

## SUMMARY OF ADMONITIONS

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This month's column summarizes admonitions issued in 1985. Admonitions are issued for unprofessional conduct of an isolated and nonserious nature. See Rule 8(c)(2), Rules on Lawyers Professional Responsibility (RLPR). A total of 101 admonitions were issued during 1985. As in previous years, the largest percentage were issued for neglect. Conflicts of interest, attorney liens, and handling clients' funds and property were also subjects of significant numbers of admonitions.

The following are digests of the facts and conclusions of several admonitions issued in 1985. Also included are citations to disciplinary rules and parallel rules from the Minnesota Rules of Professional Conduct (effective 9/1/85).

### **1. Improper Trust Account Disbursement.**

Attorney represented sellers in a real estate closing. The buyers were unable to pay the entire closing proceeds to attorney. Buyers' attorney stated that the funds would be forthcoming. Attorney issued a trust account check to sellers, but stopped payment when buyers' funds were not received. When trust account check was issued to sellers, no funds belonging to sellers were on deposit in attorney's trust account. Attorney's conduct in issuing trust account check to sellers before funds belonging to sellers were received violated DR 9-102(A), Minnesota Code of Professional Responsibility [Rule 1.15(a), Minnesota Rules of Professional Conduct].

### **2. Noncooperation.**

Attorney was asked by district ethics committee investigator to respond in writing to complaint. Despite his assurances to investigator, attorney never sent response. The director determined that the complaint did not warrant discipline. Attorney's failure to cooperate, however, was grounds for admonition. DR 1-102(A)(5) and (6), Rule 25, RLPR, and *In re Cartwright*, 282 N.W.2d 548 (Minn. 1979) [Rule 8.4(d)].

### **3. Attorney as Escrow Agent.**

Attorney represented civil defendant. The parties agreed that attorney would act as escrow agent for disputed funds. Funds were to be released upon parties' agreement or by court order. The trial court ruled for defendant. Plaintiff's counsel asked defendant's attorney to hold funds pending appeal. Attorney refused and released funds to defendant. Attorney, in acting as the escrow agent for his client and adversary, created a conflict of interest in violation of DR 5-105(A) and (C) [Rule 1.7].

### **4. Improper Negotiation of Client Check.**

Attorney represented client in a marriage dissolution. By agreement the attorney could secure fee with lien on all property "which is the subject matter of the law suit." Parties stipulated that spouse would pay certain funds to client. Client had a past-due fee balance. Attorney received check from spouse made out solely to client. Check was stamped for endorsement with the firm name and deposited in firm's account. Client was then informed of the amount credited to client's fee balance. Attorney's conduct violated DR 9-102(B) [Rule 1.15(b)].

#### **5. Simultaneous Representation of Adverse Interests.**

Client A retained attorney to negotiate purchase of real estate from B. Attorney simultaneously was representing B in purchase of other real estate which required pledge as security of realty being sold to A. Attorney did not disclose representation of B to A. Attorney's conduct in simultaneously representing adverse interests violated DR 5-105(A) and (C) [Rule 1.7 and comment].

#### **6. Attorney Threat of Withdrawal.**

Attorney represented client in a marriage dissolution. Three days before the filing date of brief and findings, attorney told client he would withdraw unless arrangements were made to pay or secure fees. Client, fearing attorney would withdraw, provided attorney with a promissory note, a mortgage, and a confession of judgment. Attorney did not discuss with client possibilities of retaining new counsel or seeking extension of briefing and filing deadline to enable client to retain other counsel. Attorney's threat of withdrawal, without allowing client time to obtain new counsel, violated DR 2-110(A)(2) [Rule 1.16(d)].

#### **7. Threatening to File an Ethics Complaint.**

Attorney A owned rental property. In a dispute regarding rental payments, a tenant, through attorney B, contended that tenant was entitled to withhold rent. Attorney A wrote to attorney B threatening to file an ethics complaint. Attorneys may not use the threat of reporting ethical violations to gain an advantage over or harass opposing counsel. Attorney A's conduct violated DR 1-102(A)(5) [Rule 8.4(d)].

#### **8. Release of Liability.**

Client retained attorney to handle marital dissolution and sale of condominium. Client soon dismissed attorney and a fee dispute arose. Attorney agreed to a smaller fee provided client released attorney from liability arising out of representation. Client refused. Attorney's attempt to obtain release of liability without advising client to obtain independent counsel violated DR 6-102(A) [Rule 1.8(h)].

#### **9. Confidences and Secrets.**

Client sought attorney's advice regarding a prenuptial agreement. Client told attorney a number of extremely private facts regarding fiancé's family. Prior to wedding, attorney disclosed to a third party at a public gathering certain facts and that attorney had advised client against signing prenuptial agreement. Disclosure of embarrassing information violated DR 4-101(B)(1) [Rule 1.6(a)(1)].

#### **10. Charging Estate for Unrelated Services.**

An heir complained against attorney for his handling of an estate. Attorney charged the estate for his time in responding to ethics complaint. Attorney also charged estate for preparing wills for the heir and her husband. Attorney's conduct in charging the estate for services not for the estate's benefit violated DR 2-

106(A) [Rule 1.5(a)].

### **11. Aggregate Settlements.**

Attorney represented several employees and former employees in a suit for back wages and wrongful discharges. Attorney settled all claims before trial but did not discuss settlement with all clients. Attorney violated DR 5-106 [Rule 1.8(g)].

### **12. Failure to Return Client Property**

Attorney represented client in marital dissolution. Client dismissed attorney and retained new counsel, who requested attorney to turn over file. Attorney refused to release file until fees were paid. Attorney's requiring that fee be paid before releasing file violated DR 9-102(B)(4) and DR 2-110(A)(2) [Rule 1.15(b)(4) and Rule 1.16(d)]. *Also see "What the Client is Entitled to Receive Upon Termination of Representation," Bench & Bar 40:11 (November 1983), p. 33.*

### **13. Failure to Timely Pay Attorney Registration Fee.**

Attorney was suspended from practice of law on July 1, 1985, for failure to pay attorney registration fee. Attorney paid the fee on October 30, 1985. From July to October, attorney practiced law in violation of DR 3-101(B) [Rule 4.4(a)].