

Consensual Private Admonition - Board Case No. 24, 2002. Date of Sanction: December 6, 2002. A panel of the Preliminary Review Committee of the Board on Professional Responsibility (“PRC”) offered a private admonition to a lawyer as a result of its finding that there was probable cause to conclude that the lawyer had violated Rules 1.3, 1.5(f), and 1.16(d) of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”). The lawyer accepted the private admonition and admitted violations of Rules 1.3, 1.5(f), and 1.16(d) by failing to timely file a client’s appeal in the Third Circuit Court of Appeals.

The lawyer was retained to defend a client in a criminal matter in the United States District Court for the District of Delaware. The lawyer accepted a retainer from the client but failed to provide the client with a written statement outlining how the retainer would be earned. The client pled guilty to certain of the criminal charges, foregoing a trial, and was sentenced by the Court. The client wished to appeal the sentence. The client believed that the lawyer had not earned the entire fee for the representation because the matter had not gone to trial and he believed that he was entitled to be represented by this lawyer on appeal. Following sentencing, the lawyer advised the client that there were no appealable issues as the Court acted within its discretion in sentencing the client. The client indicated his wish to the lawyer to appeal the sentence to the Third Circuit. The lawyer agreed to assist the client in filing a *pro se* appeal. The lawyer drafted the appeal papers for the client’s signature, delivered them to the client, and then filed them, untimely, on the client’s behalf in the Third Circuit Court of Appeals. The client’s appeal was later dismissed as untimely.

The lawyer violated Rule 1.5(f) by failing to provide a written statement to the client upon receipt of a retainer for representation. The lawyer violated Rules 1.3(diligence) and 1.16(d)(protect client’s interests upon termination) by having voluntarily undertaken the responsibility to file a *pro se* appeal on the client’s behalf and then filing this appeal untimely.

The PRC considered the lawyer’s absence of a prior disciplinary record; inexperience in the practice of criminal law in the District Court and Third Circuit Court of Appeals and the lawyer’s assurances that the lawyer has not practiced criminally in that court since this matter; the lawyer’s full and free disclosure to the disciplinary authorities and cooperative attitude; and the lawyer’s remorse for the misconduct, as factors in mitigation of a harsher sanction. In aggravation, the PRC considered the lawyer’s substantial experience in the general practice of law and the incarcerated client’s vulnerability.

The lawyer was required to reimburse ODC for the costs of its investigation in the disciplinary matter.