

Summary of Admonitions

By Kenneth L. Jorgensen

Roughly half of all complaints that result in discipline are private discipline dispositions. Two forms of private discipline exist: (1) stipulated probation; and (2) admonition. Admonitions are the least serious form of discipline and are issued where the violation of the ethics rules is "isolated and non-serious." See Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). Stipulated probation involves more chronic yet nonserious misconduct. Rule 8(d)(3), RLPR.

Approximately 100 of the ethics complaints received in 2002 were resolved with the issuance of a private admonition. One lawyer, who regularly defended lawyers in ethics matters, often explained admonitions to his clients as "the speeding tickets of the legal profession that never go away." Although I disagree with this characterization, lawyers occasionally do regard admonitions as insignificant. As an example, I recall breaking the bad news to a nervous young lawyer who was under investigation that he was about to be issued an admonition for neglecting a client legal matter. Upon receiving this news, the young lawyer breathed a huge sigh of relief and responded, "That's O.K., I already have one of those."

The vast majority of lawyers, however, do not equate admonitions with speeding tickets; nor do they consider them trivial. Most see them for what they are -- an adjudication that one's professional conduct has failed to meet the minimum ethical standards. Those who dispute admonitions are afforded the opportunity to seek review by a Lawyers Board panel and eventually the Supreme Court. Moreover, the Supreme Court's willingness to review a lawyer's "isolated and non-serious" violation of an ethics rule belies any notion that admonitions are petty or inconsequential.

Private admonitions fulfill an important function by demonstrating to the public that even minor violations of the ethics standards are important to the bar. To this end, they assist in maintaining the profession's integrity. Beyond this function, they can be a valuable tool in educating lawyers and law students. Oftentimes, when dealing with lawyers and admonitions, I have thought to myself, but for the grace of God there go I. Very few lawyers who receive admonitions are "bad or unethical" lawyers. Most often they are culpable of no more than an isolated instance of substandard lawyering.

Members of the bar have told me for years that this annual summary of admonitions article is the professional responsibility column "they never miss." I suspect they, like me, recognize that admonitions present a unique opportunity to learn valuable lessons about practicing law from the mistakes of others. I suspect that on occasion they also think to themselves, but for the grace of God there go I.

Misleading Advertisement

As part of a marketing program the lawyer had flyers advertising his personal injury practice prepared in Spanish. The flyers were distributed by placing them under the windshield wipers of cars in a Hispanic neighborhood. Because the lawyer spoke little or no Spanish, he relied upon a person outside of his firm to prepare the ad copy. At no time before distributing the flyers did the lawyer request a literal translation of the Spanish ad copy. The literal translation of the ad stated in part:

Get money for your accident!

* * *

*Documented or undocumented, licensed or
unlicensed or simply a car passenger, you have
the right to thousands of dollars for your
accident.*

The lawyer was issued an admonition for disseminating a misleading advertisement in violation of Rule 7.1, MRPC.

Unauthorized Practice of Law

An attorney failed to timely pay her attorney registration fee, resulting in her suspension. See Rule 3, Rules of the Supreme Court for Registration of Attorneys. About the same time, the attorney requested to be placed on CLE restricted status to exempt her from the CLE reporting requirements. Pursuant to Rule 12, Rules of the Minnesota Board of Continuing Legal Education, a lawyer electing CLE restricted status cannot engage in the practice of law or represent anyone in legal proceedings other than himself or herself. Nearly four years later, without having paid the attorney registration fees necessary for reinstatement and while still on CLE restricted status, the attorney entered a plea of not guilty on behalf of her fiancée in a traffic matter. The attorney's conduct in representing her fiancée while fee suspended and on CLE restricted status violated Rule 5.5(a), MRPC.

Raw Language to Adverse Party

The attorney undertook representation of the husband in a family law proceeding brought by the pro se wife. After the parties agreed to exchange personal property, the wife called the attorney to arrange the property exchange. During the phone conversation, the attorney twice told the wife she was being unreasonable and that she was "shoving this case up my butt." After the second such comment, the wife hung up. The attorney's conduct violated Rule 4.4, MRPC, in that the crude remarks served no purpose other than to embarrass or burden the adverse party (i.e. the pro se wife).

Injecting Race Into a Trial

During the closing argument of a criminal prosecution involving a Hispanic defendant, the prosecutor argued that the Hispanic defendant might think that the jury, who were "all nice white folks," would be nervous about convicting him in a case hinging on credibility of the Hispanic defendant and the white female victim. The attorney was admonished for violation of Rule 8.4(d), MRPC, for improperly injecting race into the trial. Although the Supreme Court has stated in *In re Panel File 98-26*, 597 N.W.2d 563 (Minn. 1999), that race-based misconduct is inherently serious, the conduct of the prosecutor in this case was less egregious in that it was not directed at a specific individual.

