

Summary of Admonitions

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In 1998, over 110 lawyer disciplinary files were closed with issuance of an admonition to the lawyer, a rate that is consistent with that of the last several years. Admonitions are issued for misconduct that is "isolated and nonserious," Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). Also consistent with past years, more admonitions were issued for isolated neglect or failure to adequately communicate with the client than for any other rule violations. Other misconduct that often leads to issuance of an admonition includes improper advertising, failure to pay debts, solicitation of clients, and inappropriate communication with represented parties. Summaries of a few of the admonitions issued in 1998 follow.

THREAT OF INSURANCE FRAUD DISCLOSURE

The attorney represented the wife in a dissolution of marriage action. The husband borrowed the vehicle awarded to the wife in the temporary order, with her consent, and hit a deer, damaging the vehicle. The insurance company issued a check for the damage, payable to the parties jointly. Disposition of the check became part of the ongoing settlement negotiations, particularly since the parties agreed that the husband would get the damaged vehicle in the final settlement. The wife told her attorney there had been prior damage to the vehicle in the same area, which the husband had failed to report to the insurance company. The attorney proposed to advise counsel that the parties split the insurance proceeds, and that if the husband refused, either the attorney or the wife might advise the insurance company of the prior damage. The parties could not agree on division of the insurance proceeds, so the issue was submitted to the court, which gave the proceeds to the husband provided that he supply proof of repair of the vehicle. Neither the attorney nor the wife reported the alleged insurance fraud to the insurance company. The issue of insurance fraud was unrelated to the division of marital assets, and the threat violated Rules 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC).

FAILURE TO PAY DEBTS

Failure to Pay Court Reporter. An attorney ordered transcripts of three depositions on behalf of his client. The court reporter provided the transcripts and billed the attorney. The attorney failed to pay for the transcripts, despite being billed seven times. The court reporter then brought a conciliation court action to recover payment. The attorney did not appear at the hearing, and judgment was entered in favor of the court reporter. The attorney did not remove the matter to district court or otherwise appeal. The attorney did not pay the judgment or contact the court reporter to arrange a payment plan. Failure to pay the judgment violated Rule 8.4(d), MRPC.

Failure to Pay a Non-Law Related Debt. An attorney rented a vehicle for a family vacation. The rental company obtained a default judgment against the attorney for some additional charges arising out of the rental. The attorney did not appeal, vacate or otherwise contest the default judgment. For over five years, the attorney made no payments on the judgment. The rental company then filed an ethics complaint against

the attorney. In response, the attorney claimed that he didn't pay because he didn't think he was responsible for the additional charges. The attorney then retained counsel, negotiated a settlement with the rental company, and satisfied the judgment. The attorney's failure to pay the judgment violated Rule 8.4(d), MRPC.

ADVERTISING VIOLATIONS

Improper Direct Mail Solicitation. An attorney sent a person, with whom the attorney had no family or prior professional relationship, a letter concerning the attorney's ability to provide legal services on debt issues. The solicitation letter did not contain the word "advertisement." The attorney's conduct in sending the solicitation letter violated Rule 7.2(f), MRPC.

Free Initial Consultation. An attorney published a Yellow Pages ad in which he offered "Free Initial Consultation." A client met with the attorney, and at the end of the meeting gave the attorney a \$500 check for a retainer should he decide to hire the attorney. The next day, the client and his wife decided not to hire the attorney, and asked for the \$500 check back. The attorney returned the check along with a bill for \$145 for the initial consultation. The attorney asserted that the free initial consultation was limited to one-half hour, although no such disclaimer appeared in the ad. The failure to include the limitation on the free initial consultation in the ad was an omission of fact that made the ad materially misleading. The attorney violated Rule 7.1(a), MRPC. The attorney appealed the Director's admonition. A Lawyers Professional Responsibility Board (LPRB) panel affirmed the admonition.

