



P R O F E S S I O N A L R E S P O N S I B I L I T Y

SUMMARY OF ADMONITIONS

BY EDWARD J. CLEARY

“Stipulated probation usually involves multiple instances of misbehavior or a pattern of misconduct.”

It is unusual for an attorney discipline investigation to end in disbarment; in fact, over 80 percent of the complaints received by our office are dismissed without any discipline, before or after investigation. The remaining 20 percent are fairly evenly divided between public discipline, imposed by the Supreme Court, and private discipline, issued through the Office of Lawyers Professional Responsibility. As you might expect, the cases that are brought before the Supreme Court involve the most serious misconduct, including misappropriation, forgery, failure to file tax returns, and criminal conduct.

Cases that involve minor misconduct usually result in private discipline. Private discipline may take the form of stipulated probation or an admonition. Stipulated probation usually involves multiple instances of misbehavior or a pattern of misconduct. It might also be used to monitor an attorney who is recovering from chemical dependency or psychological illness. In either instance, this office agrees to private discipline in lieu of pursuing charges of unprofessional conduct. Rule 8(d)(3), Rules on Lawyers Professional Responsibility (RLPR). Admonitions are issued for misconduct that is “isolated and non-serious.” Rule 8(d)(2), RLPR.

In the past year, 119 disciplinary files were closed with the issuance of an admonition to a lawyer, a number that is slightly higher than annual totals for the past several years. Many admonitions were issued for isolated cases of neglect or failure to adequately communicate with a client, although admonitions may be issued for other minor misconduct. Here are summaries of a number of admonitions, not involving neglect or non-communication, issued in 2001.

INCOMPETENCE IN WORKERS’ COMPENSATION MATTER

An attorney represented a claimant in a workers’ compensation matter. The claimant was receiving temporary total disability benefits prior to retaining the attorney. The attorney submitted a statement of attorney’s fees to the Department of Labor and Industry claiming a percentage of the temporary total disability benefits being paid. At the administrative con-

ference held on the fee statement, the attorney argued that he was entitled to the fees withheld, even though they were recovered without his involvement. Pursuant to Minnesota law, allowable attorney fees are to be based solely on genuinely disputed claims. The attorney later acknowledged that the assertions in his attorney’s fees statement were inaccurate and were the result of too little time and attention given to the matter. The attorney’s failure to apply the appropriate knowledge, skill, and thoroughness in the preparation of the attorney’s fees statement constituted incompetence in violation of Rule 1.1, Minnesota Rules of Professional Conduct (MRPC).

FAILURE TO SUPERVISE NONLAWYER ASSISTANT

An attorney represented a client in a matter that required review of documents produced by a school district pursuant to the Data Practices Act. The client requested that her close friend, Ms. Z, accompany the attorney on the document review. The attorney gave no instruction or guidance to Ms. Z concerning her conduct while attending the document review. When they arrived at the district office, Ms. Z was initially denied access to the documents; however, the attorney assumed responsibility for her conduct, representing to the complainant that Ms. Z was there to assist him. While the attorney was reviewing the documents produced, the nonlawyer assistant went into a separate office and began photographing other, unproduced documents. The attorney helped the school district personnel confiscate the

film and Ms. Z left the building. The attorney’s failure to properly supervise the activities of his nonlawyer assistant violated Rule 5.3(b), MRPC.

