

## SUMMARY OF ADMONITIONS

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During 1986, 94 admonitions were issued to Minnesota lawyers. An admonition is private discipline issued for "isolated and nonserious" unprofessional conduct. About 8 percent of all complaints resulted in admonitions.

In 1986, as in every other year, neglect of client files was the most frequent basis for admonitions. The "honest procrastinator" is one of the profession's hardiest perennials. As the examples below suggest, the profession has several other colorful species.

The following are digests of the findings and conclusions of ten admonitions issued in 1986. The digests also include citations to the applicable Rules of Professional Conduct (for conduct after August 31, 1985) or Code of Professional Responsibility (for earlier actions).

### **1. Contingent Fee in Criminal Matter.**

Attorney represented client on a number of criminal charges. Attorney sent client a letter agreeing to represent client for a \$5,000 fee with an additional \$5,000 fee if client's sentence was one year or less. The contingent fee became moot when the client received a sentence of more than one year. Attorney's conduct in "entering into" a contingent fee agreement in a criminal matter violated DR 2-106(C), Code of Professional Responsibility [Rule 1.5(d)(2), Rules of Professional Conduct].

### **2. Harassing or Threatening Statements.**

Attorney subpoenaed adverse witness (doctor) to deposition. The deposition commenced at 5:30 P.M. and it was agreed that the doctor could leave if he received an emergency call.

After two hours of deposition, the doctor stated he would have to leave to see patients. Attorney told the doctor that he was under court order to appear, and that if he left, "the attorney would ask the judge to issue a bench warrant for [the doctor's] arrest for violation of the judge's order" and "that if the bench warrant was issued, [the doctor] could be arrested." These statements upset the doctor, who then left to attend to patients. Attorney's statements violated Rule 4.4.

### **3. Contempt of Court for Failure to Make Child Support Payments.**

Attorney failed to meet his child support obligation and was found in civil contempt of court for failure to make child support payments as ordered. After further support delinquencies, attorney's former wife

instituted a second action for contempt of court, which resulted in attorney paying the child support arrearages on the day of the scheduled hearing. Attorney's disregard of the court's child support order, resulting in a citation for contempt of court, violated DR 7-106(A) and DR 1-102(A)(5) and (6) [Rule 3.4(c) and Rule 8.4(d)].

#### **4. Failure to Honor Obligation to Protect Medical Provider Fees.**

Attorney's client was injured and received treatment from her physician. The client agreed in writing that the physician's bill would be withheld from settlement and would be paid by her attorney directly to the physician upon settlement or verdict. Attorney agreed in writing to withhold the amount of physician's bill and to observe his client's agreement with the physician. The physician agreed to defer collection efforts in consideration of the client's and attorney's agreements. Attorney settled the personal injury action but did not withhold the amount of physician's bill or pay the physician. Attorney's failure to honor the written agreement to protect the physician's fees violated DR 1-102(A)(4) and (5) [Rule 8.4(c) and (d)].

#### **5. Failure to Pay Appellate Court Filing Fee.**

Attorney was retained to appeal a criminal conviction. Attorney's check for the \$50 filing fee was returned for insufficient funds (NSF). The Court of Appeals ordered attorney to pay the filing fee within ten days and attorney did so.

Attorney's statement of the case indicated a full transcript was required. When attorney failed to file a transcript certificate the court ordered him to do so within ten days. Attorney did not file a transcript certificate and the court dismissed the appeal.

The court later granted the attorney's motion for reinstatement of the appeal and ordered him to file a transcript certificate within ten days. When the court received a transcript certificate indicating that only a partial transcript had been ordered, the court ordered the attorney to provide a complete transcript. Thereafter, the court received a certificate of nonacceptance from the court reporter because the attorney's check in payment of the transcript deposit had been returned for insufficient funds. The court ordered the attorney to remedy the situation and he thereafter complied. Attorney's failure to comply with court orders and issuance of NSF checks to the court and court reporter violated Rules 3.4(c) and 8.4(d).

#### **6. Intimidating and Embarrassing Statements.**

Complainant, a 78-year-old woman confined to a wheelchair, attempted to terminate an employment relationship with attorney's sister. Complainant provided free living quarters in return for the sister's assistance. Complainant notified the sister of her termination through complainant's nurse.

Attorney wrote two letters to complainant and her nurse on behalf of his sister. One stated, "As a lawyer, I have brought many people into court and have made their lives miserable." Another letter concluded, "It would be my pleasure to drag you into a court of law, by the power that the state of Minnesota has given me, and expose you to an expensive and public lawsuit."

The director adopted the district committee's finding that the attorney "purposely invoked his status as an attorney and officer of the court in a rude and offensive manner with only one substantial purpose, to embarrass [others]." Attorney's conduct constituted a violation of Rule 4.4.

#### **7. Ex Parte Orders.**

In a marital dissolution proceeding, attorney was served with notice of a temporary relief hearing. Attorney told opposing counsel that attorney did not consider service of the motion timely and also informed opposing counsel and the judge's clerk that attorney would not appear because the court lacked jurisdiction. The hearing was held without the attorney. The court determined it had jurisdiction and granted opposing counsel's request for a temporary relief order.

Four days later, attorney questioned the court's court reporter concerning the temporary relief hearing. Later that day, attorney called a second judge and arranged for the second judge to sign an *ex parte* order for temporary relief. Attorney failed to inform the second judge of the earlier hearing and the already existing temporary relief order containing terms which conflicted with those sought by the attorney. When the second judge learned of the first judge's order he immediately rescinded his *ex parte* order for temporary relief. Attorney's conduct in seeking an *ex parte* order without informing the second judge that a hearing on the same subject matter had been previously held before another judge violated DR 1-102(A)(5) [Rule 8.4(d)].

#### **8. Use of Suspended Lawyer's Letterhead and Law Firm Name.**

Attorney was an associate of a legal professional corporation practicing under the name of the corporation's sole shareholder. As a result of a disciplinary proceeding, the sole shareholder was suspended from the practice of law by the Minnesota Supreme Court. The associate continued to practice law utilizing the firm name which included that of the suspended lawyer for six weeks after the date of the suspension. In addition, the associate utilized the letterhead bearing the suspended lawyer's name for at least two months after the date of the suspension. Associate's practice of law under a firm name bearing that of a suspended lawyer was misleading and violated DR 2-102(B) [Rule 7.5(a)].

#### **9. Assertion of Improper Lien.**

Attorney represented client in a personal injury claim and a workers compensation claim arising out of an auto accident. Client discharged attorney due to dissatisfaction with the delay of settlement of the personal injury claim. Attorney filed an attorney's lien against the personal injury action for hours and costs incurred in pursuing both the personal injury claim *and* the workers compensation claim. Attorney's conduct in asserting a lien against the personal injury claim, which included fees incurred in pursuing the separate workers compensation claim, violated DR 5-103(A) [Rule 1.8(j)(1)].

#### **10. Inducing Client to Withdraw Ethics Complaint.**

Client retained attorney to represent him in a profit-sharing dispute with a former employer. Client paid attorney \$150 to cover investigation costs. Client later complained to the Director's Office alleging lack of diligence by the attorney. While the complaint was under investigation, attorney negotiated a written agreement with his client whereby attorney refunded the \$150 to client in exchange for client's agreement to withdraw his ethics complaint. Attorney's conduct in providing monetary inducement to his client in exchange for client's withdrawal of ethics complaint violated Rule 8.4(d) even though underlying complaint concerning diligence was without merit.