

FOURTH DEPARTMENT GRIEVANCE ISSUES

The following are digests of fact patterns that resulted in the issuance of Letters of Caution and Admonition from the Grievance Committees of the Fourth Judicial Department during the period from May, 2005 to March, 2006. The digests are written in generic terms, as these matters are confidential pursuant to §90(10) of the Judiciary Law. It is hoped this information will be beneficial to the legal community and will assist lawyers in recognizing particular conduct which may result in action by the Grievance Committees.

These digests of Letters of Caution and Admonition may also be viewed at the webpage of the Attorney Grievance Committees, which may be accessed through the Appellate Division, Fourth Department's website at www.courts.state.ny.us/ad4. Members of the bar may also wish to view the Attorney Grievance website for other useful information related to professional ethics and the attorney disciplinary system. These resources include the Lawyer's Code of Professional Responsibility, the Fourth Department's Rules Relating to Attorneys, a description of the Fourth Department Attorney Grievance Committees, office addresses and staff, attorney registration, recent attorney disciplinary decisions by the Fourth Department, and other professional ethics resources.

LETTERS OF CAUTION - *A Letter of Caution may be issued by the Chief Counsel after consultation with the Chairperson of the Committee. A Letter of Caution is a non-disciplinary disposition of a complaint which informs the attorney that the attorney has violated the spirit, if not the letter, of an ethical standard. It is meant to educate an attorney with reference to subsequent conduct. Accordingly, Letters of Caution are reserved for minor violations of ethical standards not resulting in detriment to the public.*

1. A number of attorneys were cautioned for failing to comply with the Appellate Divisions' Procedures for Attorneys in Domestic Relations Matters at 22 NYCRR Part 1400, including failures: to provide clients with retainer agreements and Statements of Client's Rights and Responsibilities, to provide retainer agreements which complied with all of the requirements of these Rules, to provide itemized billing statements at least every 60 days, or to provide notices to arbitrate fee disputes.
2. A number of attorneys were cautioned for failing to timely comply with the attorney registration requirements.
3. In a bankruptcy matter, attorney's lack of communication and failure to respond to client's inquiries caused detriment to client.
4. In an estate matter, attorney failed to respond to inquiries by executrix and failed to adequately communicate with executrix regarding the status of the estate during the period of approximately eight months.

5. In a real estate transaction, attorney failed to provide client with the closing statement despite numerous requests during the period of several months.
6. During the period of one year after being retained to handle a divorce matter, attorney failed to provide the client with 60-day billing statements, failed to provide any legal services, and failed to respond to client's inquiries concerning the status of the matter. The attorney ultimately refunded the client's legal fee.
7. In representing a client in a criminal matter, attorney conveyed information to Assistant District Attorney concerning the victim which had not been verified and was untrue. Attorney also misinformed ADA that one of the defense witnesses would likely be a hostile witness due to a recent disagreement with the victim.
8. Attorney represented client in a divorce action before withdrawing due to a conflict of interest. Thereafter, during the pendency of the divorce action, the former client commenced a real property action *pro se*, and attorney represented the adverse party in that action. The subject property was a significant element in the pending divorce action. The Court granted the former client's motion to disqualify the attorney from representing the adverse party.
9. In domestic relations matter, attorney's retainer agreement and Statement of Client's Rights and Responsibilities were deficient and did not comply with the requirements of 22 NYCRR Part 1400. Attorney also failed to follow the direction of the fee arbitrator to vacate a confession of judgment improperly filed against the client.
10. Attorney improperly supervised an employee who directly contacted adverse parties, when the attorney knew that they were represented by counsel. DR 7-104(A).
11. Suspended attorney failed to file an Affidavit of Compliance following suspension, as required by Rule 22 NYCRR §1022.27, and otherwise failed to respond to requests from the Grievance Committee requesting the Affidavit of Compliance to be filed.
12. Dishonored check issued on attorney's trust account in connection with a real estate transaction, in which seller's attorney failed to timely deposit check received from buyer's attorney before issuing trust account check to sellers.
13. Suspended attorney failed to timely file Affidavit of Compliance for more than 8 months after the 30 day deadline in which to do so expired following the entry of the Suspension Order.
14. Attorney represented both buyer and seller in a real estate transaction. Attorney then withheld filing the deed for almost one year in an effort to obtain outstanding legal fee.

