

By this letter, we suggest that you utilize colors and/or other identifiers for checks drawn on funds from your trust, personal or business accounts. This may help avoid your mistakenly using a trust account check for personal matters in the future.

In deciding to issue you this Informal Admonition, we have taken into account that you fully cooperated with our investigation, your conduct did not involve dishonesty, and have accepted responsibilities by agreeing to accept this informal admonition. We also recognize that

you have voluntarily met with the Practice Management Advisory Service of the District of Columbia Bar and that you have taken a continuing legal education class to become familiar with the requirements of Rule 1.15 and the *Mance* decision regarding the handling of advanced fees.

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:HCS:ipm