

SUMMARY OF ADMONITIONS

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In 1997, disciplinary files for over 100 lawyers were closed with issuance of an admonition to the lawyer. Admonitions are issued for misconduct which is "isolated and nonserious." Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). As in prior years, more admonitions were issued for isolated neglect and failure to communicate adequately with the client than for any other type of rule violation. Other misconduct which often leads to issuance of an admonition includes inappropriate handling of retainers, *ex parte* contacts with the court, inappropriate communication with represented or unrepresented parties, and improper advertising. Summaries of some significant admonitions issued in 1997 follow.

Failure to clarify the basis for a fee. The lawyer was retained to review the client's claim against her former employer. The client paid the lawyer \$500, but after reviewing the claim he declined to represent her. Just prior to a scheduled hearing, the client again contacted the lawyer for representation, and the lawyer agreed to represent her at the hearing. No written fee agreement was signed, and the client and lawyer disputed the terms of payment for the representation. During the hearing, the parties settled the underlying claim for a substantial sum, of which the lawyer claimed one-third. The lawyer's failure to clarify the basis of his fee violated Rule 1.5(b), MRPC. The Director's Office did not resolve the dispute between the lawyer and client as to whether they had an oral agreement for a contingent fee.

Failure to have a written contingent fee agreement. A client and a law firm had a written contingent fee agreement that obligated the client to pay a monthly fee to the law firm, which payments would be deducted from the firm's one-third share of any recovery. A lawyer, engaged to work on the client's case as an independent contractor, then split with the law firm, and took over the case himself. The lawyer wrote to the client advising that she no longer had to pay the monthly fee, but did not advise that he had purchased the law firm and changed its name. Nor did the respondent lawyer execute a new contingent fee agreement with the client. When the case settled, the lawyer and client became involved in an acrimonious dispute over the lawyer's fee. The lawyer's failure to enter into a contingent fee agreement violated Rules 1.5(b) and (c), MRPC.

Failure to clarify payment of expenses. A client retained a law firm to represent her in a personal injury matter. The written retainer agreement stated the law firm would be paid one-third of any amount recovered, plus expenses incurred. The fee agreement further specified that if there was no recovery, there would be no fee, but failed to state whether the client would be responsible for costs in those circumstances. In addition, the retainer did not specify whether expenses were to be deducted before or after the contingent fee was calculated. The lawyer's failure to provide a written retainer which specified how expenses were to be paid violated Rule 1.5(c), MRPC.

Splitting the fee with another lawyer. A lawyer represented a client in a personal injury action. When the lawyer decided to take a sabbatical from the practice of law, he referred the client to another attorney, outside of his firm. The first and second attorneys agreed to split the fee in proportion to the work each performed, but did not advise the client of this agreement or get the client's consent to the split. Eventually, the first attorney took the case back and brought it to conclusion. The lawyer's failure to have a written fee-splitting agreement violated Rule 1.5(e), MRPC.

Failure to deposit retainer in trust account. A client retained a lawyer in a criminal matter, signed a retainer agreement, and paid the lawyer \$3,000. The retainer agreement indicated that the retainer would be applied against the lawyer's hourly fees, but that any portion unused would not be refunded. The lawyer deposited the funds directly into his business account. The lawyer eventually obtained dismissal of the criminal charges. Opinion 15 of the Lawyers Professional Responsibility Board (LPRB) requires in any non-refundable retainer agreement a final paragraph informing the client that the funds will not be placed in a trust account and will be non-refundable should the client choose to terminate the lawyer's services. The retainer agreement in this case created the impression that the lawyer was retained on an hourly fee basis and that the retainer would be placed in the lawyer's trust account until it was used up or until the matter was concluded, when remaining amounts would be transferred to the business account. The lawyer's conduct in placing the retainer in his business account immediately without appropriate language in the retainer agreement violated Rule 1.15(a) and Opinion 15, LPRB.

Telephone consultation fee. A prospective client called a lawyer to inquire about representation. During the phone conversation, the lawyer obtained the caller's name and address. After hearing the caller describe his case, the lawyer quoted a fee of \$5,000 to begin working on the case. The caller stated he did not have that much money. The next day, the lawyer mailed the caller a \$50 billing statement. The caller objected to being billed for the call inquiring about the lawyer's services. The lawyer had not advised the caller during the telephone call that he would be billed for any legal advice or information given out over the phone. The lawyer failed to communicate the basis of his fee in violation of Rule 1.5(b), MRPC.

Reneging on fee agreement. The client and lawyer had a disagreement about the lawyer's bill. After discussions, the lawyer agreed to reduce his bill by \$200. The client paid the reduced amount and obtained a receipt showing "payment in full." The client's new lawyer then sent a substitution of attorney form to the first lawyer, asking that it be signed and returned. The first lawyer then reneged on his agreement to reduce his fee and demanded that the client pay the additional \$200. The lawyer's conduct in attempting to collect the additional fee beyond what he had agreed was reasonable violated Rules 1.5(a) and 8.4(d), MRPC.

