



OFFICE OF DISCIPLINARY COUNSEL

February 7, 2022

Hamilton P. Fox, III
Disciplinary Counsel

Julia L. Porter
Deputy Disciplinary Counsel

Senior Assistant Disciplinary Counsel
Myles V. Lynk
Becky Neal

Assistant Disciplinary Counsel
Jerri U. Dunston
Dru Foster
Jason R. Horrell
Ebtehaj Kalantar
Jelani C. Lowery
Sean P. O'Brien
Joseph C. Perry
Melissa J. Rolffot
William R. Ross
Carroll Donayre Somoza
Traci M. Tait
Cynthia G. Wright

Senior Staff Attorney
Lawrence K. Bloom

Staff Attorney
Amanda Urefia
Angela Walker

Manager, Forensic Investigations
Charles M. Anderson

Investigative Attorney
Azadeh Matinpour

BY FIRST-CLASS AND CERTIFIED
MAIL NO. 9414 7266 9904 2167 7066 08

John F. Lillard, III, Esquire
8 Loudon Lane
Annapolis, MD 21401

Re: *In re John F. Lillard, III, Esquire*
(D.C. Bar Registration No. 197194)
Disciplinary Docket No. 2021-D033

Dear Mr. Lillard:

This office has completed its investigation of the above-referenced matters. 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 D.C. Bar Rule XI, §§ 3, 6, and 8.

This matter was docketed for investigation following your self-report of your conduct discussed in a memorandum opinion in *Annapolis Citizens Class Overcharged for Water-Sewer by Loudon Operations, LLC v. Staniec, Inc. et al.*, Civil Action No. 20-2603-BAH, in the United States District Court for the District of Columbia.

We find as follows:

From September 16, 2020, to January 26, 2021, you litigated claims against Stantec, Inc. and GHD, Inc., under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq. ("RICO"), and the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, et seq., on behalf of a proposed class of Annapolis, Maryland water customers called "Annapolis Citizens Class Overcharged for Water-Sewer." You alleged that the defendants overcharged for water and sewer services they provided to the City of Annapolis. Throughout the case, you failed to comply with the Federal Rules of Civil Procedure, the Local Rules of the Court, and the Court's orders.

On November 2, 2020, you caused a subpoena to be served on the defendants at their headquarters in Edmonton, Alberta, Canada. The subpoena purported to command Mr. Ron Triffo to appear at a deposition on October 1, 2020. The defendants sent you a letter stating that the subpoena was defective because: 1) it attempted to subpoena a foreign national; 2) it listed a deposition date that was one month prior to the date it was served; and 3) you had not yet held a discovery planning conference with the defendants. You did not respond or withdraw the subpoena, and the defendants were forced to file a motion to quash. On November 12, 2020, the Court granted the defendants' motion to quash.

On November 29, 2020, you filed a surreply to the defendants' reply to your opposition to their motion for sanctions without seeking leave from the Court to do so. In the surreply, you argued that defendants should be sanctioned. By minute order dated December 1, 2020, the Court struck your surreply because it was improperly filed without leave of the Court and because you failed to comply with Rule 11(c)(2) of the Federal Rules of Civil Procedure, which required your motion for sanctions to be filed "separately from any other motion" and served on the opposing party at least 21 days prior to allow them the opportunity to withdraw or correct the issue. Fed. R. Civ. P. 11(c)(2). In the minute order, the Court also cautioned you that your continued failure to comply with the rules might subject you to sanctions. Despite the Court's admonition, you filed a Motion for Sanctions two days later, reiterating the issues you raised in your surreply without serving the defendants and allowing them 21 days to correct. In addition, as the Court later found, the Motion for Sanctions "entirely lacked legal authority to suggest that defendants' conduct was sanctionable under any procedural, professional, or statutory rule."

On December 28, 2020, the Court ordered you to show cause why you should not be sanctioned for your conduct. You immediately hired an attorney and after consulting with counsel decided to voluntarily dismiss the case. On January 5, 2021, through counsel, you filed a Notice of Voluntary Dismissal and a Response to Order to Show Cause. On January 8, 2021, the Court dismissed the case and issued a Memorandum Opinion in which it sanctioned you for your improper filing of the Motion for Sanctions without legal authority and for your improper service of a pre-discovery subpoena. The Court ordered you to pay the defendants' costs and attorney's fees associated with their motion to quash. You did not contest the defendants' statement of fees and costs and promptly paid it in full.

