THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
May 25, 2006

Gregory L. Lattimer, Esquire
1100 H Street, N.W.
Suite 920
Washington, D.C. 20005

Re: ***In re Gregory L. Lattimer*;**
Bar Docket No. 2003-D389

Dear Mr. Lattimer:

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

On July 10, 2003, this Office received a complaint filed jointly by "B.H." and "T.D.", who state that they retained Malik Z. Shabazz, Esquire, to represent their two minor children in a civil action against the District of Columbia. B.H., the minors' father, states that Mr. Shabazz did not advise him that he had retained you as co-counsel until after the settlement was reached. T.D., the minors' mother, questioned why you were refusing to turn over the proceeds of a settlement approved by the United States District Court for the District of Columbia in the civil action. After a preliminary investigation, Bar Counsel opened a formal investigation on November 6, 2003.

You responded to Bar Counsel's inquiries by letters dated September 3 and November 12, 2003, and January 20, 2006.

We find as follows:

On May 31, 2001, B.H. retained Mr. Shabazz to bring a civil action on behalf of his two minor children against the District of Columbia. The retainer agreement provides, *inter alia*, that the client "acknowledges that the Attorney may associate with additional counsel for purpose of securing additional legal expertise, if needed."

Mr. Shabazz associated with you within approximately ten days of executing the retainer agreement. Although Mr. Shabazz discussed his decision to associate with you with the client and the client consented to the association

and understood that the legal fee would not be affected, neither you nor Mr. Shabazz advised the client, in writing, of: (i) the association; (ii) the contemplated division of responsibility; and (iii) the effect of the association on the fee to be charged.

You and Mr. Shabazz filed the civil suit in the United States District Court for the District of Columbia in 2001, on behalf of B.H. as next friend for his two minor children. On January 30, 2003, you and Mr. Shabazz obtained a court-approved settlement of $160,368.13 on behalf of the minor children. The settlement order, *inter alia*, directed the parties, pursuant to D.C. Code §§ 21-120, 21-301, *et. seq.*, to file promptly "the appropriate documents with the Superior Court of the District of Columbia in order to have a guardian appointed to manage the proceeds of the settlement awarded in this matter."

The settlement check was issued on or about March 20, 2003. The check was made payable to "[B.H.] next friend of [the minor children] c/o Gregory L. Lattimer, Esquire." It included the attorneys' fees that have or had been awarded. You and Mr. Shabazz promptly informed your client, B.H., that you had received the settlement check. You and Mr. Shabazz had several conversations with B.H. during the following days (and thereafter) explaining that neither you nor Mr. Shabazz could turn over the settlement proceeds directly to B.H under the terms of the settlement order and the law requiring that a guardian be appointed whenever amounts are received for the benefit of a minor in excess of $3,000. Thereafter, you prepared documents for appointment of a guardian, first naming B.H., and then another person whom you and Mr. Shabazz believed to be a family member. You and Mr. Shabazz came to learn that both B.H. and the other person, who was not a family member, would not be able to post the required bond.

In the meantime, B.H. refused to execute a distribution sheet and other key documents pertaining to the settlement. You returned the settlement check to the District of Columbia and requested separate checks be issued for attorneys' fees and for the benefit of the minors. The new checks were issued on April 24, 2003.

You and Mr. Shabazz promptly contacted B.H. and advised him that you had received the new settlement check. B.H. refused to cooperate with a guardianship procedure and demanded that you turn over the funds to him. Shortly thereafter, also in April, 2003, you met with T.D, the mother of the minor children, and the minor children. In the course of the meeting you learned for the first time that the minor children were not living with their father but had been living with T.D. during the course of the settlement

negotiations.[1] You discussed the guardianship requirements with T.D. and the minor children.[2] T.D. opposed turning over any funds to B.H., the father, and stated that she would try to find an appropriate person who could serve as guardian.

Five months later, on September 3, 2003, you wrote to B.H. and T.D. You recounted the history of the matter and reiterated the need to have a guardian appointed to handle the settlement funds. The last paragraph of the letter states: "Apparently it has been determined that it is no longer desired that I seek out a potential guardian. Accordingly, I shall seek court appointment of a guardian on behalf of [the minor children] if neither of you have been so appointed or filed a petition for such appointment within the next ten (10) business days." A few days later, on September 9, 2003, Mr. Shabazz also wrote to B.H. and T.D. Mr. Shabazz reiterated that if neither B.H. nor T.D. petitioned the court to become guardian of the minors within ten days, he and you would promptly petition the court to appoint a qualified guardian.

On May 12, 2004, Mr. Shabazz wrote to B.H. memorializing an April 6, 2004, conversation he had with B.H., and announcing his decision to withdraw from further representation. The letter recounts that Mr. Shabazz and you, separately and jointly, had many discussions with B.H. about the need to have a guardian appointed to manage the settlement funds and that B.H. continually opposed any guardian being appointed other than himself. It makes clear that Mr. Shabazz and you repeatedly explained to B.H. that his criminal record and consequent inability to secure and post a bond precluded his appointment as guardian. It also recounts that T.D., the minor children's mother, opposed B.H.'s appointment as guardian because he told her that he would use the funds to buy a new Ford Expedition SUV and make other problematic purchases.

