

## SUMMARY OF ADMONITIONS

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In 1987, 102 admonitions were issued to Minnesota lawyers, for "isolated and nonserious" unprofessional conduct. About 9 percent of all files closed resulted in admonitions.

Admonitions are private, but an annual summary of selected admonitions is published for the Bar's education. Most admonitions were issued, as ever, for neglect and inadequate communication. The following digest represents less common situations resulting in discipline.

**Charging Client for Personal Expense.** In representing a personal injury plaintiff, an attorney incurred travel expenses connected with a deposition. The attorney combined three days of personal matters with the deposition, and deducted expenses including four days' car rental from the settlement proceeds. Rule 1.15(b)(4), Rules of Professional Conduct (MRPC) was violated. The attorney refunded the \$107 to the complainant. For a more serious violation of this sort see *In re Zimmerman*, 380 N.W.2d 790 (Minn. 1986).

**Sexual Relations With Client.** Within a few days of being retained in a marriage dissolution matter, an attorney began a sexual relationship with his client. The relationship continued for several months during the representation. Rule 1.7(b), conflict of interest, was violated. Depending on the nature of the professional relationship, the subject of representation, any vulnerability of the client and other relevant factors, some complaints alleging improper sexual relationships have resulted in dispositions ranging from public petitions for disciplinary action to dismissals. Other complaints have been dismissed. There is no per se rule against sexual relationships between attorneys and clients, but circumstances may indicate conflict of interest, breach of fiduciary relationship, or harassment.

**Failure to Supervise Secretary.** An attorney instructed a secretary to obtain a medical report, but the only authorization in the file provided for release of information from another doctor. The secretary, mistakenly believing that the attorney had authorized her to alter the release, altered it and sent it. An unauthorized release of information was thereby obtained. Rule 5.3(b) was violated, as the lawyer did not "make reasonable efforts to ensure that the [secretary's] conduct is compatible with the professional obligations of the lawyer."

**Neglect of Pro Bono Client.** On a pro bono basis an attorney represented a petitioner in a marriage dissolution. The respondent defaulted. The attorney, who had difficulty contacting his client, took no substantial further action for several years. Upon the district committee's recommendation for an admonition, a violation of Rule 1.3 was found. Obligations to pro bono clients are also subject to the Rules of Professional Conduct.

**Retainer Improperly Handled.** An attorney practicing in a firm received a substantial retainer for services in a complicated custody matter. The firm bookkeeper deposited the entire retainer in the business account. Complainant requested an accounting regarding the retainer and services performed. Respondent provided no written accounting for over one year and failed to pursue the custody matter diligently. Rules 1.3, 1.4, and 1.15(b)(3), were violated. Discipline more serious than an admonition was considered, but respondent

was relatively inexperienced, relied on his firm's deposit practices (since corrected), had no prior discipline, and candidly acknowledged his mistakes.

**New Firm Member: Imputed Conflict With Prior Representation.** Attorney A represented a husband in dissolution proceedings for six months in 1982. In 1981 through 1986 Attorney B's firm represented the wife, with Attorney B actually representing her beginning in 1983. In 1986, Attorney A joined Attorney B's firm. The husband demanded that Attorney B withdraw from representation. Attorney B did not withdraw, and a judicial order for disqualification was entered. Attorney B wrote the court stating that he would continue to represent the wife in one more aspect of the proceedings. The conduct violated Rules 1.9(a), 1.10, and 8.4(d), Rules of Professional Conduct.

**Inadequate Communications.** Complainant retained respondent to evaluate and pursue a medical malpractice action and (complainant thought) to attempt recovery on an insurance policy. The policy was believed to cover the accident for which complainant sought medical treatment. Seventeen months later, and only eight days before the statute of limitations on the malpractice claim ran, the attorney advised complainant of his opinion there was no cause of action for medical malpractice. Although the attorney's file contained the insurance policy, he took no action on that matter. This conduct is now covered by Rules 1.3 and 1.4 of the Rules of Professional Conduct.

**Judgments for Professional Indebtedness.** Two judgments, over \$300 each, were entered against an attorney for nonpayment of court reporting services. The attorney did not satisfy the judgments until after ethics complaints were filed. As explained in the March 1983 *Bench & Bar* article, the director's office does not become involved in routine allegations of nonpayment of professional indebtedness. However, when there are aggravating circumstances, such as a pattern of failing to honor judgments without adequate excuse, an admonition may be issued.

**Coercive Demand.** Complainant, an attorney, came to have a substantial cause of action in tort. The attorney employing complainant insisted, as a condition of continued employment, that he be retained to represent complainant in the matter. When complainant declined, the attorney terminated the employment relationship. Rule 8.4(d) was violated.

**Misleading Letterhead.** Attorney A, a member of law firm A, B & C, was retained by complainant in a personal injury matter. Attorney A referred the matter to Attorney D. On such referrals, Attorney D used letterhead which appeared to indicate that he was an associate of the A, B & C law firm. Attorney D neglected the lawsuit. Complainants understandably became confused about who represented them. Rule 7.5 was violated.