If you need assistance in understanding your ethical obligations, please do not hesitate to call the Office of Lawyers Professional Responsibility.
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Lessons from recent private discipline

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Private discipline is issued when a lawyer has violated an ethics rule, but the conduct is "isolated and nonserious." Rule 8(d), Rules on Lawyers Professional Responsibility (RLPR), states: "In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition." Each year for decades, the Director has issued 80-120 admonitions. In 2025, 91 admonitions were issued. Most of these decisions are accepted by both complainants and respondents. In 2025, complainants appealed seven admonition determinations—all of which were affirmed. Respondent lawyers challenged four admonitions. One resulted in public discipline, one appeal was withdrawn, one admonition was affirmed, and one admonition was reversed. What lessons can be gleaned from a review of private discipline?

Lesson 1: Nonrefundable fees are still unethical

Every year lawyers are disciplined for failing to follow Rule 1.5, Minnesota Rules of Professional Conduct (MRPC), relating to fee agreements. For example, since 2011, it has been unethical in Minnesota to describe a fee as nonrefundable. Rule 1.5(b)(3), MRPC, states: "Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance payment as the lawyer's property subject to refund." The latter phrase applies to flat fees paid in advance of legal services being performed, not all advance payments made by clients. For the handling of those advance payments, please review Rule 1.15, MRPC.

Every year, we see lawyers include impermissible language in their fee agreement and they are always disciplined. Usually, it is more senior lawyers who perhaps remember a time when nonrefundable fees were not expressly prohibited, but last year we also saw newer lawyers receiving discipline for this violation. If you charge clients for your services and you have not recently reviewed Rule 1.5, MRPC, in its entirety (it is very different from the model rule), you are doing yourself a disservice.

Lesson 2: Ethics complaints are not leverage or bargaining tools

On our ethics hotline, we often provide advice to lawyers on whether they have a duty under Rule 8.3, MRPC, to report what they believe to be the ethical misconduct of other lawyers. We also discuss with lawyers how to handle this situation consistent with the ethics rules. Sometimes lawyers are disciplined because they try to use the threat of an ethics complaint as leverage. In 2025, a lawyer was disciplined under Rule 4.4(a), MRPC, for misconduct related to threatening to file an ethics complaint against opposing counsel for not providing information the lawyer wanted and believed opposing counsel should provide. Rule 4.4(a), MRPC, provides: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." In this matter, the lawyer threatened before others in unrelated proceedings on more than one occasion to file an ethics complaint against opposing counsel. Opposing counsel maintained the information sought was confidential under Rule 1.6(a), MRPC, and not something that could be disclosed. Instead of simply filing a complaint because he believed he had a basis to do so, or using available civil procedure remedies to obtain discoverable information, respondent argued that he had a substantial purpose in his actions, namely, leverage to attempt to compel disclosure. The Director disagreed.

Lawyers need to take care in these situations. Lawyers have been disciplined, usually under Rule 8.4(d), MRPC, for seeking to settle ethics complaints by asking former clients to withdraw an ethics complaint that has been filed in exchange for some resolution in a dispute between the lawyer and complainant. Lawyers have been disciplined for bargaining away criminal referrals in attempts to gain leverage in a civil proceeding. Lawyers are free to share their view that opposing counsel's conduct is inconsistent with the ethics rules. Lawyers are free to share their view that they have a duty to report or will be reporting opposing counsel for conduct they believe to be an ethics violation. Lawyers are free to state their

opinion that conduct may raise criminal as well as civil liability. But when you start bargaining about whether a complaint will be made, or taking coercive actions related to those claims, you run the risk of moving from permissible conduct to impermissible conduct.

Lesson 3: Discovery violations can lead to ethics violations

We are seeing more violations of Rule 3.4(d), MRPC. This rule provides that a lawyer shall not, "in pretrial procedures, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party." Both civil and criminal attorneys have been receiving discipline for violations of this rule, including, as one example, a county attorney who did not make reasonably diligent efforts to disclose the notes taken by a victim witness coordinator taken during meetings with witnesses. In that case, the attorney notes of the meetings were produced, but the witness coordinator's notes were not produced, and those notes were more detailed. I was a civil litigator for years and know that discovery is no fun. But Rule 3.4, MRPC, contains several subparts focused on "fairness to opposing party and counsel" that have implications for discovery, and can be violated even if sanctions (the typical penalty imposed for discovery violations) are not awarded by the courts.

Lesson 4: Understand your confidentiality obligations to former clients

Lawyers can be adverse to former clients' interests in unrelated matters under Rule 1.9(a), MRPC, without the former client's informed consent. But Rule 1.9(c), MRPC, can cause issues if lawyers fail to appreciate the breadth of their confidentiality obligation to that former client. Rule 1.9(c), MRPC, provides: "A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client, or when the information has become generally known; or (2) reveal information relating to the representation except as these rules would permit or require with respect to a client."

Lawyers sometimes mistakenly read this as focused on covering or limiting use of only secret or attorney-client privileged information. The rule is much broader, because your confidentiality obligation under Rule 1.6(a), MRPC, prohibits disclosure of "information relating to the representation of the client" unless it falls within an enumerated exception under Rule 1.6(b), MRPC. And the ABA has issued a formal opinion, which this office follows, regarding the "generally known" exception referenced in Rule 1.9(c)(1), MRPC. Specifically, ABA Formal Opinion 479, issued December 15, 2017, holds that the "generally known" exception to the duty of former-client confidentiality is limited. It applies (1) "only to the use, and not the disclosure or revelation, of former-client information; and (2) only if the information has become (a) widely recognized by members of the public in the relevant geographic area; or (b) widely recognized in the former client's industry, profession, or trade." The opinion specifically provides that "[i]nformation is not 'generally known' simply because it has been discussed in open court, or is available in court records, in libraries, or in other public repositories of information." Similarly, the exceptions in Rule 1.6(b), MRPC, do not include an exception for information that has been publicly disclosed in court or is available in court records.

In addition to limiting what can be used or revealed regarding former clients (a violation of which can lead to discipline under Rule 1.9(c)), your duty to your former client to keep information relating to the representation confidential can create a current conflict in an unrelated representation if your obligation to keep that confidence limits a current representation. Rule 1.7(a)(2), MRPC, defines a concurrent conflict of interest to include "a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer." The combination of these rules has led to discipline in several cases—including, in 2025, discipline for four public defenders for conflicted representation without informed consent and for disclosing confidential information relating to a prior representation.

Conclusion

Historically, approximately 20 percent of complaints result in discipline, and most of that discipline is private discipline. The Court also has under advisement a diversion rule, which would allow the office to resolve matters through a diversion program when there has been a rule violation, an option not currently available. Periodically reviewing the Rules of Professional Conduct is great advice to avoid rule violations. And remember, we are here to help you proactively. If you need assistance in understanding your ethical obligations, please do not hesitate to call our Office. Every day a lawyer is available free of charge to answer your ethics questions. We much prefer providing guidance in advance to disciplining lawyers later. ▲