

SUMMARY OF ADMONITIONS

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In calendar year 2011, the Director's Office resolved 112 files with admonitions that were issued to Minnesota attorneys for isolated and nonserious violations of the Minnesota Rules of Professional Conduct (MRPC). Another 13 lawyers entered into stipulations for private probation that were approved by the Lawyers Board chair; these stipulations resolved an additional 18 complaint files. A summary of private disciplines from the past year has been published on an annual basis. So, here again is a sampling of the most common types of misconduct that can lead to private discipline.

When reading these brief synopses, keep in mind that since they are offered primarily for educational purposes, the facts may have been simplified in order to make a particular violation clearer. Unless there are already open investigation files against a particular attorney, most complaints that involve what appear to be allegations of nonserious misconduct are initially investigated by a local district ethics committee (DEC). The volunteer DEC investigators, both lawyers and nonlawyers, who investigate complaints do an outstanding job of determining the facts and making a preliminary recommendation. As in past years, DEC recommendations were followed by the Director's Office approximately 90 percent of the time this year. As is true almost every year, lack of diligence and lack of communication with a client lead the way as the most common reasons for receiving an admonition.

Failure to File Answer. Attorney represented a condominium association in a dispute with a tenant. The tenant commenced a civil action and properly served the association, which turned the complaint over to the attorney to answer. Attorney did not timely prepare or file an answer. When tenant brought a motion for default judgment, attorney failed to respond. One day before the hearing on the default motion, attorney filed a certificate of representation and an answer. Attorney acknowledged being personally responsible for the failure to answer. The court denied the default judgment and permitted the answer, but sanctioned attorney \$1,000.

Attorney violated Rules 1.3 (diligence), 3.2 (expediting litigation), and 8.4(d) (conduct prejudicial to the administration of justice), MRPC.

Failure to Appear at Hearing. Attorney represented a client in an immigration removal matter. At an initial hearing, the matter was continued for approximately six months. Attorney failed to place the rescheduled hearing date on his or his office's calendar. Attorney thus failed to remind the client of the hearing and failed to appear at the rescheduled hearing. The immigration judge ordered the client's removal from the country. Although the attorney was eventually able to stop the proceeding before the client was physically removed, the DEC recommended an admonition for violation of Rule 8.4(d). Particularly in areas of law such as immigration, even minor lapses in an attorney's diligence and communication can have serious consequences for a client.

Lack of Written Contingent Fee Agreement. Attorney was hired on a contingent-fee basis to represent a property company on multiple real-estate tax appeals. Attorney failed to secure a written fee agreement signed by the client as required by Rule 1.5(c), MRPC. At the conclusion of the appeal, the client believed that attorney had proceeded too slowly, resulting in additional and unnecessary tax appeals, and refused to pay attorney. Investigation by the DEC determined that, while there were slight delays by the attorney, they were not sufficient to find that attorney had acted with a lack of diligence. The DEC determined, however, that the failure to have a signed fee agreement in a contingent-fee matter warranted an admonition.

Lack of Written Fee-Splitting Agreement. Attorney was hired for representation in a workers' compensation matter, upon the referral from another attorney not in the same firm. No written agreement outlining the division of fees was made between the two attorneys (they did have an oral understanding), nor was the client advised of the fee split or the amount each attorney would receive, as required by Rule 1.5(e), MRPC. At the conclusion of the matter, the referring attorney claimed a portion of the fee, which had been paid to attorney by the Special Compensation Fund. Client complained about delay and the quality of the representation, which the DEC found did not warrant discipline. The failure to have a written agreement and failure to inform the client of the agreement did warrant an admonition.

Failure to Pay Law-Related Judgment. Attorney contracted with a copying service to copy approximately 16,000 pages of documents related to a litigation matter and provide them in an electronic format. Attorney received the electronic copies with a bill for approximately \$3,000. Attorney failed to pay the bill. The copying service commenced a civil action against attorney, which attorney failed to answer. After a default judgment was entered against attorney, he still failed to pay voluntarily. After the disciplinary complaint was filed, attorney paid the judgment. Attorney violated

Rule 8.4(d), MRPC. Although the Director's Office will not act as a collection agency against attorneys, the Minnesota Supreme Court has held that failure to pay a law-related final judgment may constitute conduct prejudicial to the proper administration of justice.