Misleading Letterhead. An attorney sent solicitation letters on letterhead bearing the name "XYZ" firm (not the name of the attorney). The attorney stated that "XYZ" was a term used to describe the service he provided to his clients. The attorney had not registered "XYZ" as an assumed name with the Secretary of State's Office. The attorney's use of that name was misleading and violated Rule 7.5(a), MRPC.

Telephone Solicitation. An attorney received a resume from a person in response to the attorney's advertisement for a legal secretary. The attorney determined from the resume that the applicant was not qualified, and also that the applicant was injured and unemployed and possibly eligible for workers compensation, an area in which the attorney practiced. The attorney telephoned the applicant and told him that he was not qualified for the job, but went on to ask the applicant about his injuries and whether he had counsel. Three additional telephone conversations occurred a month later. The attorney appealed the Director's admonition finding the attorney had violated Rule 7.3, MRPC. The hearing panel affirmed the admonition as to the first phone call. The Supreme Court, on the attorney's appeal, affirmed and held that Rule 7.3, MRPC, is a constitutional restriction on commercial speech. *In re Charges of Unprofessional Conduct against 97-29*, 581 N.W.2d 347 (Minn. 1998).

FINANCIAL ASSISTANCE TO THE CLIENT

An attorney represented a client for eight years in a series of workers compensation and personal injury cases. During the representation, the attorney made at least 24 loans to the client in the total amount of about \$10,000.00. There were no written agreements concerning the loans, and the attorney did not advise the client to seek the advice of counsel. Each loan was repaid with the settlement proceeds of the cases the attorney was handling for the client. The attorney did not charge interest. Loaning money to the client violated Rules 1.8(a) and (e), MRPC.

TAPE RECORDING CONVERSATIONS

An attorney represented a client concerning a conservatorship for the client's aunt. The client was not the conservator. The attorney listened to and tape-recorded a telephone conversation between his client and her aunt, without the consent of the aunt. A month later, the attorney himself had a telephone conversation with the aunt, which he tape-recorded without her knowledge. A month after that, the attorney had a telephone conversation with the conservator, which he tape-recorded without her knowledge. The attorney's tape recording of the conversations violated Rule 8.4(c), MRPC. Since the time of the conduct, the LPRB has adopted Opinion 18 prohibiting secret tape recording. The attorney's conduct, occurring today, would also violate Opinion 18, LPRB.

REVEALING CLIENT CONFIDENCES AND SECRETS

An attorney met with a defendant and his family members on a criminal charge. The defendant consistently maintained to his family members that he was innocent. The attorney had several meetings with the defendant and other members of the client's family. During the one private meeting between the defendant and the lawyer, the defendant admitted to at least part of the crime. The attorney refused to represent the defendant, who was then represented by the public defender. The defendant was tried and convicted. The defendant's parents then met with the attorney and asked him to represent the defendant on appeal. In the course of the meeting, the attorney told the parents that the defendant had made certain admissions about the crime. The attorney violated Rule 1.6(b)(1), MRPC.

CONTACT WITH REPRESENTED PARTY

An attorney represented a client in a workers compensation matter. A second attorney represented both the employer and the insurer. After the settlement conference, at which both attorneys appeared, the claimant's attorney communicated by telephone with an adjuster, one of the insurer's employees. The employer's attorney then wrote to the claimant's attorney and advised that all communications should go through the attorney, and there should not be any direct communication with the employer or the insurer. Several months later, the claimant's attorney submitted a settlement proposal to the employer's attorney, with a copy to the adjuster. By separate letter, the claimant's attorney submitted the settlement proposal directly to the adjuster, and copied the claimant's attorney on the letter. On the same day, the claimant's attorney left a voice mail message with the adjuster, advising of the settlement proposal and requesting a return call to discuss the proposal. The claimant's attorney claimed that his communications with the adjuster were not in violation of Rule 4.2, MRPC, because an insurer is not a party to a workers compensation action. The rule is not, however, limited to the parties to a contested litigation or administrative proceeding. The attorney violated Rule 4.2, MRPC, by direct contact with the insurer's employee, the adjuster.