

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
JULY 13, 2001**

Patrick G. Merkle, Esquire
1750 K Street, NW
Suite 505
Washington, DC 20005

Re: Merkle/Lamb
Bar Docket Number 267-00

Dear Mr. Merkle:

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.

On August 10, 2000, Bar Counsel opened an investigation based on an ethical complaint filed by Franklin P. Lamb. Mr. Lamb states that you engaged in conduct involving dishonesty. On March 9, 1999, you filed a praecipe in a landlord-tenant matter entering your appearance as special counsel for the Trustee of the United States Bankruptcy Court. Mr. Lamb states that in the praecipe you represented that you had full authority for all landlord-tenant matters, including a \$72,000 claim that he had against your client.

Mr. Lamb explained that he filed a bankruptcy petition in the Bankruptcy Court for the District of Maryland ("Bankruptcy Court"), *In re Franklin P. Lamb*, 96-11099 (D. Md.). He owned rental property and one of his tenants filed motions for relief in the bankruptcy matter. You represented the tenant in connection with the motions in the Bankruptcy Court. Eventually Mr. Lamb filed suit against your client, seeking back rent of about \$72,000 in a landlord-tenant matter styled *Lamb v. Turner*, No. 3906-99 (D.C. Super. Ct.). On March 9, 1999, you filed a praecipe entering your appearance as special counsel for the U.S. Trustee, with full authority to act on all landlord-tenant matters for the U.S. Trustee, Merrill Cohen. Based upon your representations, the Superior Court issued a stay in Mr. Lamb's case.

You responded by letter dated September 13, 2000, with supporting documents. You state that on March 9, 1999, the Trustee of the Franklin and Nadia Lamb bankruptcy proceeding offered you the position of special counsel. You had contacted the Trustee to determine whether Mr. Lamb's landlord-tenant claim against your client had been filed with the Trustee's consent. You state that Mr. Lamb's claim against your client was an asset of the bankruptcy estate. For that reason, you

considered filing a motion to dismiss on the ground that Mr. Lamb had not obtained relief of the stay to sue in his own name. You state that you told the Trustee that the current inaction on collection of rents was costing the trust \$7,000 per month that could be applied to the payment of debts. You state that the Trustee asked if you would take over the rental properties on behalf of the estate by acting as special counsel and that you accepted. You state that the Trustee made no mention of your need to obtain the consent of the Bankruptcy Court. You state that you disclosed to the Trustee, by letter dated March 9, 1999, the possible conflict of interest presented if you were to serve as special counsel. You advised the Trustee that your client had liquidated and unliquidated claims against Mr. Lamb, that your client was interested in the outcome of Mr. Lamb's property sales, and that your client was the named defendant in Mr. Lamb's pending landlord-tenant eviction action which included a claim for \$67,000 in back rent.

You state that Mr. Lamb was not harmed by your filing the praecipe on March 9, 1999, which resulted in a continuation of the matter because the matter eventually was dismissed based on lack of valid notice to quit. You state that you took no action as special counsel and that you immediately withdrew the entry of appearance when the Trustee informed you that you had misunderstood your appointment.

We discussed the matter by telephone with Merrill Cohen, Esquire, the United States Trustee in the bankruptcy matter. Mr. Cohen stated that you requested to be appointed attorney to the Trustee to collect rent from Mr. Lamb's tenants, including your client, Ms. Turner, in the bankruptcy matter. Mr. Cohen stated that he advised you that he could not unilaterally retain you, but rather, if you wished to do so, you would first have to obtain permission from the Bankruptcy Court. Mr. Cohen stated that he advised you that he would consider your request and get back to you. Mr. Cohen stated that he was not inclined to ask the Bankruptcy Court to appoint you as special counsel because he believed that it would constitute a conflict of interest (*i.e.*, you represented a tenant seeking relief in a bankruptcy proceeding, and as special counsel, you would have had to collect rent from your own client as part of the bankruptcy petitioner's plan). He stated that when he learned that you had entered your appearance as special counsel to the bankruptcy Trustee in the landlord-tenant matter, he confronted you. You stated to him that you had misunderstood the earlier conversation and represented that you would file a praecipe in the landlord-tenant matter correcting your error.

Based on the above facts, we conclude as follows:

1. Rule 1.7(a) states in pertinent part: "A lawyer shall not advance two or more adverse positions in the same matter." The commentary to the rule provides as follows: "Rule 1.7 (a) sets out the limited circumstances in which representation of conflicting interests is absolutely *prohibited even with the consent of all involved clients.*" Comment [1]. The Rule is applicable in circumstances where ". . . the lawyer is representing multiple interests in the same matter . . ." Comment [1]. "The absolute prohibition of paragraph (a) applies only to situations in which a

lawyer would be called upon to espouse adverse positions for different clients in the same matter.” Comment [4].

You were aware of and disclosed to the Trustee, by letter dated March 9, 1999, the conflict of interest presented if you were to serve as special counsel. By filing the praecipe in a landlord-tenant matter entering your appearance as special counsel to the bankruptcy Trustee, you thereby represented multiple interests in the same matter (*i.e.*, you represented a tenant seeking relief in a bankruptcy proceeding, and as special counsel, you may have had to collect rent from your own client as part of the bankruptcy petitioner’s plan). This particular conflict of interest “is absolutely prohibited even with the consent of all involved clients.” Accordingly, we conclude that you violated Rule 1.7 (a).

2. Rule 8.4 (c) states in pertinent part: “It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit, or misrepresentation” Rule 3.3 (a)(1) states in pertinent part: “A lawyer shall not knowingly: . . . (1) make a false statement of material fact or law to a tribunal” You represented to the Court in a pleading filed in a landlord-tenant matter that you were special counsel to the Trustee in a bankruptcy matter, when you were not. However, we cannot disprove your statement that you misunderstood that you were given authority to make such a representation to the tribunal. Accordingly, we do not find that you violated Rule 8.4 (c) or Rule 3.3 (a)(1).

Based on the above facts, we conclude that you violated Rule 1.7(a). This letter constitutes an Informal Admonition pursuant to Rule XI, Sections 3, 6, and 8 of the Rules of the District of Columbia Court of Appeals Governing the Bar. Please refer to the attachment to this letter for a statement of its effect and your right to have it vacated and have a formal hearing. 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.

This Informal Admonition will become public 14 days from the above date, if you do not request a hearing. If you wish to have a formal hearing, you must submit a request in writing to the Office of Bar Counsel, 515 Fifth Street, NW, Building A, Room 127, Washington, DC 20001, with a copy to the Board on Professional Responsibility within 14 days of the date of this letter, unless Bar Counsel grants an extension.

Sincerely,

/s/

Joyce E. Peters
Bar Counsel