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November 1, 2021

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Via email only to mstoll@steptoe.com

In re John M. Smith III, Esquire
Disciplinary Docket No. 2021-D034
D.C. Bar Membership No. 994251

Dear Mr. Smith:

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

This matter was docketed for investigation based on a complaint filed by your former client's mother, P.S. Based on our investigation of this matter, we find that your conduct violated Rules 1.1(b), 1.3(a), 1.4(a), 1.16(a)(2), 1.16(d). We find as follows:

On September 16, 2016, P.S.'s son, M.S., was found guilty of violating the Uniform Code of Military Justice (UCMJ), Article 120(b)(3)(A) (sexual assault). M.S. was sentenced to one year of confinement and dismissed from the United States Coast Guard (USCG). In 2016, M.S. hired you to appeal his conviction and submit a clemency petition on his behalf. M.S. was entitled to a military attorney to represent him throughout the entire process, but he chose to hire you as civilian counsel. You accepted full responsibility for the representation, but military counsel was available to serve as co-counsel and did assist you at times. On December 13, 2016, you notified the USCG that you were retained by M.S. as his civilian counsel. Over the next two years, you unsuccessfully pursued post-conviction relief on his behalf. M.S. did not allege that you engaged in any misconduct during this time, and we do not find any.

Serving the District of Columbia Court of Appeals and its Board on Professional Responsibility

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In April 2018, a panel of appellate military judges affirmed M.S.'s conviction, and on August 22, 2018, the U.S. Court of Appeals for the Armed Forces denied his petition for review, which ended the direct appellate process. M.S. had a final option to seek relief from the sentence provisions by filing a "residual clemency" petition with the Coast Guard Clemency Board (CGCB).

This was M.S.'s final opportunity to seek relief from the sentence. The CGCB could consider multiple factors in deciding whether to grant clemency ranging from the nature and circumstances of the offense, conduct in confinement, social factors including hardship, statements from the victim or the victim's family, and mercy. At your request, M.S.'s friends and family members, as well as the victim's parents, prepared and provided you with letters in support of his request for clemency and leniency.

The residual clemency package is usually due within 45 days of the final appeal, but the CGCB frequently grants extensions informally through verbal requests, phone calls, and emails. Beginning in October 2018, you sought several extensions of the date to submit a clemency petition and letters on behalf of M.S. In March 2019, the assigned military attorney asked you about the status of the clemency petition. You responded that you were finishing the submission and would send it the next day, which you did not. In a May 16, 2019 email, the liaison with the CGCB notified you that the deadline for submitting records was by June 10, 2019, when the existing record would be delivered to the board for review. You did not submit a clemency package on behalf of M.S., nor did you notify him of your failure to do so.

On March 5, 2020, the CGCB denied M.S. clemency. You failed to notify M.S. of the decision. You state that you did not receive notice of the decision, and you were unaware of its existence. We credit your statement, but you admit that you took no action to determine the status of the matter. From at least February 2020 through August 2020, M.S. and his mother sent you multiple emails, letters, and phone messages asking to meet with you and for updates about the status of the final clemency packet and its submission. Despite their direct questions about whether you filed the clemency petition, you did not tell M.S. or P.S. that you had not submitted the clemency petition. They grew increasingly alarmed at your failure to answer their questions, and in July 2020, they began asking you to send them M.S.'s client file. You did not answer their questions or provide the file. In an August 23, 2020, email, you informed M.S. that you had significant medical issues for the past month but told him that you would provide him the client file when you returned to work. You failed to do so. M.S. continued to ask for the file through October 2020, but you did not respond. After Disciplinary Counsel docketed this matter for investigation, you delivered the client file to our office in July 2021.

On October 13, 2020, M.S. discovered that the CGCB denied clemency after he contacted his former military counsel, who told him that you had not submitted a clemency package on his behalf. She referred M.S. to the currently assigned military counsel, who confirmed that in March 2020, the CGCB denied him clemency.

Based on these facts, we find that you violated Rules 1.1(b), 1.3(a), 1.4(a), Rule 1.16(a)(2), and 1.16(d). Rule 1.1(b) requires a lawyer to “serve a client with skill and care.” Rule 1.3(a) requires “[a] lawyer shall represent a client zealously and diligently within the bounds of the law. In your response, you state that you had a nearly completed clemency package for M.S. prior to experiencing a “series of tragic events and severe medical issues.” These personal matters may be considered mitigating circumstances, but they did not excuse your inattention and inaction, which continued for over a year. You had an obligation to not only adequately prepare but also to submit the materials in a timely matter. *See* Rule 1.1, Comment [5]. By neglecting to file the residual clemency packet, M.S. lost the opportunity to seek clemency.

Rule 1.16(a)(2) states that a lawyer “shall withdraw from the representation of a client if “[t]he lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client . . .” Your failure to act is exacerbated by your failure to notify M.S. or his assigned military counsel, who was available to assume the representation, that you were unable to practice law competently and diligently or complete and file the clemency petition. To the extent that your personal and health issues “materially impair[ed]” your representation, your failure to terminate the representation violated Rule 1.16(a)(2)

Rule 1.4(a) which requires that “[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” For over a year, from March 2019 through October 2020, both M.S. and P.S. sent you multiple requests for updates regarding the status of the residual clemency packet. You failed to advise them about the extent of your inability to practice law, advise them to hire new civilian counsel, or refer them to the assigned military attorney available for representation. After June 2019, you failed to communicate that you had not submitted any additional materials and the deadline had passed. Your failure to keep your client reasonably informed about the status of his petition for clemency and your failure to promptly comply with your client’s reasonable requests for information violates 1.4(a).

Rule 1.16(d) provides that “a lawyer shall take timely steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred.” Beginning in July 2020, M.S. and P.S. made several requests for the client file. You responded on August 23, 2020, stating you would download the documents when your return to

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your home, but you failed to do so. Your failure to provide M.S. his client file after multiple requests violates Rule 1.16(d).

In deciding to issue this letter of Informal Admonition rather than institute formal disciplinary charges against you, we have taken into consideration that you have no prior discipline, cooperated with our investigation, that you have accepted responsibility for your misconduct including by accepting this Informal Admonition, it appears that you had health issues at the time of the misconduct, and you have stated that you are winding down your practice. We also took into account that you independently took CLE courses on ethics and practice management and have expressed remorse due to your inaction.

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 Bar Counsel will institute formal charges pursuant to D.C. Bar R. XI, §§ 8(b) and (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 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.

Sincerely,

Hamilton P. Fox, III
Hamilton P. Fox, III
Disciplinary Counsel

Enclosure: Attachment letter to Informal Admonition

cc: P.S. and M.S.

HPF:BN:act