

Admonitions: A Primer With Examples

By Carl Schaeperkoetter

INTRODUCTION

An admonition is the lowest disciplinary sanction in the disciplinary process set forth in Missouri Supreme Court Rule 5. It does not restrict a lawyer's ability to practice law and is the only sanction issued by any entity other than the Supreme Court of Missouri. Pursuant to Missouri Rule 5.31(b), an admonition is considered a public document and a permanent part of the lawyer's record available to the public.¹ This article will discuss the theoretical basis for admonitions, the process by which an admonition is issued, and conclude by giving some admonition summaries as examples of the minor rules violations that can result in the issuance of an admonition.²

THEORETICAL BASIS

Missouri has a tiered discipline system, depending on the severity and frequency of lawyer acts that violate the Rules of Professional Conduct. Various sections of Missouri Supreme Court Rule 5 permit an admonition, a reprimand (with or without requirements), probation (with or without a stayed suspension),³ an actual suspension or disbarment, depending on lawyer misconduct. An admonition is deemed to be the least severe sanction. It is the only sanction that may be issued by an entity other than the Supreme Court of Missouri. An admonition may be issued by the Office of Chief Disciplinary Counsel, a Regional Disciplinary Committee that has investigated allegations against a lawyer, or a Disciplinary Hearing Panel that has heard formal evidentiary charges involving an attorney. The graduated system of disciplinary sanctions is consistent with the process long advocated by the American Bar Association. *See* ABA Standards for Imposing Lawyer Sanctions (1991 ed.).

THE ADMONITION PROCESS

Rule 5.09 authorizes the Chief Disciplinary Counsel, or any Regional Disciplinary Committee acting on his behalf, to investigate any allegations of lawyer misconduct. Rule 5.11(b) permits the Chief Disciplinary Counsel or a Regional

Disciplinary Committee to issue an admonition upon a finding of minor misconduct deemed insufficient to file a formal charge, called an Information. A respondent lawyer is given 15 days after service to accept or reject the admonition. If accepted, the admonition becomes a part of the lawyer's record. If rejected, Rule 5.11(b) states: "If the admonition is rejected, the entity finding probable cause shall prepare an Information." Thus, a rejected admonition will result in formal charges being pursued against the respondent lawyer.

Once formal charges have been filed, a three-member Disciplinary Hearing Panel is appointed to hear the case. That panel, as one of the sanctions available to it, may also issue an admonition to a respondent lawyer. *See* Rule 5.16(b).

An admonition issued by the Hearing Panel and accepted both by the Chief Disciplinary Counsel and the respondent lawyer concludes the case. However, both the Chief Disciplinary Counsel and the respondent lawyer have the right to reject the admonition. If rejected, the Disciplinary Hearing Panel is required by Rule 5.16(b)(4) to issue a written decision. That decision does not include the option of an admonition. The Disciplinary Hearing Panel at that time may choose to dismiss the case or recommend discipline to the Supreme Court of Missouri. The range of recommended discipline may be a public reprimand, probation, suspension or disbarment. *See* Rule 5.16(d).

Further discussion of other disciplinary sanctions is beyond the scope of this article. For present purposes, the important thing to remember is that an admonition is for minor rule violations that do not invoke formal discipline.

EXAMPLES

The admonition summaries listed below pre-date the current version of Rule 5.31. The underlying admonitions are more than three years old and not available to the public. These examples are provided to give lawyers guidance and avoid the sorts of problems that result in minor disciplinary actions.

1. The lawyer represented a professional corporation, whose two shareholders each had a 50 percent interest. A

dispute arose between the two shareholders. The lawyer elected to represent shareholder number one against shareholder number two, and also filed suit on behalf of the corporation against shareholder number two. There had been no authorization by shareholder number two, as an equal owner for the corporation, to take legal action against him.

The lawyer received an admonition for violation of Rule 4-1.7 (conflict of interest), which states, “A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if ... there is a significant risk that the representation of one ... client will be materially limited by the lawyer’s responsibilities to another client ... or a third person.”

2. The lawyer successfully represented a creditor client in obtaining a judicial decision in a collection lawsuit. However, the lawyer took more than five months to prepare the judgment requested by the judge.

