

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
February 24, 2004**

Harry Tun, Esquire
Tun & Associates
400 Fifth Street, N.W.
Suite 300
Washington, D.C. 20004

Re: **In re Harry Tun; Bar Docket No. 2003-D385**

Dear Mr. Tun:

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.").

On November 5, 2003, after a preliminary inquiry, we docketed this matter for formal investigation based on a complaint from Ms. Delores Kennedy, your former client. Ms. Kennedy states that you failed to provide her with documentation indicating the amount of her settlement for a civil suit. She states that she was awarded \$3,000, but that you took approximately \$1,400-\$1,600 in attorney's fees. Ms. Kennedy states that she received a notice from the Internal Revenue Service ("IRS") indicating that she owed taxes on the full \$3,000 settlement. She states that she needs documentation to show that she did not receive the full award. Ms. Kennedy provides a copy of the IRS statement.

On October 16, 2003, you replied to the allegations. You state that Ms. Kennedy's matter was settled satisfactorily and that the funds were distributed properly. You state that you explained to Ms. Kennedy that settlement funds for pain and suffering are not taxable. You state that you unsuccessfully attempted to speak with an official from the Office of Corporation Counsel concerning the matter. You state that you cannot locate Ms. Kennedy's file because of an office move but forward a copy of an affidavit that you have provided to Ms. Kennedy, in which you state that the funds she received were for pain and suffering, and therefore not taxable.

On October 21, 2003, Ms. Kennedy replied to your response. She states that her tax dispute has been resolved to her satisfaction. However, Ms. Kennedy continues to request her client file because she believes that you overcharged her for legal services and that the file will confirm this. She provides a copy of her retainer agreement dated August 20, 1999.

On December 15, 2003, you provided a further response, adopting your October 16th response and reiterating that you properly deducted \$1,000 from the settlement as your attorney's fees and an additional amount for expenses incurred in representing Ms. Kennedy. You state that you believe that the expenses included transcription fees for depositions and faxes and copying costs.

We find that your failure to retain Ms. Kennedy's client file and records reflecting your handling of her settlement funds violates Rules 1.15(a) and 1.16(d)¹. See *also* Legal Ethics Opinion 283 (July 15, 1998) (advising prompt delivery of client property and retention of client files in closed cases for at least five years in most circumstances); D.C. Bar R. XI, § 19(f). The conclusion of your legal representation of Ms. Kennedy was less than five years since the date she requested her files and financial records must be kept even in the absence of a client request. Thus, you should have retained her file and financial records concerning the settlement and promptly delivered them to her, as required by the Rules. You state that you moved and apparently lost the file. It was your responsibility to safeguard the file and financial records, and to provide them to Ms. Kennedy in a timely manner. An office move does not excuse your obligation to comply with your ethical responsibilities.

In view of the size of the settlement and the amount deducted as attorney's fees (which was consistent with that provided in the retainer agreement), we do not have sufficient evidence that your deduction of attorney's fees and expenses from the settlement funds was improper. It further appears that Ms. Kennedy did not object to the amount of legal fees and expenses deducted from her recovery at the time of distribution.

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

¹ Rule 1.15(a) states, in relevant part: "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

Rule 1.16(d) states that "[i]n connection with any termination of representation, a lawyer shall take timely steps . . . to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled"

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

Enclosure: Attachment letter to
Informal Admonition

Via Regular and Certified Mail # 7160 3901 9844 1904 5818

cc: Ms. Delores Kennedy

JEP:EAH:tsm