



# PROFESSIONAL RESPONSIBILITY

## SUMMARY OF ADMONITIONS

BY EDWARD J. CLEARY

**A** significant number of cases opened by the Office of Lawyers Professional Responsibility involve attorney misconduct resulting in private discipline (not filed with the Supreme Court, except on appeal). Private discipline consists of stipulated probations and admonitions. Admonitions are the least serious form of discipline and are issued for misconduct that is "isolated and nonserious," Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). In 1999, 110 lawyer disciplinary files were closed with the issuance of an admonition to the lawyer, a number that is consistent with that of the last several years. Many admonitions were issued for isolated instances of neglect or for failure to adequately communicate with the client in a matter. Other types of misconduct that resulted in an admonition being issued include improper advertising, failure to pay debts, solicitation of clients, and inappropriate communication with represented parties. Here are summaries of several of the admonitions issued in 1999.

### REFUSAL TO TURN OVER FILE

An attorney represented a woman and her two children as plaintiffs in a personal injury action. The defendant, sued by an additional party, brought a third-party complaint against the woman, and respondent was appointed by the insurance company to defend her.

During the representation the client made a written request to respondent for a copy of her entire file, offering to pay copying charges to ensure that she received all correspondence. Respondent refused to send a copy of his file, fearing release of the file would be detrimental to the interests of the insurance company. The client requested the file two more times, but the attorney continued to refuse to provide it and finally withdrew from his representation of her without providing a copy of the file.

Since respondent's primary duty in the representation was to his client (the insured), his refusal to provide his client with a copy of the file and withdrawing as counsel in this manner violated Rules 1.4(a), 1.15(b)(4) and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

## "Admonitions are the least serious form of discipline"

### DISCLOSING CLIENT CONFIDENCES AND SECRETS

An attorney represented the mother and maternal grandmother of an illegitimate child whose paternity had not been established. The attorney promised to represent both parties if a paternity action was initiated against the suspected father. The paternal grandmother had an amicable relationship with the birth mother and visited the child often. The paternal grandmother was referred to the attorney by a lawyer referral agency and she inquired about her visitation rights. The attorney discussed the basic steps of a paternity action. When the attorney learned the name of the birth mother involved, the attorney stated that she could not represent the paternal grandmother due to a conflict of interest.

The attorney later contacted the maternal grandmother and informed her that she could not represent her or the mother in a paternity action and that the paternal grandmother had met with the attorney to discuss paternity and grandparent rights issues. As a result of that disclosure, the paternal grandmother's relationship with the mother and grandmother of the child deteriorated and she was no longer allowed to visit her grandson.

Once the conflict had been established, counsel should have informed both parties of her inability to represent them due to a "conflict of interest." The attorney's disclosure of the paternal grandmother's visit violated Rule 1.6(a), MRPC.

### CONFLICT OF INTEREST

An attorney was initially retained by a woman to file a bankruptcy. Several months later, but before the petition was filed, the woman advised the attorney she wanted to pursue dissolution of her marriage and would wait to file bankruptcy. The attorney applied the bankruptcy

retainer towards the dissolution proceedings and served a petition for dissolution of marriage on the husband, who lived in California. While the dissolution was pending, the attorney agreed to file a joint bankruptcy petition, without advising the husband and wife of the implications of the joint bankruptcy representation while the dissolution was pending.

Respondent should have recognized that his continuing representation of the wife was directly adverse to the husband. After the bankruptcy was concluded, the attorney obtained a default dissolution of marriage, representing only the wife. The attorney's joint representation in the bankruptcy while the dissolution was pending violated Rules 1.7(b) and 1.16(a), MRPC.

### THREATENING TO FILE AN ETHICS COMPLAINT

An attorney subleased space from another attorney. The lessor brought an action for unpaid rent and lessee served an answer and counterclaim. One paragraph of the answer, in bold type, stated the lessee would "take any and all appropriate action to inform pertinent authorities that Plaintiff and his attorney are engaging in unprofessional conduct."

The threat had no substantial purpose other than to improperly pressure the opposing party in a civil claim. Threatening to file an ethics complaint solely to gain an advantage in a civil suit violated Rules 4.4 and 8.4(d), MRPC.

