

ADMONITIONS: EXAMPLES OF MINOR MISCONDUCT

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INTRODUCTION

An admonition is the lowest 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 public¹.

An admonition is the only sanction that may be issued by an entity other than the Missouri Supreme Court². 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.

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), an actual suspension or disbarment, depending on lawyer misconduct.

EXAMPLES

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

1. The lawyer represented a client, a Medicaid provider. In the course of representation the lawyer successfully defended the client when charged with Medicaid fraud. However, the client was notified by the State of Missouri that the client's status as a Medicaid provider was terminated. Attorney agreed to represent the client in appealing that decision but failed to do so in a timely manner.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by failing to timely file the appeal. The lawyer also was cited for violation of Rule 4-1.4 on communication by failing to advise the client of the appeal's dismissal.

2. In campaigning for a judgeship, the lawyer (who formerly had been a judge) stated in campaign materials that the lawyer as a judge "had never been reversed on a disposition in a criminal case." That statement was not true.

The lawyer received an admonition for violation of Rule 4-8.2(b), which states a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct. Canon 4, Rule 2-4.2(A)(5) of the Judicial Code says a candidate for judicial office shall not knowingly or with reckless disregard for the truth make a false or misleading statement regarding the candidate's qualifications.

3. The lawyer represented a client in a dissolution in which the opposing party was represented by counsel. The lawyer entered a business where the opposing party in the dissolution was employed and spoke with the opposing party about the dissolution.

The lawyer received an admonition for violation of Rule 4-4.2, which says a lawyer shall not communicate about the subject of a representation with a person a lawyer knows to be represented by another lawyer in the matter, unless the other lawyer has given consent.

4. Before licensure the lawyer on a Bar admission application failed to disclose a university sanction for plagiarism in an undergraduate course. On the same bar admission application the lawyer failed to provide correct information about an

arrest. These matters were not discovered until after the lawyer was admitted and The Board of Law Examiners no longer had jurisdiction.

The lawyer received an admonition for violation of Rule 4-8.1(a) by knowingly making a false statement to an admissions authority. The lawyer had practiced a number of years without discipline, a mitigating factor in sanction analysis.

5. The lawyer was hired by a client to do some transactional work. Shortly thereafter the lawyer was diagnosed with an illness involving surgery and significant rehabilitation. The lawyer made no arrangement for completing the client work or arranging for assistance from other lawyers either in or out of the lawyer's office to complete the client's work.

The lawyer received an admonition for violation of Rules 4-1.3 on diligence and 4-1.4 on communication. Illness alone did not excuse the lawyer from making appropriate arrangements for the client's work to be done in a timely fashion.

6. The lawyer, while a private citizen and not in a representative capacity, interfered with the arrest of another individual by police officers by physically attempting to restrain the officers. The lawyer was criminally charged and pled guilty to the class A misdemeanor of interfering with an arrest.

The lawyer received an admonition for violation of Rule 4-8.4(b), which states, in part, that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's fitness.

7. While attending a deposition at another lawyer's office the lawyer in question noticed credit cards in plain view on a table. The lawyer took possession of those cards and concealed them on the lawyer's person. The lawyer only returned the cards when confronted by the other lawyer after the deposition. No criminal charges were brought. The lawyer claimed that taking the credit cards was only a practical joke.

The lawyer received an admonition for violation of Rule 4-8.4(c) for engaging in conduct involving dishonesty, deceit or misrepresentation. A so-called "practical joke" on another attorney at a deposition was entirely inappropriate under the circumstances.

8. The lawyer was hired by clients to prepare a Chapter 13 bankruptcy with the specific purpose of preventing a foreclosure on the clients' home. The lawyer failed to prepare and file the Chapter 13 bankruptcy in a timely fashion, resulting in the home foreclosure.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by failing to take timely action regarding the main purpose of the bankruptcy.

