THE FOLLOWING INFORMAL ADMONITION WAS ISSUED
BY BAR COUNSEL ON
April 2, 2002

BY FIRST-CLASS AND CERTIFIED
MAIL # 7106 4575 1294 2774 4065

Cheryl Moat Taylor, Esquire
1730 K Street, N.W.
Suite 304
Washington, D.C. 20006

Re: Moat Taylor/James-Brewington
Bar Docket No. 346-01

Dear Ms. Moat Taylor:

This office has completed its investigation of the above-referenced matter. Because your conduct reflected a disregard of certain ethical standards, we are issuing to you this Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the District of Columbia Court of Appeals Governing the Bar.

On September 13, 2001, Bar Counsel docketed a formal investigation based on an ethical complaint filed by your former client, Lissa M. James-Brewington who retained you in August 2000 to represent her in a bankruptcy matter. Ms. Brewington states that you never filed her bankruptcy petition even though she paid you and provided you all the necessary information. Ms. Brewington stated that she was being pressed by creditors in April 2001 and so notified you. While she thought you had already filed her petition with the Bankruptcy Court, Ms. Brewington states that she learned that you had not. When she spoke with you in the summer of 2001, you advised her that the petition would be filed by the end of August 2001. When she called you back to confirm that her petition had been filed, she discovered that your office phone had been disconnected. At that point, Ms. Brewington filed a complaint against you with this office.

By letter dated November 2, 2001, you acknowledge that Ms. Brewington first spoke with you on August 23, 2000 about her desire to

file for bankruptcy. You claim that you informed her that you were about to give birth and could not meet with her. Nonetheless, you state that Ms. Brewington came to your office the next day, filled out the paper work and left it along with a $400 fee for you. Your paralegal prepared documents which were sent to Ms. Brewington by September 27, 2000, along with a request for her to provide "additional items before [you] could file the case," including a credit report. You state that you only received the credit report in April 2001, when you first learned that Ms. Brewington had additional property that was not previously accounted for. As a result, you state that you needed further information from Ms. Brewington. You indicate that Ms. Brewington did not have an answering machine which prevented you from leaving her a message. You claim that you called her again in June 2001 and that she responded in July 2001, "but never left a daytime number, and most times did not leave any number at all." You claim to have sent her a letter and insist that she still failed to provide you the necessary additional information "which would have permitted [you] to file the case." Nonetheless, on October 3, 2001, "because the client was insistent at that point," you filed her bankruptcy petition. A bankruptcy hearing was held on October 31, 2001, but both you and your client failed to appear because you never received the notice. You had the hearing reset by the Trustee for November 8, 2001.

You further indicate that you ultimately filed the bankruptcy petition "once the file was 90% complete because the debtor was being garnished." You deny any misconduct, claiming that you maintained adequate communication with your client.

After reviewing your response, Ms. Brewington submitted a reply. In her letter, she reiterated that in April and June 2001, she advised you that her creditors were seeking to garnish her wages. Ms. Brewington states that "each time [she] contacted [your] office . . . [you] advised [that you] would handle it." She added that she only filed a complaint with this office when she realized you had done nothing. Then in early October 2001, a member of your staff contacted her about the garnishment problem that had existed since April 2001.

At or about the time she filed her reply, Ms. Brewington advised that she discharged you shortly after she filed her Bar Counsel complaint. She believes that you only began working for her after she filed her complaint.

During this investigation, we called upon you to provide us with your office file relating to Ms. Brewington's matter. On January 14, 2002, you informed us that you could not locate her file because you had recently relocated your office and apparently lost her file during your move.

On January 31, 2002, we asked you whether you had been discharged by Ms. Brewington "at any time after October 3, 2001," and "whether you complied with Rule 1.16(d) upon notification of your discharge." On February 21, 2002, you replied that sometime in November 2001, you were advised that Ms. Brewington called your office and left a message "stating that she did not want [you] to represent her." You stated that you sent her a letter requesting that she confirm your discharge. You then "attended the second hearing to represent her," believing that "despite her telephone message [you were] obligated to keep moving on the case because it was so close to completion." With your response, you provided a copy of your November 12, 2001, letter to Complainant, wherein you requested Ms. Brewington to confirm in writing her intention to discharge you.

