THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
April 10, 2002

William S. Stancil, Esquire
2933 W Street, S.E.
Washington, D.C. 20020-7215

Re: Stancil/Jones; Bar Docket No. 392-01

Dear Mr. Stancil:

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 November 13, 2001, Bar Counsel docketed a formal investigation based on an ethical complaint by your former client, Anne Jones (the "Complainant"), who retained you to represent her in a civil matter styled *Jones v. Nelson,* No. 00-CA-993 (D.C. Super. Ct.). We docketed this investigation based upon your client's statement that you failed to prepare her adequately for trial, to appear at trial, to inform her in advance that you would not be present at trial, or to seek the court's permission to withdraw from the matter. In addition, Complainant states that you charged her $500, $200 of which she paid, notwithstanding that the written contingent-fee agreement provided that you would be paid a percentage of any recovery.

You responded by letters dated August 3, 2001, and November 16, 2001, and met with Bar Counsel on January 29, 2002. You state that you were unable to prepare Complainant for trial because she refused to come to your office in an effort to avoid payment of the retainer balance. In a telephone conversation with our office on November 5, 2001, you acknowledged that, in addition to the written fee agreement, which provided that the firm would receive a percentage of any recovery, you also charged Complainant $500. We note that the fee agreement has no provision for the payment of any advance fee. You state that the $500 fee was an oral agreement, made at the same time that Complainant signed the fee agreement and was indeed an additional fee, not an advance of

costs. Therefore, the total fee was a percentage of any recovery *plus* $500. [1]

You state that you were unable to appear at the trial scheduled for June 18, 2001, because of a medical emergency. You state that on the day of the hearing you contacted chambers and opposing counsel, but that you were unable to reach Complainant. The record reflects that at the hearing, the matter was continued to September 4, 2001. The record also reflects that a notice of the new hearing date was sent to you together with an order denying your client's motion for sanctions against you for your failure to attend the scheduled hearing. You state that you met with the judge on or about June 19, 2001, to explain your absence.

You wrote to Complainant on June 21, 2001, advising her that you would withdraw from her case because she had not paid the $300 retainer balance and had contacted opposing counsel without your knowledge. The letter indicates that you returned the original documents that Complainant had provided you. The record reflects that you did not move the court for permission to withdraw until a month later, on July 27, 2001, and that the court did not act on your motion prior to the rescheduled September 4, 2001, court date. Neither you, nor Complainant, appeared at the rescheduled court date. At the hearing, the Defendant orally moved to dismiss the suit, which the court granted without prejudice.

In the November 5, 2001, telephone conversation with our office, you stated that you had not received any opposition to your motion to withdraw, but you acknowledged that there had been no ruling on the motion. Further, you acknowledged that you had taken no further action on Complainant's case, had not checked on the status or inquired into the court's ruling on the motion after you filed it, and that you were unaware of the dismissal without prejudice. Our office spoke with the presiding judge in this case on December 18, 2001. He stated that he did not rule on your motion prior to the scheduled court date because he wanted you and Complainant to come to court to discuss the motion to withdraw.

1. Rule 1.5 (c) provides that "[a] contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation, and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated." Rule

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[1] You state that the retainer agreement is the standard retainer agreement used by the firm and that you had no role in drafting it.

1.5 (b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation." The Commentary to the rule provides, "[i]n a new client-lawyer relationship . . . an understanding as to the fee should be promptly established." Comment 1. "It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation." Comment 1.

You acknowledge that in addition to the written fee agreement, which provided that the firm would receive a percentage of any recovery, you also charged Complainant $500. The fee agreement had no provision for the payment of any advance fee. Notwithstanding that the retainer agreement may be the standard form used by your firm[2], we find that your failure to put the $500 fee in writing constitutes a violation of Rules 1.5 (c) and/or (b).

2. Rule 8.4 (d) provides that "It is professional misconduct for a lawyer to . . . engage in conduct that seriously interferes with the administration of justice." At an interview at our office on January 29, 2002, you stated that you never received notice of the September 4, 2001 trial continuance and did not appear for that court date. Our investigation reveals that the continuance is noted on the June 18, 2001 court docket sheet, and that your failure to attend the hearing resulted in the dismissal of your client's matter without prejudice. Notwithstanding your statement that you never received notice of the continuance, the record reflects that the court mailed you notice of the rescheduled date. In any event, attorneys have an independent duty to keep current with the trial court's docket. *See Ruby v. State of Maryland*, 708 A.2d 1080, 121 Md. App. 168 (Md. 1998). The Maryland Court observed that "it is a lawyer's duty 'to follow dockets' so as to keep abreast of developments in case, and 'counsel will not be heard to exclaim that [or she] was unaware of an entry.'" *Id*. at 1085, quoting *Maryland Metals v. Harbaugh*, 33 Md. App. 570, 576, 365 A.2d 600, (Md. 1976). In the District of Columbia at or about the same time, in a domestic relations matter where a party failed to file a timely notice of appeal, the court held a lawyer's "lack of knowledge of entry of judgment occasioned by failure to receive the clerk's notice [of entry of judgment] does not,

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[2] Under the provisions of Rule 5.2 (a), "a lawyer is bound by the Rules . . . notwithstanding that the lawyer acted at the direction of another person." Rule 5.2 (b) states a subordinate lawyer does not violate the Rules *only if* that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty. Here, Rule 1.5 makes clear the lawyer's duty to provide the client a written disclosure of the rate or basis of the fee.

without more, constitute grounds for a finding of excusable neglect," and does not present grounds to extend the time for noting an appeal. *Pryor v. Pryor*, 343 A.2d 321, 323 (D.C. 1975). Notwithstanding the lawyer's failure to receive notice of the trial court's decision on her motion, the Court specifically noted that counsel could have contacted "the law clerk or secretary or the clerk's office to keep abreast of the case without having to disturb the judge personally." *Id*. Thus, although you claim that you never received notice of Complainant's trial continuance, you took no steps after June 2001 to determine the status of your client's case and failed to appear at the rescheduled court date, which resulted in the dismissal of the case. Your failure to check the status of your motion to withdraw together with your failure to keep abreast of your client's case, thereby leading to its dismissal, constitutes a violation of Rule 8.4 (d).

3. Rule 1.16 (d) provides that "[i]n connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled . . . ." An attorney may withdraw from representation provided he has taken reasonable steps to avoid prejudice to the client. Here, although you satisfied the requirement of filing a motion to withdraw from representation with the Superior Court of the District of Columbia and forwarded a letter to Complainant dated June 21, 2001, informing her of your decision, the court did not act on your motion. Therefore, you were still obliged to appear on Complainant's behalf at the September 4, 2001, rescheduled trial. We find that your improper withdrawal failed to protect your client's interests and constitutes a violation of Rule 1.16 (d).

Based on the above facts, we conclude that you violated Rules 1.5 (c) and/or 1.5 (b), 8.4 (d) and 1.16 (d). 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.

In making our determination to issue this Informal Admonition, we have taken into account that you have no prior public discipline, that you have cooperated with Bar Counsel and you have expressed willingness to take steps to reinstate your client's matter.

This Informal Admonition will become public 14 days from the above date if no

request for a hearing is made. 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,

Joyce E. Peters
Bar Counsel

Encl. Informal Admonition Attachment

Regular and Certified Mail
No. P-977-311-585

cc: Anne Jones

JEP:JTR:dcw