



# OFFICE OF DISCIPLINARY COUNSEL

May 12, 2021

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**BY FIRST-CLASS AND CERTIFIED  
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David J. Bartone, Esquire  
26868 Canyon End Road  
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*In re David J. Bartone, Esquire*  
D.C. Bar Membership No. 411044  
Disciplinary Docket No. 2019-D085  
Disciplinary Docket No. 2019-D092  
Disciplinary Docket No. 2020-D106  
Disciplinary Docket No. 2020-D140

Dear Mr. Bartone:

This office has completed its investigation of the above-referenced matters. We find that your conduct reflected a disregard of certain ethical standards under the District of Columbia Rules of Professional Conduct, specifically Rules 1.4(a) and 1.5(b). We are, therefore, issuing you this Informal Admonition pursuant to the District of Columbia Court of Appeals Rules Governing the Bar (D.C. Bar R.) XI, §§ 3, 6, and 8.

We docketed these matters for investigation following receipt of separate complaints from four of your clients: T.S. (DDN 2019-D085); J.S. (2019-D092); A.D. (2020-D106); and C.B. (2020-D140).

**J.S. – DDN 2019-D092  
A.D. – DDN 2020-D106  
C.B. – DDN 2020-D140**

In the three matters referenced above, your clients: J.S., A.D., and C.B., were retail merchants who hired you to negotiate the removal of their businesses from the MATCH list (Member Alert To Control High-risk merchants). They sought your assistance so they could process payments from customers who used Visa and Mastercard. In all three of these matters, between December 2018 and May 2020, you agreed to represent them, they paid you a flat fee, you did some work in furtherance of their objectives, but you failed to communicate with them about the status of their case. You submitted the client files for each of these matters that show your efforts to remove their businesses from the MATCH list,

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including written communications and telephone calls with financial institutions. However, you concede that you eventually stopped responding to your clients' requests for information and even failed to notify them of the actions you had taken. Accordingly, we find that you violated Disciplinary Rule 1.4(a), which requires a lawyer to keep his client reasonably informed about the status of a matter, and to promptly comply with reasonable requests for information.

You admit that you violated Rule 1.4(a) and recognize that by ignoring and not responding to your clients' requests for status updates and accountings of the work you had completed, you caused them concern and frustration when they were entitled to your prompt responses to their reasonable requests for information. During our investigation you have shown remorse for your lack of communication and explain that due to personal difficulties in 2019, and because of personal and family medical issues beginning in April 2020, you were overwhelmed and did not respond to your clients' requests for information.

#### **T.S.; DDN 2019-D085**

In 2014, you represented T.S. in an employment discrimination matter for a contingency fee as set forth in a written fee agreement. Several years later, in March 2018, you agreed to help T.S. in responding to her employer who was in the process of terminating her, but you did not provide a written fee agreement identifying the scope of the representation or the basis of your fee. You admit that you had an attorney-client relationship with T.S. but that you did not prepare a written fee agreement because you agreed to help her *pro bono* and did not expect or ask for compensation.

After you conducted some investigatory work, you helped T.S. prepare a letter that she sent to her employer on May 18, 2018, which put them on notice of issues she claimed violated her employment rights. A year later, on May 29, 2019, after T.S. was terminated, you help prepare and send a demand letter to her employer alleging that they wrongfully terminated her. When the employer's counsel sent a letter rejecting her demand, T.S. claims that you agreed to prepare a written response to her employer, but you failed to do so. You assert that you told T.S. that you would not represent her further. Subsequently, T.S. tried to contact you by email, phone and text messages, but you failed to respond. Although we do not find that you failed to communicate your withdrawal from the representation, the best practice would be to terminate the relationship in writing. *See*, Rule 1.16(d) which addresses providing reasonable notice to your client.

As to your failure to have a written agreement, you state that you did not intend to collect any fees and only agreed to assist T.S. by preparing a demand letter for her without seeking compensation. Your client believed that the 2018 case was a contingent fee arrangement like arrangement in the 2014 representation. Her misunderstanding was a direct result of your failure

to establish the basis and rate of your fee in writing. Moreover, T.S.'s many emails asking you for updates on when you were going to respond to her employer's rejection of her demand establish that you did not fully, or clearly, explain the limited scope of the representation to T.S. Even if you intended to represent her *pro bono*, Rule 1.5(b) "requires a lawyer who has not regularly represented the client, to communicate to the client the basis or rate of the fee, the scope of the lawyer's representation, and the expenses for which the client will be responsible." We credit your assertion that you intended to represent T.S. *pro bono*, an arrangement different from the 2014 representation. However, you would have avoided any misunderstanding with T.S. if you had simply put in writing both the limited scope of representation and the agreement to perform the services *pro-bono*.

In issuing this informal admonition, we have taken into consideration that you have accepted responsibility for your misconduct, including by accepting this Informal Admonition, and that you are remorseful and fully cooperated with our investigation, including meeting with us via a Zoom video conference to discuss all four of the aforementioned cases. We also note that you refunded all the fees requested by the clients who terminated your representation, even though your files show that you performed work in furtherance of their objectives. Additionally, we note that you have no record of prior disciplinary violations in over 33 years of practice. Finally, we have given substantial consideration to pandemic-related medical issues.

You also agreed to take six (6) hours of Continuing Legal Education courses in ethics offered by the D.C. Bar and pre-approved by Disciplinary Counsel, within one year of the date of this Informal Admonition. You must present proof of attendance of the CLE within 30 days of attendance. In the event you do not complete the 6 hours of pre-approved CLE within one year, this Informal Admonition will be considered null and void and Disciplinary Counsel may initiate disciplinary proceedings against you.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and is public when issued. An Informal Admonition is the most lenient form of public discipline available. 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 within 14 days of the date of this letter to the Office of Disciplinary Counsel, with a copy to the Board on Professional Responsibility, 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(b) and (c). This 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(c). Such a hearing could

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result in a recommendation to dismiss the charge(s) 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 letter to Informal Admonition

HPF:BN:itm