Charging a fee for responding to an ethics complaint. A lawyer represented a client in a dissolution of marriage action. When the case was concluded, the client filed an ethics complaint against the lawyer, which was assigned to the district ethics committee (DEC) for investigation. This required the lawyer to prepare a written response to the complaint. The lawyer's next billing to the client included a charge for preparing the response to the DEC investigator. This billing violated Rules 1.4(a) and 8.4(d), MRPC. The Minnesota Supreme Court has previously found such a charge to a client to be inherently unreasonable. *See In re Panel No. 94-17, 546 N.W.2d 744 (Minn. 1996).*

Placing a lien on the client's homestead. A lawyer represented a client in a dissolution of marriage action. The client paid a retainer and signed a retainer agreement. Several months later, the lawyer filed an attorney's lien against the client's homestead for fees in excess of \$2,000. When the client requested, the lawyer withdrew the lien. The lawyer did not have a separate signed homestead exemption waiver. The

lawyer's failure to obtain such a waiver prior to filing the lien against the client's homestead violated Opinion 14, LPRB.

Placing a lien on non-homestead property. A lawyer represented the husband in a marriage dissolution action. The parties reached a stipulated settlement that awarded the parties' lake cabin to them jointly, but required that the cabin be sold. The proceeds were to be used to pay certain joint debts, and any remaining proceeds were awarded to the wife as partial payment of child support arrearages. The husband was not entitled to any proceeds. Within a month of the decree, the lawyer filed an attorney's lien against the lake cabin. The lawyer refused to release the lien, and the closer required a portion of the sales proceeds to be held in escrow. After the wife filed an ethics complaint, the lawyer released his attorney's lien. By filing an attorney's lien against property in which his client had no pecuniary interest the lawyer violated Rules 3.1, 4.4 and 8.4(d), MRPC.

Contacting a Criminal Codefendant. A lawyer was retained to represent a criminal defendant charged, together with X, with first-degree murder. The lawyer hired a free-lance investigator to aid in the investigation and defense. The lawyer met with the investigator, explained the case, and requested that the investigator interview X, who was still in jail. The investigator was reluctant to do so, since another attorney represented X. The lawyer advised that it would not be a problem, and prepared a letter to the jail authorizing the investigator to interview X. The lawyer did not contact X's counsel to obtain permission to interview X. The lawyer's conduct in sending the investigator to interview a represented criminal codefendant violated Rules 4.2 and 8.4(a), MRPC.

Contact with Unrepresented Person. A lawyer represented the defendant driver in a personal injury action. In the course of obtaining information concerning the plaintiff's injuries and his medical history, the lawyer obtained medical releases that specifically prohibited discussion or consultation with the medical providers. The lawyer took an authorization to the office of one of the doctors, who was scheduled to testify in defense of a related workers compensation claim. The lawyer met briefly with the doctor, but did not advise the doctor that the private discussion was contrary to the authorization and Minnesota law. The lawyer's *ex parte* contact with the plaintiff's doctor violated Rules 3.4(c) and 4.3(b), MRPC.

Subpoena of Medical Records. A lawyer represented the father in a CHIPS action. The lawyer obtained a subpoena *duces tecum* in the CHIPS matter, to require the appearance of a doctor in court, and production of the doctor's records concerning his treatment of the child's mother. The subpoena prepared by the lawyer also directed the doctor to send copies of the medical records to the lawyer prior to the hearing. The doctor sent the medical records to the lawyer. Upon learning of this, the court ordered the lawyer to return the medical records to the court without copying them or looking at them again. The lawyer's conduct in preparing a subpoena *duces tecum* that compelled production of confidential medical records directly to the lawyer violated Rules 4.4 and 8.4(d), MRPC.

Failure to Correct Interrogatory Answers. A lawyer represented a plaintiff in civil litigation against her former employer. In response to interrogatories, the lawyer served answers which denied that plaintiff had sought professional counseling. The answer was true at that time. Later, plaintiff entered into psychological counseling. Thereafter, the lawyer prepared identical responses to a second set of interrogatories, and did not disclose the counseling. The lawyer did not amend the answers after learning that his client had begun counseling. At trial, the court did not allow the plaintiff to testify concerning obtaining counseling. The lawyer's failure to take reasonable remedial measures to correct the interrogatory answers which he knew were no longer correct violated Rule 3.3(a)(4), MRPC.

Errors in Appeal. A lawyer represented a client in appealing a summary judgment to the Minnesota Court of Appeals. Three days before the deadline, the lawyer filed the notice of appeal, but failed to file the necessary proofs of service. The clerk of appellate courts on the same day sent a notice of case filing to the lawyer, which notice advised that proof of service was required and that sanctions could be imposed for failure to remedy the deficiencies. The lawyer could have preserved the appeal by acting promptly. Twenty days later, the lawyer served the notice of appeal on adverse counsel and the district court administrator and filed proof of service. The Court of Appeals dismissed the appeal as untimely. The lawyer's failure to properly file the appeal violated Rules 1.1 and 1.3, MRPC.

Failure to Respond to the DEC. A lawyer represented a client in a civil action. The client filed an ethics complaint, which was sent to the DEC for investigation. The lawyer was sent a notice requesting a response to the DEC investigator within 14 days. The lawyer provided a response. The DEC investigator then three times requested further information. The lawyer failed to respond. The DEC investigator called the lawyer, who said that he would mail the information that day or the following day. The lawyer did not, however, provide the requested information. The investigator wrote another letter and called the lawyer again before finally receiving the information requested over three months earlier. The lawyer's failure to promptly respond to the DEC investigator's request violated Rule 8.1(a)(3), MRPC.