

SUMMARY OF ADMONITIONS

By

Marcia A. Johnson, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (February 1993)

Approximately once a year, the Director's Office publishes a summary of recent private admonitions, primarily to help educate lawyers about some of the rule violations that can lead to minor discipline. In 1991, 172 admonitions were issued to Minnesota attorneys. As of December 1, 1992, 122 admonitions have been issued.

The types of unprofessional conduct that generally result in "serious" or public discipline are relatively easy to identify (*i.e.* misappropriation of client funds or failure to file tax returns) and, for the great majority of practitioners, to avoid. For most lawyers, it is axiomatic that stealing or "borrowing" trust account monies is not ethical. A lawyer cannot rely on instinct alone, however, to avoid the types of conduct that can result in private discipline. Many attorneys who have received private admonitions might have avoided discipline if they had regularly refreshed their knowledge of the Rules of Professional Conduct, the formal opinions of the Lawyers Professional Responsibility Board, and *Bench & Bar* articles that deal with issues related to professional responsibility.

Minnesota attorneys who are unsure about their ethical obligations can seek assistance by calling the Director's Office for a telephone advisory opinion. This year the office has provided nearly 1,200 telephone advisory opinions to Minnesota lawyers to help them make decisions consistent with the professional rules.

Each year, most of the admonitions involve the same basic themes and rules. Situations which have resulted in private admonitions in 1992 include the following:

1. Diligence and Noncommunication. As always, lack of diligence and failure to communicate adequately with the client (Rules 1.3 and 1.4) are the most common reasons for an attorney to be admonished.

An attorney represented a woman in a gross misdemeanor criminal matter. The attorney knew that he likely would be unavailable for the pretrial proceedings because of another court commitment, yet did not advise his client of the problem or make arrangements for another attorney to attend. On the date of the pretrial hearing, the client appeared at the courthouse. She called the lawyer's office and was told he was in trial. Finally, the clerk of court called the attorney's office and another attorney was sent to appear at the pretrial hearing on the client's behalf. The lawyer's failure to make adequate arrangements to have substitute counsel attend and failure to notify his client that he would not attend violated Rules 1.3 and 1.4.

2. Charging Excessive Interest. Starting approximately one year after the lawyer was retained by a client, the lawyer's invoices began listing interest charges at 1.5 percent per month (18 percent per year) on unpaid

legal fees, applied retroactively. There was no written agreement with the client concerning the imposition of finance charges. The attorney violated Rule 1.5(a). For a more complete discussion on the ethical limits on charging interest on client fees, *see* Wernz, "Interest on Attorney's Fees," 46 *Bench & Bar* 9 (October 1989), p. 18.

3. Failure to Return File Promptly. A client wrote to the lawyer requesting return of his file. The lawyer advised the client that the file would be available, but made no arrangement to return it and did not contact the client further. Despite several phone calls and two additional letters from the client, the attorney did not mail the file until approximately six months after the initial request. This delay violated Rule 1.16(d).

4. Failure to Honor Letter of Protection. An attorney represented two clients (mother and daughter) injured in an automobile accident. The attorney wrote a letter on behalf of the mother to a chiropractor stating, "Please let this letter serve as a letter of protection regarding any bills incurred in this matter. They will be paid out of any recovery for damages." Eighteen months later, the matter was settled. The client told the attorney she would arrange payment of the chiropractor's bill personally, and the lawyer did not withhold any funds as promised in the letter of protection. The client then failed to pay the chiropractor. The lawyer's failure to honor the letter of protection violated Rule 8.4(d).

5. Lack of Written Fee Agreement. A lawyer agreed to represent two individuals in a civil action against a corporation on a contingent fee basis. No written fee agreement was prepared or signed. Although the clients discharged the lawyer before the case was concluded, the lawyer violated Rule 1.5(c), which requires that all contingent fee agreements be in writing.

6. Failure to Deposit. Pursuant to a written fee agreement, a lawyer agreed to represent a client upon receipt of an advance fee of \$500. The client was able to pay only \$400, so the lawyer provided no services. The money was never deposited in the lawyer's trust account. Although the lawyer eventually refunded the money, the failure to deposit an unearned advance fee violated Rule 1.15(a). Attorneys should also familiarize themselves with Opinion No. 15 of the Lawyers Professional Responsibility Board concerning deposit of retainers. *See* 48 *Bench & Bar* 10 (November 1991), p. 11.

7. Misleading Advertisement. A lawyer placed a telephone directory advertisement stating that the lawyer's firm was the largest personal injury firm in its area and had substantial experience with local juries. Since the lawyer's firm could not produce data to support these assertions and because no one in the firm had tried a personal injury case to a local jury for several years, the advertisement violated Rules 7.1(a) and (c).

8. Candor to a Tribunal. A lawyer represented the wife in a dissolution. The parties signed a stipulation dividing the marital property. The husband was to receive the parties' stereo, which was still in the possession of the wife. Before the default hearing on the dissolution (at which the husband was not present), the wife informed the lawyer that the stereo recently had been stolen. The lawyer nevertheless chose to submit the stipulation without informing the court of the theft. This violated Rule 3.3(d).

9. Contact with Represented Person. A lawyer represented the father in a child support proceeding. The mother was represented by the county attorney's office. Prior to a review hearing regarding a referee's order reducing the father's child support obligation, the father had pressured the mother into stipulating to the reduced child support. The mother then met with the father's attorney, signed a waiver of counsel and the stipulation. The lawyer did not contact the county attorney prior to the meeting or advise the county attorney of the agreement. The lawyer's conduct violated Rule 4.2. When an individual is represented by

counsel, Rule 4.2 requires the consent of the lawyer, not just of the affected client, in order to prevent just the type of pressure which was exerted upon the mother in this case.

10. Practice After Suspension. A lawyer was suspended from the practice of law in 1986 and has never been reinstated. In 1991, the suspended attorney drafted documents for a residential real estate transaction and conducted a closing on the transaction. The suspended attorney provided a receipt to one of the parties, for payment of closing costs, on letterhead stationery that still listed him as an attorney at law. Although the former lawyer informed both parties that he was not representing either of them in the transaction,, he did not disclose that his license had been suspended and that he was not an attorney at the time. This conduct violated Rules 5.5(a) and 8.4(c).

Admonitions will be issued to suspended attorneys for minor misconduct or, occasionally as the "least inappropriate discipline" for more serious misconduct. Minor discipline issued subsequent to suspension or disbarment is frequently used by the Director as a basis to oppose reinstatement of the suspended or disbarred attorney.

11. Business Transaction with Client. An attorney sold a piece of property that he owned to an individual who had been his client on several occasions. The attorney prepared the title opinion as part of the transaction. The attorney did not advise the purchaser to consult independent counsel nor advise the purchaser of any potential conflicts of interest. The lawyer's failure to disclose the conflict of interest and failure to obtain written consent before entering into a business transaction with the client violated Rules 1.7(b) and 1.8(a).