The letter advised B.H. that Mr. Shabazz and you had "attempted to work through the guardianship process with [B.H.] so that the funds could be dispersed for the needs of [B.H.'s] sons and perhaps ease some of [B.H.'s] burdens." However, based on B.H.'s

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[1] Both B.H. and T.D. are District residents.

[2] In a subsequent conversation between you and the elder of the minor children, you learned that both minors had been placed in a residential facility. The elder minor reported to you that he and his brother did not need the funds at present and did not wish to have a guardianship proceeding. Instead, he asked you to hold the funds on their behalf until they reached the age of majority.

"consistent resistence to a realistic and appropriate guardianship process, as well as [his] current adversarial posture towards [Mr. Shabazz] . . . [Mr. Shabazz was] unable to provide further representation in this matter." Mr. Shabazz continued by stating: "As we have discussed, you can file on your own to be the guardian, or you may retain any attorney to assert your position in regards to the estate . . . . The settlement check [is] in the possession of Mr. Lattimer, and available as the courts may require." The letter does not indicate a courtesy copy to you. Indeed, you continued in the representation and continued to hold the settlement check in the client file.

In June 2005, the elder child contacted you stating that he had turned 18 and that he wanted his share of the settlement. You asked him to come to your office with proof of his age, which he did after a period of time. Upon verifying his age, you realized that you would be unable to make a disbursement because the settlement check was stale, having been issued two years earlier in April 2003.

You contacted the D.C. finance office and, after an audit was completed, the finance office issued a new check on October 3, 2005. On October 6, 2005, the elder of the two children, accompanied by B.H., signed a Settlement Distribution Statement acknowledging receipt of his share of the settlement funds. At the request of the younger child who was still a minor, you placed the remainder of the funds in an interest bearing trust account for the benefit of the minor.[3]

Based on the above, we conclude as follows:

1. Rule 1.15(a) states in pertinent part: "A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. *Funds shall be kept in a separate account maintained in a financial institution.*" (Emphasis added.) Rule 1.15(b) provides in pertinent part: " A lawyer shall promptly deliver to the client . . . any funds . . . that the client . . . is

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[3] In a meeting with a representative of this Office, you recognized that you had failed to follow through with the guardianship proceedings after you had promised B.H. and T.D. that you would do so. You also acknowledged that your reliance on the stated wishes of the minors, *i.e.*, to hold the funds on their behalf (without seeking appointment as guardian), was misplaced. However, you stated that your actions were intended to benefit the minors. Further, you promised to promptly seek appointment of a guardian for the remaining minor, which you have done.

entitled to receive . . . ." You were in possession of the settlement check. By placing the settlement check in the client file rather than promptly filing the required documents to have a guardian appointed, securing the client's endorsement and depositing the check into your client escrow account, or taking other appropriate action such as filing an interpleader with the Court, you allowed the check to become void on its face. Although you were ultimately able to get the check reissued, we conclude that you failed to safekeep the client's property as required by the Rule. In addition, your actions caused a five-month delay in disbursing funds once the elder child reached the age of majority. Accordingly, we conclude that you violated Rules 1.15(a) & (b).

2. Rule 1.1 provides:

(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.

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

We conclude that you violated these Rules in several ways. First, although you were aware that pursuant to the terms of the settlement order and D.C. Code §§ 21-120, 21-301, *et. seq.* a guardian needed to be appointed, and you promised B.H. (and T.D.) that you would do so, you failed to timely secure a court-appointed guardian to manage the proceeds of the settlement awarded in the matter. Second, by failing to follow the requirement under Rule 1.15 to safekeep client property, you also: (i) prevented interest to be earned on the settlement proceeds, which, as a fiduciary, you were required to do; and (ii) were unable to promptly turn over the funds. Accordingly, we conclude that you violated Rules 1.1(a) & (b).

3. Rule 1.5(e)(2) provides that a division of a fee between lawyers who are not in the same firm may be made only if: "the client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and the effect of the association of lawyers . . . on the fee to be charged." You acknowledge that you and co-counsel failed to provide your client the required writing. Accordingly, we conclude that you violated Rule 1.5(e)(2).

In issuing you this Informal Admonition, rather than pursuing more severe discipline, we have considered: (i) that you have been a member of the D.C. Bar since

1983 and have had no prior discipline; (ii) that you cooperated fully in our investigation; (iii) that your actions were motivated by your intent to protect the settlement awards for the benefit of the minor children; and (iv) that you have since taken appropriate steps to secure a court-appointed guardian to manage the funds of the remaining minor.

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, §§ 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 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). 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.
Bar Counsel

Enclosure: Attachment to Letter of Informal Admonition
cc w/o encl: B.H. and T.D.

Via Regular & Certified Mail
No. 7160-3901-9849-4835-8335

WES:JTR:JMJ:dcw