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**Sent:** Monday, November 11, 2019 10:18 AM  
**To:** Nancy K. Mischel <nmischel@mnbars.org>; fredf006@earthlink.net  
**Subject:** RE: MSBA Rules of Professional Conduct Committee Meeting 11/26 at Noon

Re the MRPC 3.8 proposal, the Committee might be interested in the following, from my treatise and from two articles. Ms. Kutty's letter is not quite accurate in stating, "Unfortunately, there's very little to no legal recourse for a victim whose rights have been overlooked or violated." The issue would be better framed as including whether Rule 3.8 should be amended to codify past disciplines and more directly apprise prosecutors of disciplinary consequences regarding Ch. 611A non-compliance.

### **FROM MINNESOTA LEGAL ETHICS:**

#### **E. Notifying Victims**

*Minnesota Statutes Chapter 611A* includes several requirements for prosecutors to notify victims of certain rights and proceedings. In many county attorney offices, the notification responsibility has been delegated to a victim advocate, or some such person.

At least two prosecutors have received admonitions for violating *Minn. Stat. § 611A.03* (2010), and Rule 8.4(d) (conduct prejudicial to the administration of justice), by not providing such notices. Timothy M. Burke, *The Unique Responsibilities of Criminal Prosecutors*, Minn. Law., Oct. 6, 2008, at 5; Martin A. Cole, *Summary of Admonitions*, Bench & B. of Minn., Feb. 2012, at 12, 13.

**FROM THE COLE ARTICLE: Violation of Victim's Rights Statute.** Attorney acts as the city attorney and prosecutes certain crimes in the jurisdiction. Attorney charged an individual in a matter alleging a domestic assault. After speaking with the defendant's counsel, the attorney dismissed the complaint. Minn. Stat. ch. 611A requires that a prosecutor make reasonable efforts to notify a victim of domestic assault if the prosecutor has determined to decline prosecution or dismiss charges against a defendant. Attorney made no effort to contact the victim, thereby violating the statute and Rule 8.4(d), MRPC.

**FROM THE BURKE ARTICLE:** The prosecutor's conduct in failing either to make the court aware of the victim's objection to the plea agreement or to provide the victim with the opportunity to express his objections directly to the court violated Rule 8.4(d), which prohibits "conduct that is prejudicial to the administration of justice."