

SUMMARY OF ADMONITIONS

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For many years, on roughly an annual basis, this column has offered summary information on admonitions issued to attorneys. Admonitions are the lowest level of discipline, issued for "isolated and nonserious misconduct." The annual summary illustrates the kind of minor infractions that generally careful practitioners might stray into.

In 1988, 102 admonitions were issued, about 9 percent of all dispositions. These statistics are consistent with past years' as is the predominance of neglect and noncommunication as the leading subject of all levels of discipline.

Admonitions are issued for violations of the Minnesota Rules of Professional Conduct (MRPC). Investigative and hearing procedures are set by the Rules on Lawyers Professional Responsibility (RLPR). Most admonitions are issued after investigation and recommendation by local district ethics committees.

1. Failure to File Tax Returns Timely

An attorney obtained an extension to August 15, 1986, to file his 1985 income tax returns. He did not file the 1985 returns until November 21, 1986. While most cases of failure to timely file income tax returns warrant public discipline, the attorney's filing one year's returns approximately three months late was considered isolated and nonserious. Rule 8.4(d), MRPC; *In re Bunker*, 294 Minn. 47, 199 N.W.2d 628 (1972).

2. Safekeeping Client Property

An attorney received a tax refund check for an estate he was probating. The attorney did not deposit the check into the estate's account, but left it unnegotiated in his file for six months. Thereafter, the attorney sent the check to the personal representative. Respondent's conduct violated Rule 1.15(a), MRPC.

3. Charging Client for Personal Expenses

The attorney incurred travel expenses while representing a client at a deposition. The attorney combined three days of personal matters with the deposition, and then deducted expenses from the settlement proceeds, including car rental for the entire period. The attorney refunded this amount to the complainant after the complaint was filed. Rule 1.15(b)(4), MRPC. For more serious violations of this sort, see *In re Zimmerman*, 380 N.W.2d 790 (Minn. 1986) (reprimand) and *In re Simmonds*, 415 N.W.2d 673 (Minn. 1987) (suspension).

4. Improper Statement to a Jury

The attorney represented a criminal defendant. In his opening remarks before a jury, the attorney alleged that the police had acted "illegally." The prosecutor moved for a mistrial. The court did not grant the motion for a mistrial, but ordered respondent's comments be stricken from the record and instructed the jury to disregard them. Respondent's statement violated Rule 3.4(e), as no proper and timely motion had been made for determining the legality of police conduct; and there was no admissible evidence of illegality.

5. Failure to Give Notice of Intent Not to Appear at Trial

An attorney obtained a conciliation court judgment for unpaid attorneys fees. The defendant removed the matter to district court and trial was scheduled. The attorney phoned the court on the morning of trial and stated he would be unable to attend the hearing. Defendant and her counsel appeared for trial. The matter was continued.

On the date trial was rescheduled, defendant and her counsel again appeared. The attorney's office then informed the court that he was unable to appear for trial. He did not notify the court or opposing counsel prior to trial that he would be unable to attend the trial. The attorney's conduct violated Rules 8.4(d) and 3.2, MRPC. Trial proceeded by default and the attorney's claim was dismissed with prejudice. The attorney was further ordered to pay defendant's attorneys fees.

6. Communicating With Represented Persons

Complainant, an attorney, represented a buyer in the purchase of a home. The respondent attorney represented the seller. The parties were in dispute concerning the purchase agreement. Complainant met with respondent once and spoke with him on the telephone on three occasions. Respondent wrote to complainant twice regarding the real estate matter. Thereafter, without complainant's permission, respondent wrote directly to complainant's client regarding the disputed purchase agreement. Respondent's conduct violated Rule 4.2, MRPC.

7. Conflict of Interest: Simultaneous Representation Adverse to Client in Unrelated Matter

Complainant and a bank were both longstanding clients of the attorney and the attorney's firm. Complainant consulted with the attorney regarding financial difficulties. The attorney then represented complainant in bankruptcy. Complainant's largest creditor was the bank. The firm continued to represent the bank in matters unrelated to complainant. Several situations arose in which respondent did not discuss with complainant options which could have had an adverse effect on the bank. Respondent never advised complainant concerning the conflict. Rule 1.7(a) and Rule 1.10, MRPC.

8. Failure to Provide an Accounting

An attorney was paid a \$1,500 retainer to represent the complainant in a dissolution. Thereafter, complainant directly negotiated various settlements with her husband. Complainant reported results of the negotiations to the attorney. The attorney wrote three letters to complainant's husband requesting financial information. When complainant inquired about the unearned portion of her retainer, she was told that some of the retainer remained unearned.

Complainant and her husband obtained the divorce without respondent's further assistance. Complainant then requested a refund of the unearned retainer. Respondent did not provide any refund, nor give an accounting of services rendered. When an accounting was obtained by the director, respondent claimed the

entire retainer had been earned. Respondent's failure to provide complainant with an accounting violated Rule 1.15(b)(3) and Rule 1.4(a). Complainant was advised that if she disputed the accounting, she should pursue fee arbitration.

9. Noncooperation

The director received a complaint and referred it to the district ethics committee for investigation. The attorney did not respond within two weeks as requested. The investigator called, and the attorney agreed to respond promptly. The response was not sent to the investigator until seven weeks after initially due.

The attorney was also requested to appear before the district committee and was informed of his duty to cooperate with the disciplinary investigation pursuant to Rule 25, RLPR. The committee administrator left two messages at the attorney's office regarding the hearing time and date. The attorney did not appear before the committee, nor did he notify the committee of his inability to attend. Respondent's noncooperation violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

10. Failure to Communicate

An attorney was retained in an uncontested marriage dissolution matter. At hearing, the court declined to approve a marital termination agreement, for lack of clarity. The complainant incorrectly believed that after the hearing she was divorced. After signing a revised termination agreement, the complainant remarried. She wrote to the attorney who forwarded yet another version of the agreement for her signature. The attorney's delays in communicating and lack of clarity contributed to complainant's remarriage prior to dissolution. The attorney thereby violated Rule 1.4(a).

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Admonitions are a private, but permanent form of discipline. They may be admissible in future disciplinary proceedings against the same attorney. Rule 19(b), RLPR. Copies of the admonitions are provided to the complainant and the district ethics committee which investigated the matter. Rule 8(d)(2), RLPR. The remainder of the file is confidential and is not available to the complainant or to other individuals. Rule 20(a), RLPR. The Director's Office has successfully opposed subpoenas, in state court proceedings from criminal prosecutors and defendants, and from parties to civil proceedings, which requested access to confidential files.

Both complainants and respondent attorneys have the right to appeal from admonitions. On appeal in the last several years, the Minnesota Supreme Court has affirmed two admonitions and, ruling that a disciplinary rule was unconstitutional, overturned an admonition related to specialist advertising. *In re Johnson*, 341 N.W.2d 282 (Minn. 1983); *In re R.P.*, 392 N.W.2d 544 (Minn. 1986); *In re Appeal of Panel Matter No. 87-22*, 425 N.W.2d 824 (Minn. 1988).

Although admonitions are disciplinary in nature, it is hoped that they may also be educational. In several cases the Court has noted that public discipline for a serious offense may be more severe if an attorney has a record of private disciplines. However, the vast majority of admonitions are issued to attorneys who are never again subject to discipline.