

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
January 6, 2005**

Steven Kreiss, Esquire
1120 Connecticut Avenue, N.W.
Suite 240
Washington, D.C. 20036

Re: **In re Steven Kreiss, Bar Docket No. 2004-D204**

Dear Mr. Kreiss:

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 (the "Rules"). We are, therefore, issuing you this Informal Admonition pursuant to D.C. Bar Rule XI, sections 3, 6, and 8.

We docketed this matter on May 17, 2004, based on a complaint from your former client, Daniel Oghenochuko. Mr. Oghenochuko states that you failed to file a timely brief in his immigration matter, despite your express agreement to do so, resulting in the dismissal of his appeal. Mr. Oghenochuko states that you were retained to assist him in his appeal of the Immigration Court's denial of his application for asylum and its order of deportation. Mr. Oghenochuko states that although you told him several times that you would file the brief, you did not do so by the filing deadline and it was rejected by the Board of Immigration Appeals ("BIA"). Mr. Oghenochuko further states that you failed to keep him updated on the status of his case. Mr. Oghenochuko provides documentation from his immigration file to support his statement, including your retainer agreement and a copy of a receipt for payment of \$1,500, which indicates that payment is for a "brief to the Board/Appeals."

On July 8, 2004, you responded to the allegations. You state that Mr. Oghenochuko filed the disciplinary complaint in order to re-open his immigration case. You state that you agreed to file an appeal and review the evidence, but you did not expressly agree to file a brief on Mr. Oghenochuko's behalf. You state that you did not promise to prepare a brief because (1) you did not have the full evidentiary record, (2) you did not know the legal issues because you were not trial counsel, and (3) you had not researched the issues to determine whether a brief was warranted. You state that to file a brief without this information would amount to a frivolous filing, which is prohibited. You state that although the notice of appeal and the receipt you provided Mr. Oghenochuko indicate that you would file a brief, these statements served to preserve Mr. Oghenochuko's right to file a brief if one was warranted, not as a promise to file one. You provide a copy of your retainer agreement with Mr. Oghenochuko, dated April 1, 2003, which states that you agreed to "prepare an appeal on asylum issue." You state that this phrase means that you agreed to prepare a notice of appeal, not necessarily file a brief.

You state that Mr. Oghenochuko promised to obtain a State Department report on the political climate in Nigeria, but he failed to do so. You state that you required Mr. Oghenochuko's assistance in obtaining this document because your osteoarthritic hip limited your mobility. You state that Mr. Oghenochuko promised to pay you \$3,000, but he paid you only \$1,500. You state that you requested extensions of time to file the brief because you were assisting your father who was ill and because Mr. Oghenochuko failed to provide the requested document.

You state that after you obtained the country report through the Executive Office of Immigration Review ("EOIR"), you decided to file the brief, with a motion to file the brief late. You state that when you informed Mr. Oghenochuko of the BIA decision not to accept the motion to late-file the brief, you offered to file a motion for reconsideration, but Mr. Oghenochuko terminated your representation.

You deny that you did not communicate adequately with Mr. Oghenochuko. You state that you communicated with him at least once a week because he called often to inquire about his case. You state that each time you spoke with Mr. Oghenochuko, you asked him about the materials he was supposed to provide.

On July 26, 2004, Mr. Oghenochuko replied to your response. Mr. Oghenochuko states that you provided a receipt for the \$1,500 that he paid to you and that the receipt indicates that it is "for brief to Board/Appeals." He denies that he caused a delay in obtaining the transcript or other evidence from his Immigration Court hearing and states that it was your responsibility to obtain these documents. Mr. Oghenochuko states that because you failed to file the brief on a timely basis, he is entitled to a refund.