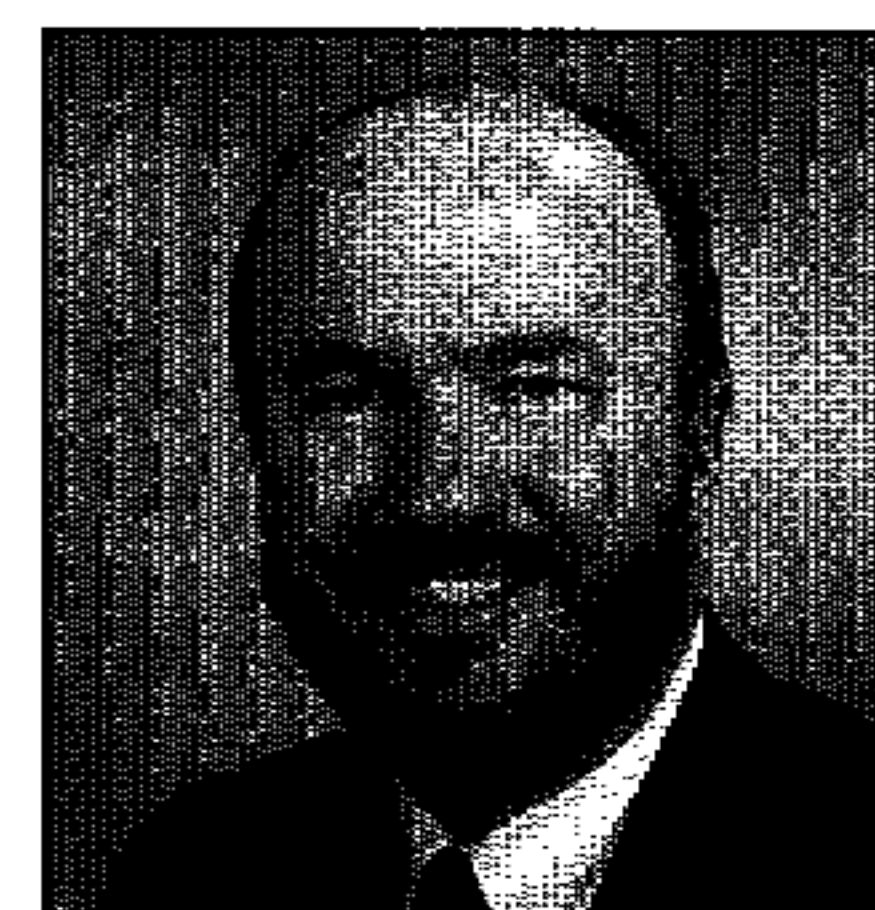
REVEALING CLIENT CONFIDENCES

An attorney represented the custodial parent in a dissolution of marriage action and prepared proposed findings consistent with the stipulation of the parties. Many years later, the parties were involved in a post-decree proceeding involving the meaning and interpretation of the child support provisions of the judgment and decree. Attorneys not involved in the original dissolution action now represented the parties. The former attorney for the custodial parent provided an affidavit to the attorney for the adverse party that purported to explain the attorney’s intentions and thoughts at the time the proposed findings were drafted. The affidavit was adverse to the former client’s interests and was intended to be used to contest the former client’s interpretation of the judgment and decree. The attorney’s conduct in revealing work product, without the former client’s permission, violated Rules 1.6 and 1.9(b), MRPC.

SOLICITATION AND SPECIALIZATION

An attorney in private practice owned a one-half interest in a corporation that provided advice and services to individuals seeking Social Security disability benefits. The owner of the other one-half interest went to certain homes providing charitable services to disabled individuals and distributed business cards that identified the attorney as “General Counsel” for the corporation and identified him as a “Social Security Specialist.”

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Prospective clients of the corporation were given a retainer agreement signed by the attorney, which also identified him as "General Counsel" and as "J.D., L.L.M." The attorney's conduct in soliciting clients through the acts of another and holding himself out as a specialist in an area of law which is not certified violated Rules 7.3, 7.4(b) and 8.4(a), MRPC.

CONTACT WITH REPRESENTED PARTY

An attorney represented the husband in a family law matter. The wife was also represented by counsel. The parties and both attorneys appeared in court on the wife's motion for an order for protection (OFP), which was granted. Some weeks later, the wife wanted to drop the OFP and the husband told her to call his attorney to arrange it. The wife then left a message for the husband's attorney asking him to call her. Without calling adverse counsel to determine whether the wife was represented, the attorney returned the call to the wife and they discussed dismissing the OFP. The attorney appeared in court with the parties at a hearing to drop the OFP, without notifying adverse counsel. The attorney's conduct in having *ex parte* communication with a represented party violated Rule 4.2, MRPC. On appeal by the attorney, a Lawyer's Board Panel affirmed the admonition, explaining that until the attorney knew representation had ended, the attorney could not contact the adverse party even to inquire about whether representation had ceased.

