



PROFESSIONAL RESPONSIBILITY

SUMMARY OF ADMONITIONS

BY EDWARD J. CLEARY

In any given year, roughly one half of all matters that result in professional discipline result in private dispositions issued by the Office of Lawyers Professional Responsibility (OLPR) and do not involve the Supreme Court. These are files which generally involve minor misconduct, albeit misconduct nonetheless. Private discipline consists of stipulated probations and admonitions. Admonitions are the least serious form of discipline and are issued for misconduct that is "isolated and nonserious," Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). Stipulated probations involve more serious misconduct or multiple instances of misconduct, and are in lieu of pursuing charges of unprofessional conduct. Rule 8(d)(3), RLPR.

In the past year, approximately 100 lawyer disciplinary files were closed with the issuance of an admonition to the lawyer, a number that is consistent with the number of cases closed with that disposition in each of the last several years. As in prior years, many admonitions were issued for isolated instances of neglect or for failure to adequately communicate with a client in a matter. Other types of misconduct that resulted in an admonition being issued include improper advertising, failure to pay debts, solicitation of clients, and inappropriate communication with represented parties. Here are summaries of several of the admonitions issued in 2000.

RELEASE OF PROPERTY CONTRARY TO COURT ORDER

An attorney represented the husband in an acrimonious marital dissolution. The final decree made a very specific provision for review and duplication of the couple's family photographs. The wife was to deliver the original photographs to the attorney, who would then allow them to be reviewed by his client and those to be duplicated were to be marked. Before the husband had completed reviewing the photographs, the attorney terminated representation. The attorney released the original photographs to his client, contrary to the terms of the decree. Here the attorney had a duty to follow through on the terms of the final decree. The attorney violated Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

RECORDING AN INVALID POWER OF ATTORNEY

An attorney represented a bank in a loan transaction. Husband and wife were involved in dissolution of marriage proceedings. While the husband and wife were separated, an unknown third party forged the husband's signature on a statutory power of attorney (P/O/A). The wife applied for a loan, secured by a mortgage on the husband's property through a bank. The bank approved the loan application and scheduled the loan closing. The wife and the named attorney-in-fact attended the closing. The wife told the attorney for the bank that her husband was too ill to attend the closing, and had instead executed the P/O/A. The bank paid off the husband's existing mortgage and disbursed the remaining cash proceeds of approximately \$28,800 to the wife. Eventually, the husband's attorney learned of the mortgage transaction and advised the bank's attorney that the P/O/A was forged. Shortly thereafter, the title company notified the bank's attorney that it would not record the P/O/A because the notary's commission had expired, rendering the P/O/A facially invalid. A paralegal in the firm took steps to have the P/O/A renotarized, possibly without the attorney's knowledge. The title company still refused to record the P/O/A. The bank's attorney then forwarded the documents directly to the county recorder's office for recording, despite the assertion that the husband's signature was forged and without conducting any further investigation, which the attorney should have done. The attorney's participation in recording the invalid P/O/A violated Rule 8.4(d), MRPC. The panel hearing the attorney's appeal of the admonition noted that the foreseeable consequences to the husband in having the forged document filed of record made the attorney's misconduct "arguably serious." There was no evidence, however, that the attorney participated in or knew of the intended fraudulent use of the P/O/A, and the attorney was new to the practice of law. These circumstances led the Office to issue an admonition, rather than seek public discipline.

FAILURE TO PAY ATTORNEY REGISTRATION FEE

An attorney failed to timely pay his attorney registration fee, resulting in his suspen-

