

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

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Private letters of warning were sent out to 51 Minnesota lawyers during the first six months of operation under the new rule which allows issuance of warnings. While the investigation of most ethics complaints still result in a finding of no unprofessional conduct, the initial experience shows that the private warning rule has significantly increased the percentage of complaints in which some improper conduct is found.

Rule 8(c)(2), Rules on Lawyers Professional Responsibility, permits the Director to send a private warning, either upon recommendation of the District Ethics Committee or following direct investigation by the Board's staff. Each warning letter sets forth a brief summary of the facts and cites the Disciplinary Rules violated. The warned attorney is given a reasonable time (usually about two weeks) within which to contest the warning by demanding a full hearing before a Panel of the Lawyers Professional Responsibility Board. During the first six months of 1977, only four appeals were taken from warnings. If the attorney accepts the warning, the complainant is notified of the fact that a warning was given, and the District Ethics Committee is provided with a copy of the warning letter.

I am most hopeful that the new rule will assist the profession by giving early warning to those lawyers whose practices or office procedures are in need of adjustment. Particularly in the area of neglect complaints – which still comprise almost 50% of the total – the theory is that a private warning will nudge an otherwise competent lawyer to review his or her office procedures.

Warnings issued are grouped below in summary categories.

1. **Neglect and Lack of Communication** – 22 warnings. Complaints in this area include dilatory handling of probate files, real estate matters, and civil litigation. Several warnings arose from repeated failures to respond to client telephone calls or correspondence. In resolving such complaints, an effort is made to recite the specific findings (e.g., failure to reply to four successive letters over a five-month period), and to suggest changes in office procedures or workload management to avoid future problems. The lawyer who accepts more work than he or she can handle, or persistently neglects files, evokes more complaints from disgruntled clients than any other type of ethics transgressor.

2. **Conflicts of Interest** – 6 warnings. Lawyers were warned for placing themselves in conflict situations in connection with real estate transactions, divorce cases, and for improper purchase of probate assets while serving as attorney for the estate.

3. **Solicitation and Advertising** – 4 warnings. Two attempts to solicit litigation and two paid advertisements resulted in warnings before the decision in *Bates v. State Bar of Arizona*.

4. **Miscellaneous** – 19 warnings. Examples of other complaints which have resulted in warnings are:

- failure to respond to inquiry from the District Ethics Committee;
- issuing NSF law firm checks;
- failure to protect the interests of a doctor in settlement proceeds, notwithstanding a written agreement by the attorney to do so;
- filing a default affidavit in a civil action, despite the fact that written response had been received from the adverse party denying liability;
- obtaining a client's purported verification of dissolution of the marriage pleadings before the actual preparation of the petition.
- permitting a non-lawyer investigator to sign law office stationery in such a manner as to lead recipients of the letter to believe that he was a lawyer;
- turning over confidential files to another attorney for handling, but without the prior consent of the client;
- disbursement of proceeds of minor's personal injury settlement contrary to express provisions of court order;
- improper withdrawal from civil litigation contrary to the terms of employment.

Some of the foregoing summaries are oversimplifications of complicated factual circumstances. They do, however, reflect the diverse cases which have been dealt with by issuance of private warnings. A more complete statement of the facts which have given rise to warnings (excluding the names of attorneys) is available upon request at the Board's office.