15. In an adoption matter, attorney neglected to advance matter and failed to communicate with client, requiring the matter to be transferred to successor counsel.
16. Attorney cautioned for being sanctioned by Supreme Court Justice for engaging in needless, meritless, and vexatious litigation.
17. Attorney cautioned for publication on law firm's internet website of language suggesting that a judge was biased in favor of certain parties.
18. In a divorce action, attorney commenced representation of the husband a few months after the wife had consulted with same attorney. Attorney did not perform a conflict check at the time attorney commenced representation of husband. Disciplinary Rule 5-108(A).
19. Attorney improperly eavesdropped on an administrative interview of a party who was also the subject of a criminal action, as attorney did not have right to be present at the interview.
20. Attorney made improper loan to a client for a brief period of time. DR 5-103(B).
21. Attorney failed to satisfy a fee arbitration award which had been reduced to a judgment for a period of more than five years.
22. Attorney neglected to attend to matter involving clearing the title on a parcel of real property.
23. Attorneys cautioned for having improper title on IOLA account checks as required by Disciplinary Rule 9-102(B)(2). Attorneys also permitted office manager to sign an IOLA check, as attorney did not understand that to be improper. DR 9-102(E).
24. In a guardianship proceeding, attorney failed to properly account to the beneficiary, but there was no evidence of fiduciary impropriety. Attorney also failed to cooperate with inquiries of Grievance Committee.
25. Following a real estate closing, attorney failed to promptly file the deed for a period of more than ten months, causing the clients to lose ability to apply for a STAR exemption. Attorney also failed to return client's telephone calls during this period.
26. Attorney improperly represented ex-wife in a child custody matter, after having represented ex-husband in a DWI case.
27. Attorney failed to provide client with written retainer agreement, and then when client discharged attorney, attorney became belligerent and refused to promptly return client's file. Attorney has since returned the file.

28. Attorney guaranteed a \$1,000 loan to a personal injury client, in violation of Disciplinary Rule 5-103(B).
29. Attorney failed to communicate with client regarding client's dispute with a town for nearly a year.
30. Attorney had a conflict of interest by representing both husband and wife in their divorce action.
31. Attorney was sanctioned by Court for failing to withdraw a frivolous employment discrimination action.
32. Attorney neglected two collection actions against attorney's client, which resulted in two default judgments against client. Attorney thereafter paid negotiated settlements of these judgments from attorney's personal funds.
33. In a divorce proceeding, the written retainer agreement excluded attorney's representation on post-judgment matters. After divorce judgment was filed, attorney represented ex-wife in obtaining two QDROs without a written retainer agreement or Statement of Client's Rights and obtained only a verbal agreement for legal fee, which client then disputed. Attorney also did not send itemized invoices for the QDRO services every 60 days.
34. Attorney inadequately communicated with client in divorce matter, failed to reach a clear agreement on legal fee and payment of disbursements, and did not send periodic billing statements.
35. Attorney's neglect of client's matter resulted in a dismissal of a cause of action.
36. In a real estate closing, attorney failed to pay surveyor's invoice for a lengthy period of time.
37. In a civil action, attorney's neglect resulted in dismissal of action and expiration of statute of limitations before action was re-filed. Attorney then entered into an agreement with client wherein client released attorney from liability in exchange for a refund of one-half the legal fees. This agreement violated Disciplinary Rule 6-102(A).
38. In matrimonial action, attorney failed to provide client with 60-day billings, after charging the client a "flat fee," and then sending a bill 20 months into the representation requesting an additional several thousand-dollar fee.

