OFFICE OF DISCIPLINARY COUNSEL

December 1, 2020

Robert T. Hume, Esquire
Via e-mail on to thume@humellc.com

Re: In re Robert T. Hume, Esquire
D.C. Bar Membership No. 114132
Disciplinary Docket No. 2018-D346

Dear Mr. Hume:

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 R. XI. §§ 3, 6, and 8.

We opened this matter based upon a letter sent to us by Judge Mark A. Barnett of the United States Court of International Trade, attaching his opinion in *New Mexico Garlic Growers Coalition, et al v. United States, et al,* 352 F. Supp 1281 (Ct. Int'l Trade 2018).

We find as follows: In 1994, the Department of Commerce issued an antidumping order for fresh garlic imported into the United States from China. Antidumping orders are issued when the Department determines that goods are being sold in the United States at an unfair low price, *i.e.*, "dumped." After a determination that Chinese garlic was being dumped, the Department instructed the agency now known as the Bureau of Customs and Border Protection to collect a "cash duty deposit" from the United States customers of Chinese exporters of garlic to offset the margin between the dumped price and the fair price. These antidumping orders may be reviewed annually, and the cash duty deposits may be adjusted based on the results of the review. In 2004, the Department determined that garlic imported from the Chinese company, Zhengzhou Harmoni Spice Co., Ltd. ("Harmoni"), was no longer being dumped and so no cash duty deposit was to be collected. For other Chinese exporters, however, the cash duty deposit remained at $4.71 per kilogram. As a result, Harmoni had a competitive advantage over other Chinese exporters whose United States customers had to pay duties.

For a number of years, you have represented Chinese companies that export garlic to the United States in competition with Harmoni. These companies lacked standing under United States law to request a review of the determination that Harmoni was not dumping. Only Harmoni itself or United States competitors (or importers) could request such a review. The twentieth annual review ("AR 20") began in 2014. You persuaded Stanley Crawford, a small grower of garlic in New Mexico, to file a request for a review of Harmoni. You represented Mr. Crawford in that review request. Harmoni threatened retaliation against one of your Chinese clients. After the review was initiated, Mr. Crawford withdrew it at your suggestion. Subsequently, you paid Mr. Crawford $50,000.

The next annual review AR 21 would begin in the Fall of 2015. Your law firm, Hume and Associates, employed Joey Montoya, a recent law school graduate. You assigned Mr. Montoya to be in charge of a request to review Harmoni's garlic import prices for AR 21. Your firm's clients requesting this review were Mr. Crawford and Avrum Katz, another small New Mexico grower, who formed the New Mexico Garlic Growers Coalition (collectively "NMGGC"). NMGGC requested a review of Harmoni's cash deposit duty for AR 21. You represented Qingdao Tiantaixing Foods Co., Ltd. ("QTF"), another Chinese exporter of garlic, which was also subject to review in AR 21. Initially, you represented that there would be a wall or screen between your representation of QTF and Mr. Montoya's representation of NMGGC. Nevertheless, you supervised Mr. Montoya's representation of NMGGC.

Two months after NMGGC requested this review of Harmoni, Harmoni filed a RICO action in the Southern District of California that named, among others, you, Mr. Montoya, Mr. Crawford, and Mr. Katz as defendants. Chinese clients paid your legal fees to defend this suit, which was eventually dismissed in 2019.

In March of 2016, after the review had been requested, Mr. Montoya withdrew as counsel for NMGGC and left your firm. While still representing QTF in AR 21, you also entered your appearance for NMGGC. Both QTF and NMGGC wanted a cash duty to be assigned to Haramoni, and in that regard, their interests were the same. In June 2016, you withdrew from representing QTF. NMGGC intended to support a methodology of calculating duty amounts, which if adopted by the Department of Commerce, would increase the duty for QTF. American competitors such as the members of NMGGC benefited from higher prices for Chinese importers, but higher prices were not in QTF's interest.

In June 2016, the Department of Commerce determined that NMGGC had standing to request the review of Harmoni, and in December, it made a preliminary finding that Harmoni would be reviewed. The Department eventually reversed that determination and concluded that representations made on behalf of NMGGC lacked candor and therefore that NMGGC lacked credibility. It rescinded its administrative review of Harmoni. NMGGC challenged this decision

in the Court of International Trade. That Court ruled in the Department's favor, and the Federal Circuit affirmed that decision in March of 2020.

Your conduct in this matter violated the rules prohibiting conflicts of interest, specifically Rules 1.7(b)(2) & (4) and Rule 1.8(d). Rule 1.7(b)(2) prohibited you from representing NMGGC in AR 21, when that representation was or was likely to be adversely affected by your representation of another client, QTF, in its AR 21 review. QTF had an interest in lower duties on its exports, while NMGGC stood to benefit from higher duties for all Chinese exporters. You appeared to recognize this conflict at the outset because you purported to establish a wall or screen between yourself and Mr. Montoya, but this screening failed when you gave Mr. Montoya instructions as to how to represent NMGGC.

In AR 20, your representation of Mr. Crawford violated Rule 1.7(b)(4) because your professional judgment on behalf of Mr. Crawford was adversely affected by your on-going responsibilities to your Chinese clients. When Harmoni pressured one of your clients in China, you persuaded Mr. Crawford to withdraw his request that Harmoni be reviewed. You prioritized your Chinese client's interest over Mr. Crawford's interest in having the review conducted.

Rule 1.7(b)(2) & (4) conflicts may be waived, pursuant to Rule 1.7(c). You have maintained that Mr. Crawford and Mr. Katz were aware that you represented Chinese exporters of garlic, including QTF in AR 21. We accept your representation but being aware of your other clients does not constitute informed consent to the conflict. To obtain their informed consent, you needed to have informed Mr. Crawford and Mr. Katz of the nature of the possible conflict and the possible adverse consequences of your representing them despite the conflict. You would also have had to make your Chinese clients aware of these same factors and obtained their consent to represent Mr. Crawford in AR 20 and NMGGC in AR 21. Representing two or more clients with adverse interests cannot be undertaken without full and complete disclosure and informed consent from all clients, and that did not occur here.

Rule 1.8(d) prohibited you, in connection with a pending or contemplated administrative proceeding, from advancing financial assistance to your client, in this case the $50,000 that you paid Mr. Crawford. You have represented that this was your own money, and we cannot prove the contrary. But you were prohibited from providing financial assistance to Mr. Crawford except to advance expenses in the administrative proceeding or where such expenses are necessary to permit the client to maintain the proceeding. Here, you made the payment to Mr. Crawford after the AR 20 review had been withdrawn but when your representation of him in the AR 21 review was imminent.

In deciding to issues this letter of Informal Admonition rather than initiate formal disciplinary charges against you, we have taken into consideration that you were motivated in part by your genuine belief that the antidumping administrative procedures were unfair and that as a

result Harmoni has been able to maintain a competitive advantage and obtain substantial market share to which it should not have been entitled. We have also considered the fact that you did not charge Mr. Crawford, Mr. Katz, or NMGGC for your legal services. Indeed, you were not directly compensated for those services, although you did receive retainers from various Chinese garlic exporters for services rendered for which you did not keep time records. You have cooperated fully with our investigation. Finally, you have no disciplinary record after almost 50 years of practice, and you are now retired.

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 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.

Very truly yours,

/s *Hamilton P. Fox, III*
Hamilton P. Fox, III
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

HPF:act