

When We Depart

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By the Numbers

August 1, 2022 – July 31, 2023

- Total submitted to DEC: 240*
 - DEC followed: 177 (82%)
 - DEC departure: 38 (18%)

*25 cases were withdrawn from DEC



By the Numbers

DEC Recommendation

- Public charges (10)

OLPR Disposition

- DNW (2)
- Admonition (8)



By the Numbers

DEC Recommendation

- Admonition (15)

OLPR Disposition

- DNW (11)
- Panel dismissal (1)
- Private probation (1)
- Transfer to disability (1)
- Suspension (1)



By the Numbers

DEC Recommendation

- DNW (13)

OLPR Disposition

- Admonition (10)
- Private probation (1)
- Suspension (1)
- Disbarment (1)



*In re Ratgen*¹

- May 2019: diligence & communication complaint
 - Client unaware that R received 7 checks and paid them to client's medical providers without client consent
 - DEC: DNW found no violation of 1.3 and 1.4(a)(4), MRPC, in handling of overall representation
 - DEC report does not address if client was notified that checks had been received (Rule 1.15(c)(1), MRPC)

¹ 989 N.W.2d 896 (Minn. 2023)



*In re Ratgen*¹

- August 2020: unreasonable fee complaint
 - \$4,000 settlement but just \$103 given to client
- Disbarred for:
 - False statements to Director,
 - Negligent misappropriation of funds,
 - Failing to maintain books and records, and
 - Federal conspiracy to commit healthcare fraud conviction.

¹ 989 N.W.2d 896 (Minn. 2023)



Public Discipline → DNW



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Rule 8.4(c), MRPC

- “It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”



Public Discipline → DNW

- Eviction proceeding
 - R represented landlord
- Tenants and landlord agreed on date to remove personal property
 - Twice tenants did not appear



Public Discipline → DNW

- R tells tenants that landlord will not reschedule until tenants sign a liability waiver for any damage done by landlord to tenants' property
- Tenants sign the waiver but felt coerced to do so



Public Discipline → DNW

- DEC: 8.4(c), MRPC, violated
 - R required the waiver to protect his client from litigation by the tenants
 - DEC found that R implied his client had the right to deny tenants access to their property until a release was signed
 - There is no such right



Public Discipline → DNW

- OLPR: 8.4(c) & (d), MRPC, NOT violated
 - Focus is not whether law allows the waiver but whether R's conduct in making the demand for a waiver was dishonest
 - R did not tell tenants that the law required them to sign a release



Public Reprimand → Admonition



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Rule 1.8(c), MRPC

- “A lawyer shall not prepare an instrument giving the lawyer . . . any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.”



Rule 1.8(k), MRPC

- “While lawyers are associated in a firm, a prohibition in the foregoing paragraphs [including (c)] that applies to any one of them shall apply to all of them.”



Public Reprimand → Admonition

- Probate matter
 - R becomes friends with client who he represented in probate of client's father's estate
 - Client tells R he wants to leave 25% of client's estate to R
 - R recommends another attorney draft the will to do so
 - R aware he could not draft a will to give himself a substantial gift
 - Worried client would die intestate and estate would go to family client specifically wished to disinherit



Public Reprimand → Admonition

- Probate matter
 - R has another attorney in his firm draft the will and R stays removed from it
 - R also named client's attorney-in-fact, health care agent, and estate's personal representative
 - Over next 9 years, R suggests client name another family member or charity as beneficiary



Public Reprimand → Admonition

- Probate matter
 - Client passes away and R probates the will, serving as attorney and PR of estate
 - Court finds R's roles as attorney, PR, and devisee to be problematic
 - At hearing, R orally disclaims his share of estate but does not file formal disclaimer



Public Reprimand → Admonition

- DEC: 1.8(c) & (k), MRPC, violated
 - R had another attorney in his firm draft a will that R himself would not have been permitted to draft
- Public reprimand basis
 - *In re Preuter*¹: attorney who prepares a will naming himself (and his spouse) beneficiaries warranted a public reprimand

¹ 359 N.W.2d 613 (Minn. 1984)



Public Reprimand → Admonition

- OLPR: 1.8(c) & (k), MRPC, violated
- Admonition basis
 - “Close call”
 - Admonitions issued for similar conduct where R promptly disclaim the gift and no harm resulted
 - Consultation with complainant



Admonition → DNW



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Rule 1.5(b)(1), MRPC

- “A lawyer may charge a flat fee for specified legal services . . . If agreed to in advance in a written fee agreement signed by the client, a flat fee shall be considered to be the lawyer’s property upon payment of the fee . . .”