39. In a real estate transaction, attorney failed to promptly remit funds held in escrow. Attorney also failed to cooperate with Grievance Committee's investigation, and attorney also failed to re-register for more than one year after being notified of attorney's delinquency.
40. Attorney improperly used an account entitled "trust account" for transactions related to management of funds of a family member. No client funds were maintained in the account at the time of the dishonoring of a check from this account, and attorney has now taken steps to rectify this situation.
41. Prior to suspension from practice of law on unrelated matters, attorney submitted an affirmation to Court for an extension of time, which inaccurately stated that attorney had been ill for a certain period of time.
42. Attorney failed to appear at the adjourned date of a hearing on behalf of client in an administrative proceeding, and failed to make other arrangements for client to be represented. Client appeared *pro se* and lost the matter, resulting in a fine. Client later appealed the determination *pro se*, which findings were affirmed.
43. Attorney engaged in conflicts of interest in two real estate matters.
44. Attorney, who resides out of state, failed to perform any services on client's immigration matter, and failed to refund client unearned fee.
45. Clients consulted with attorney on an immigration matter, at which time they provided attorney with certain original documents, including birth certificates and a passport. When clients subsequently decided not to retain this attorney and requested the return of their documents, attorney could not locate them. Attorney has offered to pay to have these documents replaced.
46. Attorney represented husband in divorce proceeding, which occurred after attorney's firm had previously represented husband after wife had suffered a traumatic brain injury for the purpose of estate/Medicaid planning. Wife's disqualification motion against attorney's representation of husband in divorce proceeding based on a conflict of interest was successful.
47. Attorney engaged in improper conflict of interest pursuant to Disciplinary Rule 5-108(A) in a federal employment matter.
48. Attorney made direct contact with opposing party which was represented by counsel. Attorney also allowed attorney registration to become delinquent after being subject to a prior registration complaint. Attorney also used letterhead listing a post office box rather than a street address.

49. Attorney neglected an uncontested divorce matter for more than three years, and retainer agreement did not comply with requirements of 22 NYCRR Part 1400, and no 60-day invoices were sent to client. After complaint was filed, attorney waived balance of the fee which was due.
50. Attorney neglected to promptly finalize the estate of client's late husband.
51. A suspended attorney failed to deliver to new counsel the file on the estate proceeding which attorney had neglected and which was the subject of the Order resulting in attorney's suspension. This occurred despite requests from the client and new counsel, resulting in further delays in closing the estate which had been open for 12 years. Attorney finally transferred file to new counsel five months after being suspended. During period of suspension, attorney also failed to promptly remove "Law Offices" sign from exterior of office building.
52. In a series of several residential real estate transactions, attorney engaged in conflicts of interest by representing both the private mortgagee and the respective buyers/mortgagors. Attorney also pursued collection matter on behalf of the mortgagee against one of the buyers/mortgagors. Attorney has since ceased engaging in this practice.
53. In a child support matter, attorney failed to appear for a court appearance, failed to respond to communications from the client, and failed to respond to successor counsel's request for the file, and failed to sign a substitution of counsel. Attorney also failed to submit an invoice until long after attorney was discharged. Attorney cited stress-related depression which kept attorney out of office for a several-month period.
54. In a divorce action, client was not provided with 60-day itemized invoices, and retainer agreement did not comply with the requirements of 22 NYCRR §1400.3. However, upon revising the retainer agreement, attorney included an improper non-refundable retainer clause.
55. In a divorce matter, attorney failed to provide client with a Statement of Client's Rights, and retainer agreement did not comply with the requirements of 22 NYCRR §1400.3, nor did attorney comply with 60-day billing requirement. In a separate complaint, attorney engaged in improper conflict of interest involving a former client conflict in a custody modification case, which resulted in attorney's disqualification by the Referee.
56. In a custody matter, attorney failed to provide client with a written retainer agreement, in violation of Disciplinary Rule 2-106(C)(2), and 22 NYCRR Part 1400.
57. Attorney failed to provide client with an abstract of title for a lengthy period of time, and was unresponsive to client's inquiries. Attorney also failed to cooperate with the Grievance Committee's investigation, resulting in attorney being subpoenaed and examined by Staff of Grievance Committee.

