

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

Guillermo D. Uriarte, Esquire
c/o Jacob A. Stein, Esquire
Stein, Mitchell & Mezines
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: **In re Uriarte; Bar Docket No. 380-02**

Dear Mr. Uriarte:

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. ").

The Allegations and Your Response

We docketed this matter for investigation based on a disciplinary complaint filed by Luís Hernando Acuña, who alleges that you represented him incompetently before an immigration judge in his asylum case and neglected to file an appeal of the judge's oral decision denying his petition.

You deny most of Mr. Acuña's version of events but acknowledge that you did not file a brief appealing his case, despite indicating to the immigration court that you would do so. You state, through counsel, that "[t]he brief was not filed because of a breakdown in what Mr. Uriarte had reason to believe was a well-established and efficient office procedure put in place to log in deadline dates." You attach the affidavit of your paralegal, Alejandro Frigerio, whom you state "is a licensed attorney in Argentina and has a masters degree in economics and philosophy from Georgetown University and a Ph.D. in philosophy from American University."

Mr. Frigerio avers that he was "in charge of case and records management as well as court dates, deadlines and client appointment management." He reports that your system for recording "court dates and document submission deadlines," was to file and record the pertinent dates in the "file database" once he received any documents from court or the Immigration and Naturalization Service (INS). Then he "would write-up in the main calendar board accessible to all office employees, both court dates and deadlines for filing." During a meeting at our office on March 18, 2003, you stated that it is your

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practice to meet with Mr. Frigerio daily to review incoming correspondence and deadlines.

Mr. Frigerio reports that he recalled “receiving a notice to file a brief in support of the appeal,” in Mr. Acuña’s case. He continues:

Furthermore, I recall following the usual procedure of filing the notice and entering the deadline in the file database. I do not recall with certitude but, apparently, I failed to write-up the deadline on the main calendar board and in addition the information was somehow deleted or erased from the database by mistake.

Our Investigation

Our investigation reveals that on or about October 12, 2000, Mr. Acuña retained you to represent him at an asylum hearing in connection with his political asylum claim. His wife’s then employer, James J. Corsetty, paid you \$3000 to represent Mr. Acuña at his hearing.¹

At the hearing on February 27, 2001, Immigration Judge Bruce M. Barrett denied Mr. Acuña’s request for asylum, holding that he had not presented sufficient evidence to demonstrate fear of harm in Colombia based on membership in a particular social group or the holding of an unpopular political opinion. Judge Barrett further found that Mr. Acuña had not demonstrated a link between, on one hand, the Colombian paramilitary groups he claimed had threatened him and, on the other, the Colombian government or its officials acting in their official capacity.

You agreed to handle the appeal before the Board of Immigration Appeals (BIA) for \$1,000, plus filing costs, all of which was paid by Mrs. Acuña’s former employer. You timely noted the appeal on March 27, 2001.

In a notice dated September 24, 2001, the BIA notified you that your brief in support of the appeal was to be received on or before October 24, 2001. You did not file a brief despite indicating on the notice of appeal that you would do so; you never explained to the BIA your failure to do so. The notice of appeal form has the following notice:

¹ Mrs. Acuña died in childbirth on January 25, 2002, before her immigration claim was fully adjudicated.

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WARNING: Your appeal may be summarily dismissed if you indicate in Item #6 that you will file a separate written brief or statement and, within the time set for filing, you fail to file the brief or statement and do not reasonably explain such failure.

(Emphasis in original). On October 12, 2001, approximately two weeks before your brief was due, the INS filed a “Memorandum in Opposition to Respondents’ Appeal” in Mr. Acuña’s case, as well as that of his wife and daughter. You did not file a response to the INS’s pleading.

On April 17, 2002, the BIA summarily dismissed Mr. Acuña’s appeal because a brief had not been submitted on his behalf and because on review of the record, the BIA was not persuaded that the immigration judge’s “ultimate resolution was in error.” At this point, Mr. Acuña had two options: to file a motion to reopen for which he had 90 days, or file an appeal of the BIA’s decision in federal court, for which he had 30 days.

You state that you met with Mr. Acuña in April/May 2002, after you discovered that you had missed the deadline for filing the appeal brief. You report through counsel: “[Mr. Uriarte] told him that he would see if anything could be done. It turned out that without new evidence nothing further could be done. There was no new evidence.” You contend that “[t]he appeal itself had little likelihood of success.”

At the end of July or early August 2002, Mr. Acuña retained new counsel, who filed with the BIA a motion to reopen based on your ineffective assistance of counsel.

During the course of our investigation, you refunded the fee for the appeal that Mr. Corsetty had paid on Mr. Acuña’s behalf.

Legal Analysis

1. Under Rule 1.1, an attorney has an obligation to represent his client competently. Competent representation requires (a) the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation, and (b) service with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters. We are unable to conclude that your failure to file the brief in Mr. Acuña’s case was an isolated error due to a calendaring mistake because, before your deadline had passed, the INS filed, in effect, the opening brief when it filed its legal memorandum opposing the relief that Mr. Acuña sought. Thus, you had a second

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opportunity to file a timely pleading on Mr. Acuña's behalf but failed to do so. We conclude that you violated this Rule.

2. Based on the analysis above, we also conclude that you neglected Mr. Acuña's appeal in violation of Rule 1.3(a), which provides that an attorney must represent his client with diligence and zeal.

3. Under 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." Here, you state that you had no basis to file a motion to reopen Mr. Acuña's case with the BIA because you had no new evidence. However, you could have advanced your failure to file the brief as "new evidence" and filed the motion based on ineffective assistance of counsel, as other attorneys in a similar position have done. If, as is understandable, you did not wish to do so, you could have informed Mr. Acuña of this avenue for another attorney to pursue. You failed to do so. Further, you do not address why you rejected filing an appeal of the BIA's decision and do not contend that you advised Mr. Acuña of that option. Neither does Mr. Acuña. Consequently, we conclude that you violated this Rule.

4. With respect to a nonlawyer employed by a lawyer, Rule 5.3 provides in pertinent part:

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer[.]

Based on Mr. Frigerio's affidavit regarding the office procedures you employ, and your representations at our meeting that you and he meet daily to discuss incoming correspondence and deadlines, we do not believe that we could establish that you failed to put in effect measures to ensure that Mr. Frigerio's conduct is compatible with your ethical obligations and we do not find a violation under this Rule.

Conclusion

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 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 7188

cc: Luís Hernandez Acuña

JEP:TMT:RLH:snl

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