### RESTRICTING THE RIGHT TO PRACTICE LAW

An attorney entered into an employment agreement with a firm, and after several years, the attorney left the firm to set

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up her own practice. The attorney and firm entered into a separation agreement.

The employment agreement provided that the departing lawyer could not work for a legal clinic within the Twin Cities area or work with other employees of the firm for one year after termination. Civil litigation ensued. These clauses were found to violate Rule 5.6, MRPC, which does not allow even a limited restriction on the right to practice law. Other restrictions, on the location of the departing lawyer's office and who the departing lawyer may hire as associates, for example, did not violate Rule 5.6, MRPC.

### SOLICITATION OF CLIENTS

An attorney learned from a hospital receptionist that a recent juvenile admittee was in need of legal services. The attorney sent his investigator to the hospital with an Authorization for Release of Police Report. The attorney did not tell the investigator who could or should sign the release.

The investigator obtained a signature on the release from a visiting relative, who was not legally authorized to sign the release, and used it to obtain police reports. When the attorney later visited the hospital, the juvenile's parent told him that his services were not needed.

The next month, the attorney lent money to the hospital receptionist. The money was not repaid and the attorney never made any effort to collect the amount due, because the receptionist had been "really good for our firm." The attorney's conduct in lending money to the receptionist in return for client referrals violated Rule 7.2(c), MRPC, and his failure to properly instruct and supervise his investigator violated Rule 5.3, MRPC.

### IMPROPER NOTARIZATION

An attorney prepared and served a notice of motion and motion to modify custody. The former spouse served a response and counter-motion. The attorney decided to prepare a counter-affidavit in reply and obtained several documents from his client to help him prepare the counter-affidavit. In addition, the attorney had his client sign several blank pages for the affidavit he intended to draft.

Several days later, the attorney reviewed the affidavit he had drafted with his client by telephone. When his client confirmed the substance of the affidavit, the attorney printed a copy of the affidavit using one of the presigned pages so that the signature would appear at the appropriate location on the page. The

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attorney then notarized the document. The attorney's conduct in improperly notarizing the affidavit, which had not been prepared when complainant signed it, and, once completed, had not been signed in front of him, violated Rules 8.4(c) and (d), MRPC.

### CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE

An attorney represented a client in a litigation matter. The client did not pay the firm's fees. The attorney left the law firm and began his own practice. The attorney was assigned the claim for unpaid legal fees against the client. The attorney filed a conciliation court claim against the client. The client asked for a copy of the original retainer agreement and an itemized bill. The attorney did not respond.

On the scheduled day, the client appeared for the conciliation court claim. The attorney did not appear and did not advise the client or the court that he would not be appearing. The court dismissed the claim with prejudice. The attorney's actions in failing to attend a

hearing he had requested and failing to notify the court or adverse party that he would be unable to attend violated Rule 8.4(d), MRPC.

### IMPROPER HOMESTEAD LIEN

An attorney was retained to represent a client in a child custody and visitation matter. The retainer agreement signed by the client provided "I agree that [the attorney's fees] shall be a lien upon any real or personal property in which I may now or at any time hereafter have an interest." The attorney filed a lien against the client's homestead for unpaid fees and collected when the client sold the homestead.

After the client filed an ethics complaint, the attorney changed her retainer agreement and used a separate document for the client's waiver of the homestead exemption. The attorney's conduct in claiming an attorney's lien against the homestead proceeds without a waiver of the homestead exemption separate from the fee agreement violated Lawyers Professional Responsibility Board Opinion No. 14.

### CLIENT TAPE RECORDING

An attorney represented clients in a claim involving their mortgage holder. The clients believed they were current in their mortgage payments, but they were receiving what they considered to be harassing telephone calls from the mortgage holder, who claimed the payments were delinquent.

The attorney was retained to write a letter to the mortgage holder, which he did. The attorney also advised the clients to tape-record future phone calls from the mortgage holder. The attorney's advice violated Rule 8.4(d), MRPC, and Lawyer Professional Responsibility Board Opinion No. 18. An attorney may not tape-record conversations to which the attorney is a party without the other party's consent and may not advise another person to do what the attorney cannot do himself.

These are just a few examples of admonitions issued in 1999. It is important to keep in mind that a pattern of otherwise "isolated and non-serious conduct" can lead to other dispositions, including private probation, and, in some instances, public discipline. Forewarned is forearmed. □

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