Admonition → DNW

- Criminal case: R and def communicate before (and after) R is retained
 - Retainer agreement: \$10,000 fee
 - Unsigned by client
 - Overall, agreement did not comply with all requirements of Rule 1.5(b)(1), MRPC
 - R is paid \$1,500 (of the \$10,000) and deposits it in operating account



Admonition → DNW

- DEC: Rule 1.15(c)(5), MRPC, violated
 - Client did not sign the retainer agreement so \$1,500 could not be deposited into the operating account



Admonition → DNW

- OLPR: R's retainer agreement did not comply with 1.5(b)(1), MRPC, so all *unearned* funds must be deposited in trust...
- Ask: did R earn the \$1,500 when he received it?
 - 78 text messages and 10 phone calls
 - Discussed criminal history and information about the alleged offense
 - R provided initial advice based on potential outcomes, options, and timelines



Admonition → DNW



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Rule 4.2, MRPC

- “In representing a client, 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 lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”



Admonition → DNW

- Eviction proceeding
 - Landlord's atty filed cert of rep in November
 - Hearing set for December 28
 - Tenant retains an attorney
 - Few days before hearing, attorney unable to attend so another attorney (R) takes over
 - Tenant tells R there's an agreement



Admonition → DNW

- Eviction proceeding
 - 12/24: R texts landlord directly asking to confirm terms of agreement, no response
 - 12/26: R texts landlord again, no response
 - 12/27: R realizes landlord may have atty
 - Texts landlord again, gets a reply



Admonition → DNW

- DEC: Rule 4.2, MRPC, violated
 - Landlord had been represented entire time
 - R could've found the atty was but didn't try



Admonition → DNW

- OLPR: Rule 4.2, MRPC, NOT violated
 - Comment [8] to Rule 4.2, MRPC, specifies that it “only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation”
 - No indication that R had actual knowledge until 3rd text message



DNW → Admonition



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Rule 1.7(a)(1), MRPC

- Subject to some exceptions, “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest” which exists if “the representation of one client will be directly adverse to another client”



DNW → Admonition

- Real estate transaction
 - R represented client in purchase of real property from client's brother
 - R represented client's brother in sale of real property to client
 - Orally advises both of potential conflict



DNW → Admonition

- DEC: DNW
 - Clients' interests are directly adverse
 - R met 3 of 4 exceptions in 1.7(b), MRPC
 - Did not go 'extra step' to get informed consent, confirmed in writing



DNW → Admonition

- OLPR: 1.7(a)(1), MRPC, violated
 - Clients' interests are directly adverse
 - Informed consent, confirmed in writing is not an extra step
 - It is one of four requirements in Rule 1.7(b), MRPC



DNW → Admonition



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Rule 1.16(d), MRPC

- “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client [and] allowing time for employment of other counsel. . .”



DNW → Admonition

- Modification of custody
 - March 2021: R represents mom and stipulation is reached in Sept 2021
 - R does not withdraw and remains counsel of record
 - March 2022: Another dispute regarding parenting time so mom contacts R
 - Spoke regarding potential resolution



DNW → Admonition

- Modification of custody
 - Dad's attorney files a motion to be heard
 - Next day, R tells mom he will not represent her & files withdrawal



DNW → Admonition

- DEC: 1.16(d), MRPC, NOT violated
 - R was upfront that he did not have necessary time to prepare for the motion
 - R withdrew promptly upon receipt of dad's motion



DNW → Admonition

- OLPR: 1.16(d), MRPC, violated
 - R had represented mom for about 1 year
 - R took no action to protect mom's interests
 - Seeking an extension or continuance to allow the client sufficient time to obtain new counsel
 - Explain to mom her next steps to respond to dad's motion or obtain a continuance



Thank you



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