

**THE FOLLOWING INFORMAL ADMONITION WAS ISSUED  
BY BAR COUNSEL ON  
August 3, 2007**

**BY FIRST-CLASS AND CERTIFIED  
MAIL NO. 71603901984984056899**

David W. Draper, Jr., Esquire  
c/o David Ross Rosenfeld, Esquire  
Law Offices of David Ross Rosenfeld  
118 South Royal Street  
Second Floor  
Alexandria, Virginia 22314-3392

*In re David W. Draper, Esquire*  
D.C. Bar No. 434137  
Bar Docket No. 2005-D299

Dear Mr. Draper:

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).<sup>1</sup> We are, therefore, issuing you this Informal Admonition pursuant to Rule XI, §§ 3, 6, and 8 of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

**The Complaint**

You are a name partner and managing shareholder in Draper & Goldberg, PLLC. We docketed this matter based upon a civil complaint alleging that your law firm engaged in, *inter alia*, fraudulent practices in the conduct of numerous foreclosure proceedings in the District of Columbia, Maryland, and Virginia on behalf of several financial institutions that are clients of your firm. In addition to the allegations in the litigation, several Virginia Commissioners of Accounts raised concerns that your firm used documents, including "Substitutions of Trustee" and "Lost Note Affidavits" on which the notarized signature had been placed on a page that had obviously been prepared without any date information, which date was filled in later by the firm upon

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<sup>1</sup> Because the disciplinary complaint alleged that the misconduct in question occurred in connection with transactions that involved debtors in the District of Columbia, Maryland, and Virginia, the Rules of each jurisdiction apply. There is no material difference among those jurisdictions in the language of the Rules cited.

submission. The Commissioners are appointed to serve, in essence, as administrative law judges for the various Virginia Circuit Courts with the duty to oversee all cases with a fiduciary aspect, including foreclosures in Virginia.

### *Your Response*

You concede the following: *First*, a substantial part of the firm's practice is devoted to foreclosures "and related default matters." Your institutional clients are designated beneficiaries under the deeds of trust encumbering certain real property, and the performance of legal services in the foreclosure proceedings often requires the firm to substitute itself as trustee for a client.

*Second*, often, a lost note affidavit is filed where the client has been unable to locate the original note memorializing the debtor's obligation. Because foreclosures must be completed within rigid deadlines imposed by government regulators and private sector entities, a number of the firm's clients have requested or endorsed the law firm's use of pre-signed and notarized forms so that the appointment process and /or the presentation of the appropriate lost note affidavit and, consequently, the foreclosure may be concluded expeditiously. In such circumstances and with your approval, the firm would secure a pre-signed and notarized form from an appropriate representative of its lender client and, pursuant to the client's instructions, the firm would attach the pre-signed form to a document describing the specific details of the firm's appointment as substitute trustee for that transaction.

In each such circumstance, the firm would have been expressly and specifically instructed and authorized by the client to file the deed appointing it as substitute trustee using the pre-signed form. The facts set forth in the affidavit would have been confirmed by the firms as accurate, executed by an authorized representative of the institutional client, then notarized at the client's site. The firm no longer uses pre-signed documents for Virginia foreclosure proceedings.

During the period in question, the firm employed more than 100 individuals, including 12 attorneys. You state, through counsel:

While the firm's individual attorneys retain oversight and ultimate responsibility for cases which are assigned to them, much of the processing of cases is done by non-attorney paralegals and trained processors. Time line management, work flow production, internal non-legal training and technology enhancements, are managed and facilitated by non-attorneys. However, administration, oversight, prosecution and resolution of particular legal files and matters are done by specific attorneys assigned to the matter.

### Legal Analysis

We conclude that you violated Rules 5.1 and 5.3 in that, until your firm discontinued the practice in Virginia, you approved and facilitated the use of pre-signed and notarized documents by attorneys and non-attorneys in your office, who later inserted a date on the forms for submission. Thus, the verification asserting that the signer had appeared before the notary on a specified date was false; nonetheless your firm submitted the documents to various Virginia Circuit Courts as accurate.

Under Rule 5.1 (responsibilities of a partner or supervisory lawyer):

- (a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional conduct if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer has direct supervisory authority over the other lawyer or is a partner in the law firm in which the other lawyer practices, and knows or reasonably should know of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Under Rule 5.3 (responsibilities regarding nonlawyer assistants):

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (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; and
- (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) The lawyer requests or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) The lawyer has direct supervisory authority over the person, or is a partner in the law firm in which the person is employed, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

We further conclude that you violated Rule 8.4(d) (conduct seriously interfering with the administration of justice), in that you knowingly tendered notarized documents to tribunals with dates that failed to reflect the actual date of execution. Under Rule 8.4(d), "[i]t is professional misconduct for a lawyer to[] [e]ngage in conduct that seriously interferes with the administration of justice[.]"<sup>2</sup>

In order to violate the rule, an attorney's conduct must be "improper;" it must "bear directly upon the judicial process . . . with respect to an identifiable case or tribunal"; and "the attorney's conduct must taint the judicial process in more than a *de minimis* way."

*In re Hopkins*, 677 A.2d 55, 60-61 (D.C.1996).

Here, the act of falsely dating the documents in question was improper because it did not reflect the actual dates of execution. The misconduct bore directly on the judicial process in identifiable cases in that Virginia Circuit Courts were reviewing each set of documents through its Commissioners. Finally, the act of falsely dating the Substitutions of Trustee and Lost Note Affidavits and submitting them to the Commissioners tainted the judicial process in more than a *de minimis* way because the District of Columbia Court of Appeals has long held that "[d]ocuments are an attorney's stock in trade, and should be tendered and accepted at face value in the course of professional activity." *In re Schneider*, 553 A.2d 206, 209 (D.C.1989).

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<sup>2</sup> This is numbered Rule 8.4(c) in Virginia.

We do not find clear and convincing evidence to support the allegations made in the civil action and that matter was settled without factual findings or legal conclusions by a court.

**Conclusion**

This letter constitutes an Informal Admonition pursuant to D.C. Bar Rule XI, § 3, 6, and 8 for your violation of Rules 5, 5.3 and 8.4(d), and is public when issued. We have decided to issue an Informal Admonition because you have agreed to accept it, have cooperated with our investigation, have agreed to cease using pre-signed documents in connection with future transactions, and there was no prejudice to your institutional clients. Further in mitigation, the Commissioner who drafted the initial complaint has indicated that the concerns he raised have been addressed and he no longer sees the problems of which he complained.

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 to the Office of Bar Counsel, with a copy to the Board on Professional Responsibility, within 14 days of the date of this letter, 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,

Wallace E. Shipp, Jr.  
Bar Counsel

Encl.: Attachment to Letter of

Informal Admonition

WES:TMT:act

Sent Regular and Certified Mail No.

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