LOAN TO CLIENT, UNAUTHORIZED PRACTICE, NONCOOPERATION

An attorney failed to pay his annual attorney registration fee, resulting in his suspension from practice. A client filed an ethics complaint against the attorney, and the attorney was asked to respond to the notice of investigation and to a letter concerning his suspended status. The attorney failed to respond to either request. After several months had passed and the attorney had not responded to further notices, the investigation was returned to the Director's Office from the ethics committee. Eventually, the attorney advised the office that he had been unaware of his unpaid attorney registration fee; that he had continued practicing law; and that he had made a \$200 loan to a personal injury client (a loan that didn't qualify as an exception to the general prohibition on such loans). The attorney's continued practice while fee suspended violated Rule 5.5, MRPC; his conduct in providing financial assistance to a client in connection with contemplated litigation violated Rule 1.8(e), MRPC; and his failure to timely respond to reasonable

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requests for information during the disciplinary investigation violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

PROSECUTORIAL MISCONDUCT

An assistant county attorney tried a defendant on two felony counts of terroristic threats and one gross misdemeanor count of obstructing arrest. During cross-examination of the defendant, the attorney attempted to elicit testimony about the defendant's juvenile record, prohibited by the Rules of Evidence. The attorney also made closing and rebuttal arguments to the jury which belittled the defense's use of its right to subpoena witnesses; referred to another trial in an attempt to impassion the jury; and implied the jury should convict complainant because the victims were police officers. After the jury convicted the defendant, the judge granted a motion for a new trial based on prosecutorial misconduct. The attorney's conduct violated Rules 3.4(c) and 8.4(d), MRPC.

ILLEGAL GAME HUNTING

An attorney hired a guide to aid him in a hunt for large game in Alaska. The guide advised the attorney after the fact that they had hunted in a restricted area and that they had taken more game than allowed. Further, he indicated that they had taken protected species. The attorney nevertheless had trophies of the animals killed transported back to Minnesota, without executing the required transportation export documents. Two years later, the attorney hired the same guide and hunted again in Alaska. The attorney killed game illegally on this trip also. Two years later, after the guide was killed in a plane crash, the attorney learned he was under investigation concerning his first hunting trip. The attorney retained counsel and acknowledged his wrongdoing on both hunting trips. He was sentenced, paid substantial penalties, and reported his criminal conviction to the Director's Office. The attorney's violation of Rule 8.4(b), MRPC, warranted only an admonition because he had self-reported and his

misconduct was not related to the practice of law, nor did it harm clients.

IMPROPER USE OF SUBPOENAS

An attorney represented a defendant on charges of criminal sexual conduct arising out of the alleged sexual abuse of two adolescent girls. The attorney subpoenaed records of the girls from 20 providers for *in camera* review by the court. In the cover letter accompanying the subpoenas, the attorney stated the provider could send copies of the requested documents to the attorney's office instead of producing them in court. This procedure allowed the attorney an advance look at documents that should have been initially viewed by the court to determine materiality. The court admonished the attorney for this improper procedure, imposed restrictions on his cross-examination of the victims, and collected all documents that had been sent directly to the attorney's office. The attorney's conduct in obtaining and viewing confidential medical and psychological records without following established procedure for an *in camera* review violated Rules 3.4(c) and 4.4, MRPC.

IMPROPER NOTARIZATION

An attorney represented a client in a dissolution-of-marriage action. The attorney prepared the affidavit of his client in response to a motion brought by the adverse party. In preparation for the next day's hearing, the attorney notarized the affidavit, without his client's signature, and made copies for distribution. One copy was given to the adverse party. After the hearing, the attorney filed the affidavit, now signed by the client. No other changes had been made to the affidavit. The attorney's conduct in notarizing an affidavit prior to it being signed before him violated Rule 8.4(c) and (d), MRPC.

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These are a few examples of admonitions issued in 2001, many of them similar to those issued in prior years. An advisory opinion attorney is available at the Director's Office during business hours to give advisory opinions to attorneys who call with questions about their *own prospective* conduct. If you think you may be facing an ethical dilemma, err on the side of caution and call us before proceeding. The office phone numbers are (651) 296-3952 and (800) 657-3601. □

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