Based on the submissions to this office, we find as follows: On March 17, 2003, the Immigration Court denied Mr. Oghenochuko's request for asylum and ordered him removed to Nigeria. On April 1, 2003, you agreed to represent Mr. Oghenochuko. Your retainer agreement states that Mr. Oghenochuko was to pay \$3,000 for you to "prepare an appeal" before the Board of Immigration Appeals ("BIA"). You agree that Mr. Oghenochuko paid all but \$500 of the \$3,000 fee. On April 11, 2003, you filed a notice of appeal and indicated that a brief would be filed. The brief to the BIA was due on September 29, 2003. On that date, you did not file a brief but rather requested an extension of the briefing schedule, which the BIA denied because you failed to serve the opposing party at the correct address. On October 20, 2003, you filed a second request for an extension, which the BIA denied. On October 27, 2003, you filed a brief with the BIA, with a motion for leave to late-file. On November 13, 2003, the BIA denied your motion and rejected the brief. On January 9, 2004, the BIA summarily affirmed the Immigration Court's order of deportation.

We find your failure to file a brief in a timely manner or to properly serve the motion to extend the time to do so inconsistent with Rules 1.1¹ and 1.3 (a) and (c).² We find that your failure to keep Mr. Oghenochuko informed about the status of the matter and promptly comply with reasonable requests for information violated Rules 1.4(a) and (b).³ Neither the retainer agreement nor the receipt you provided Mr. Oghenochuko established any preconditions for the filing of a brief. Your assertion that the retainer was to preserve Mr. Oghenochuko's appellate rights without obligating you to file a brief may be a reasonable view of the agreement. However, even if your understanding of the verbal agreement is accurate, the language in the receipt and the retainer agreement is

¹ Rule 1.1(a):

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.1(b):

A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

² Rule 1.3(a):

A lawyer shall represent a client zealously and diligently within the bounds of the law.

Rule 1.3(c):

A lawyer shall act with reasonable promptness in representing a client.

³ Rule 1.4(a):

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.4(b):

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

ambiguous and misleading. Mr. Oghenochuko clearly believed that you agreed to file a brief and the writings you provided to him support his understanding of the agreement. Further, if you determined that an appeal would have been frivolous, you had an obligation to make this determination and communicate your position to Mr. Oghenochuko before his right to file a brief expired. Therefore, if he wished to obtain a second opinion, he could do so without losing his right to pursue his appeal. Furthermore, if you needed more time to perfect the appeal, you should have requested an extension well before the due date for filing the brief and, of course, served the opposing party at the correct address.

Boilerplate language in the BIA's notice of appeal warns that an appeal may be "summarily dismissed if you indicate . . . that you will file a separate written brief or statement and, within the time set for filing, you fail to file the brief . . ." Although you eventually submitted a brief to the BIA, it was nearly one month late, was filed after two warnings from the BIA that the matter would be dismissed if the brief was not filed, and was in fact, rejected by the BIA. Filing a brief after the tribunal's deadline is inconsistent with the type of skill and care generally afforded clients by other attorneys in similar matters. Immigration attorneys are aware that the BIA strictly construes its deadlines and rules.

Further, if Mr. Oghenochuko did not provide a document necessary for you to prepare the brief, it was your responsibility either to obtain the document or to take other action to preserve Mr. Oghenochuko's rights. It appears that the sole document that you claim delayed your preparation of the brief (*i.e.*, the country report on Nigeria) is easily accessible via EOIR or the State Department's website. Thus, it should not have taken much effort or time for you to obtain this report.

We do not find that you failed to communicate with Mr. Oghenochuko. We do, however, find that the communications were not adequate in that they did not inform your client that a brief was not necessarily part of the representation, that the brief would not be timely filed, that your requests for extensions had not been granted and what the legal effect of the rejection of the brief would be.

In deciding to issue you an informal admonition rather than filing disciplinary charges, we have considered the following mitigating factors: (1) you have no record of prior misconduct and (2) during the time you were representing Mr. Oghenochuko it appears that you had to devote significant periods of time taking care of your ill father who lived in Florida and, (3) you have agreed to refund \$2,500 to Mr. Oghenochuko.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, sections 3, 6, and 8, 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 accept this informal admonition, you must submit a check made out to Mr. Oghenochuko for \$2,500 to the Office of Bar Counsel within 10 days of the date of this letter.

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 Rule 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 Rule 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.
Acting Bar Counsel

Sent via Regular and Certified Mail # 7160 3901 9844 1904 5146

Enclosure: Attachment to Letter
of Informal Admonition

cc: Mr. Daniel Oghenochuko