

Admonitions: Examples of Minor Misconduct

By Carl Schaeperkoetter

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. 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

An admonition is the only sanction that may be issued by an entity other than the Supreme Court of Missouri.² 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. For present purposes, the important thing to remember is that admonitions are for minor rule violations that do not invoke formal discipline by the Supreme Court.

EXAMPLES

The admonition summaries listed below are provided to give lawyers guidance and avoid the sorts of problems that result in minor disciplinary actions.

The lawyer represented a client in a medical malpractice case. The lawyer advised the client that the lawyer would no longer continue representation. This notice of non-representation to the client was given one month before the expiration of the statute of limitations.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by neglecting a legal matter entrusted to the lawyer until shortly before the expiration of the statute of limitations. (The lawyer also could have been cited for violating Rule 4-1.16(b)(1), which states “a lawyer may withdraw from representing a client if withdrawal can be accomplished without materially adverse effect on the interests of the client.”)

The lawyer represented a decedent’s estate. Checks were prepared and signed by the personal representative to be distributed to the heirs. The lawyer placed the signed checks in the file and did not mail the checks to the heirs until more than seven months later.

The lawyer received an admonition for violation of Rule 4-1.15(d), which states that upon receiving funds or other property in which a third party has an interest, the lawyer shall promptly deliver to the third party any funds to which that third party is entitled.

The lawyer was hired by a debtor in a bankruptcy matter. The debtor paid all fees and costs in advance, and completed credit counseling in January. The lawyer never filed the bankruptcy petition and was discharged by the debtor in July. The lawyer eventually returned all advance fees and costs, but not until a disciplinary complaint had been filed.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by failing to file the bankruptcy petition despite having a reasonable time to do so. The lawyer also failed to refund unearned fees in a timely manner, a violation of Rule 4-1.16(d), which states that all client property to which a client is entitled should be refunded at the termination of representation.

The lawyer was suspended for failure to comply with the tax requirements of Rule 5.245. Despite the tax suspension, the lawyer continued to practice law in Missouri courts for several months. Eventually the lawyer corrected the tax deficiencies with the Missouri Department of Revenue and applied for reinstatement.

The lawyer was reinstated, but only after accepting an admonition for violation of Rule 4-5.5 by engaging in the unauthorized practice of law while suspended.

The lawyer previously had received an admonition for violating Missouri Rule 4-1.15 on safekeeping property by having an overdraft on a client trust account. As part of that previous admonition, the lawyer was directed to attend a continuing legal education course on trust accounting. The lawyer never attended any such trust accounting course and later the disciplinary office received a second trust account overdraft notification. The second overdraft was because of a mistaken deposit to the lawyer’s office account instead of the client trust account.

The lawyer received a second admonition for violation of Rule 4-1.15 on safekeeping property. The lawyer had

not demonstrated any effort to educate himself on trust account practices and the second overdraft, even if because of a clerical error, was sufficient to warrant a second admonition.

The lawyer, while representing a client in a civil matter, issued a subpoena requesting bank records from a non-party. The lawyer had not provided timely notice to the opposing party of the request for records and the subpoena had not been issued in conjunction with the deposition of a bank official. The bank sent the records to the lawyer's office.

The lawyer received an admonition for violation of Rule 4-8.4(d) on conduct prejudicial to administration of justice by not properly notifying the opposing party of the bank records subpoena.

The lawyer referred two personal injury cases to lawyers in other firms pursuant to verbal agreements among the lawyer, his clients and the other lawyers. There was no written agreement with the lawyer and his clients to permit the referrals.

The lawyer received an admonition for violation of Rule 4-1.5(c), which states that a division of a fee between lawyers who are not of the same firm may be made only if (1) the division is proportional to the services performed or each lawyer assumes joint responsibility for the representation; (2) the client agrees to the association and the agreement is confirmed in writing; and (3) the total fee is reasonable. In this case there was no written agreement wherein the lawyer assumed joint responsibility and where the clients agreed in writing to the fee splitting arrangement.

The lawyer entered into a written fee agreement with a client to represent the client on a wide range of matters, including wrongful termination, discrimination, and workers' compensation. While the lawyer represented the client in a workers' compensation case, the other causes of action were never pursued. Finally, the client discharged the lawyer in the workers' compensation case five years later and asked for the return of the client file. The lawyer took several months to send the file to the client's new counsel.

The lawyer received an admonition for violation of Rule 4-1.3 on reasonable diligence by failing to pursue the client's claims for wrongful termination and discrimination despite the written contract calling for the lawyer to do so. The lawyer also received an admonition for violation of Rule 4-1.16(d), which states that upon termination of

representation all client property is to be returned to the client in a reasonable time.

The lawyer was the prosecuting attorney for a Missouri county. While the lawyer was prosecutor for that county, he attempted to represent a client/friend facing misdemeanor assault charges in another county.

The lawyer received an admonition for violation of Rule 4-1.7(a) on conflicts of interest. The prosecutor, as a representative of the State of Missouri, had a direct adverse conflict that barred the prosecutor from representing criminal defense clients anywhere within the state.

