

Admonitions: Examples of common violations

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As you work to even better serve your clients and communities, it can be easy to forget to regularly review Rule 4 to ensure you are complying with the Rules of Professional Conduct.

There are numerous actions, and in some cases inactions, which violate the Rules of Professional Conduct and can lead to an admonition. This article will hopefully remind you of, and encourage you to review, the Rules of Professional Conduct so you may avoid complaints that may result in an admonition.

Receiving an admonition

The Office of the Chief Disciplinary Counsel is authorized to investigate – with or without complaint – allegations of professional misconduct.¹

If the investigation leads to a determination that there is sufficient probable cause to believe the lawyer is guilty of professional misconduct, Rule 5.12 provides that the matter may be resolved by the administration of an admonition or the filing of an information. An admonition is appropriate if the misconduct is of such a nature that further proceedings are not warranted.

Rule 4-1.3: Diligence and Rule 4-1.4: Communication

Rule 4-1.3 requires a lawyer to act with commitment and dedication in representing a client. The lawyer should manage their workload and not procrastinate so they can competently and promptly handle client matters to avoid adversely affecting a client's legal position.

Rule 4-1.4 requires a lawyer to keep clients reasonably informed, promptly comply with clients' requests for information, inform clients about limitations to assistance that are not permitted by law or Rules of Professional Conduct, and adequately explain matters to clients so they may make informed decisions regarding representation.

Consider these real-life examples of admonitions:

- A lawyer was retained in July 2022 for a traffic matter. The lawyer e-filed the Entry of Appearance in July 2022 but failed to confirm its acceptance by the court. It was not until the client contacted the lawyer in early February 2023 about the client's suspended

license that the lawyer learned the Entry of Appearance was never accepted. The lawyer further failed to advise the client of the proper steps necessary to accept a recommendation.

- A lawyer agreed to perform an investigation into a potential client's medical malpractice case. The lawyer failed to keep the potential client informed of the status of the matter, and the lawyer did not inform the potential client of the investigation results. The lawyer further failed to respond to the potential client's calls. It was determined that although the lawyer did not enter into an employment agreement with the client, the lawyer's actions were in violation of Rule 4-1.1 (Competence), 4-1.3, and 4-1.4.

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Rule 4-1.15: Trust accounts and property of others

The rules regarding lawyer trust accounts and requirements to safely keep the property of others are quite detailed. Consider these real-life examples of violation of Rule 4-1.15:

- A review of a client complaint and records provided to OCDC revealed the lawyer's "Retainer Agreement" used the terms "non-refundable" and "earned in full upon its payment" when referring to an advanced fee payment made by the client. Rule 4-1.15(c) requires a lawyer to deposit advanced fees and expenses into the client trust account and withdraw them as they are earned. Rule 4-1.15(a) prohibits a lawyer from making an agreement for, charging, or collecting an unreasonable fee.
- An investigation revealed a lawyer commingled client funds in the client trust account by transferring funds from other business or personal accounts into the client trust account. The lawyer also did not delay the disbursement of client funds from the client trust account until a reasonable period of time had passed for the funds to be collected by the financial institution and the deposited funds became "good funds."

Rule 4-5.3: Responsibilities regarding nonlawyer assistants

Lawyers with managerial authority within a law firm must make reasonable efforts to ensure the firm has measures in effect that ensure nonlawyers working in the firm and nonlawyers working on firm matters outside the firm comply with the lawyer's ethical obligations. A lawyer must give such assistants appropriate instruction and supervision, and the lawyer should be responsible for the nonlawyers' work product.

In one admonishment, the lawyer allowed nonlawyers under the lawyer's supervision to engage in the unauthorized practice of law by handling all communication with a client and negotiating a potential settlement on behalf of the client.

Rule 4-3.3: Candor toward the tribunal

A lawyer shall not knowingly:

(1) 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 to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.²

Consider these admonitions that resulted from Rule 4-3.3 violations:

- A lawyer represented a client in several legal matters, including an adult order of protection matter and a child order of protection matter. These matters were filed on Jan. 4, 2023, by the client's wife. Nine days later, the lawyer filed a "Petition for Dissolution of Marriage" on behalf of the client against the client's wife. The petition filed by the lawyer stated in relevant part: "Petitioner knows of no proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings related to domestic violence, protective orders, termination of parental rights and adoptions." The lawyer admitted that this statement in the petition was made with knowledge of the two pending protective order actions and was a false statement to the court.
- A lawyer filed a Petition and Application Requesting Withdrawal of Candidacy and Removal from the Ballot on behalf of a candidate for a board of aldermen seat. The lawyer appeared before the court two days later on behalf of the candidate and obtained a consent order and judgment removing the candidate from the ballot. The lawyer represented to the court that an attorney-client relationship existed between the lawyer and the candidate. However, at no time did the candidate retain the lawyer or consent to the lawyer representing him in the legal proceeding. The lawyer was paid by the city for the legal services to the candidate.

Rule 4-8.2: Judicial and legal officials

"A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer, or public legal officer, or of a candidate for election or appointment

to judicial or legal office."³


In one example, during the lawyer's legal representation of a client in a domestic matter, the lawyer posted a link on their social media to a website that promoted the lawyer's support of a law regarding guardian ad litem liability and child custody and visitation disputes. The link contained the lawyer's name and contact information at the bottom. Within that website were posts that impugned the integrity of the opposing counsel and the judge associated with the representation in a grotesque fashion. The lawyer was admonished for violation of Rule 4-8.2 and Rule 4-8.4(d) (Misconduct) because allowing the lawyer's name to remain associated with the site, while a client's litigation was pending, was irresponsible, prejudiced the administration of justice, and recklessly called into question the integrity of the judge.

Rule 4-8.4: Misconduct

Rule 4-8.4 outlines numerous ways lawyers could perform professional misconduct, from violating or attempting to violate the Rules of Professional Conduct to engaging in dishonesty and harassment.

In one example, the lawyer repeatedly called, texted, and left voicemails on the lawyer's former girlfriend's phone. When she refused to respond, the lawyer went to her house at least twice, prompting her to call the police. In a text message, the lawyer threatened to embarrass her. A subsequent voicemail threatened to create problems for her at her job. The lawyer was admonished for violation of Rule 4-8.4(d) because the conduct was prejudicial to the administration of justice in that it negatively impacted the image and perception of lawyers, who are officers of the court.

Conclusion

Although an admonition is the least severe sanction in the disciplinary system, upon its acceptance, it is available to the public and becomes part of the lawyer's record. It establishes a disciplinary history and may also be used to assist in evaluating the lawyer's future conduct. Admonitions should be viewed as informative and as a warning to the lawyer that they should be more careful to ensure compliance with the Rules of Professional Conduct in the future. 

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Endnotes

- 1 Rule 5.07.
- 2 Rule 4-3.3.
- 3 Rule 4-8.2.