

HOW TO AVOID ISSUES OF UNAUTHORIZED PRACTICE

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One of an attorney's many professional responsibilities is to ensure that he or she is authorized to practice. Simple? Self-evident? The number and variety of admonitions issued for engaging in unauthorized practice is greater than attorneys might think. This summary may help attorneys avoid some common pitfalls.

Paying the annual attorney registration fee and filing an affidavit of CLE (continuing legal education) compliance every three years ought to be a familiar routine with which every attorney carefully complies. Failing to "take care of business" can have attorney discipline consequences.

Failure to pay the annual attorney registration fee results in an automatic suspension from the practice of law until the fee is paid. Failure to submit a CLE affidavit results in court-ordered restricted status. A significant number of attorneys who continued to practice for relatively short periods of time while on CLE restricted status or while suspended for nonpayment of attorney registration fees, have received private admonitions.

For example, Attorney A failed to pay his attorney registration fee due Sept. 30, 1995, until Oct. 26, 1995. During the three weeks he was suspended he continued to practice, making several court appearances. Because he promptly paid his fees when notified by the Director's Office, he received an admonition.

more examples

Attorney B is a county attorney. He failed to timely file a CLE affidavit and was placed on restricted status. He continued to act as county attorney during the three weeks before his license was restored to active status. The county attorney advised his local newspaper that "he worked continuously during the period but that an assistant county attorney handled courtroom duties," implying that only courtroom appearances while on restricted status violate Rule 5.5(a), Minnesota Rules of Professional Conduct. The practice of law is not limited to court appearances. His presence and management of the county attorney's office while on restricted status constituted the unauthorized practice of law for which he received an admonition.

Attorney C is a partner in a law firm that pays its attorneys' annual registration fees. For some reason his fees were not paid. Attorney C is a patent attorney and does not practice in Minnesota civil or criminal courts. A current Minnesota license is, however, necessary for Attorney C to do patent licensing representation. When informed by the Director's Office that he had been practicing while suspended, he promptly paid the attorney registration fees.

Attorney D signed and forwarded her attorney registration card to her firm's bookkeeping department, but for some unexplained reason the fee was not paid. Attorney D then left that firm without notifying attorney registration of her new address. Subsequent license renewal forms were sent to her former firm but were not forwarded to her and she remained suspended for several years. Payment of the attorney registration fee can never be a wholly clerical function. It is the attorney's responsibility to see to it that addresses are

updated and to inquire when the attorney does not receive a new license or the annual renewal notice.

Because Attorney C was unaware of his suspension and Attorney D did not practice for a substantial portion of the time her license was suspended, their unauthorized practice was sufficiently isolated and nonserious to warrant an admonition.

Attorneys who continue to practice for long periods of time or despite actual knowledge of their suspension for nonpayment or CLE-restricted status have received public discipline. See, *In re Wertz*, 442 N.W.2d 781 (Minn. 1989) and *In re Anastas*, 375 N.W.2d 483 (Minn. 1985).

An attorney on retired status who does not pay the annual registration fee is not authorized to practice law or to hold himself out in any manner as qualified or authorized to practice.

a civil action

Retired Attorney E appeared as attorney of record for a plaintiff in a civil action and wrote to the opposing counsel on stationery identifying him as an attorney without indicating any restrictions on his ability to practice. Attorney E alleged that he was unaware of the restrictions. Because the unauthorized practice was isolated and apparently unintentional he received an admonition.

Attorney F agreed to represent a client in a Wisconsin criminal matter. Attorney F is not licensed in Wisconsin but associated with another Minnesota counsel who is also licensed in Wisconsin. Attorney F assumed that his co-counsel had obtained permission for him to appear in the matter in a Wisconsin court. Apparently his co-counsel had not done so and the Wisconsin judge had not authorized his appearance. The judge complained.

It is the attorney's personal responsibility to make sure that he has the necessary permission to appear before a particular tribunal. His failure to do so resulted in unauthorized practice for which he received an admonition.