

## **Rules of Professional Conduct in Personal Matters**

**by**

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Reprinted from *Minnesota Lawyer* (June 6, 2005)

Lawyers understand that they are subject to the Minnesota Rules of Professional Conduct (MRPC) in all of their professional dealings. Lawyers do not always remember, however, that they also may be subject to the professional conduct rules for actions outside the practice of law.

For example, a lawyer may be subject to professional discipline for criminal conduct. MRPC Rule 8.4(b); *see, e.g., In re Flynn*, 679 N.W.2d 330 (Minn. 2004). A lawyer may also be disciplined for engaging in fraudulent conduct in personal business dealings. MRPC Rule 8.4(c); *see, e.g., In re Clapp*, 536 N.W.2d 895 (Minn. 1995).

In more personal matters too, lawyers must remember that their behavior has certain constraints imposed by the rules of professional conduct. The following example, based on a matter previously before the Director's Office, illustrates the point.

### **Lawyer letter**

When a wife and husband were beginning a marital separation, the wife found a printed copy of an e-mail from a female lawyer to her husband. (The lawyer did not represent husband.) The wife construed the e-mail as evidence that her husband and the lawyer were having an affair. The wife revealed the contents to the lawyer's husband.

As one might imagine, the lawyer was quite displeased with the revelation of the e-mail to her husband. The lawyer wrote the wife expressing her displeasure and stating that she might seek a restraining order and criminal charges on claims of harassment and criminal defamation. The lawyer also threatened: "I will not hesitate to pursue claims against you which means I will talk to the [prosecutor], who is a law school classmate of mine and remains my good friend. I have no doubt that [the prosecutor] will find merit in my claim especially when I explain to [the prosecutor] the witch hunt you are on and what you are attempting to use to smear my reputation."

The lawyer sent copies of this letter to the prosecutor's office and to law enforcement.

Even though the lawyer's letter was not written on behalf of a client, the lawyer violated MRPC Rule 8.4(e), which provides that a lawyer may not "state or imply an ability to influence improperly a government agency or official."

This rule is not limited to a lawyer's representation of clients.

Here, the letter outlined potential criminal charges and suggested that the lawyer's friendship was somehow related to whether the prosecutor would find a basis for criminal charges. Unquestionably, the letter indicated an ability to influence a criminal prosecution.

The district ethics committee investigator who investigated the matter correctly noted: "There was no question that the letter arose from an emotionally charged situation. The existence of an emotionally charged situation does not however excuse or permit inferences that because of the lawyer[']s position, knowledge and inference, suggestions concerning criminal charges may be made to improve or enhance a lawyer[']s relationship with others with whom there are differences of opinion."

Lawyers may become emotionally involved in situations outside the practice of law. The Minnesota Rules of Professional Conduct can follow a lawyer in all aspects of his or her life. Sometimes the passage of time, allowing cooler heads to prevail, or choosing not to send a letter may prove the best course of all.