58. Attorney neglected to file a notice of appeal of a denial of a *habeas corpus* petition within the 30-day time to appeal, and failed to communicate with the client or the client's family.
59. Attorney engaged in former client conflict of interest pursuant to Disciplinary Rule 5-108(A) in an administrative proceeding, as the attorney had previously represented the opposing party in a substantially related matter.
60. Attorney engaged in improper debt collection procedures in three different debt collection actions.
61. In a personal injury action, attorney improperly advanced living expenses to a client. After client became dissatisfied with eventual settlement, attorney agreed not to collect entire legal fee, and agreed not to seek repayment of funds which attorney had previously advanced.
62. On an internet website, attorney improperly used the language "specializing" in certain areas of law, contrary to Disciplinary Rule 2-105(A). After being notified of the impropriety, the attorney immediately took actions to modify the website.
63. Attorneys improperly indicated on their internet website that they "specialize" in certain areas of law, contrary to Disciplinary Rule 2-105(A). In addition, the website indicates that these attorneys were the "premier" attorneys in a certain geographic area in a certain area of law, contrary to Disciplinary Rule 2-101(A). Attorneys subsequently took actions to modify the website.
64. In a bankruptcy matter, attorney inadequately communicated with client and failed to respond to two letters requesting status updates from the Bankruptcy Court. Attorney also failed to timely comply with the attorney registration requirements, after having received one prior Letter of Caution for failing to reregister.
65. Attorney neglected a bankruptcy matter by delaying in filing the bankruptcy petition for a period of 14 months.
66. Attorney represented both buyer and seller in a real estate matter, and failed to promptly close the sale.
67. Attorney convicted of misdemeanor DWI.
68. Attorney made unauthorized distribution of escrow funds from trust account to client, in violation of Disciplinary Rule 9-102(C)(4).
69. Neglect of client's estate matter, and failure to provide timely responses to client's inquiries about the status of the matter. Attorney also failed to promptly respond to the Grievance Committee's inquiries concerning this complaint.

70. Attorney applied to withdraw as defense counsel on day of client's trial, thereby exposing client to unnecessary risk of prejudice, DR 2-110(A)(2).
71. In domestic relations matter, attorney provided only one billing statement to client over a two-year period. Attorney also failed to maintain proper bookkeeping records concerning funds in this matter which had been deposited with attorney's firm.
72. Attorney did not send itemized bills to domestic relations client at least every 60 days, and after client objected to attorney's fee, attorney also failed to send the required notice of right to arbitrate.
73. Attorney failed to promptly comply with direction of Family Court to prepare and submit a final order in a custody proceeding.
74. Delay in completion of client's divorce for several months. Attorney also failed to comply with attorney registration requirements for three consecutive biennial periods.
75. Attorney failed to complete a client's uncontested divorce for more than two years, while ignoring client's inquiries about the status of the matter. Attorney also failed to promptly cooperate with the Grievance Committee's inquiries concerning this complaint. Although attorney's secretary appears to have contributed to these issues, attorney was also cautioned that Disciplinary Rule 1-104(D) imposes responsibility for violations of the Disciplinary Rules on the attorney for conduct of a non-lawyer in attorney's employ.
76. Unreasonable delay in preparation of client's proposed separation agreement, during which time attorney also failed to reply to client's inquiries about the matter.
77. Unreasonable delay in a transfer of client's real property for approximately two years.
78. Attorney unreasonably delayed the filing of a client's bankruptcy petition for approximately five months, during which time attorney also failed to respond to client's inquiries about the status of that matter.
79. Attorney improperly communicated on the subject of the representation with an employee of the adverse corporate party, which attorney knew to be represented by counsel, and without that counsel's prior consent. It was determined that this attorney initiated these communications in the belief that the employee could influence the outcome of a pending legal dispute between employer and this attorney's client, DR 7-104.
80. Attorney delayed and failed to submit a proposed order to Family Court reflecting the outcome of client's custody and visitation proceeding concluded one year earlier. After receiving two notices from the Court concerning this delinquency, attorney further delayed submission of the proposed order for more than four months.

81. Attorney failed to oppose a motion to amend a Verified Complaint, contrary to client's directions, and failed to seek leave of the Court to withdraw as counsel based upon irreconcilable differences with client.
82. After agreeing to represent client on a one-third contingency fee basis, attorney failed to promptly provide clients with a writing detailing the method by which the fee was to be determined, and the nature and extent of services to be provided, contrary to the requirements of DR 2-106(D). Attorney also failed to communicate the status of the matter to client for more than two years.
83. Upon closing law practice, attorney transferred responsibility for a client's DWI case to another attorney, without first either obtaining a fully executed consent to change attorney, or seeking leave of the court where the matter was pending, DR 2-110(A)(1).
84. Upon receipt of client's income tax refund check, attorney failed to promptly notify the attorney for the client's ex-husband that the proceeds had been deposited into attorney trust account.
85. Failure to promptly respond to inquiries by attorney's bankruptcy client for a period of more than one year.
86. Upon sentencing of attorney's client on a conviction which resulted from a negotiated plea bargain, attorney failed to ascertain client's intent to appeal the conviction, and did not file a Notice of Appeal. Attorney's failure to properly ascertain client's intention to appeal violated attorney's duties as criminal defense counsel, contrary to the Appellate Division, Fourth Department's Rule at 22 NYCRR §1022.11(a).
87. Attorney failed to promptly refund divorce client's legal fee upon client terminating attorney's employment, DR 2-110(A)(3).
88. Attorney neglected client's criminal matter by failing to interview client for several months, or to otherwise counsel client within a reasonable time after client's incarceration.
89. Attorney failed to properly withdraw as retained appellate counsel of record, when client stopped communicating with attorney and failed to provide funds necessary to perfect the appeal, and attorney failed to properly inform Appellate Division of resulting inability to perfect the appeal.
90. Attorney engaged in isolated instance of depositing small amount of personal funds into attorney trust account.

