

## Professional Responsibility for Professionally Incurred Debts

by

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Despite the generally good economic climate in 1999, several attorneys received admonitions for failure to pay law-related judgments obtained by court reporters and expert witnesses.

It is well-established in Minnesota that attorneys who fail to pay professionally incurred debts violate their professional responsibilities. See *In re Pokorny*, 453 N.W.2d 345 (Minn. 1990) and *In re Stanbury*, 561 N.W.2d 507 (Minn. 1997). The severity of the sanction--a private admonition, private probation, public reprimand or suspension--depends on a number of factors including whether the failure to pay was due to financial hardship or an unwillingness to acknowledge the validity of the judgment and a willful failure to pay.

Pokorny failed to pay judgments obtained against him by a process server and by Sel-Mor Distribution Company for the purchase of a copy machine. He argued that the creditors were using the discipline system as a collection agency by filing complaints against him to coerce payments. He further argued that his refusal to pay was analogous to the right to discharge debts in bankruptcy since he was not hiding assets or preventing collection efforts.

The court held that Pokorny's "adamant stance against voluntary payment of valid debts, especially when such obligations were for goods and services used in respondent's law practice, 'reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law [citation omitted].'" *In re Pokorny*, 453 N.W.2d at 348.

Stanbury refused to pay a Hennepin County law library bill with which he disagreed.

The court noted, "After final judgment and exhaustion of his legal appeals, Stanbury did not voluntarily pay any portion of his debt. This conduct alone is sufficient to violate Rule 8.4(d)." *In re Stanbury* 561 N.W.2d at 511.

Other attorneys publicly disciplined for similar misconduct include: *In re Haugen*, 543 N.W.2d 372, 375 (Minn. 1996) (failure to timely pay court reporter); *In re Hartke*, 529 N.W.2d 678, 683 (Minn. 1995) (failure to satisfy a fee arbitration award until two months after an ethics complaint was filed), and *In re Ruffenach*, 486 N.W.2d 387, 390 (Minn. 1992) (failure to voluntarily pay malpractice judgment).

Admonitions (the lowest disciplinary sanction) have been issued where attorneys acknowledge their obligation to pay and present evidence that their failure to pay was not indicative of willful indifference to their financial obligations.

For example, an attorney retained a psychologist to perform psychological evaluations for two of her clients. When neither the clients nor the attorney paid the psychologist's invoices, the psychologist obtained a conciliation court judgment. The attorney appealed the judgment to District Court which ruled in the psychologist's favor and entered judgment for the amount of his bill. The attorney did not appeal further.

The court then mailed the attorney an order for disclosure. When the creditor did not receive the completed disclosure, the court issued an order to show cause. The attorney remailed the completed disclosure form to the creditor. The county sheriff's department levied on the attorney's bank account to satisfy a portion of the judgment but a substantial portion of the judgment remained unpaid.

Despite promises to pay, the attorney made no voluntary payments on the debt. In response to the complaint filed by the psychologist, the attorney claimed that she was financially unable to pay the debt.

Because her failure to pay was based on an asserted inability to pay, the attorney received an admonition but the attorney was cautioned that the issuance of the admonition did not relieve her from the possibility of further discipline if she did not make reasonable efforts to pay the judgment.

When a court reporter called an attorney about his unpaid bill, the attorney told her that he had spoken with his client and that the client would pay the bill. The court reporter agreed to wait 10 more days. When the bill remained unpaid, the reporter demanded payment from the attorney. The attorney did not pay. The court reporter obtained a conciliation court judgment which the attorney did not appeal. When the attorney still did not pay, the court reporter complained to the Director's Office.

The attorney initially responded that the bill had been overlooked or misplaced and that he thought it had been paid. The attorney gave the district ethic committee investigator the impression that he would pay the judgment. A review of the attorney's recent tax returns indicated that he had the ability to pay but had failed to make any payments. He received an admonition.

A third attorney employed an expert on behalf of his client in a civil action. From previous association, the attorney and the expert understood that the clients would pay the expert's bill from the civil settlement or verdict. Nevertheless, the attorney was still responsible for the debt that had been reduced to a judgment against him. The attorney neither appealed the judgment nor made any arrangements to make payments on the debt. The attorney received an admonition for violation of Rule 8.4(d), MRPC.

The Director's Office does not investigate complaints about an attorney's failure to pay a debt until the creditor obtains a final judgment. An attorney has a professional obligation to pay law-related debts when there is no longer any basis to dispute the debt. Failure to pay just debts is professional misconduct which can result in disciplinary sanction.