Based upon our investigation of this matter, we find that your conduct violated Rules 1.1(a), 1.1(b), 3.1, and 8.4(d).

Rules 1.1(a) and 1.1(b) Competence

Rule 1.1(a) states:

A lawyer shall provide competent representation to a client,
competent representation requires the legal knowledge, skill,

thoroughness, and preparation reasonably necessary for the representation.

Rule 1.1(b) states:

A lawyer shall serve a client with skill and care commensurate with that generally afforded to clients by other lawyers in similar matters.

Comment [5] to Rule 1.1 provides in pertinent part that the “[c]ompetent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.”

We find that your failure to familiarize yourself with and adhere to the Federal Rules of Civil Procedure when filing your Motion for Sanctions and issuing the subpoena to Mr. Triffo, especially after being alerted by the Court and opposing counsel to the deficiencies, constitutes a violation of Rules 1.1 (a) and (b).

Rule 3.1 Meritorious Claims and Contentions

Rule 3.1 states in part:

A lawyer shall not bring or defend a proceeding, or assist or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...

We find that your Motion for Sanctions violated Rule 3.1 because as the Court found, “it was made without any legal authority or basis and failed to present any reason to believe that defendants’ actions were sanctionable or at all unprofessional.” You did not make a reasonable inquiry to ensure that your arguments were supported by law, nor did you advance a nonfrivolous argument for extension, modification, or reversal of the law.

Rule 8.4(d) Conduct that interferes with the Administration of Justice.

Rule 8.4(d) states in part:

It is professional misconduct for a lawyer to engage in conduct that seriously interferes with the administration of justice.

An attorney violates the rule if his conduct: (1) was improper (2) bore directly upon the judicial process with respect to an identifiable case or tribunal; and (3) tainted the judicial process in more than a *de minimis* way - “that is, at least potentially impact[s] upon the process to a serious

and adverse degree.” *In re Hopkins*, 677 A.2d 55, 60-61 (D.C. 1996). We find that your filing of a frivolous Motion for Sanctions and issuing a pre-discovery subpoena tainted the proceedings pending before the Court by wasting the time and resources of the Court and defense counsel. You failed to comply with Rules 11(c)(2) and 26(d) of the Federal Rules of Civil Procedure, even after being reminded of the rules by defense counsel and admonished by the Court to follow the rules or risk being sanctioned. Defense counsel was unnecessarily forced to file and litigate a motion to quash, which the Court was forced to consider and rule on. You also caused the Court to review multiple frivolous and procedurally deficient sanctions motions, and to ultimately issue a 30-page opinion imposing sanctions for your misconduct.

In deciding to issue this Informal Admonition rather than institute formal disciplinary charges against you, we considered that you took this matter seriously and cooperated with our investigation, that you have accepted responsibility for your actions by agreeing to this Informal Admonition, and that you completed the *Mandatory Course on the D.C. Rules of Professional Conduct and D.C. Practice* offered by the D.C. Bar’s Continuing Legal Education (CLE) Program.

This letter constitutes an Informal Admonition for your violation of Rules 1.1(a) and (b), 3.1, and 8.4(d) pursuant to D.C. Bar Rule XI, §§ 3, 6, and 8, and it is public when issued. Please refer to the attachment to this letter of Informal Admonition for a statement of its effect, as well as 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 Disciplinary Counsel, with a copy to the Board on Professional Responsibility, unless Disciplinary Counsel grants an extension of time. If a hearing is requested, this Informal Admonition will be vacated, and Disciplinary Counsel will institute formal charges pursuant to D.C. Bar Rule XI, §§ 8(b) and (c). This 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 Rule XI, § 8(c). Such a hearing could result in a recommendation to dismiss the charge(s) 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,

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

Encl.: Attachment to Letter of Informal Admonition

HPF:JCL:itm