

SUMMARY OF ADMONITIONS

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In calendar year 2012, the Director's Office resolved 122 files with admonitions that were issued to Minnesota attorneys for isolated and nonserious violations of the Minnesota Rules of Professional Conduct (MRPC). Another 11 lawyers entered into stipulations for private probation that were approved by the Lawyers Board chair; these stipulations resolved an additional 11 complaint files (probations often involve multiple complaints against the same attorney in areas where supervision may be of benefit; this year that was not the case, but that is unusual). A summary of private disciplines from the past year has been published on an annual basis. Here again is a sampling of the misconduct that led to private discipline this past year; this year all matters described were admonitions.

When reading these synopses, keep in mind that they are offered for educational purposes and the facts may have been simplified in order to make a particular violation clearer. Most complaints that involve what appear initially to be allegations of isolated and nonserious misconduct are investigated by a local district ethics committee (DEC). The lawyer and nonlawyer volunteer DEC investigators who investigate such complaints do an outstanding job of determining the facts and making a preliminary recommendation. As in past years, DEC recommendations were followed by the Director's Office approximately 90 percent of the time this year (and where the recommendation technically was not followed, in some instances it was because the attorney had prior similar discipline, a factor the DEC is not expected to consider, rather than due to any actual disagreement with a DEC recommendation for discipline). As has been true every year, lack of diligence and/or lack of communication with a client are the most common reasons for receiving a complaint, and also for receiving an admonition.

Admonitions

Neglect, Noncommunication and Withdrawal. The attorney was retained to represent the mother in a CHIPS proceeding. The attorney handled the matter through initial

hearings. Thereafter, the attorney failed to return several phone calls from the client, such that the client submitted a complaint to the Director's Office. Thereafter, the attorney determined to withdraw from further representation, and so notified the county attorney of his intent but not the court or complainant. The court then issued an order concerning the complainant's case. The attorney received the order but did not inform the complainant, who remained unaware that the attorney claimed he had withdrawn. The county then served a petition for termination of parental rights upon the attorney, who did not inform the complainant for several weeks, ultimately providing the petition along with a motion to withdraw. The attorney violated Rules 1.3 (diligence), 1.4 (communication) and 1.16 (termination of representation/withdrawal), Minnesota Rules of Professional Conduct (MRPC).

A second attorney was retained to pursue collection of a judgment previously obtained by a client. The client provided the attorney with information about the debtor's assets and copies of discovery served by the client's previous lawyer. The attorney made no attempt to ascertain the status of the prior discovery, but rather served new interrogatories. He then contacted the client to ask about possible assets; the client reminded the attorney that she had already given him such information. Thereafter, over the next several months, the client left several phone messages seeking an update; the attorney did not return any of the calls. In response to the client's complaint, the attorney stated that he "forgot." The attorney violated Rules 1.3 and 1.4, MRPC.

Scope of Representation. The attorney was hired for representation in a workers' compensation matter. About one year later, the attorney sent a settlement proposal to the employer's attorney. The attorney had not consulted with the client about the settlement proposal or informed the client that a settlement proposal was being sent. When the client eventually learned of the offer, he did not agree with its terms. The attorney violated Rule 1.2(a) (scope of representation: "a lawyer shall abide by the client's decision whether to settle a matter") and Rule 1.4, MRPC.

Ex Parte Contact with Represented Person or Court. The attorney represented the wife in a marital dissolution matter and post-dissolution motions. The husband retained counsel (the complainant), who promptly notified the attorney of his being retained. The attorney states that he attempted to contact the husband's lawyer about settlement without success. Thereafter, the attorney wrote directly to the husband about a possible settlement. The attorney violated Rule 4.2, MRPC (communication with represented person). The attorney knew that the opposing party was represented; a lack of response by the opposing attorney does not authorize direct contact with a represented opposing party.

Another lawyer submitted to the court a qualified domestic relations order (QDRO) as directed. The attorney did not, however, serve the opposing party's attorney or otherwise inform the opposing attorney of the submission. The court signed the proposed QDRO, which was filed. The attorney again did not inform opposing counsel of the matter. The attorney violated Rule 3.5(g), MRPC ("in an adversary proceeding a lawyer shall not communicate ... as to the merits of the case with the judge ... except in writing, if the lawyer promptly delivers a copy of the writing to opposing counsel").

Suspended Lawyers. The attorney represented a defendant in a criminal matter. The attorney was suspended by the Minnesota Supreme Court for misconduct unrelated to the representation of this client. A suspended attorney must, pursuant to Rule 26, Rules on Lawyers Professional Responsibility (RLPR), notify clients, courts, and opposing counsel of his or her suspension by certified mail within ten days. The attorney so notified the client, but never notified the court or opposing counsel as required. The attorney thereby violated Rules 3.4(c) (violating rules of the tribunal) and 8.4(d) (conduct prejudicial to the administration of justice), MRPC.

Another attorney hired a disbarred attorney to assist the lawyer with several legal matters. Suspended or disbarred lawyers may be hired as paralegals, but notice must be provided to the Office of Lawyers Professional Responsibility (OLPR) pursuant to Rule 5.8, MRPC. There are also specific tasks that the suspended or disbarred lawyer may or may not perform. In this matter, the attorney did not notify OLPR of having hired the disbarred attorney.

Safekeeping Client Property. The attorney was hired to advise a client about a corporate restructuring. The client provided to the attorney corporate records including unissued stock certificates. The attorney provided the opinion as requested but did not return to the client the client's property upon request. The attorney later informed the client that she had misplaced the corporate records. Several months later, but only after a complaint was filed, the records were located and returned to the client. The attorney violated Rules 1.15(c) (safekeeping client property) and 1.16(d) (return of client property at end of representation), MRPC.

Conflict of Interest. A personal injury attorney was retained by the driver of a car involved in motor vehicle accident to represent the driver and the driver's two minor children, who were in the vehicle, one of whom was severely injured. The attorney obtained the police report of the matter, which indicated that the driver-client was at fault. Although there clearly was adversity between the attorney's clients, the attorney did not obtain informed consent, confirmed in writing, to the joint representation. The driver-client was then criminally charged in the matter. At this point, the attorney

withdrew from representing the driver but continued to attempt to represent the minors. The attorney again did not obtain the now-former client's informed consent, confirmed in writing. The attorney violated Rule 1.7 (concurrent conflict of interest) and then Rule 1.9 (former client conflict of interest), MRPC. Because the harm was ultimately limited, an admonition was considered appropriate.

Solicitation. An individual's residential property went into foreclosure. The attorney obtained this information from public court records. The attorney called this potential client on the telephone and solicited professional employment. The person contacted was not a lawyer and had no family, close personal or prior professional relationship with the attorney. The attorney violated Rule 7.3(a) (direct contact with prospective clients), MRPC. The attorney could have contacted the individual by mail if he had included the words "Advertising Material" on the envelope and within the communication. *See* Rule 7.3(c), MRPC.

Conclusion

The majority of attorneys who receive an admonition never repeat their misconduct. Most do not commit any further misconduct at all. Admonitions are not public, although the complainant and the DEC, if any, will receive a copy at the end of the investigation. Should the attorney commit further misconduct in future, an admonition will be relevant to the determination of what level of discipline is appropriate in any subsequent proceeding and thus may be admitted in a future public disciplinary proceeding.