



# OFFICE OF DISCIPLINARY COUNSEL

April 4, 2022

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1201 Seven Locks Road, Suite 360  
Rockville, MD 20854

Via email only to [tlharlow@verizon.net](mailto:tlharlow@verizon.net)

Re: *In re Mark L. Hessel, Esquire*  
(D.C. Bar Registration No. 333344)  
Disciplinary Docket No. 2021-D174

Dear Mr. Hessel:

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 R. XI, §§ 3, 6, and 8.

We docketed this matter for investigation based on a disciplinary complaint from your former client, H.B., who hired you in June 2019 to assist him with collecting monies owed to his business. On October 3, 2019, you filed a civil action in D.C. Superior Court on H.B.’s behalf. The opposing party was represented by counsel. Between October 3, 2019, and February 21, 2020, you met regularly with H.B., filed pleadings in the case, and appeared in court for an initial scheduling conference. However, starting in March 2020, you failed to respond to discovery requests, letters from opposing counsel, and various motions. You also failed to respond to nearly all of H.B.’s attempts to contact you during this time. You did not provide substantive information about the status of the case on the rare occasion when you spoke to H.B. On December 1, 2020, the court dismissed H.B.’s case for failing to comply with discovery or otherwise prosecute the case. H.B. learned about the dismissal several months later from opposing counsel.

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In response to H.B.'s disciplinary complaint, you admitted that you did not "respond to [H.B.] or proceed to work on his case" following the start of the COVID-19 pandemic in March 2020, and you explained that you thought that "all litigation time lines [*sic*] were on hold." During an interview with us, you said H.B.'s case was your only case in D.C. Superior Court, and you conceded that you did not actively monitor the docket and that you should have checked the court's website for guidance relating to court operations. You explained that as a solo practitioner you coped poorly with practical challenges brought on by the pandemic. You also said that pandemic-induced social isolation, health concerns, and general uncertainty about the future caused you to feel depressed and that you were only able to "muddle through" 2020 and most of 2021. You told us that you had recently started attending therapy on a regular basis, and that you had reduced your workload to cope better with the stressors presented by the pandemic.

Rule 1.1(a) requires a lawyer to "provide competent representation to a client." Comment [5] to Rule 1.1 explains that competent handling of a matter includes "continuing attention to the needs of the representation to assure that there is no neglect of such needs." Similarly, Rule 1.3(a) requires the lawyer to represent a client "zealously and diligently," and Rule 1.3(c) requires the lawyer to "act with reasonable promptness in representing a client." Comment [8] to that Rule makes clear that "[n]eglect of client matters is a serious violation of the obligation of diligence." Here, you failed to address the ongoing needs of H.B.'s case, some of which were time sensitive, and H.B. ultimately lost the opportunity to present his case because of your neglect. You therefore violated Rules 1.1(a), 1.3(a), and 1.3(c).

Rule 1.3(b)(1) provides that a lawyer shall not intentionally "fail to seek the lawful objectives of a client through reasonably available means," while Rule 1.3(b)(2) prohibits a lawyer from intentionally "prejudic[ing] or damag[ing] a client during the course of the professional relationship." A violation of Rule 1.3(b) does not require proof of intent "in the usual sense of the word. Rather, neglect ripens into an intentional violation when the lawyer is aware of his neglect of the client matter or, put differently, when a lawyer's inaction coexists with an awareness of his obligations to his client." *In re Ukwu*, 926 A.2d 1106, 1116 (D.C. 2007) (cleaned up). Furthermore, "intent may also be inferred where the neglect is so pervasive that the lawyer must have been aware of it." *Id.* (cleaned up). Here, you were served with discovery requests and various motions via the court's electronic filing system, and the client file you produced to us included discovery deficiency letters from opposing counsel. You acknowledged during our investigation that you did not prosecute H.B.'s case although you knew you had an obligation to do so. Your inaction foreclosed H.B.'s ability to ask the court to adjudicate his case on the merits. You therefore violated Rules 1.3(b)(1) and (b)(2).

Rule 1.4(a) requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Rule 1.4(b) requires the lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Here, you failed to inform H.B. that various pleadings and orders had been filed in his case, and as a result, H.B. was unable to participate in decisions concerning how to proceed. You likewise failed to answer H.B.'s requests for information, which

deprived him of the opportunity to participate in his case. Finally, you did not inform H.B. that the court had dismissed his case. You therefore violated Rules 1.4(a) and (b).

In deciding to issue this Informal Admonition rather than institute formal disciplinary charges against you, we have considered numerous mitigating factors. First, you took this matter seriously and fully cooperated with our investigation. Second, you have no prior discipline in the District of Columbia. Third, your misconduct occurred over a relatively short period of time and is isolated to one litigated matter. Fourth, you have accepted responsibility for your actions by agreeing to this Informal Admonition. Fifth, you voluntarily refunded all fees to the client. Sixth, you completed a law firm assessment with the DC Bar Practice Management Advisory Service. Seventh, you completed the DC Bar CLE course entitled, “Our Altered Legal Landscape: Cultivating Resilience and Ethical Practice in 2021.” Eighth, your conduct did not involve dishonesty, fraud, deceit, or misrepresentation.

Your neglect of H.B.’s matter coincided with the start of the pandemic and continued through 2021. We recognize that much of 2020 was a particularly challenging time when COVID-related deaths, illnesses, lockdowns, and social restrictions were at their peak without an end in sight. Therefore, we also considered your reaction to the pandemic as a mitigating factor in the context of your misconduct. Our consideration of this factor is heavily influenced by the timing and nature of your misconduct, coupled with the proactive remedial measures you took to cope better with the pandemic. We emphasize that the pandemic does not excuse an attorney’s failure to adhere to the Rules of Professional Conduct, and an attorney’s reaction to it might not mitigate the sanction for violating the Rules in other cases.

This letter constitutes an Informal Admonition for your violation of Rules 1.1(a), 1.3(a), 1.3(b)(1), 1.3(b)(2), 1.3(c), 1.4(a), and 1.4(b) pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and it is public when issued. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect, as well as 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 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.

Mark L. Hessel, Esquire  
c/o Thomas L. Harlow, Jr., Esquire  
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Sincerely,

*/s/ Hamilton P. Fox, III*

Hamilton P. Fox, III  
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

cc: H.B. (by email)

HPF:JRH:itm