

Requirement to cooperate with director is just that: a requirement

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Since Jan. 1, the director of the Minnesota Office of Lawyers Professional Responsibility has issued 70 admonitions. Admonitions are a private form of discipline issued when the violations are isolated and nonserious in nature. Admonitions are the most common form of discipline the director issues during the year.

In reviewing the 70 admonitions, it was discovered that eight of the admonitions related to a respondent's noncooperation with the director's investigation of a complaint. While eight admonitions may seem like a relatively small number, those eight admonitions account for more than 10 percent of the admonitions issued so far this year. What is even more surprising is that in reading the eight admonitions, five of those admonitions were issued only for failure to cooperate with a request for information or for delay in responding to the complaint.

Specifically, failure to cooperate with the director is a violation of Rule 8.1, Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility (RLPR). Essentially, a lawyer is required to respond to all lawful demands for information from the disciplinary authority. The disciplinary authority means not only the director and the Office of Lawyers Professional Responsibility staff, but also the District Ethics Committees and their investigators.

Further, as evidenced by the five admonitions issued only for noncooperation, violations of Rule 8.1(b), MRPC, and Rule 25, RLPR, may result in discipline separate from the allegations in the complaint. In each of the eight admonitions issued for noncooperation, the respondent attorney ultimately did comply with the request for information despite several delays. Had the respondent attorney never complied with the requests for information, the matter may have become a case for public discipline.

When this office initiates a notice of investigation on a complaint, the notice of investigation is mailed to both the attorney and the complainant. The notice clearly states that the attorney's written response to the complaint is due two weeks from the date of the notice of investigation. Also, if the complainant is a client or former client, the respondent attorney must send the complainant a copy of his or her written

response to the complaint. Reasonable requests for additional time to supply the written response may be granted at the discretion of the investigator.

Merely supplying the initial written response to the complaint does not automatically absolve an attorney of their requirement to cooperate with the investigation. Often, investigators or the director may need to make additional requests, including, but not limited to documents from the attorney's file, authorizations or necessary releases of information, more information from the attorney or an appearance at a meeting. Failure to provide responses to additional requests by the director in a timely fashion may also be considered to be violations of Rule 8.1(b), MRPC, and Rule 25, RLPR. Continuous delays in responding to these requests, even if the information is ultimately provided, may still be considered a violation.

Oftentimes, respondent attorneys state that they never received the requests for information from the director either because they have moved from the address used for the requests for information or they do not often check their mail at the address submitted to lawyer registration. However, this excuse is not always a valid defense. The director most often uses the address the respondent attorney submitted to the lawyer registration office; therefore, it is important for all attorneys to notify the lawyer registration office of any change in their addresses (*See* Rule 2(G), Rules of the Supreme Court on Lawyer Registration) and for lawyers to regularly check their mail at that address.

Simply providing a timely response to all requests for information, whether the request comes from this office or a district ethics committee investigator, is not only complying with the requirements of the ethical rules, but is also potentially saving attorneys from unnecessary discipline. Already, there are several attorneys this year that unfortunately learned a hard lesson about providing timely responses to these requests.