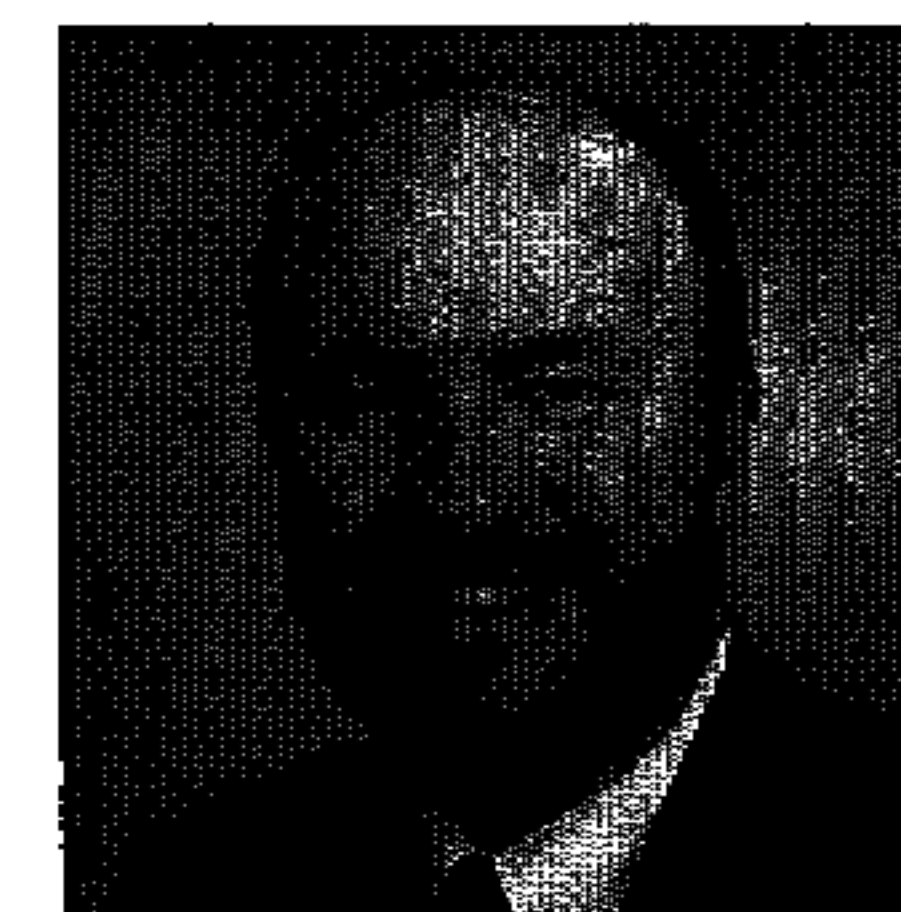
sion. The attorney was advised by the Director's Office that continued practice while fee-suspended constituted unauthorized practice of law. After proof of payment was provided, the Director's Office closed the file without further action. A year later, the attorney again failed to timely pay his attorney registration fee, and again his license was suspended. The attorney appeared in court to try a visitation dispute. Written submissions were made after the trial was concluded. The judge discovered that the attorney was suspended, and the clerk's office returned the written submissions to the attorney. The attorney then paid his overdue attorney registration fee. In response to a Notice of Investigation from the Director's Office, the attorney stated that he was unaware that his license was suspended, and that because his practice is so busy, he often pays obligations late. The attorney's conduct in engaging in a pattern of failing to timely pay his attorney registration fee and continuing to practice law while fee suspended violated Rule 5.5, MRPC.

FAILURE TO DISCLOSE EXCULPATORY EVIDENCE TO THE GRAND JURY

An attorney for a governmental subdivision was involved in a grand jury proceeding concerning potential criminal charges against an individual. The attorney was asked whether there were any arrangements made with testifying witnesses. The attorney informed the jurors that no deals whatsoever had been made with witnesses. Later, the grand juror who had initially asked the question inquired further, and the attorney advised the jurors that at least one witness testified subject to use immunity. The attorney's conduct in advising that no deals had been made violated Rules 3.4(c) and 8.4(c), MRPC.

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and as a public defender for 20 years and is past president of the Ramsey County Bar Association. His book, Beyond the Burning Cross, won a national award in 1996.



