

## **Admonitions**

### **Consider Some Examples**

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Not surprisingly the lowest form of sanction in the disciplinary process is also the most common sanction in the disciplinary process. The admonition.<sup>1</sup> Like other sanctions authorized by Missouri Supreme Court Rule 5, an admonition is part of a lawyer's record and is available to the public.<sup>2</sup>

The Office of Chief Disciplinary Counsel, a Regional Disciplinary Committee and a Disciplinary Hearing Panel may issue an admonition.

The Office of Chief Disciplinary Counsel or a Regional Disciplinary Committee may issue an admonition to a lawyer if, after the completion of an investigation, it is determined there is probable cause to believe a lawyer has committed professional misconduct and the misconduct is of such a nature that further proceedings are not warranted.<sup>3</sup> If the Office of Chief Disciplinary Counsel or a Regional Disciplinary Committee believes the issuance of an admonition is not appropriate, an Information may be filed.<sup>4</sup> A Disciplinary Hearing Panel assigned to hear an Information may, after a hearing, find that the Information should be dismissed, a written admonition should be issued, or that further proceedings are warranted.<sup>5</sup>

## **Consider**

The following admonition summaries are intended to provide guidance to lawyers to avoid conduct that could result in the issuance of an admonition.

1. During the representation of a client, the lawyer loaned the client money so that the client would not feel forced to accept a settlement offer.

The lawyer received an admonition for violation of Rule 4-1.8(e) which prohibits a lawyer from providing financial assistance to a client in regard to pending or contemplated litigation. Although the Rule allows for financial assistance in certain circumstances none were relevant to the lawyer's conduct.

2. The lawyer's client made statements in a deposition that the lawyer believed made it unlikely the client would prevail in the case and subjected the client to other claims. The lawyer informed the client that the lawyer was not going to pursue the client's claim. The client requested the lawyer to continue representing the client. The lawyer did not withdraw from the case. The lawyer failed to appear at a hearing and the case was dismissed.

The lawyer received an admonition for violation of Rule 4-1.2 on scope of representation which provides a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. The lawyer also received an admonition for violation of Rule 4-1.3 on diligence.

3. While representing a client in a pending case the lawyer, knowing the opposing party was represented by counsel in the matter, spoke with the opposing party about the subject of the representation. The lawyer also sent a “friend” request on Facebook to the opposing party. Both of the communications were made without obtaining consent from opposing counsel.

The lawyer received an admonition for violation of Rule 4-4.2 which states a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the other lawyer has given consent or is authorized to do so by law or a court order.

4. The client terminated the services of the lawyer. The lawyer informed the client that the client would have to pay \$100.00 for copying expense before the lawyer would return the client file.

The lawyer received an admonition for violation of Rule 4-1.16. Rule 4-1.16(d) provides that upon termination of representation, a lawyer must take steps to protect a client’s interests, including surrendering papers and property to which the client is entitled.

Note: Missouri Advisory Committee Formal Opinion 115, as amended, addresses this issue. The Opinion provides that if a lawyer wants to keep a copy of the file the lawyer must bear the costs of copying the file. A lawyer may retain those items contained in the file that the lawyer has borne out of pocket expenses

until reimbursement for the out of pocket expenses is made. Upon reimbursement the items must immediately be provided to the client.

5. The lawyer represented a client at a time the lawyer was tax suspended in the state of Missouri.

The lawyer received an admonition for violation of Rule 4-5.5 for engaging in the unauthorized practice of law. A lawyer who is not admitted to practice in the state of Missouri cannot hold out to the public or otherwise represent that the lawyer is admitted to practice law in the state of Missouri. Pursuant to Rule 5.245 a lawyer who is delinquent on a tax or has failed to file a tax return is subject to automatic suspension unless the matter is satisfactorily resolved within the time limit provided by the Rule.

6. The lawyer represented a client on a guardianship and conservatorship matter.

When it became necessary to terminate the guardianship and conservatorship the lawyer failed to act in a timely manner to collect information and file the final settlement required for the termination. The lawyer also failed to reasonably communicate with the client regarding the termination.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence and Rule 4-1.4 on communication.

7. The lawyer represented a client in a personal injury case and dismissed the case without prejudice without the client's knowledge or consent.

The lawyer received an admonition for violation of Rule 4-1.4 on communication and Rule 4-1.2 (a) on scope of representation.

8. The lawyer was retained to represent a client on a dissolution for a flat fee, which was paid. The client did not sign any pleadings and the lawyer did not file any pleadings. The parties reconciled less than two months after the lawyer was retained. Although the client requested a refund, no refund was provided.

