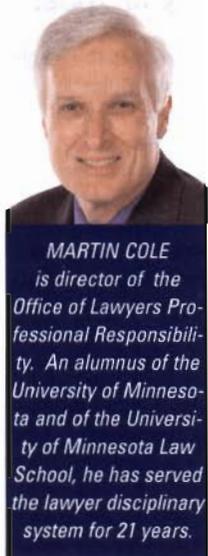


Summary of Admonitions

Private discipline can take two forms: admonition or stipulated private probation. In calendar year 2008, 106 admonitions were issued to Minnesota attorneys for what the Rules consider isolated and nonserious misconduct.¹ Another 16 lawyers entered into stipulations for private probation that were approved by the Lawyers Board chair; these stipulations resolved 29 additional complaints.² A summary of the admonitions issued in the past year has been published on an annual basis. So, here again is a sampling of the types of misconduct that can lead to private discipline.

A word of caution is appropriate before reading the brief synopses: since these are offered for educational purposes, the facts may have been simplified in order to make the violations clearer (real life fact patterns can get complicated). It is also worth noting that in all of the admonition examples described, if the complaint was initially investigated by the local district ethics committee (DEC), the DEC had recommended that the director issue an admonition. As has been reported previously, the Director's Office follows the DEC recommendation over 90 percent of the time. The volunteer DEC investigators, both lawyers and nonlawyers, do an outstanding job in determining the facts and applying the Rules of Professional Conduct.



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Contacting Represented Person. Attorney represented vendor on a matter involving the cancellation of a contract for deed. Attorney directly contacted vendee by telephone after serving the notice of cancellation, despite knowing that vendee was represented by counsel. Attorney proposed that vendee and vendor meet at attorney's

office to discuss resolution of the matter. Vendee notified his attorney, who filed complaint. Attorney's conduct violated Rule 4.2, Minnesota Rules of Professional Conduct (MRPC), which prohibits contacting a person known to be represented about the subject of the representation. An attorney was publicly disciplined this past year for a particularly egregious violation of Rule 4.2.³

Business Transaction with Client.

Attorney's client was having difficulty making mortgage payments on certain farm property. Attorney offered to purchase the property and then lease it back to the client. Attorney did not comply with Rule 1.8(a), MRPC, which establishes requirements that must be met when entering into a business transaction with a client. Here, the client was not advised in writing to seek independent counsel nor gave informed consent in a separate document signed by the client.

In another matter, an attorney representing a client in a personal injury matter lent a client approximately \$5,000 during the course of the representation to be repaid out of any settlement proceeds. The attorney drafted promissory notes that were signed by the client. Here again, the client was not advised in writing to seek independent counsel nor gave informed consent in a separate document signed by the client, as required by Rule 1.8(a). The attorney also violated Rule 1.8(e), which allows Minnesota attorneys to guarantee a loan to a client to withstand delay in litigation, but not to make such loans directly.

Timely Withdrawal. Attorney represented a client in marriage dissolution. Client was behind in payment of his legal fees. About one month before the scheduled trial in the matter, attorney informed the client that if the fees were not brought current attorney would withdraw. Client did not make payment. Attorney waited until six days before trial to notify client, court and opposing counsel of withdrawal. Attorney did not make any request for a continuance of the trial. Attorney violated Rule 1.16(b)(1), MRPC, since withdrawal could not be accomplished without material adverse effect on the client at that time. Attorney also violated

Rule 1.16(d) in that she did not give reasonable notice to the client or time to employ other counsel.

Copying Charges. Attorney represented a client in a criminal matter. When discharging the attorney, the client requested copies of certain documents from his file. The attorney sent the client a bill of \$185 for copying the documents, and stated that the documents would not be provided until the payment was received. The attorney violated Rule 1.16(g), MRPC, which prohibits conditioning return of client papers upon payment of the cost of copying.

Depositing Fees into Business Account.

