

SUMMARY OF ADMONITIONS

By
William J. Wernz, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (February 1991)

In 1990, 133 admonitions were issued to Minnesota attorneys for "isolated and nonserious misconduct." Neglect and failure to communicate were the subject of almost half these admonitions. Other common subjects included conflicts of interest and practicing while suspended for failure to pay the attorney registration fee.

The admonitions summarized below were chosen in the hope that they would be instructive to practicing lawyers. Attorneys are regularly involved in difficult and heated situations; avoiding unprofessional conduct may be easier after reflecting on the following admonitions.

1. Unfairly Burdening Third Parties. A minister testified that the state's star witness, who was a member of his own church, was a chronic liar. After trial, the prosecutor called the minister and criticized him, on religious grounds, for betraying his own congregant. The prosecutor also suggested that other ministers would be told about the minister's action. The prosecutor was admonished for unfairly burdening the minister, in violation of Rule 4.4, Rules of Professional Conduct.

In a dissolution case, an attorney advised the husband to endorse his and his wife's name to tax refund checks, without her consent. Because there was apparently no intent to permanently deprive the wife of money, the violation of Rule 4.4 and other rules was deemed to be nonserious.

In another dissolution matter, an attorney while cross-examining an expert witness on custody and visitation asked, "Are you gay?" In his offer of proof the attorney stated, gratuitously: "People in her office are gay; she is gay" The attorney violated Rule 4.4 and Rule 8.4(g), which prohibits harassment on several grounds, including sexual preference.

2. Improper Contact With Represented Parties. Two attorneys, in separate matters, were admonished for communicating with represented parties in cases in which they were acting *pro se*. Rule 4.2 prohibits such contacts "in representing a client . . ." and several authorities conclude that a *pro se* attorney represents himself or herself.

Another attorney was admonished for having his secretary call a represented party, posing as a student seeking educational materials, and thereby obtain relevant documents.

3. Intimidating a Judicial Officer. At a marriage dissolution settlement conference, the referee suggested that the position taken by an attorney was not likely to be successful at hearing. The attorney became very upset, stood up in chambers, and argued his position in a threatening way. The referee terminated the conference. After everyone else left, the attorney closed the door, faced the referee, and asked if he had

something personal to settle with the attorney as a man. The referee twice asked the attorney to leave, then circled behind his desk, and began to call for a bailiff. The attorney then left. This conduct was prejudicial to the administration of justice, in violation of Rule 8.4(d).

4. Sexual Advances to a Client. An attorney representing the wife in a divorce began a personal relationship with her by giving her flowers, kissing her, and making suggestive comments. Although the wife did not welcome these advances, she met with the attorney in restaurants and in her home. However, one evening when he embraced and kissed her and grabbed her breast on the outside of her clothing, she rebuffed him. The attorney stated he believed the sexual advances were welcome, but admitted that his personal desires could have interfered with his professional judgment. He was admonished for a conflict of interest, under Rule 1.7.

5. Failure to Disclose and Deception. Plaintiff's counsel in a malpractice action pursued settlement negotiations, without disclosing that his client had died after commencement of the action. When a judge inquired about the status of the case, the attorney did not reply. In negotiations, the attorney made statements after the client's death such as, "My client has indicated there is some movement from our demand" Only after defense counsel inquired three times in one conversation about the client's health, was the death revealed. The attorney was admonished for deceptive conduct.

An attorney selling his home represented that it had only a "partial basement," and that it had no moisture problems. In fact, the home had a full basement, which the attorney had boarded up and concealed, and which had severe water damage. The misrepresentations were arguably serious, but an admonition was issued because the conduct was isolated and outside the practice of law.

An attorney learned he had inadvertently provided false information in a previous proceeding, and that his client had lied to criminal authorities. The attorney did not take any remedial action, and thereby violated Rule 3.3(a)(4).

6. Revealing Client Confidences. An attorney wrote to a client, demanding payment of his fee, and sent a copy of the letter to the client's mother. Disclosure of a "secret" violated Rule 1.6.

7. Attempting to Prevent Ethics Complaints. Two attorneys were admonished for attempting to deter clients from filing ethics complaints. Both attempted to settle fee disputes by insisting that the client agree not to file an ethics complaint.

8. Improper Notarization. A client signed the verification for a marriage dissolution petition in the attorney's presence. Later, the attorney had his secretary notarize the client's signature although she had not witnessed it. A number of improper signatures and more serious violations of proper notarial practice have resulted in public disciplines, but this attorney was admonished for this isolated and nonserious violation.

9. Retired Status. An attorney on retired status continued to use professional letterhead identifying himself as an attorney. He represented a corporation through correspondence and an appearance at hearing. He was the sole shareholder, officer, and director of the corporation. His conduct violated Rules 5.5, 7.1, and 7.5.

10. Admonitions and Supreme Court Actions. Under the Rules on Lawyers Professional Responsibility, if the Director issues an admonition, a lawyer may appeal to a Lawyers Board panel. The panel may dismiss, affirm, or direct a petition to the Supreme Court for public discipline. The only year in which all three

possibilities occurred is 1990.

The Supreme Court affirmed a panel's affirmance of an admonition to LMN, for having failed to make a good faith effort to comply with the IOLTA program. LMN did not arrange for the interest earned on his trust account to be paid to the IOLTA Board for several years. He did not use the accrued interest himself, and there were problems on the bank's side as well, but for a considerable period he took no steps to rectify the problems.

Another attorney appealed his admonition to a panel, which directed a petition for public discipline by the Court. The attorney, acting *pro se*, wrote to represented parties, threatening them with an expensive RICO action unless they ceased efforts to collect a judgment against him for attorney fees. The Supreme Court issued a public reprimand.