

SUMMARY OF ADMONITIONS

By

Kenneth L. Jorgensen, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (March 2005)

This month's article is the annual summary of admonitions issued to Minnesota lawyers over the past year. Admonitions are issued for "isolated and non-serious" violations of the Rules of Professional Conduct. Of the 1,147 complaints received in 2004, 94 resulted in private admonitions. Some of the facts in the following summaries have been simplified for ease of understanding and others have been changed to maintain anonymity.

■ **FAILURE TO CONSULT REGARDING LIMITED SCOPE OF REPRESENTATION.** The lawyer was retained to handle the client's personal injury claim. The retainer agreement provided for a one-third contingency fee for representation through trial. At the time the client signed the retainer agreement, the firm's practice and policy was to refer the client to another lawyer outside of the firm if a settlement could not be negotiated and the case needed to be litigated. After about a year, it became clear that the insurer was unwilling to resolve the matter without litigation. The lawyer, for the first time, told the client that another lawyer outside of the law firm handled the firm's litigation matters. After a brief consultation, the outside lawyer determined he could not handle the client's case due to a conflict of interest. Thereafter, the law firm withdrew from representing the client.

The lawyer was cited for violating Rules 1.2(b) [*scope of employment*] and 1.4(a) [*communication*]. When the lawyer agreed to represent the client, he did not inform the client that the firm's representation was limited to settlement negotiation services and that another law firm would provide litigation services. Lawyers are permitted to limit the scope of representation, but can only do so by consulting with the client and obtaining the client's consent to the limited representation.

■ **RELIANCE ON CLIENT AND INCOMPETENCE.** The lawyer was retained to represent wife in her divorce. As part of the marital termination agreement, wife was awarded a parcel of real estate owned by the parties. The judgment and decree required husband to quit claim his interest in the property to the wife.

On the initial client interview form, the wife listed the legal description as "Blackacre subdivision, block 9, lot 2 and part of lot 3." The description did not identify the specific part of lot 3 applicable to the

property. The lawyer later asked the client to obtain the legal description for the property. Instead of obtaining a copy of the recorded deed, the client provided a real estate appraisal for the property, which also contained the clearly inaccurate legal description failing to specify which part of lot 3 was applicable to the property. The lawyer used this legal description to prepare the quitclaim deed.

The client's attempt to record the deed was rejected by the recorder, who provided the client with the correct legal description. When the client requested the lawyer to prepare a corrected deed, the lawyer refused to do so until the client paid the lawyer for preparing a new deed.

The lawyer was admonished for violating Rule 1.1 [*competence*]. Although lawyers are entitled to rely upon the representations of their clients, the reliance must be reasonable. Here, the legal description on its face was clearly inadequate and the lawyer's preparation of the deed, including the insufficient legal description, constituted incompetence.

■ **INTERFERENCE WITH ETHICS INVESTIGATION PROCESS.** The attorney was hired to draft a will by a certain date because the client was leaving the country. Although the client reminded the attorney of the date, the attorney was not able to complete the will. The client made necessary revisions to a preexisting will and took it upon himself to have the will executed. The client then wrote to the attorney asking for a partial refund. After making follow-up inquiries, the client filed an ethics complaint.

After receiving notice of the ethics complaint, the attorney contacted the client and offered a partial refund if the client would withdraw his ethics complaint. In fact, the lawyer sent the partial refund only after receiving confirmation that the client told the ethics investigator that the matter had been resolved. Although the lawyer's failure to timely draft the client's will did not rise to a level warranting discipline, the lawyer received an admonition. The lawyer's partial refund after receiving notice of the ethics complaint was not improper. However, conditioning the partial fee refund on withdrawal of the ethics complaint violated Rule 8.4(d).

■ **FAILURE TO NOTIFY COURT OF ADDRESS CHANGE.** The lawyer was hired to represent a client in an immigration matter. The action was not successful and the lawyer agreed to file an appeal on behalf of the client. The appeal was timely filed with the Board of Immigration Appeals (BIA). Subsequent to filing the appeal, the lawyer moved his office but did not communicate the new office address to the BIA.

As a result of the failure to communicate the new address, the lawyer did not receive an order from the BIA closing the client's case and indicating the client may have been eligible for Temporary Protected Status. The lawyer also did not make any inquiries regarding the status of the client's case. The lawyer did not find out about the BIA action until the following year when additional action was taken. The lawyer was admonished for failing to notify a tribunal in a pending matter of an address change and failing to monitor the status of a pending case. *See* Rule 1.3 [*diligence*].

■ **FAILURE TO CONDUCT NECESSARY DISCOVERY.** Client retained attorney to represent her in divorce proceedings. At the time of the initial meeting, client told the attorney she wanted spousal maintenance. The attorney prepared and filed the divorce petition but did not include client's request for spousal maintenance. The attorney claims opposing counsel agreed to informal discovery on financial matters pertaining to the maintenance request. After a hearing, the judge ordered all discovery be completed within 45 days of the order. The attorney never received the financial information, nor did the attorney make a formal discovery request when the financial information was not provided.

At the pretrial hearing, the lawyer claimed opposing counsel was reminded of their agreement for informal discovery. Nevertheless, the financial information was never provided and the attorney never made a formal discovery request. The judge eventually issued an order which indicated in part that the client had waived the claim. The client later obtained new counsel and was able to reopen the maintenance portion of the decree. The lawyer was admonished for violation of Rules 1.3 and 1.1.

■ **CONDITIONING RETURN OF CLIENT FILES.** After terminating the attorney's services, the client requested the file from the attorney. The attorney informed the client's new counsel there would be a charge for copying the file and that the payment must be received prior to or at the time of the file's pick-up or delivery. The attorney later advised new counsel that a deposit was needed before the firm would begin copying the file. The attorney did not have a retainer agreement by which the client agreed to be responsible for copying costs at the termination of representation. By conditioning delivery of the client's file on payment of copying costs, the attorney violated Rule 1.16(d).

■ **FAILURE TO DISCLOSE ROLE AS COUNSEL.** The attorney was retained to assist the client with a dispute concerning a neighbor's fence. The attorney and the client, although not related, have the same surname. While the attorney and the client were videotaping in the client's backyard, the client's neighbor approached them. The neighbor asked the lawyer about his role in the matter. The attorney did not identify himself as an attorney and indicated he was simply assisting the client. The attorney was admonished for violating Rule 4.3(b) which requires lawyers representing clients to identify themselves as such when dealing with unrepresented persons and adversaries.

■ **FAILURE TO SAFEGUARD CLIENT FUNDS.** The client contacted the attorney about representation in a criminal matter and provided the attorney with a \$10,000 cash retainer, which the attorney placed in a wall safe. The attorney did not have a signed retainer agreement with the client. The cash remained in the safe for several months until the lawyer applied some of the funds to his legal fees. The attorney was admonished for failing to deposit the funds in a client trust account in violation of Rule 1.15(a).