

Competent Representation Requires Knowledge of Procedure

by

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Rule 1.1 of the Minnesota Rules of Professional Conduct (MRPC) requires that lawyers provide competent representation to their clients. A lawyer is expected to be familiar with well-established principles of law applicable to a client's needs. The requisite familiarity with well-established legal principles extends also to matters of procedure.

Not every act of attorney negligence or poor quality representation implicates a violation of Rule 1.1, however. Attorneys have been privately admonished for isolated and nonserious instances of failing to follow the appropriate rules of procedure, especially where the misconduct affected the client's ability to effectively litigate their case.

For example, an attorney was hired to represent a personal representative of an estate. The prior attorney for the personal representative had submitted a claim against the estate for legal fees and costs. The attorney failed to determine the correct deadline to disallow the claim of action until after it expired. Pursuant to Minnesota law, the failure of a personal representative to mail a notice to a claimant of action on a claim for two months after the time for original presentation of the claim has expired has the effect of a notice of allowance of claim. The District Court judge subsequently denied the personal representative's disallowance of the claim as untimely. The attorney was privately admonished for violating, among other things, Rule 1.1 of the MRPC.

More serious instances of failing to follow the applicable rules of procedure have resulted in public discipline, especially where the statute of limitations expired or there was significant monetary harm to the client.

In one case, an attorney was hired to appeal a final judgment and decree issued in a dissolution matter. The attorney incorrectly concluded that the appeal time was triggered by his receipt of the notice of filing. Under Minn. R. Civ. App. P. 104.01, subd. 1, the appeal time is triggered 60 days after judgment is entered. The client's appeal was ultimately dismissed by the Minnesota Court of Appeals. The attorney's misconduct was deemed to have violated, among other things, Rule 1.1 of the MPRC, and the attorney was publicly reprimanded.[Ftn 1](#)

In another instance, an attorney represented a client in a civil dispute, but failed to respond to several notices and orders of the clerk of court or attend a pretrial conference. When the attorney was served with a notice of motion and motion for default judgment, the attorney sent the court administrator a notice of

withdrawal but did not notify the client of his withdrawal or an upcoming hearing on the motion for default judgment. Neither the attorney nor the client attended the hearing, which resulted in the District Court judge entering a default judgment against the client in the amount of \$40,000. The client was subsequently unable to vacate the default judgment. The attorney's neglect and incompetence was found to have violated, among other things, Rule 1.1, and the attorney was suspended for six months.[Ftn 2](#)

Similarly, a lawyer is expected to know the rules of the courts before which the lawyer practices. Recently, an attorney was retained to represent a client on an appeal of a criminal matter to the 8th U.S. Circuit Court of Appeals. The attorney filed a notice of appeal but then wrote a letter to the 8th Circuit withdrawing the appeal and advising that a brief would not be filed. The clerk for the 8th Circuit advised the attorney several times that the local rules of procedure required that the attorney obtain the client's signed consent to dismiss the appeal. The attorney failed to respond to the clerk or obtain a signed consent to dismiss from his client. As a result, the 8th Circuit reinstated the appeal on its briefing schedule. When the attorney failed to file a brief, the 8th Circuit issued an order to show cause why the appeal should not be dismissed for failure to prosecute. The 8th Circuit eventually dismissed the client's appeal.

The attorney's conduct was found to have violated, among other things, Rule 1.1, and the attorney was suspended for four months.[Ftn 3](#)

These recent cases highlight the need for lawyers to educate themselves appropriately on matters of procedure. Competent representation requires analysis of not only the factual and legal aspects of a case but also inquiry and review of the relevant procedural rules, especially those relating to the manner and timeliness in which documents must be filed with the court.

¹ *In re Swanson*, 709 N.W.2d 623 (Minn. 2006).

² *In re Schaeffer*, No. A05-2501 (February 14, 2006).

³ *In re Redburn*, 702 N.W.2d 215 (Minn. 2005).