

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
March 30, 2004**

Samuel N. Omwenga, Esquire
1717 K Street, N.W.
Suite 600
Washington, D.C. 20036

Re: **In re Omwenga, BDNs. 125-03 & 2003-D267**

Dear Mr. Omwenga:

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

In Docket No. 125-03, we docketed this matter for investigation based on a disciplinary complaint filed by Mr. Carl Brown. Mr. Brown, *inter alia*, raised the issue of whether you were retained to assist him in vacating his criminal conviction in Maryland. In response, we requested that you forward a copy of Mr. Brown's retainer agreement or the writing required by Rule 1.5(b). You responded by stating that Mr. Brown retained another attorney who, in turn, retained you. You forwarded a copy of Mr. Brown's retainer agreement with the first attorney. The retainer agreement does not address the division of fees between attorneys who are not members of the same firm. You do not have a writing that complies with the requirements of Rule 1.5(e) and state that you believed that it was the first attorney's responsibility to obtain such a writing. The first attorney's retainer agreement notes that a co-counsel may be retained but does not discuss the identity of the co-counsel or the division of responsibility between the counsels. The first attorney, who is not a member of the District of Columbia Bar, may not be required by his Bar to make such a disclosure in writing.

We find that you violated Rule 1.5(e) by your failure to provide, or to make sure that the first attorney provided, a writing consistent with the requirements of Rule 1.5(e). We do not address the remainder of Mr. Brown's issues because shortly after he filed a reply, he was deported. Thus, we are unable to complete our investigation. If Mr. Brown returns, we reserve the right to re-open this matter as to the remainder of Mr. Brown's allegations.

In Docket No. 2003-D267, we docketed this matter for investigation based upon a complaint filed by your former client, Ms. Mutwol. Ms. Mutwol states that after she terminated your services, you would not turn over her file. She states that she retained the services of another attorney to assist her in obtaining her file, but you failed to send her file to her new attorney as she requested.

On September 5 and October 1, 2004, you responded to the complaint. You state that you previously provided a copy of Ms. Mutwol's labor certification to her and that you thereafter mailed a copy of the file directly to Ms. Mutwol rather than to her new attorney, although you were aware of her request to mail the file to her new attorney. You further address the reference in your retainer agreement which states, "Attorney is not obligated to release the client's file unless all fees and costs then owing are paid by the client." You state that you have never cited it in *refusing* to release a client's file and that you have now deleted this provision.

On August 12, 2003, Ms. Mutwol replied to your initial response. She encloses correspondence to her from her new attorney concerning his attempts to obtain the file from you and a letter from you to the new attorney concerning the file. One of the letters from you to Ms. Mutwol's new attorney references the provision in your retainer agreement which states that you will not provide client files when the client has an outstanding balance.

Rule 1.16(d) states: "In connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled." Although you provided certain documents to Ms. Mutwol before your services were terminated, we find that you did not provide the entire file. Therefore, when your services were terminated, Ms. Mutwol had the right to ask for her entire file. Although there was little else in the file besides a copy of the labor certificate application, Ms. Mutwol and her new attorney had the right to all documents, correspondence, retainer agreements and other documents comprising the file. Ms. Mutwol also had the right to direct that the file not be sent to her but to her new attorney. You failed to comply with this reasonable request. Although you state that you sent the file directly to Ms. Mutwol, if it was sent, it was sent to an address that was not current and therefore Ms. Mutwol did not receive it. Ms. Mutwol did not receive the file until you complied with this office's subpoena for the file and we forwarded it to her. Therefore, we find that you violated Rule 1.16(d).

Rule 1.8(i) states:

A lawyer may acquire and enforce a lien granted by law to secure the lawyer's fees or expenses, but a lawyer shall not impose a lien upon any part of a client's files, except upon the lawyer's own work product, and then only to the extent that the work product has not been paid for.

Although you state that you did not impose a lien on Ms. Mutwol's file, the statement in your retainer agreement is improper and inaccurate. We find that your reference to this provision in your letter to successor counsel was an attempt to violate

Rule 1.8(i). *See* Rule 8.4(a) (“It is professional misconduct for a lawyer to: (a) violate or attempt to violate the rules of professional conduct . . .”).

In issuing this Informal Admonition, this office has taken into consideration your cooperation with our investigation, the absence of dishonesty in these matters, and the apparent lack of prejudice to your clients.

This letter constitutes an Informal Admonition for your violation of Rules 1.5(e), 1.16(d) and 8.4(a) pursuant to D.C. Bar R. 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 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 9848 0251 9163

cc: Carl J. Brown
Agnes Mutwol

JEP:EAH:tsm