The lawyer received an admonition for violation of Rule 4-1.3 on reasonable diligence by not preparing a judicial document within a reasonable time.

3. The Chief Disciplinary Counsel received two overdraft notifications from the bank where the lawyer’s trust account was located. An investigation by the Chief Disciplinary Counsel found that no client funds ultimately had been lost. However, the lawyer was not keeping accurate trust account ledgers, reconciling the trust account on a regular basis, or distributing money owed to clients on a timely basis.

The lawyer received an admonition for violation of Rule 4-1.15 on safekeeping client property. A trust account, by definition, should not have a negative balance, because all funds should belong to clients and should not be distributed until a determination made that sufficient funds exist to cover payments. In addition, Rule 4-1.15 requires all lawyers to keep complete records of any client trust account transactions for at least five years after termination of the representation or the date of the last disbursement of funds, whichever is later.

4. A person was involved in an automobile accident. The lawyer sent a written solicitation letter to the person. The written solicitation did not have the word “Advertisement” plainly marked on the face of the envelope, nor was the word “Advertisement” at the top of the first page of the solicitation letter. In addition, the solicitation letter did not have any language about disregarding the solicitation if the person had already engaged a lawyer, any statement that the person

might want to consult another lawyer, any reference that the advice and information in the solicitation was general, or that the specific legal situation might depend on many facts not known to the lawyer at that time.

The lawyer received an admonition for violation of Rule 4-7.3(b). That rule has very specific language about where the word “Advertisement” must appear on both the envelope and in the letter. In addition, subsection (b)(3) has specific language that must be included in the solicitation letter. That did not happen in this case.

5. The lawyer pled guilty to a charge of driving while intoxicated. The lawyer had a previous guilty plea seven years earlier to a driving while intoxicated charge.

The lawyer received an admonition for violation of Rule 4-8.4(b) by committing a criminal act that reflected adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects. It should be noted that multiple offenses of such a nature can lead to a more severe sanction. *See In re: Stewart* 342 S.W. 3d 307 (Mo banc 2011).

6. The lawyer received an advance fee payment of \$1,000 for representation in a dissolution action. Shortly thereafter, the client changed her mind and requested a refund. The lawyer failed to refund the money until after a complaint had been filed with the Chief Disciplinary Counsel.

The lawyer received an admonition for violation of Rule 4-1.16(d), which states that upon termination of representation a lawyer is to refund any payment of advance fees or expenses that has not been earned. The lawyer was unable to document that the lawyer had earned any of the \$1,000 advance fee payment.

7. The lawyer was appointed to represent a criminal defendant in a post-conviction relief action. The lawyer failed to notify the client of the hearing date on the motion and failed to arrange for the client to appear in court.

The lawyer received an admonition for violation of Rule 4-1.4 on reasonable communication by not keeping the client apprised of what was happening in the case and not arranging for the client to be present for the hearing.

8. The lawyer represented the wife in a dissolution action. The lawyer attempted to put language in a proposed settlement agreement that the husband would not file a complaint with the Office of Chief Disciplinary Counsel at the conclusion of the case. The settlement agreement

already included a general release of civil liability and discharge of all claims from the respective parties.

The lawyer received an admonition for violation of Rule 4-8.4(d) for conduct prejudicial to the administration of justice. Missouri Supreme Court Advisory Committee Formal Opinion 122 states that a lawyer attempting to enter into a settlement prohibiting the filing of a bar complaint engages in conduct prejudicial to the administration of justice. *See* Formal Opinion 122 for greater analysis of this issue.

9. The lawyer was hired by a client and received an advance fee payment of \$1,500. There was no written fee contract. The client had several issues in litigation and was considering bankruptcy. The client and lawyer got into a dispute regarding the scope of the lawyer's services. The lawyer stopped answering telephone calls and emails from the client. The client discharged the lawyer and directed that the file be delivered to new counsel. The lawyer advised the new counsel that the file had been lost, although it was ultimately found and delivered several weeks after the directive.