LETTERS OF ADMONITION - *A Letter of Admonition is a form of non-public discipline issued by the Committee which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice. Admonition is the least serious of the formal disciplinary sanctions, and is the only private sanction.*

1. Attorney modified a retainer agreement without full disclosure to and consent of client, which retainer dramatically increased legal fee, in violation of Disciplinary Rule 5-104(A).
2. Attorney, who has substantial prior disciplinary history involving neglect of client matters and failure to cooperate with the Grievance Committee's investigations, received a Letter of Admonition for the neglect of a legal matter and non-cooperation with the Grievance Committee's investigation.
3. Attorney, who had prior disciplinary history for neglect of client matters, was issued a Letter of Admonition resulting from neglect of a client's CPL 440.10 motion, and neglect in advancing client's *habeas corpus* petition, including misrepresentations made regarding the status of those matters.
4. Out-of-state attorney who is admitted in New York State received a Letter of Admonition for failing to satisfy delinquency in attorney registration, conditioned on compliance within 90 days despite numerous requests by the Grievance Committee's Staff, and despite attorney's promises to do so.
5. Attorney received Letter of Admonition for neglect of an appeal of client's parole revocation proceeding, with serious adverse consequences to the client. Attorney has substantial prior disciplinary history for prior similar conduct.
6. Attorney received Letter of Admonition resulting from numerous improprieties in the handling of attorney trust account.
7. Attorney received Letter of Admonition resulting from lengthy neglect of appeal of juvenile delinquency sentence, and subsequent filing of the appeal knowing that the issues were moot, and then filing vouchers for payment of legal fees when attorney knew, or should have known, that attorney was not entitled to payment.
8. Attorney, who had extensive history of failing to comply with attorney registration requirements, received Letter of Admonition, conditioned upon compliance with registration requirements within 60 days.
9. Attorney convicted of misdemeanor DWI, which included multiple DWI arrests, and attorney had prior DWAI conviction.

10. Attorney neglected client's collection matter and failed to respond to client's inquiries. In another matter, attorney misrepresented to client that an action had been commenced and a judgment obtained in client's favor, and failed to cooperate with Grievance Committee's investigation.
11. Attorney delayed the release to a former client and former client's attorney of electronic files demanded by the client, without any legal authority to withhold such property, with detriment to client, who needed files to prepare for an approaching trial.
12. In a collection matter, attorney mailed a direct solicitation to a prospective client, which solicitation included a material misrepresentation and misleading information, contrary to Disciplinary Rules 1-102(A)(4), 2-101(A), and 2-103(A)(2). The solicitation also included language which appeared to guarantee specific results to the prospective client. Solicitation also included the statement "Don't let XXXXXXXX, Esq., treat you this way." The direct solicitation also was not filed with the Grievance Committee's office at the time of its initial mailing, as required by DR 2-101(F)(1).
13. Attorney was convicted of misdemeanor attempted criminal possession of computer-related material. Grievance Committee determined that attorney's possession of an unauthorized satellite television access card constituted illegal conduct adversely reflecting on the attorney's fitness as a lawyer, and conduct involving dishonesty and fraud, in violation of Disciplinary Rules 1-102(A)(3) & (4).
14. Attorney was convicted of misdemeanor harassment in the second degree, resulting from a physical altercation with a former client, constituting illegal conduct adversely reflecting on attorney's fitness as a lawyer, DR 1-102(A)(3). In an unrelated matter, attorney failed to properly withdraw from employment, DR 2-110(B)(4). Attorney also failed to promptly label and place a settlement check in a safe deposit box or other place of safekeeping, DR 9-102(C)(2).