Misleading Law Firm Name. Attorney operated a solo practice under the name of "Attorney & Associates." There were no associates in the firm. Rule 7.5, MRPC, prohibits false or misleading law firm names; the Lawyer's Board, in Opinion No. 20 (Use of the word Associates in a law firm name), determined that the use of the phrase "& Associates" by a solo practitioner is false and misleading. The lawyer violated Rule 7.5. The complaint was brought by the opposing attorney in a contentious litigation matter. Nevertheless, the DEC recommended an admonition.

Settling Matter without Client Consent. Attorney was hired for representation in a workers' compensation matter. During a mediation session, the client left because he was unhappy with attorney's efforts. Four days later, he faxed a letter to attorney, discharging him. In the interim, attorney negotiated and stipulated to a settlement of the matter without the client's knowledge or consent. Attorney violated Rule 1.2(a), MRPC (A lawyer shall abide by a client's decision whether to settle a matter). The matter was considered nonserious largely because client's successor attorney was able to reopen the matter and have it remanded for hearing.

Violation of Victim's Rights Statute. Attorney acts as the city attorney and prosecutes certain crimes in the jurisdiction. Attorney charged an individual in a matter alleging a domestic assault. After speaking with the defendant's counsel, the attorney dismissed the complaint. Minn. Stat. ch. 611A requires that a prosecutor make reasonable efforts to notify a victim of domestic assault if the prosecutor has determined to decline prosecution or dismiss charges against a defendant. Attorney made no effort to contact the victim, thereby violating the statute and Rule 8.4(d), MRPC.

Unauthorized Practice While on Restricted Status. Attorney requested to be transferred to voluntary restricted status because he knew he had not completed the requisite number of CLE credits to remain in good standing. He was transferred and notified of the fact. Attorney still had two clients at the time of his transfer, and continued to represent them, including making a court appearance on behalf of one of the clients approximately one month after being transferred. Attorney violated Rule 5.5(a), MRPC.

Failure to Place Disputed Fees in Trust. Attorney represented client in a dispute over certain insurance proceeds. Following a temporary hearing, the proceeds

were placed into attorney's trust account. When the matter was settled, attorney withdrew his claimed fees plus costs. The client disputed the amount of the attorney's fees and demanded an accounting. The attorney did not return the disputed portion of the fee to his trust account as required by Rule 1.15(b), MRPC, until the dispute was resolved, which was not until several months later. The DEC did not find sufficient evidence to support other allegations made by the client, but did recommend an admonition for the attorney's failure to place the disputed fees in trust.

Providing Financial Assistance to Client. Attorney represented client in criminal matter. Client was incarcerated pending trial. Attorney placed \$1,000 of his own funds into client's jail spending account, in violation of Rule 1.8(e), MRPC, which prohibits direct financial assistance to a client in pending or contemplated litigation, except in limited circumstances that did not apply in this matter. Attorneys may advance certain costs of litigation or guarantee a loan for a client, but may not make a loan directly or give funds to the client. The attorney's actions appeared well-intentioned, but nevertheless violated the rule.

Failure to Return File. Attorney represented client in a post-dissolution matter. Attorney withdrew from representation. Client requested a copy of her file, but attorney refused because he said he had provided the client with copies of all documents during the representation. Client made several additional requests before filing a complaint. Shortly thereafter, attorney provided client with her file, as required by Rule 1.16(d), MRPC. Although providing a client with copies of pleadings and correspondence during a representation can be an excellent method of complying with an attorney's duty to communicate with a client (Rule 1.4, MRPC), it does not eliminate the obligation to provide a client with their file upon request after a representation is terminated.

Summing Up. Most attorneys who receive an admonition take it to heart, and never repeat the conduct again; indeed most do not commit any further misconduct at all. For those who do commit additional misconduct, a prior admonition is relevant to the determination of what level of discipline is appropriate in a subsequent proceeding.