Summary of Admonitions

For the past 23 years my predecessor had the opportunity of this column to provide a summary of some of the private admonitions issued by the Director's Office. Such summaries, although often couched in their statement of the facts of a particular matter, help educate practitioners about some of the numerous violations that can occur even in an otherwise ethical practice, and perhaps deter others from similar actions. The standard for an admonition is a violation of the Rules of Professional Conduct of an isolated and numerous nature. Rules 8(3)(b)1 and 9(3)(b)(1)(m). Rules on Lawyers Professional Responsibility (RLPR). Most admonitions are issued after a preliminary investigation by a district ethics committee and upon their recommendation for discipline. The admonishments summarized below are among the 83 admonitions issued by the Director's Office in 2006. As in most years, the majority of admonitions last year involved a lack of diligence and/or communication by the attorney. Others involved what may seem to be rather outrageous, albeit comparatively nonsensical conduct, such as in some of the admonitions summarized in this article, where some of the factual recitations have been simplified to highlight the applicable misconduct.

Expiring Litigation. The attorney represented an individual in a workers' compensation case for the client, desired that the matter be handled as promptly as possible and the attorney specifically agreed to do so. Although there were delays from the time he was hired until the scheduled hearing, all of which were cited to the client, the attorney departed the matter with a request to delay the scheduled hearing. The attorney then started obtaining medical reports until less than two months before the hearing. The last report was not provided to the employee's counsel until ten days before the hearing. The employee's counsel requested a continuance based upon information contained in the belatedly provided report. The workers' compensation judge granted the request and the client complained. The attorney violated Rule 3.2, which requires an attorney to "make reasonable efforts to expedite litigation consistent with the interests of the client."

Failing to Deposit and Refund Advance Fees. The attorney agreed to represent the wife in a marital dissolution proceeding. The client said the attorney a $2,000 advance fee. There was no written fee agreement prepared or signed. The attorney immediately deposited the money into her business account, rather than into her trust account. Before the attorney had earned the entire advance fee, she took a job that did not permit her to maintain a private law practice. Although the employee withdrew from the representation, she did not refund any portion of the advance fee until after a complaint was filed. The attorney violated Rules 1.5(b) and 1.15(a)(5), which require a written fee agreement if a fee is to be considered nonrefundable and deposited into a business account upon receipt. She also violated Rule 1.16(d), which requires an attorney to refund unearned advance fees upon termination of representation.

Communication with a Represented Party. The attorney represented the plaintiff in a limited contract dispute. The attorney received an email from another attorney stating that he represented the defendant and that all future communications should be directed to counsel. Thereafter the attorney attempted to contact the party directly, including serving motions papers on the individual that should have been served on counsel (Rule 5.22, Minnesota Rules of Civil Procedure). The attorney's conduct violated Rule 4.2, MRPC.

The attorney argued that until a formal certificate of representation was filed by opposing counsel with the court, that direct contact with the client was still permitted. Rule 4.2 requires only that an attorney know that a person is represented by counsel and contains no web requirement in litigation matters.

Threatening Action Unrelated to the Case. The plaintiff was a foreign citizen who was in compliance with all immigration requirements. In response to a settlement offer from the plaintiff, the attorney threatened to seek to have the plaintiff deported if she did not voluntarily dismiss the matter. The attorney's threat was unrelated to the litigation and had no purpose except to burden the plaintiff in violation of Rule 4.4, MRPC. This matter was analyzed as being similar to threatening criminal prosecution in a civil matter, which is permissible only if there is a good faith belief that the claim is valid, and there exists a nexus between the threat and the pending matter.

Return of File and Unnecessary Disclosure of Client Confidential Information. An attorney represented the wife in dissolution proceedings. After approximately one year, the client discharged the lawyer and requested the return of her file. The fee agreement signed by the client authorized the attorney to charge for copying the client's file upon termination of the representation. The attorney would not release the file, however, until the expenses were paid. The attorney even contacted the Director's Office for an advisory opinion on whether the lawyer could charge the client pursuant to the agreement, he could not condition return of the file on payment of the expenses. The conduct violated Rule 1.16(g), MRPC. The same attorney also filed an attorney lien for unpaid fees. In support of lien, the attorney attached unredacted copies of billing statements and an affidavit in which the attorney disclosed confidential information about the client and the attorney's assessment of her mental health. This information went beyond what was necessary to collect the attorney's lien and violated Rule 1.16(b)(3)(B), MRPC, which allows disclosure of confidential information only to the extent reasonably necessary to establish a claim in a controversy between the lawyer and a client (see Comment [J2] to Rule 1.6).

14 BenchBar of Minnesota ▲ March 2007

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Improper Claim of Specialization. The complaint was filed against the law firm in the Circuit Court of Cook County, Illinois. The firm represented the plaintiff in a breach of contract lawsuit. The complaint alleged that the firm failed to adequately represent the plaintiff and breached their fiduciary duty. The firm moved to dismiss the complaint, arguing that the plaintiff had not sufficiently alleged a breach of contract. The court denied the motion to dismiss, finding that the complaint adequately pleaded the breach of contract.

Litigation in Response to Ethics Complaint. The firm represented the plaintiff in a lawsuit alleging that the defendant, a competing law firm, had engaged in unethical conduct. The firm argued that the plaintiff's allegations were groundless and that the plaintiff had no standing to bring the lawsuit. The court agreed, finding that the plaintiff had not stated a claim for relief under Illinois law.

Conclusion. In summary, the firm provided competent legal representation to its clients. However, the firm acknowledged that its representation was not perfect and that there were instances where the firm could have done better. The firm committed to improving its legal representation and to ensuring that its clients receive the best possible representation in the future.