

**Director's Office Admonishes Attorney
For Failing To Clearly Communicate Fee**

**by
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A dispute between a lawyer and client about fees is often at the heart of a complaint filed with the Office of Lawyers Professional Responsibility. Many such complaints are summarily dismissed by the Director's Office without any investigation. Some, however, result in discipline, usually private admonitions.

A complaint alleging a simple fee dispute (e.g., "My lawyer charged me \$1,000 to defend a motion. We lost. I don't think the fee is fair") will be summarily dismissed by the Director without any investigation, pursuant to the Lawyers Board's dismissal guidelines.

Instead, the complainant will be provided the address of the fee arbitration committee for their district. Fee arbitration committees are set up to resolve such disputes; generally the Director's Office is not.

Get it in writing

Some complaints about fees do raise issues of compliance with the Minnesota Rules of Professional Conduct (MRPC), however. For example, it is always a good idea to have a written fee agreement with the client.

In some circumstances, a written agreement is required, and the failure to have such an agreement will result in discipline, most often a private admonition. Written fee agreements are mandatory for contingent fee matters (Rule 1.5(c), MRPC) if a fee split or referral fee is involved (Rule 1.5(e), MRPC) and if a non-refundable retainer is contemplated (Lawyers Board Opinion 15; *In re Lochow*, 469 N.W.2d 91, 98 (Minn. 1991)).

Even some fee disputes can involve rule violations. If the lawyer is holding client funds in her trust account, such as an advance fee to be billed against or a personal injury settlement, and if the client disputes the lawyer's entitlement to the fee or disputes the amount to which the lawyer is entitled, then the disputed portion is to remain in the trust account until the dispute is resolved (Rule 1.15(a), MRPC). Even when a complaint is summarily dismissed by the Director, this provision remains in effect.

Some complaints almost force the Director's Office to try to resolve a dispute over fees. In one recent admonition, the complainant insisted that the attorney agreed to represent her in an administrative hearing (concerning an employment discharge) for an hourly rate. The attorney was just as insistent that the parties agreed to a one-third contingent fee.

Let's say that the case settled for approximately \$150,000 and the attorney likely spent 100 hours (with a

normal billing rate of \$100/hour) on the case. There was no written fee agreement. Thus, a \$40,000 fee dispute existed!

The lawyer was willing to admit to a violation of Rule 1.5(c), MRPC, which requires that contingent fee agreements be in writing. The local district ethics committee recommended an admonition for the admitted violation.

Issuing such an admonition, however, would require the Director to resolve the credibility issue in the attorney's favor and find that the attorney's version of the oral fee agreement was correct. This might prejudice the client should she sue the attorney or seek fee arbitration.

Instead, the attorney was admonished for violating Rule 1.5(b), MRPC, which requires that an attorney clearly communicate the fee arrangement (preferably in writing) to a first-time client, which was the case here. The attorney accepted the admonition.