Abusive Voicemail Messages

The attorney represented a driver submitting a claim to his insurer. The insurer sent denial of the claim to the attorney. The attorney called the adjuster to discuss the claim, although he knew the insurer was represented by counsel. During the telephone conversation, the insurance adjuster reminded the attorney that the insurer was represented by counsel. The attorney continued to discuss the case with the adjuster, and during the telephone call became verbally abusive. In later voicemail messages the attorney's tone and demeanor was abusive and threatening to the point where the messages could only be characterized as "ranting and raving." The attorney's conduct violated Rules 4.2 (contacting a represented party) and 4.4 (conduct with no purpose other than to harass or burden), MRPC.

Failure to Release Adverse Party's Funds

An attorney represented the husband in a marriage dissolution proceeding. The court issued an order for protection against the husband, granting temporary custody to the wife and requiring payment of \$250 per month by the husband. After a problem ensued with visitation at a supervised visitation center, the husband ceased supervised visitation.

The husband began claiming that his visitation rights were being violated because his wife had moved and he did not know where his children were living. The husband's counsel called the wife's counsel and told her that he was in possession of the last two months of child support checks, but would not forward them to the wife unless the wife's address was disclosed. The wife was concerned for her safety and had asked that her address not be disclosed. The wife's counsel declined to provide her address, and offered to forward the support checks to the wife. Minnesota Statute §518.612 provides, in pertinent part:

Interference with parenting time or taking a child from this state without permission of the court or the other parent is not a defense to nonpayment of support. If a party fails to make support payments, interferes with parenting time, or removes a child from the state without permission of the court or the other parent, the other party may petition the court for an appropriate order.

When the husband's attorney continued to receive monthly child support checks from his client and failed to forward them to the wife's counsel, the wife was forced to seek relief from the court. After hearing the wife's motion, the family court referee referred the matter to the Director's Office. The attorney's withholding of the child support checks violated Rules 1.15(c), 3.4(c), 4.4 and 8.4(d), MRPC.

Malpractice Waiver

The attorney was retained to represent the plaintiff in a personal injury matter. After obtaining a medical report verifying the injuries, the attorney did little on the case for nearly a year. A year and a half after accepting the case, the attorney learned that the land on which his client was injured belonged to a municipality, not a private corporation as had first been thought. The attorney told the injured party he was terminating the representation due to the difficulty in suing a municipality, but agreed to give the client procedural advice if the client elected to go forward with the case on his own.

Thereafter, the attorney drafted a self-representation agreement for the client, which essentially limited the lawyer's representation to advising the client about how to handle the claim pro se. The agreement also included a clause releasing the attorney and his law firm from "any liability which may have been incurred in or by representing me." The agreement did not advise the client that independent representation concerning the release was appropriate. The attorney violated Rule 1.8(h) MRPC, by requiring his client to sign an

agreement limiting his liability without advising the client that independent counsel was appropriate.

Misleading Law Firm Name

After lawyer X joined the A & B law firm. The firm changed its corporate name to the A, B & X law firm. Two years later, X withdrew from the firm and became associated with another firm. Shortly after his departure, X wrote the firm demanding that his name be removed from the firm's corporate name. For at least seven months thereafter, the firm continued to use the "A, B & X" firm name on its promotional materials and on its letterhead and website. When X filed an ethics complaint, the firm's managing partner was issued an admonition for violating Rules 7.1 and 7.5 by using a firm name that was misleading.

Advising Client to Disobey Court Order

An attorney represented the wife in an ongoing domestic abuse matter. At the court hearing, the parties agreed to issuance of a restraining order without a finding of abuse. In addition, the wife was given 14 days to vacate the house, and was to leave certain personal property in the house unless the parties reached agreement on disposition or brought the matter back to court. When the deadline came for the wife to move, she called the attorney about what items she could take with her because the parties had been unable to reach any agreement. Ignoring the order, the attorney told her she could take "what she knew absolutely was hers." The attorney's conduct in advising his client to violate a court order by removing property from the home, without the agreement of the opposing party, violated Rule 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), MRPC.

The author would like to thank Candice M. Hojan of the OLPR for her assistance in preparing this article.

KENNETH L. JORGENSEN is director of the Office of Lawyers Professional Responsibility. He has served the cause of lawyers' self-regulation in Minnesota for over 20 years.