The lawyer received an admonition for Rule 4-15(a) for collecting an unreasonable fee and for violation of Rule 4-1.16(d) for failure to provide a refund to the client.

9. The lawyer submitted a proposed judgment to a judge during the time the lawyer's law license was suspended for non-compliance with the continuing legal education requirements of Missouri Supreme Court Rule 15.

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

10. The lawyer filed a motion in a domestic relations case. The motion included language that the client had read and understood the motion and that the client "has executed the same..." Although the client may have been present and authorized an individual to sign the client's name, the client did not sign the motion.

The lawyer received an admonition for violation of Rule 3.3(a)(1) which states a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made by the lawyer to the tribunal.

11. The lawyer moved out of his office and abandoned client files in the office. The lawyer was contacted by the Office of Chief Disciplinary Counsel and directed to make arrangements with the landlord to pick up the client files. Due to the lawyer's failure to do so the Office of Chief Disciplinary Counsel took possession of the files.

The lawyer received an admonition for violation of Rule 4-1.6 and Rule 4-8.1(c). Rule 4-1.6(c) requires a lawyer to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information related to the representation of a client. Rule 4-8.1(c) states that a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

12. An individual met with the lawyer and discussed a civil matter. The individual retained counsel, not the lawyer, for representation in a lawsuit. Without permission from the individual, the lawyer provided some information discussed with the individual to a title company.

The lawyer received an admonition for violation of Rule 4-1.18(b). This Rule prohibits a lawyer from using or revealing information learned in a

discussion with a perspective client, even when no client-lawyer relationship occurs. The Rule does provide an exception pursuant to Rule 4-1.9 (duties to former clients) with respect to information of a former client.

13. The lawyer provided legal services in a dissolution. The Marital Settlement Agreement included language that the lawyer represented only the wife. The lawyer had previously provided legal services to the husband regarding businesses in which the husband had an interest and the lawyer also assisted the husband, at or near the time of the dissolution, regarding a business owned by the husband. The parties signed an agreement which provided, in part, that the husband released and discharged the lawyer from any bar complaint the husband might have against the lawyer.

The lawyer received an admonition for violation of Rule 4-1.7 which prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest and Rule 4-8.4(d) which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Missouri Advisory Committee Formal Opinion 122 prohibits a lawyer from entering into, or attempting to enter into, a settlement that includes a term that a party to the agreement will withdraw or refrain from filing a complaint under Missouri Supreme Court Rule 5.

14. The lawyer's client advised the lawyer that the client did not want to proceed with the separation and property settlement agreement. Before a scheduled hearing the lawyer sent correspondence which included confidential information to opposing counsel to present to the court. After judgment was entered the lawyer did not send a copy of the judgment to the client.

The lawyer received an admonition for violation of Rule 4-1.4 on communication and Rule 4-1.6 on confidentiality of information. Rule 4-1.6 requires a lawyer not to disclose information related to the representation of a client. Under certain circumstances, including a client's informed consent, a lawyer may disclose information related to the representation.

15. The lawyer was hired by a law firm. The lawyer completed an application for employment and a second form. Both forms asked if the lawyer had been refused admission to practice, disbarred, suspended or formally reprimanded, or been subject to any disciplinary inquiry, complaint or proceeding for any reason except for non-payment of dues. The lawyer responded no on both forms. The Office of Chief Disciplinary Counsel records showed the lawyer had previously received an admonition.

The lawyer received an admonition for violation of Rule 4-84(c) which states that is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.



## **Conclusion**

A lawyer's conduct that violates the Rules of Professional Conduct can result in the issuance of an admonition. Although an admonition is the lowest form of sanction in the disciplinary process lawyers should consider that upon acceptance an admonition will become part of a lawyer's record. The issuance of an admonition may also assist in evaluating the lawyer's future conduct and compliance with the Rules of Professional Conduct.

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<sup>1</sup> Various subsections of Supreme Court Rule 5 authorize an admonition, a reprimand, probation, suspension (stayed or actual) and disbarment.

<sup>2</sup> Effective July 1, 2012 an admonition becomes a public record upon its acceptance. Supreme Court Rule 5.31(b)(3) Prior to July 1, 2012 admonitions, subject to some restrictions, were available to the public for only three years from the date of acceptance.

<sup>3</sup> Supreme Court Rule 5.11(b).

<sup>4</sup> Supreme Court Rule 5.11(a).

<sup>5</sup> Supreme Court Rule 5.16(a)