9. The lawyer represented a client in a dissolution. The client decided to terminate the lawyer's services and hire new counsel. At the time of termination the lawyer held several hundred dollars in advance fee payments in the lawyer's trust account. The lawyer failed to return those unearned fees to the client for more than four months and only after being contacted by disciplinary counsel.

The lawyer received an admonition for violation of Rule 4-1.16(d), which requires a lawyer to return all unearned fees to a client within a reasonable time after termination of representation. In this case four months was entirely too

long and it should not have been necessary for disciplinary counsel to get involved.

10. The lawyer represented a client in a paternity action. A Guardian ad litem was appointed to represent the minor child. Subsequent to the appointment of the GAL, the lawyer met with the minor child, who made a statement to the lawyer without the GAL being present or the GAL giving consent to the meeting.

The lawyer received an admonition for violation of Rule 4-4.2, which states the lawyer cannot communicate with a person represented by counsel unless the other counsel has given consent.

11. The lawyer issued a subpoena for the custodian of records at a medical center to appear at court and bring medical records of the opposing party. Rather than appearing in court, the custodian of records provided the lawyer a business affidavit and the medical records. The opposing party had not given the lawyer consent to obtain the records and was not given notice of the subpoena.

The lawyer received an admonition for violation of Rule 4-8.4(d), conduct prejudicial to the administration of justice. There is an appropriate

procedure to obtain medical records from an opposing party. The lawyer did not adhere to it in multiple ways.

12. The lawyer agreed to file a pleading on behalf of clients in a civil matter. The lawyer further agreed with the clients that the lawyer would not represent them thereafter. However, the lawyer did not give notice to the court that the lawyer was no longer representing the clients, nor did the lawyer file a motion to withdraw. The lawyer received notices and motions filed by the opposing party and did not contact the clients about them. Included in the information not communicated to the clients was a motion for default judgment and notice of hearing on that motion.

The lawyer received an admonition for violation of Rules 4-1.16(d) and 4-1.4. The lawyer failed to take appropriate action to protect the clients' interests upon termination of representation [4-1.16(d)] and failed to communicate to the clients about the court notices [4-1.4].

13. The lawyer represented the client in a legal malpractice case. The lawyer did not enter into a contingent fee agreement. Instead the lawyer and the client entered into a joint venture, with any proceeds from the lawsuit to be deposited

into a charitable trust, and the lawyer and client each to draw an annual salary for managing the charity.

The lawyer received an admonition for violation of Rule 4-1.8(i) because the joint venture resulted in the lawyer taking a proprietary interest in the malpractice case. The only proprietary interests a lawyer may acquire in the course of litigation are (1) acquiring a lien authorized by law to secure the lawyer's fees or expenses; or (2) contracting with the client for a reasonable contingent fee in a civil case.

14. The lawyer represented the wife in a dissolution. The husband was represented by opposing counsel. The husband attended a meeting with the lawyer and the wife without the husband's counsel being present. Issues concerning the dissolution were discussed.

The lawyer received an admonition for violation of Rule 4-4.2 by communicating with an opposing party represented by counsel.

15. The lawyer represented the relative of a child who was under the jurisdiction of the Juvenile Court and the physical and legal custody of the Division of Family

Services. The lawyer's client asked the lawyer if the child could be taken out of state. The lawyer attempted unsuccessfully to contact the lawyer for the Juvenile Office and the caseworker from the Division of Family Services. Even though unable to contact them, the lawyer then advised the client that the child could be taken from the state. Later the lawyer was able to notify the attorney for the Division of Family Services that the child had been taken out of Missouri. At no time was the whereabouts of the child unknown and the Juvenile Court/Division of Family Services did not object to the out of state visit.

The lawyer received an admonition for violation of Rule 4-1.3 on diligence by advising the client to take the child without previously communicating with either the Juvenile Court or the Division of Family Services. The lawyer also could have been cited for violation of Rule 4-8.4(d) on conduct prejudicial to the administration of justice by thwarting the legal system. More significant action was not taken because the Juvenile Court and Division of Family Services ultimately were not opposed to the action taken.

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.