THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
July 30, 2003

Erling Hansen, Esquire
c/o Steven Schaars, Esquire
King, Pagano & Harrison
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Re: In re Hansen; Bar Docket No. 507-02

Dear Mr. Hansen:

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

On November 14, 2002, Bar Counsel docketed this matter for investigation based on an ethical complaint made by Marni Byrum, Esquire. Ms. Byrum states that she represented an individual ("client") in negotiations with your client, a non-profit corporation ("corporation"), regarding her client's termination of employment from the corporation. Ms. Byrum states that without her authorization, you contacted her client directly, about the subject of Ms. Byrum's representation, and that you threatened her client with criminal charges in order to gain an advantage in a civil matter.

In January 2002, Ms. Byrum commenced representation of her client with regard to a legal dispute with the corporation. The scope of Ms. Byrum's representation included matters incidental to the corporation's termination of her client's employment, such as wording of the termination letter, compensation to be paid to her client, job-related expenses for which her client should be compensated, wording of the corporation's communications concerning her client's departure, and return of confidential documents, money and property belonging to the corporation.

You represented the corporation. You were also contemporaneously serving as the Acting Executive Director for the corporation.

On July 25, 2002, you wrote a letter directly to Ms. Byrum's client, stating:

It has come to my attention that you are not complying with the terms of the agreement ending your services with [the corporation]. Recently, you have

> represented to SunTrust Bank that you are an authorized agent of [the corporation] for check writing purposes. In addition, you continue to maintain possession of [the corporation's] property. Without the consent of [the corporation], these are criminal acts.
>
> On or about May 31, 2002, you made unauthorized use of the [corporation's] checking account by representing yourself as an authorized signatory and requesting a debit instrument payable to Sprint PCS in the amount of $136.43. This payment appears to be for your personal use of your own cellular phone and not in any way for services on behalf of or related to [the corporation]. It is an incomprehensible and bizarre act. It is also unlawful.
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> Additionally, you continue to make unauthorized use of a laptop computer purchased by [the corporation]. There is no evidence in the [corporation's] files that would suggest you reimbursed [the corporation] in order to make it your personal device. You were given the opportunity to provide such evidence or to reimburse [the corporation]. You have done neither. Your failure to do so is actionable under law.
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> It is my expectation that immediately you will: (1) reimburse [the corporation] the amount of the $136.43 for your personal cellular phone charges; and (2) return the laptop computer or pay [the corporation] for the amount of $2536.94 to make it legally your own property. My sole alternative if you fail to comply by July 31, 2002 is to report these as acts of theft to the police. (Emphasis added.)

On November 8, 2002, Ms. Byrum filed a complaint with this office alleging that your letter constituted misconduct in violation of Rule 4.2 (prohibiting a lawyer from communicating about the subject of a representation with a party known to be represented by another lawyer in the matter) and Rule 8.4(g) (prohibiting a lawyer from seeking or threatening to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter).

On December 5, 2002, your attorneys responded to the complaint, stating that throughout the dispute between Ms. Byrum's client and the corporation, you communicated directly with Ms. Byrum's client regarding the business matters of the corporation and the return of files and other property that you believed belonged to the corporation, and that Ms. Byrum was aware of these communications. Your attorneys

also stated that your last communication with Ms. Byrum was in February 2002, which would have been five months before you sent the subject letter. Thus, they state that you assumed that you were authorized by Ms. Byrum to communicate directly with her client regarding the subject of Ms. Byrum's representation and that, at any rate, Ms. Byrum had finished her involvement in the case by the time you sent the subject letter.

