

When We Depart

Krista Barrie

Managing Attorney

**Office of Lawyers Professional
Responsibility**



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Background Information

The standard of proof required in attorney disciplinary proceedings is “full, clear, and convincing evidence.”

This standard is met when “the truth of the facts asserted is highly probable.”



Background Information

DEC options upon investigation:

- If determine there is a rule violation
 - Public charges
 - Admonition



Background Information

DEC options upon investigation:

- If no rule violation, discipline not warranted (DNW)
- Further investigation



By the Numbers – DEC Totals

August 1, 2023 – August 31, 2024

Total DEC recommendations: 282

199 – DNW (71%)

61 – Admonition (21%)

14 – Public charges (5%)

8 – Further Investigation (3%)



By the Numbers – Departures

August 1, 2023 – August 31, 2024

Of these 282 DEC recommendations:

DEC followed: 230 (82%)

DEC departure: 52 (18%)



Departure Rate

Departure rate remains low:

- 2023 – 18%
- 2022 – 18%
- 2021 – 15%
- 2020 – 20%
- 2019 – 19%



Public Charges

DEC Recommendation

- Public charges (14)

OLPR Disposition

- Public charges (4)
- Private probation (2)
- Admonition (6)
- DNW (2)



Admonitions

DEC Recommendation

- Admonition (61)

OLPR Disposition

- Admonition (40)
- Public charges (3)
- DNW (18)



DNWs

DEC Recommendation

- DNW (199)

OLPR Disposition

- DNW (178)
- Admonition (21)



Fact Patterns and Take Aways



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Public Discipline Departures

Departed from recommendations for public charges 10 out of 14 times

Of the 10 departures:

2 – private probation

6 – admonitions

2 – DNWs



Public Discipline → Admonition

An admonition is a form of private discipline that is issued for isolated and non-serious misconduct. Rule 8(d)(2), RLPR.



Public Discipline → Admonition

Example #1

Respondent used ChatGPT in a court filing

Respondent received two cases from ChatGPT and used them in his brief without checking them

These were not real cases



Public Discipline → Admonition

Example #1

DEC recommended charges based on candor to the court (Rule 3.3) and bringing non-meritorious claims (Rule 3.1)

DEC considered this to be a misrepresentation



Public Discipline → Admonition

Example #1

Rule 3.3, MRPC

1. knowingly make a false statement to a tribunal
2. knowingly fail to disclose controlling law
3. knowingly offer false evidence

Rule 3.1, MRPC – must have a basis for bringing an issue



Public Discipline → Admonition

Example #1

Admonition issued for violation of Rule 1.1,
MRPC

Competent representation includes keeping abreast of changes in law and its practices, “including the benefits and risks associated with relevant technology.” Comment [8] to Rule 1.1, MRPC



Public Discipline → Admonition

Example #1

Respondent failed to understand the limits of ChatGPT and address those limits when using it such as verifying the existence or accuracy of the information received by ChatGPT before including it in his brief.



Public Discipline → Admonition

Example #2

Complainant was a client who complained about respondent's billing practices

Respondent did not send any bills over several years

Respondent tried to collect fees using reconstructed records



Public Discipline → Admonition

Example #2

DEC recommended public charges based on Rule 1.5(b) – failing to explain fees



Public Discipline → Admonition

Example #2

Rule 1.5(b), MRPC: “The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation”



Public Discipline → Admonition

Example #2

OLPR issued Admonition for diligence and communication issues in violation of Rules 1.3 and 1.4, MRPC



Public Discipline → Admonition

Example #2

Rule 1.3, MRPC: Requires a lawyer to act with reasonable diligence and promptness in representing a client



Public Discipline → Admonition

Example #2

Rule 1.4(b), MRPC: Requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation



Admonition Departures

Departed from recommendations for admonitions 21 out of 61 times

Of the 21 departures:

3 – Charges

18 – DNWs



Admonition → Public Charges

Most common reasons for public charges in these circumstances:

Respondent has other cases

Respondent's disciplinary history



Admonition → DNW

Example

Respondent is an immigration attorney with a client in a removal case and an asylum case

During the DEC investigation, respondent said communication could have been better and felt bad about the client's situation

DEC recommended an admonition under Rule 1.4,
MRPC



Admonition → DNW

Rule 1.4(a), MRPC requires a lawyer, in part, to:

- promptly inform a client of any decision requiring informed consent
- reasonably consult with the client about the means used to accomplish the objectives of the representation
- keep the client reasonably informed about the status of the matter
- promptly comply with reasonable requests for information



Admonition → DNW

- Rule 1.4(b), MRPC, requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.



Admonition → DNW

- Email and other records were produced and showed that respondent had timely responded to requests for information and generally updated the client
- There were times where communication was not frequent but that was because there were no updates on the matter



DNW Departures

Departed from recommendations
for DNWs 21 out of 199 times:

21 – admonitions



DNW → Admonition

Example

Client retained respondent in a criminal matter in February 2022 – hourly rate with payments in advance

Respondent deposited funds into trust but did not withdraw them as earned

Client hired another attorney after 13 months



DNW → Admonition

Example

Respondent provided client a final accounting and partial refund upon termination in March 2023

Client notified respondent that there was still an amount in dispute

Respondent withdrew earned fees, including the disputed amount, from trust in April 2023 and did not take steps to resolve the dispute



DNW → Admonition

DEC recommended no discipline

Rule 1.15(b), MRPC – must withdraw earned fees “within a reasonable time after the fees have been earned”



DNW → Admonition

The OLPR issued an admonition and found that respondent violated Rule 1.15(b), MRPC by failing to promptly withdraw earned fees from trust within a reasonable time of being earned



DNW → Admonition

- Rule 1.15(b), MRPC also requires:
 - written notice of the withdrawal of earned fees and an accounting of the funds in trust
 - if the right of the lawyer to the funds is disputed then the disputed portion must be placed back in trust until the dispute is resolved



DNW → Admonition

The OLPR found that respondent also violated Rule 1.15(b), MRPC by:

- failing to timely provide written notice of the time, amount, and purpose of the withdrawal
- failing to return disputed funds to trust until the dispute was resolved