On February 21, 2002, Ms. Shanell Harleston, your paralegal, confirmed in a telephone conversation with a member of our staff that Ms. Brewington had told her in early October 2001 that she was discharging you.

As part of our investigation, we obtained copies of pertinent documents from the files of the Bankruptcy Court in *In re Brewington*, Case No. 01-02029 (Chapter 7), a case filed with the United States Bankruptcy Court for the District of Columbia (the "Bankruptcy Court"). The Bankruptcy Court's docket sheet reflects that you filed Ms. Brewington's voluntary petition for bankruptcy on October 3, 2001. A review of the supporting documents filed along with the petition reveals that Ms. Brewington signed the documents in September 2000, more than one year before you filed them with the Bankruptcy Court. On December 12, 2001, the Trustee filed his Report of No Distribution with the Bankruptcy Court, thereby concluding her bankruptcy.

Based on the above facts, we conclude that you violated the following ethical rules:

1. Rule 1.5 (b) states:

> When 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

Rule 1.5(b) requires an attorney to provide a client with a written fee agreement in circumstances where the attorney has not previously represented the client. The issue, therefore, is whether you provided Ms. Brewington with such a writing. Ms. Brewington reports that she first contacted your office on August 24, 2000. After discussing her case with you by telephone, she advises that on September 27, 2000, she signed and dated all

necessary paperwork and mailed it to your office. A review of the bankruptcy petition, No. 01-2029, confirms that Complainant did in fact sign several documents on that date. Accordingly, for purposes of our analysis, we determine that the attorney-client relationship began on or before September 27, 2000.

By letter dated December 18, 2001, we requested that you submit Complainant's file to this office so that we could review the work you had performed between August 23, 2000, when she first came to your office, and October 3, 2001, when you finally filed her bankruptcy petition. In a letter dated January 14, 2002, you informed us that you were unable to locate Ms. Brewington's file because it was misplaced during your recent office move. Ms. Brewington informs us that she received no such writing from you setting forth your fee agreement.

We had expected to find in your office file a copy of a writing setting forth your fee that an attorney must give to a new client at the time the representation begins. Ms. Brewington states that she never received such a writing from you after she came to your office in August 2000.

In light of the clear mandate of Rule 1.5(b), because you are unable to provide a copy of any writing or retainer agreement and because Ms. Brewington denies ever receiving such a document, we conclude that you did not, in fact, provide your client with the required writing setting forth your fee. Therefore, we find that you violated Rule 1.5(b).

2. Rule 1.3 (a) states in pertinent part:

> A lawyer shall represent a client zealously and diligently within the bounds of the law.

Attendant in every attorney-client relationship is the duty of the attorney to discharge his or her duties with the requisite degree of commitment and dedication to the interests of the client. Here, the issue is why it took you approximately 14 months to file Mr. Brewington's bankruptcy petition, and whether you employed all means reasonably available to achieve her lawful goals.

Ms. Brewington reports that she first contacted your office on August 23, 2000. Subsequently, she states that she signed and mailed the necessary documentation to your office by September 27, 2000. The Bankruptcy Court's file indicates the petition was not filed until early October 2001. You state in your November 2, 2001, letter that you had informed your client that you would soon be on maternity leave and thus would not be

able to work immediately on her legal matter. Ms. Brewington disputes this representation. However, even assuming *arguendo* that you were on maternity leave from September to December 2000, we can glean no satisfactory explanation from the record as to why it took you ten months thereafter to file her bankruptcy petition with the Bankruptcy Court.