The lawyer represented a client in a dissolution case. There were errors in the dissolution decree and the lawyer filed a motion to amend nunc pro tunc. The lawyer did not call up the motion for hearing until six months after filing. After the hearing, the judge directed the lawyer to prepare an amended judgment. That amended judgment was not presented to the court for another four months.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence. The delay between filing the motion and the ultimate court disposition was not reasonably diligent action.

The lawyer was suspended in March for failure to comply with the continuing legal education requirements of Missouri Supreme Court Rule 15. Despite the suspension, the lawyer practiced law for several months thereafter.

The lawyer received an admonition for violation of Rule 4-5.5(c), which states a lawyer shall not practice law in Missouri if failing to comply with Rule 15.

The lawyer met with a husband in the lawyer's office regarding a possible divorce. The husband disclosed several pieces of information about his business affairs but did not hire the lawyer. Later, the lawyer was hired and represented the wife in the dissolution. The lawyer disclosed to the wife several pieces of information the lawyer had learned from the husband.

The lawyer received an admonition for violation of Rule 4-1.18 (the Rule governing behavior regarding prospective clients). Rule 4-1.18(c) states that a lawyer shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be harmful to that person. The lawyer in this case had not obtained any waiver to represent the wife and the prospective client husband had shared confidential information with the lawyer. The lawyer should never have represented the wife in the case.

The lawyer was the prosecuting attorney for a Missouri county. A grand jury was called into session. The lawyer as prosecutor provided an oath to the grand jurors that did not contain the confidentiality promise required at the time a grand jury is to be convened.

The lawyer received an admonition for violation of Rule 4-1.1 on competence because of the lawyer's failure as prosecutor to provide the most basic of necessary information to a grand jury.

The lawyer ran for a judicial position. While the lawyer had been a judge in the past, the lawyer was not a sitting judge at the time of the applicable election. The lawyer filed a statement of committee organization with the Missouri Ethics Commission identifying the name of the committee as "Re-elect Judge"

Because the lawyer was not a currently serving as elected judge, the lawyer received an admonition for violation of Rule 4-8.2(b) of Supreme Court Rule 4 and Canon 4, Rule 2-4.2(A)(5) of the Code of Judicial Conduct. Rule 4-8.2(a) states a lawyer shall not make a statement with reckless disregard as to its truth or falsity concerning the qualifications of a candidate for election. Canon 4, Rule 2-4.2(A)(5) states a candidate shall not make a misleading statement regarding the candidate's qualifications, present position, or other fact.

The lawyer represented a claimant in a workers' compensation case. The lawyer communicated with the workers' compensation judge about a substantive matter in the case without opposing counsel's presence or consent.

The lawyer received an admonition for violation of Rule 4-3.5(b), which states a lawyer shall not communicate ex parte with a judge during a pending legal proceeding.

The lawyer was hired by several prospective shareholders to set up a corporation. The lawyer prepared all the appropriate documentation for incorporation. A dispute later arose among several of the shareholders. The lawyer agreed to represent one of the shareholders against the others in the corporate dispute.

The lawyer received an admonition for violation of Rule 4-1.9 by having a conflict of interest from past representation. Rule 4-1.9(a) states that a lawyer who has formerly represented a client shall not thereafter represent another person in the same or substantially related matter. Rule 4-1.9(c) states that a lawyer who has formerly represented a client may not use information related to the representation to the disadvantage of the former client. The lawyer in this case had not obtained consent from any of

the other shareholders before attempting to represent an opposing shareholder in a corporate dispute.

The lawyer was the county prosecuting attorney at the time a criminal defendant pled guilty to a felony offense and was placed on probation. After the prosecutor left office, a motion to revoke probation was filed against the criminal defendant. The former prosecutor entered an appearance and represented the defendant at the probation violation hearing.

The lawyer received an admonition for violation of Rule 4-1.9. The former role as prosecuting attorney meant the lawyer had a direct conflict in representing someone against the State of Missouri in the same case. In addition, confidential information obtained as a prosecutor could have been used against the State of Missouri at the time of the probation violation hearing.

A former client made a complaint against the lawyer. The regional disciplinary committee sent three different letters to the lawyer demanding a response to the complaint. The lawyer never provided any response.

The lawyer received an admonition for violation of Rule 4-8.1(c) by failing to respond to a request for information from a disciplinary agency. This admonition was imposed even though the regional disciplinary committee ultimately found the lawyer had not committed a rule violation on the underlying complaint.

The lawyer was charged and convicted of the crime of third degree misdemeanor assault of a police officer after an altercation late one night when the police officer was dispatched in response to a call from a private residence. The lawyer struck the officer at the residence. The lawyer's actions at that time were in a private capacity and in no way could be construed as involving the practice of law.

The lawyer received an admonition for violation of Rule 4-8.4(b), which states that it is professional misconduct for a lawyer to engage in any criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

The lawyer had taken inactive status several years prior and, thus, was not a licensed Missouri attorney. Despite that, the inactive lawyer on his business website identified himself as a licensed lawyer in the State of Missouri.

The inactive lawyer received an admonition for violation of Rule 4-5.5(b), which states that one may not hold oneself out as a licensed attorney in this state when that is not the case.

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 Various sections of Missouri Supreme Court Rule 5 permit an admonition, a reprimand (with or without requirements), probation (with or without a stayed suspension), or an actual suspension or disbarment, depending on lawyer misconduct.



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