

Personal conduct can be unprofessional conduct
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Many of the participants in the Watergate scandal of the early 1970s were lawyers, most notably President Richard Nixon. In response, in 1974 the ABA issued Formal Opinion 336, making it clear that “all applicable disciplinary rules apply to lawyers at all times, whether or not acting in their professional capacity.”

In Minnesota, it is clear that the reach of the Minnesota Rules of Professional Conduct (MRPC) extends to some parts of our personal or private lives and affairs, when we are not wearing our “lawyer hats.” The Minnesota Supreme Court stated that view nearly 30 years ago when it said:

“Neither can it be said that a lawyer’s ethical obligations and professional responsibility are confined to conduct arising out of the attorney-client relationship. The Code of Professional Responsibility has been interpreted as requiring a lawyer to comply with applicable disciplinary rules at all times, regardless whether he or she is acting in a professional capacity.”

The majority of cases in which discipline has been imposed for a lawyer’s conduct outside of the practice of law involve some part of Rule 8.4, MRPC (or its predecessor in the old Code of Professional Responsibility). Rule 8.4 begins, “It is professional misconduct for a lawyer to ...” Conspicuously absent from Rule 8.4 are qualifying phrases (found in other MRPC) that would limit its applicability to legal representations or attorney-client relationships.

Perhaps the provision of Rule 8.4 most frequently applied to personal conduct is subdivision (b), which provides that it is professional misconduct to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Cases applying this rule are often newsworthy, since they almost always involve a criminal conviction, usually a felony involving dishonesty. For example, in one recent case a lawyer pleaded guilty to one count of felony financial exploitation of a vulnerable adult — her own father. Over the years, lawyers have been convicted of money laundering, aiding and abetting insider trading, check forgery, even cattle theft. Each of these lawyers was disbarred.

Rule 8.4(b) has also been cited as the basis to discipline lawyers for criminal misconduct that did not involve dishonesty or deceit. Although a single DWI arrest or conviction would rarely result in discipline, in two recent cases lawyers were publicly disciplined for felony DWI convictions. Other criminal conduct that has led to public discipline includes failing to pay child support, assault and disorderly conduct, possession of methamphetamines with intent to sell, cocaine distribution and solicitation of a minor over the Internet.

Misconduct committed outside the practice of law occasionally can violate other provisions of the MRPC. Rule 8.4(d) provides that it is professional misconduct to “engage in conduct that is prejudicial to the administration of justice.” For example, a lawyer violated the terms of a stipulated private probation, and thus Rule 8.4(d), by “failing to maintain total abstinence from alcohol” as had been agreed. Rule 8.4(h) states that a lawyer shall not commit a discriminatory act that is prohibited by federal, state or local statute or ordinance that reflects adversely on the lawyer’s fitness. Whether the act was committed in connection with the lawyer’s professional activities is a factor to consider under the rule but not a prerequisite to finding a violation, such as if a lawyer is also a landlord.

As the Minnesota Supreme Court has stated, lawyers are required to comply with the Rules of Professional Conduct at all times, even when not acting in a professional capacity. This article reviewed only a few of the MRPC and Supreme Court decisions that can regulate lawyers’ conduct in their personal lives. Lawyers are encouraged to review the MRPC to ensure that their personal as well as their professional conduct complies with the rules.