Attorney was hired to handle an appeal from a custody determination. Attorney requested a "nonrefundable" advance fee of \$10,000, which he did not deposit into his trust account. There was no written fee agreement. Attorney violated Rule 1.5(b), MRPC, which requires a written fee agreement in any matter in which a nonrefundable availability retainer is paid.⁴

In a second matter, an attorney represented a client *pro hac vice* in a federal criminal matter in Iowa. The attorney charged a "nonrefundable" fee of \$50,000, which was not placed into his trust account. There was a written fee agreement signed by the client to that effect. Iowa's Rules of Professional Conduct, however, do not permit such "nonrefundable" fees even with a signed fee agreement. Attorney's conduct violated Iowa's rule, which pursuant to Rule 8.5, MRPC (Choice of Law), was the applicable standard.

Representation Adverse to Former Client.

Attorney represented husband and wife in a potential bankruptcy matter. Attorney met with the couple several times, carefully reviewed their finances, discussed various options and eventually recommended they not file a joint bankruptcy petition. Almost immediately thereafter, wife sought to retain attorney to commence a marriage dissolution proceeding. Apparently, husband orally informed wife that he would not object to attorney representing wife. Attorney never contacted husband, however, and never obtained his

informed consent, confirmed in writing, to the representation. Attorney violated Rule 1.9(a), MRPC, which prohibits representation adverse to a former client in a substantially related matter without consent, confirmed in writing (defined in Rule 1.0(f)).

Employing and Supervising Suspended Attorney. Attorney employed a former attorney who was suspended from the practice of law for misconduct. Friend of former attorney, who was unaware of his suspension, hired suspended attorney to represent him in marriage dissolution. Although hiring attorney claimed that she was attorney of record, she never had any dealings with client, while suspended attorney handled all work. Client thought suspended attorney was his lawyer. Attorney violated Rule 5.5(a), MRPC, by assisting suspended attorney in the unauthorized practice of law. Attorney also violated Rule 5.8, because she had never notified the Director's Office of her employment of the suspended attorney, as is required.

Complying with Statute. City attorney handled an assault prosecution. Attorney entered into a plea agreement with the defendant. Attorney was aware that victim did not agree with the proposed plea. Attorney did not notify victim of the final agreement, inform the court of the victim's opposition, or provide the victim with an opportunity to make an impact statement to the court, as required by statute.⁵

Confidentiality. Attorney represented client in possible personal injury mat-

ter. Attorney had collected client's medical records, and then sent the client's file to another attorney in a different law firm to determine whether that attorney wished to take over the representation. Attorney had not sought, and the client had not granted, permission to disclose her confidential information to another lawyer in a different firm. Attorney violated Rule 1.6, MRPC (Confidentiality). Although there are numerous exceptions that may permit disclosure without client consent, none of them applied in this instance. In particular, the attorney was not "impliedly authorized" under Rule 1.6(b)(3) to make such disclosures, as the attorney argued.

Conclusion

Admonitions are issued for "isolated and nonserious" violations of the disciplinary rules. The educational value of such admonitions is seen by the fact that in many instances the admonition will be the only discipline an attorney ever will receive. In some cases, however, attorneys do not recommit themselves to learn and follow the Rules of Professional Conduct, and find themselves with greater disciplinary difficulties, possibly private probation or even public discipline.

Mandatory continuing legal education requirements for coursework in professional responsibility and elimination of bias in the legal profession help ensure that attorneys remain familiar with the rules. Nevertheless, simply reading the rules periodically should also be a regular part of every attorney's continuing education. ▲

Notes

¹ Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR).

² Rule 8(d)(3), RLPR.

³ *In re Wilson*, 746 N.W.2d 643 (Minn. 2008).

⁴ There is currently a debate in the Minnesota professional responsibility community about the appropriate use of "nonrefundable" fees. See, Gerlander, "Nonrefundable Retainers & Other Oxymorons," *Bench & Bar of Minnesota*, February 2009. The dispute concerns under what circumstances such agreements might ever be appropriate. There is no dispute, however, that all such agreements must be in writing.

⁵ Minn. Stat. §611A (crime victims' rights).



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