In your letter February 14, 2002, you explain that your failure to promptly file a bankruptcy petition was due to Ms. Brewington's unresponsiveness to your requests for necessary financial information. You claim that you attempted to telephone Complainant, but were not able to reach her or leave a message. You also claim that you drafted a letter to her "a few months ago" to obtain the necessary information. However, you concede that, because you misplaced your office file, you cannot provide copies of any letters that you sent to your client requesting information. Furthermore, in a telephone conversation on January 25, 2002, Ms. Brewington advises that she never received any letter from you seeking additional information from her.

Pursuant to this investigation, we requested your client to provide this office with copies of creditors' letters indicating that her wages would be attached or garnished. To date, she has not provided such evidence. Consequently, we cannot determine the degree of economic harm your client suffered as a result of your untimely performance. While we conclude that your actions in this case were improper, we cannot conclude with certainty that your failure to act in a timely manner caused your client any harm.

Nonetheless, we can conclude that you failed to exercise reasonable zeal and diligence while representing Ms. Brewington. If you were unable to reach her by telephone, the prudent course of action would have been to send her a letter explaining your efforts to contact her and her need to assist you. As noted above, however, you lost her file and are unable to provide any letters demonstrating your efforts to communicate with your client from October 1, 2000, to October 3, 2001.

It may well be that Ms. Brewington did not respond promptly to your requests for information; nonetheless, as the attorney, it was your responsibility either (1) to promptly and unequivocally communicate to her your need to obtain her financial records to effect the expedient filing of her bankruptcy petition, or (2) to notify her that you would be required to withdraw your representation because she was refusing to cooperate with you. Here, we conclude that you did neither. Therefore, based on the foregoing, we find a violation of Rule 1.3 (b).

3. Rule 1.16(a) states in pertinent part:

> [A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if . . . the lawyer is discharged.

Comment 4 to this rule clearly advises that a client has a right to terminate a lawyer's services, with or without good cause. Therefore, the issue is whether the evidence shows that you continued representing Complainant after she had communicated her intent to discharge you. We conclude that it does.

In your letter dated February 14, 2002, you contend that Ms. Brewington left a message on your answering machine in early November, 2001, indicating that she no longer wished to retain you. You acknowledge that you were aware of her message discharging you but that you continued to represent her anyway because you believed her case would be prejudiced by your withdrawal at that late stage. In addition, you also state that she needed to confirm in writing her desire to terminate your representation.

Our review of the bankruptcy petition indicates that you signed and filed several documents with the Court on October 3, 2001. Ms. Brewington contends that she discharged you shortly after she filed her complaint with this office on September 13, 2001, when your paralegal telephoned her requesting financial information from her. In a telephone interview on February 21, 2002, Ms. Harleston indicated that she recalled speaking with your client and confirms her account of discharging you in early October 2001. Therefore, we do not accept your statement that you were discharged sometime in November 2001 just before the second meeting scheduled by the Trustee.

In view of the foregoing, the evidence demonstrates that you were aware, or should have been aware, that in early October 2001 you were discharged by your client, at or after the time that you filed the bankruptcy petition. Accordingly, you should not have continued any further legal work on her matter thereafter. The proper course of action would have been to promptly file with the Bankruptcy Court the requisite motion to withdraw, duly advising your client of your intent to withdraw, and then turn over your client file to her.

Moreover, it bears noting that your statement that your client needed to provide you with a writing to discharge you suggests that you misapprehend the applicable ethical rule. A client is not required to provided a writing to discharge her attorney. While such a writing might be desirable, it is by no means compulsory. Your client's oral declaration is sufficient.

In deciding to issue an informal admonition, we have taken into account (1) the relatively brief period you have been practicing law; (2) your full cooperation with this investigation; (3) the apparent lack of prejudice that has accrued to your client's case; and (4) your stated intention to soon leave the practice of law in order to meet family obligations.

This letter constitutes an Informal Admonition pursuant to Rule XI, §§ 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 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. 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 unless you 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, N.W., Building A, Room 127, Washington, D.C. 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

JEP:RTD:cms

Enclosure: Attachment to Letter
of Informal Admonition

cc (w/o enclosure): Ms. Lissa M. James-Brewington