

## SUMMARY OF ADMONITIONS

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Reprinted from *Bench & Bar of Minnesota* (February 1994)

Each year, the Director's Office publishes a summary of recent private admonitions to help educate lawyers about some of the rule violations that may lead to minor discipline. (Admonitions are issued for "isolated and non-serious misconduct," Rule 8(d)(2), Rules of Lawyers Professional Responsibility.) In 1992, 135 admonitions were issued to Minnesota attorneys. As of December 1, 1993, 139 admonitions had been issued.

Nearly half of all admonitions are issued for neglect or failure to communicate with the client, usually in a single matter. Other common misconduct resulting in admonitions includes failing to return the client's file, failing to have a written retainer agreement in a contingent fee or flat fee (earned upon receipt) case, and charging illegal interest on unpaid fees.

Admonitions, while private, are permanently retained and may be used in subsequent proceedings as disciplinary history. Most lawyers who receive admonitions, however, are never disciplined again. Many lawyers who receive admonitions might have avoided discipline if they had refreshed their knowledge of the professional rules on a periodic basis, or called the Director's Office for a telephone advisory opinion concerning a particular situation. With the hope, then, that reviewing the following might be instructive to lawyers and aid them in their practice, this summary of a few of the admonitions issued in 1993 is provided.

### DISRESPECT FOR RIGHTS OF THIRD PERSONS

A lawyer represented the exhusband in postdecree child support and custody matters. Pursuant to a discovery order, personal and financial documents belonging to the lawyer's client were to be reviewed by opposing counsel at the lawyer's office. The lawyer placed a table in the reception area to serve as a work space for the document review. There were two chairs in the reception area. The lawyer was unaware that the exwife would be attending the meeting with opposing counsel. Upon learning that the exwife had arrived, before her counsel, for document review, the lawyer removed the second chair from the reception area because the lawyer did not think it fair for the exwife to be present. The lawyer refused to return the chair upon request of opposing counsel. After a short time, opposing counsel and the exwife left without completing the document review. The lawyer's conduct in refusing to provide a second chair for the document review had no purpose other than to delay or burden the adverse party and violated Rule 4.4, Minnesota Rules of Professional Conduct (MRPC).

### HARASSMENT AND SEXIST COMMENTS

A lawyer represented the wife in a dissolution of marriage proceeding. The parties had joint temporary custody of their minor child, but were engaged in a custody dispute. The husband lived with his

parents while the proceeding was pending. The lawyer and the wife made an unannounced visit to the husband's parents' home while the husband was not present. As a result of the visit, the court issued an order restraining further such visits, upon finding that the lawyer had become very offensive toward the parents by raising his voice and making threats and that the parents were very intimidated and frightened by the lawyer's conduct. The court also found that the lawyer had directed sexist comments towards opposing counsel during earlier settlement negotiations by remarks such as "Listen, woman ...," and ordered that such comments cease. The lawyer's conduct as found by the court violated Rules 4.4 and 8.4(g), MRPC.

### **FAILURE TO DISBURSE FUNDS**

A lawyer represented the wife in a dissolution of marriage proceeding. The judgment and decree provided that the parties endorse an insurance proceeds check for deposit into the lawyer's trust account for equal distribution. The husband refused to endorse the check until an agreement for escrow of a portion of the funds pending further court order was reached. Upon reaching such an agreement, the lawyer disbursed funds from the check to his law firm and to his client, but not to the adverse party. After opposing counsel threatened to report the lawyer to disciplinary authorities, the lawyer paid the agreed upon funds to the husband. The court then issued a disbursement order concerning the funds in escrow. The lawyer disbursed a portion of the escrowed funds to his client, the wife, but not to the husband. When the wife retained new counsel, the lawyer sent the remaining funds to new counsel for distribution pursuant to the court's order. The lawyer's failure to promptly disburse the escrowed funds to the husband violated Rules 3.4(c), 4.4, and 8.4(d), MRPC.

### **RELEASE FROM LIABILITY**

A lawyer represented a client on a workers compensation claim. After the hearing, the client became dissatisfied with the representation, fired the lawyer, and began negotiating directly with opposing counsel. A settlement offer was made by opposing counsel to the lawyer. The client advised the lawyer that he had not been discharged, after all. The lawyer, however, declined to continue representation. In exchange for waiving his claim for attorney fees in the workers compensation case, the lawyer asked that the client cease communicating with the lawyer and sign a release of all claims for malpractice and unprofessional conduct against the lawyer and his firm. The lawyer did not advise the client to obtain independent counsel concerning the release. This conduct violated Rules 1.8(h) and 4.4(d), MRPC.