In her reply of January 7, 2003, Ms. Byrum agrees that you were authorized to speak directly with her client regarding business matters of the corporation. Because Ms. Byrum's client had been the Executive Director of the corporation and because the corporation was winding down its operations, such discussions were necessary to the successful termination of the corporation's business. However, Ms. Byrum denies that you were authorized to speak directly to her client regarding the subject of her representation. Further, Ms. Byrum denies that her last communication with you was in February 2002. Instead, Ms. Byrum states that she last wrote to you on April 1, 2002, regarding reimbursement for expenses incurred by her client and compensation for her unused annual leave.[1] Ms. Byrum also states that when you did not reply, she left you a voice mail requesting that you contact her about the April 1 letter, the laptop computer, and several outstanding financial issues. You ignored Ms. Byrum's request and never contacted her. Instead, on July 25, 2002, you sent the subject letter directly to Ms. Byrum's client.

Rule 4.2(a) provides:

> During the course of representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party known to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so.

When you sent your letter to Ms. Byrum's client, you communicated directly with a party that you knew, or should have known, was represented by Ms. Byrum. Further, you communicated directly with Ms. Byrum's client regarding the subject of Ms. Byrum's representation, without authorization from Ms. Byrum. The opening sentence of your

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[1] Ms. Byrum has provided this Office with a copy of the April 1, 2002 letter. This letter, along with Ms. Byrum's January 7, 2003 reply to your response of December 5, 2002, was sent to your attorneys on May 14, 2003.

letter references the very agreement negotiated by you and Ms. Byrum. In addition, your letter alleges that Ms. Byrum's client possessed property and funds belonging to the corporation, which the corporation wanted returned.

Even if this property -- the laptop computer and the corporate funds used to pay phone charges -- had not been specifically mentioned during the negotiations, the subject of the negotiations between you and Ms. Byrum had been the settling of accounts and the exchange of property.[2] For instance, Ms. Byrum's letter of April 1, 2002, to you requested reimbursement for expenses her client incurred on behalf of the corporation and compensation for her client's leave balances. Ms. Byrum ended her letter by stating "[i]f there are any further concerns please contact me immediately. Otherwise, I will expect payment for the expense balance and outstanding leave to be delivered to [my client]." Despite follow-up phone messages to you from Ms. Byrum, including one on April 17, 2002 specifically mentioning the need to discuss the laptop computer, you never responded to Ms. Byrum. Instead, you sent your letter of July 25, 2002 directly to Ms. Byrum's client. The letter constitutes clear and convincing evidence of misconduct in violation of Rule 4.2(a).

We have also considered whether your letter constitutes a violation of Rule 8.4(g), which states that it is "professional misconduct for a lawyer to . . . seek or threaten to seek criminal charges or disciplinary charges *solely* to obtain advantage in a civil matter."(Emphasis added.) While the last paragraph of your letter threatens that you will file a criminal complaint against Ms. Byrum's client if she does not surrender property, we think it is a close case whether you made the threat solely to obtain an advantage in a civil matter. We are particularly troubled by the fact that you directly threatened Ms. Byrum's client while she was represented by counsel. This gives the appearance that you were attempting to use the threat of possible criminal action solely to exert leverage over Ms. Byrum's client to benefit the corporation. We conclude, however, that your threat, in spite of the fact that it was made in circumvention of known legal counsel in violation of Rule

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[2] With regard to the laptop computer, your attorneys have stated that "[a]t the time of her dismissal, [Ms. Byrum's client] had falsely represented to Mr. Hansen that the computer was hers; Mr. Hansen took [Ms. Byrum's client] at her word but later discovered files showing [the corporation] as the purchaser." In her reply, Ms. Byrum states that "[o]n April 17, [she] left a voice mail for Mr. Hansen that [she] wanted to discuss the laptop computer with him and the outstanding financial issues." Thus, it appears that the laptop computer had been an issue as early as January 2002, and was a subject of Ms. Byrum's representation of her client.

4.2(a), could possibly be subject to other interpretations. Consequently, we conclude that we could not prove a violation of Rule 8.4(g) by clear and convincing evidence.

This letter constitutes an Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the Rules of the District of Columbia Court of Appeals Governing the Bar 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 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 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,

Joyce E. Peters
Bar Counsel

Encl: Attachment to Letter of
Informal Admonition

Sent Regular and Certified Mail
No. 7160-3901-9844-1904-6242

JEP:JNB:dcw