

The pitfalls of business transactions with clients
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Lawyers are permitted to enter into business transactions with clients; however, those transactions must comply with Rule 1.8(a), Minnesota Rules of Professional Conduct.

Rule 1.8(a), MRPC, prohibits a lawyer from entering into a business transaction with a client unless “the transaction and terms . . . are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client,” “the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction” and “the client gives informed consent, in a document signed by the client separate from the transaction documents, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.”

It seems as if everyone should be familiar with this rule and its requirements, but occasionally a reminder is necessary.

Recently, a lawyer was issued an admonition — private discipline issued for isolated and non-serious misconduct — for failing to comply with the provisions of Rule 1.8(a), MRPC. The lawyer had entered into two separate mortgage transactions with his client. At the time of both mortgages, the lawyer was representing the client in criminal matters and was also representing the client’s interests in a guardianship/conservatorship proceeding.

The mortgages were intended to secure payment of attorney’s fees owed to the lawyer. It is well established that, unlike an attorney’s lien or a contingent fee agreement, a mortgage to secure fees is subject to Rule 1.8(a), MRPC.

The first mortgage was in the amount of \$20,000 and secured a promissory note that was due and payable about a year later. This mortgage was intended to secure payment of the lawyer’s attorney’s fees for his representation of the client in one or more criminal matters. The second mortgage was in the amount of \$32,346.87 and secured a promissory note that was due and payable about two months later. The lawyer intended this mortgage to secure payment of his attorney’s fees for his

representation of the client in various criminal matters and in the guardianship/conservatorship matter.

The lawyer drafted both mortgage documents and the underlying promissory notes. With respect to both mortgage transactions, the lawyer did not (a) disclose and transmit to the client in writing the terms of the transaction in a manner that the client could easily understand, (b) advise the client in writing of the desirability of seeking independent legal counsel regarding the transaction, or (c) obtain the client's informed, written consent to the essential terms of the transaction and regarding the lawyer's role in the transaction in a document separate from the mortgage and promissory note.

The lawyer did not dispute having entered into the mortgage transactions with the client and provided the director with copies of the transaction documents. Further, the lawyer did not dispute that at the time he entered into the mortgage transactions, he was actively representing the client in criminal matters and/or the guardianship/conservatorship matter.

The lawyer did not produce any documents reflecting (1) clear disclosure and transmission of the terms of the transactions, (2) advice to the client to seek the advice of independent counsel with respect to either of the mortgage transactions, or (3) the consent and disclosures required to appear in a document separate from the transaction documents by Rule 1.8(a), MRPC. The lawyer's conduct was therefore deemed to have violated Rule 1.8(a), MRPC.

While business transactions between lawyers and clients may be advantageous to both parties, lawyers must be careful to strictly comply with the requirements of Rule 1.8(a), MRPC. Failure to do so may result in professional discipline.