

## SUMMARY OF ADMONITIONS

By  
Martin A. Cole, Director  
Minnesota Office of Lawyers Professional Responsibility

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In calendar year 2010, the Director's Office resolved 122 files with admonitions that were issued to Minnesota attorneys for isolated and nonserious misconduct.<sup>Ftn 1</sup> Twenty-six lawyers entered into stipulations for private probation that were approved by the Lawyers Board chair;<sup>Ftn 2</sup> these stipulations resolved an additional 34 complaint files. A summary of the admonitions and private probation stipulations from the past year has been published on an annual basis. So, here again is a sampling of the types of misconduct that can lead to private discipline.

As always when reading these brief synopses, keep in mind that since these are offered primarily for educational purposes, the facts may have been simplified in order to make a particular violation clearer. In all of the admonition examples described, the complaint was either initially investigated by a local District Ethics Committee (DEC), which had recommended that the director issue an admonition, or was investigated by the Director's Office without referral to a DEC.<sup>Ftn 3</sup> The volunteer DEC investigators, both lawyers and nonlawyers, who investigated these complaints again did an outstanding job of investigating the facts and making a preliminary recommendation.

As is true almost every year, lack of diligence and lack of communication with a client lead the way as the most common reasons for receiving an admonition.

### **Failure to Schedule Motion**

Attorney was hired to represent client in an attempt to vacate an earlier guilty plea in a criminal matter. Attorney prepared and filed the motion, but agreed to continue and reschedule the matter upon the request of the prosecutor. Thereafter, without any excuse, attorney failed to reschedule the matter. Several months later, the client discharged attorney and hired new counsel. Attorney's lack of diligence violated Rule 1.3, Minnesota Rules of Professional Conduct (MRPC) (lawyer shall act with reasonable diligence and promptness in representing a client).

### **Failure to Appear for Hearing**

Attorney was hired to represent a client in a child custody and visitation matter. A scheduling conference was scheduled but had to be continued when attorney failed to appear. At the renewed scheduling conference, a trial date was set as was a deadline for exchange of witness and exhibit lists. Attorney failed to submit the lists and failed to appear for the trial as scheduled. The judge's personnel were unable to locate the attorney. The judge, who filed the complaint, issued an order to show cause. A hearing was held before a different judge, who issued an order finding attorney's failure to appear to be "without reasonable cause" and sanctioned attorney. Attorney violated Rules 1.3 and 8.4(d) (conduct prejudicial to the administration of justice), MRPC.

### **Failure to Pursue Discovery**

Attorney was hired to represent husband in marital dissolution. After receiving wife's answers to discovery, client believed wife was hiding assets, and requested that attorney pursue supplemental discovery. For the next six months, attorney took no action on the matter. Client then discharged attorney; successor counsel discovered that wife indeed had not disclosed substantial marital income obtained during the proceeding. Attorney violated Rule 1.3, MRPC.

As these three examples indicate, there can be an overlap between disciplinary matters involving diligence and potential malpractice claims. Yet many lawyers still believe that if the matter may be labeled as "malpractice," then the Director's Office and the Lawyers Board cannot investigate the conduct and in appropriate matters impose discipline. This belief is not correct, as the above examples illustrate. These attorneys' lack of diligence caused minimal financial harm to their clients, yet warranted discipline. It would be ironic if causing sufficient harm to warrant a viable malpractice action meant that discipline for a lack of diligence was precluded.

### **Advancing Nonmeritorious Claim**

Attorney represented client in an immigration matter. Client sought to remain in the United States and work legally. Client had entered the country without authorization. Attorney informed client she could apply for Temporary Protective Status (TPS). In fact, she was not eligible for such status due to the date of her entry into the United States and attorney became aware of that fact. Attorney did not inform client he had learned that she was ineligible for TPS. Attorney nevertheless made and pursued a claim based upon TPS, and not upon any other basis. The claim was denied. Attorney appealed denial; the reviewing court affirmed, all on the basis that client did

not qualify for TPS. Attorney violated Rule 3.1 for bringing a frivolous claim without any good faith basis for an extension of the law. Client is now, with the aid of new counsel, seeking to oppose deportation.

### **Failure to Return Client File**

Attorney represented client in potential civil litigation matter while employed as an associate at law firm. When she left the firm, she continued to represent some clients and thus retained their files. Nevertheless, when complainant called her about the status of his matter, attorney told complainant that former firm still had his file. After firm told complainant that in fact their former attorney took his file with her, complainant called attorney again. This time attorney actually checked and found she did have file. Complainant then discharged attorney and asked that file be sent to him. Several months passed before attorney returned the file. Attorney violated Rule 1.16(d), MRPC, which requires that upon termination of representation, an attorney must surrender any papers and property (which includes the client's file) to which the client is entitled.

### **Improper Solicitation Letter**

Complainant was involved in a traffic accident for which a police report was filed. Thereafter, she received letters from attorneys offering to represent her on a claim for any injuries she may have suffered. Several of the letters failed to clearly and conspicuously include the words "Advertising Material" on the envelope. The recipient filed complaints against those attorneys, who violated Rule 7.3(c), MRPC, which requires that "Advertising Material" appear clearly and conspicuously on the outside envelope (and within the communication too) if the prospective client is known to be in need of legal services in a particular matter. Obtaining information from police reports of possible accident victims fits this requirement.

### **Practice While Suspended**

Attorney failed to pay his lawyer registration fee when due and thus was automatically suspended from practice.<sup>Ftn 4</sup> Attorney states that, five months later, when he attempted to file a court document in a case, he was informed by court personnel that he was not authorized to practice. Attorney thereupon paid his registration fee and was reinstated. The following year, attorney again failed to pay his registration fee and was suspended. Thereupon, opposing counsel (this was in the same ongoing matter) complained. Attorney's unauthorized practice of law violated Rule 5.5(a), MRPC.

### **Notes**

1 Rules 8(d)(2) or 9(j)(1)(iii), Rules on Lawyers Professional Responsibility (RLPR).

2 Rule 8(d)(3), RLPR.

3 This can happen for several reasons. The most common in relation to admonitions is that the attorney already has other open complaint files under investigation by the Director's Office.

4 Rule 2H, Rules of the Supreme Court on Lawyer Registration.