

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
May 7, 2008**

CONFIDENTIAL

Leroy M. Fykes, Esquire
1313 Emerson Street, NW
Suite A-1, Third Floor
Washington, DC 20011

**Re: *In re Leroy M. Fykes*;
Docket No. 2004-D293**

Dear Mr. Fykes:

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 Rule XI, §§ 3, 6, and 8 of the District of Columbia Court of Appeals' Rules Governing the Bar ("D.C. Bar R.").

This matter was docketed for investigation based upon an ethical complaint filed by your former client (hereinafter "JLW").

On May 20, 2003, JLW retained you to represent her in connection with her appointment and service as the personal representative of an estate pending before the Probate Division of the Superior Court for the District of Columbia.

In June 2003, you assisted JLW in filing a Petition for Probate, and a Notice of Appointment. You also aided JLW in publishing a Notice to Creditors and a Notice to Unknown Heirs in the Washington Post and the Daily Washington Law Reporter.

In September 2003, you filed a Motion for Leave to Withdraw from the representation, which was granted by the court on October 2, 2003.

On June 15, 2004, notwithstanding that you were no longer involved with the estate, you filed a pleading styled, "Motion for Supervised Probate and Removal of Personal Representative"(the "Motion"). In the Memorandum of Points and Authorities accompanying the Motion, you made several statements detrimental to JLW, in support of your motion to have her removed as personal representative of the estate. Specifically, you stated that:

- "[JLW] failed and refused to apply the Estate funds to the debts of the Estate";

- “[you] w[ere] forced to pay publication costs in the amount of \$557.68 to protect [your] credit when Personal Representative refused to apply Estate funds to Estate expenses”;
- “[JLW] dissipated Estate assets for her own use and to pay her personal expenses”;
- “Estate [p]roperties have been in various states of default and foreclosure since the appointment of [JLW]”;
- “[JLW] has collected no rents, nor effected any eviction, nor consummated any property sales in more than a year after her appointment, although two of the estate properties have mortgages in default and foreclosure”;
- “[JLW] lives in the only unliened Estate property at [deleted], paying no rent, or otherwise sharing any of the benefits of the Estate with other heirs”;
- “[JLW] lacks the financial acumen and resources to be the fiduciary in an estate holding properties valued at nearly \$1 million”;
- “[JLW] lacks understanding or refuses to perform her duties as fiduciary to the appropriate standards that require that she act on behalf of all beneficiaries and creditors”;
- “[JLW] has failed to maintain and manage the assets of the Estate by collecting rent, sales and repairs”;
- “[JLW] has failed to address and otherwise ignored the claims of the creditors of the decedent and the payment of the estate administrative expenses”; and
- “[JLW] has demonstrated an unfitness to serve in a fiduciary capacity because of both malfeasance and nonfeasance of duties.”

Based upon our investigation of this matter, we find that the statements contained in your Motion violated Rule 1.6(a)(1).

Rule 1.6(a)(1) provides pertinently that a lawyer shall not knowingly: “[r]eveal a confidence or secret of the lawyer's client.” Rule 1.6(b) defines the terms confidence and secret as follows:

“[c]onfidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client.

An attorney's duty to safeguard client secrets continues after the termination of the attorney-client relationship.¹ The District of Columbia Court of Appeals has held that this duty is to be broadly construed, and has previously disciplined attorneys for revealing a client's confidences and secrets. *See In re Gonzalez*, 773 A.2d 1026 (D.C. 2001) (Court affirmed the issuance of an informal admonition where attorney revealed client secrets in a motion to withdraw from the representation). In this case, you had a duty to maintain the confidentiality of information you acquired about your client during the course of the representation. In the Motion (which you filed more than eight months after the representation was terminated), you made numerous statements about your former client that you learned during the course of the representation that were both embarrassing and detrimental to her. Accordingly, we find that you revealed the confidences and secrets of your former client in violation of Rule 1.6(a)(1).²

In issuing you this informal admonition, we have taken into consideration that your misconduct did not involve dishonesty, and that an informal admonition is within the range of sanction for similar misconduct. *In re Gonzalez, supra*. We also have considered that on August 9, 2004, your former client was removed as Personal Representative of the Estate, and subsequently ordered to repay a substantial sum of money that she had misappropriated during her time as Personal Representative of the Estate.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8 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 within 14 days of the date of this letter to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, unless Bar 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). The case will then be assigned to a Hearing Committee and a hearing will be scheduled by the Executive Attorney for the Board on

¹ See Comment [28] to Rule 1.6.

² On February 1, 2007, D.C. Rule of Professional Conduct 1.6(d) was amended to provide:

When a client has used or is using a lawyer's services to further a crime or fraud, the lawyer may reveal client confidences and secrets, to the extent reasonably necessary:

(1) to prevent the client from committing the crime or fraud if it is reasonably certain to result in substantial injury to the financial interests or property of another; or

(2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of the crime or fraud.

The conduct at issue in this case is not governed by the present Rule, as it took place before the effective date of the amendment. In any event, we find that your conduct nonetheless would have violated the current Rule 1.6. Although some of the statements you made in the Motion can be construed as "reasonably necessary" to prevent, mitigate or rectify substantial injury to the Estate's financial interests, many other of the statements may not be so construed, and appear to have had no purpose other than to embarrass and/or harm your former client.

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,

Wallace E. Shipp, Jr.
Bar Counsel

Enclosure: Attachment to Letter of Informal Admonition

HCS/AT/cr