### **FAILURE TO ACCOUNT**

A lawyer was retained by a creditor to investigate possible misappropriation of funds by a debtor in bankruptcy. The lawyer placed the retainer paid by the client into a trust account, but within a week withdrew the funds, before they earned, without notifying the client. The lawyer investigated the matter for about one year, but did not communicate the results to the client during the investigation or for several months thereafter, until the client retained new counsel. The lawyer's conduct in neglecting the matter, failing to communicate adequately with the client, failing to keep the unearned portion of the retainer in her trust account, and failing to account for the retainer fee violated Rules 1.3, 1.4(a), and 1.15(b)(3), MRPC.

### **EXCESSIVE REFERRAL FEE**

A lawyer was paid a \$2,500 retainer to evaluate a client's potential legal malpractice claim and recommend another lawyer to handle the claim. There was no written retainer agreement. The lawyer

contacted another attorney about the case, but that attorney declined to handle the matter. The lawyer, thereafter, did not attempt to find another lawyer to handle the client's claim. The client wrote numerous times asking for an accounting of the fee. The lawyer refused to account, claiming in response to the complaint that the retainer was a flat fee. The lawyer's conduct in failing to communicate with the client, charging an excessive fee for the referral, and failing to account violated Rules 1.4(a), 1.5(a), and 1.15(b)(3), MRPC. The lawyer was not additionally charged with a violation of Opinion 15 of the Lawyers Professional Responsibility Board (LPRB) because the retainer was received prior to September 13, 1991, the effective date of the opinion.

### **FAILURE TO CLARIFY ROLE**

Inhouse corporate counsel telephoned an officer of a company with which the corporation was having a dispute. No litigation was pending at the time. The lawyer referred to himself as an "insurance advisor" for the corporation, and did not state that he was an attorney. The lawyer's conduct in failing to clarify his role as attorney for the corporation violated Rule 4.3(b), MRPC.

### **PRACTICE WHILE UNDER SUSPENSION**

A lawyer was automatically suspended for failing to pay the annual attorney registration fee when it was due. The lawyer continued to practice law during the five months that this license was suspended, until the registration fee and penalty were paid. The lawyer's conduct violated Rule 5.5(a), MRPC.

### **ILLEGAL FEE**

A lawyer represented a client before the Social Security Administration (SSA). By law, anyone who charges or collects a fee in connection with a claim before SSA must first obtain approval of the fee from SSA. Without obtaining approval, the lawyer collected a fee directly from the client. The lawyer later wrote to SSA and requested payment of a fee. The client objected to any fee in excess of that already paid. The lawyer later filed a formal fee petition with SSA. The lawyer's conduct in demanding and receiving a fee from his client without SSA consent or approval violated Rule 1.5(a), MRPC.

### **IMPROPER ASSERTION OF ATTORNEY LIEN**

A lawyer represented a corporate client in a property tax appeal. A stipulated settlement provided for a substantial refund to the corporate client for taxes previously paid. The corporate client paid the attorney fees which had been billed in the property tax appeal. The taxing authority issued a check payable jointly to the lawyer and the client. The lawyer advised the client that he would hold the tax refund check pending payment of an outstanding bill for legal services in another unrelated matter, in which the client was a separate but related entity. After the client filed a summons and complaint against the lawyer seeking an order for delivery of the check under Minn. Stat. §481.14, the lawyer returned the check to the client, but it was still unendorsed. The lawyer's conduct in retaining the property tax refund check and asserting a lien against it for unrelated legal work violated Rule 1.15(b)(4), MRPC. *See also* Wisconsin Formal Opinion E-83-7, citing *Fryer v. Mutual Benefit Health & Accident Assn.*, 45 Wis.2d 106, 172 N.W.2d 308 (1969)

### **QUARTERLY MEETINGS OPEN**

In an effort to allow the public and the bar increased access to the policy-making aspects of the lawyer discipline system, the Lawyers Board, at its September 17, 1993, meeting, voted to open its quarterly

meetings to the public. Those portions of meetings dealing with actual lawyer discipline cases or issues which require confidentiality (such as personnel issues) of course will still be closed. Those persons wishing to make oral comment at a meeting must request permission prior to the meeting date by calling the Director's Office at (612) 296-3952. Comments with respect to proposed board opinions or rules must be in writing and received prior to the meeting date. The agenda for upcoming meetings will be available by calling the Director's Office one week prior to the meeting date. The 1994 meetings are scheduled for the following dates: March 11, June 10, September 9, and December 2.