The lawyer received an admonition for violation of Rule 4-1.4 on reasonable communication and 4-1.16(d) on failure to return property owed to the client at the termination of the representation. Even though the lawyer and client were involved in a dispute over services, it still was the lawyer's obligation to reasonably communicate with the client until such time as the lawyer would withdraw or be discharged. In addition, losing a file for a period of time was not a defense to a lawyer's obligation to return a file to a client at the end of representation.

10. The lawyer represented the plaintiff in a personal injury lawsuit against the driver of another vehicle and that driver's insurance company. The insurance company retained counsel to represent the insured. The plaintiff's lawyer got into a dispute with the insured's counsel and sent a letter to the insurance company accusing the insured's counsel of inappropriate conduct.

The plaintiff's lawyer received an admonition for violation for Rule 4-4.2. Once the insurance company had retained legal counsel, the plaintiff's lawyer was not permitted to contact either the insured or the insurance company without the defense lawyer's consent.

11. The lawyer represented a client in a dissolution of marriage action. Upon completion of the case, the

dissolution judgment directed the lawyer to complete a QDRO (qualified domestic relations order). The lawyer failed to do so for more than eight months and only after a complaint had been filed with the Chief Disciplinary Counsel.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by failing to prepare the QDRO within a reasonable time. The lawyer also received an admonition for violation of Rule 4-1.4 on communication by failing to communicate with the client and explain why it was taking so long for the QDRO to be completed.

12. The lawyer represented the client in a workers' compensation case. The client was short on funds for personal expenses. The lawyer advanced money to the client for payment of personal expenses. The funds loaned were not for court costs or expenses of litigation.

The lawyer received an admonition for violation of Rule 4-1.8(e). A lawyer cannot provide financial assistance to a client in connection with pending litigation except for court costs and litigation expenses.

13. The Chief Disciplinary Counsel received a complaint against a lawyer and sent three separate letters to the lawyer asking for a response to the complaint. The lawyer did not respond to any of the letters and had to be subpoenaed for personal appearance at the disciplinary office. The underlying complaint was found to be without merit.

The lawyer received an admonition for violation of Rule 4-8.1(c), which states that a lawyer is obligated to respond to requests for information from the disciplinary office.

14. The lawyer was a prosecuting attorney. The prosecutor failed to disclose to the defense counsel evidence favorable to the defendant prior to trial, including information gathered by an investigator at the prosecutor's office.

The lawyer received an admonition for violation of Rule 4-3.8(d), which requires a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

15. A Missouri-licensed lawyer applied for admission to the bar of another state. The application form of that state asked whether the lawyer had ever been the subject of any complaints or grievances in the State of Missouri, regardless

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of whether discipline had been imposed. The lawyer, in his answer to the application, failed to disclose complaint files that had been opened and to which he responded, but in which no violation had been found.

The lawyer received an admonition for violation of Rule 4-8.4(d) by engaging in conduct prejudicial to the administration of justice. The lawyer either negligently or intentionally misled the admission authority in another state.

16. The lawyer served as a municipal prosecutor for a small Missouri community while being of counsel to a firm employing the municipal judge.

The municipal prosecutor received an admonition for violation of Rule 4-1.7. The prosecutor had a conflict of interest by having a relationship with the same firm as the municipal judge before whom the prosecutor appeared.

CONCLUSION

An admonition is the least severe sanction in the disciplinary system. It does not restrict a lawyer's license to practice law. An admonition does establish a disciplinary

history and is available to the public. It also should be viewed as instructive to the lawyer and a warning that the lawyer needs to more carefully practice in the future.

ENDNOTES

1 Prior to July 1, 2012, admonitions were only available to the public for a period of three years from the date of acceptance, with some limited exceptions. (Former Missouri Supreme Court Rule 5.31(d)). As part of a general revision to Rule 5.31 (effective July 1, 2012), admonitions from that date forward always will be matters of public record.

2 All admonition summaries are from cases more than three years old; all the admonitions now are private under former Rule 5.31(d), and thus the admonitions summarized no longer are available to the public.

3 Reprimand with requirements and stand-alone probation without a stayed suspension are new sanction options as of January 1, 2013. See Rule 5.225.



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