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FAILURE TO ADVISE OPPOSING PARTY OF SETTLEMENT OFFER

The client in a breach of contract case directed the attorney to present a proposed settlement to the opposing party at a settlement conference. The attorney did not do so. In fact, the attorney advised the magistrate that discussions concerning settlement "would be premature and inadvisable." The Director issued an admonition for violation of Rule 1.2(a), and the attorney appealed. The Lawyers Board panel that heard the appeal affirmed 2-1. The attorney then appealed to the Supreme Court, which found that the panel did not abuse its discretion in concluding the attorney violated Rule 1.2, MRPC, but declined to adopt a bright-line rule that under all circumstances, Rule 1.2(a) places an absolute duty on an attorney to communicate an offer of settlement from the attorney's client to the opposing party. *In Re Panel File Number 99-5*, 607 N.W.2d 429 (Minn. 2000).

FAILURE TO PUT A RETAINER IN THE TRUST ACCOUNT

An attorney represented a client in a criminal matter. The client paid the stated retain-

er of \$12,500 in two installments, early in the representation. The attorney did not put the retainer payments into his trust account. Sometime during the representation the client received a retainer agreement from the attorney, signed by the attorney, which stated immediately above the signature line "Client understands that the retainer/fee of \$12,500 which is fully earned and non-refundable (1) will not be held in a trust account and (2) will not be refunded if client later chooses not to hire [attorney] or chooses to terminate [attorney's] services." The client never signed the retainer agreement and never agreed to a non-refundable fee. In addition, the client understood that the attorney would refund one-half of the retainer if the matter did not go to trial. The failure to deposit the retainer into the trust account, without a signed retainer agreement with the client, violated Rule 1.15, MRPC, and Lawyers Professional Responsibility Board Opinion 15.

USING A SUSPENDED ATTORNEY'S NAME AS OFFICE NAME

The Minnesota Supreme Court suspended an attorney from practice and

required him to petition for reinstatement pursuant to Rule 18, RLPR. After the suspension order was issued, another attorney purchased the suspended attorney's interest in his law office, a professional association. The attorney practiced under the name of the suspended attorney, P.A., and employed the suspended attorney as office administrator. Despite notification from the Director's Office that he was in violation of Rule 7.5(a), MRPC, the attorney declined to discontinue use of the designation. The attorney's continued use of the suspended attorney's name as a firm name violated Rule 7.5(a), MRPC.

LOANS FROM A CLIENT

An attorney represented a client in a personal injury matter. During the representation, the client lent funds to the attorney's wife, who acted as his paralegal, and the paralegal lent funds to the client. None of the loan transactions were reduced to writing, and the attorney did not advise the client to seek the advice of other counsel regarding the loan transactions. The loans were repaid either during



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or at the conclusion of representation. Entering into business (loan) transactions with the client violated Rules 1.8(a) and (e), MRPC.

FAILURE TO PROPERLY ADVISE A TRIBUNAL

An attorney represented a party seeking to be appointed special administrator of his grandmother's estate. Before seeking the appointment, the attorney asked his client if he knew of any will other than the July 1999 will he was asserting as the final will. The client advised the attorney that another heir had said there was a new testament, but had refused to show it to him. Once the client had advised the attorney of this alleged new will, the attorney was under an obligation to inquire before going forward. Nevertheless, the attorney took no further action to determine whether a new will in fact existed. The attorney then met with a judge and requested an *ex parte* order appointing the client as special administrator for his grandmother's estate. The petition for Formal Appointment of Executor, which the attorney prepared, said that the petitioner was unaware of any later will. The attorney did not advise the judge that he was aware of the possible existence of another will. After the meeting with the judge, the attorney contacted the law firm that drafted the July 1999 will, and learned that it had been revoked by a subsequent will. The attorney's failure to advise the judge in an *ex parte* proceeding of all material facts violated Rules 3.3(d) and 8.4(d), MRPC.

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These are just a few examples of admonitions issued in 2000. It is important to keep in mind that a pattern of otherwise "isolated and non-serious conduct" can lead to other dispositions, including private probation and, in some instances, public discipline. Do not view a "small" ethical transgression as a "cost of doing business." Small matters have a way of becoming large problems. If you think you may be facing an ethical dilemma, you probably are being confronted by such a problem. Err on the side of caution and call the OLPR before acting. An advisory opinion attorney is available at the office during business hours to give advisory opinions to attorneys who call with questions about their *own prospective* conduct. The phone numbers are (651) 296-3952 and (800) 657-3601.

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

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