

FILE NO. C1-84-2140

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

FEB 12 1996

IN SUPREME COURT

FILED

In Re Amendment of the Rules on
Lawyers Professional Responsibility.

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD TO AMEND THE RULES ON
LAWYERS PROFESSIONAL
RESPONSIBILITY**

Petitioner, Lawyers Professional Responsibility Board (LPRB), respectfully petitions this Honorable Court to amend the Rules on Lawyers Professional Responsibility by: (1) increasing the costs imposed pursuant to Rule 24(a) from \$750 to \$900; and (2) adding a new Rule 30. In support of this petition, the LPRB would show the following:

1. Petitioner LPRB is a Board appointed by this Court to oversee the lawyer discipline system.
2. This Honorable Court has the exclusive and inherent power and duty to administer justice and to adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession. This power has been expressly recognized by the Legislature. *See* Minn. Stat. § 480.05 (1992).
3. This Honorable Court has adopted the Rules on Lawyers Professional Responsibility for the administration of the system for professional responsibility in Minnesota.

Rule 24: Costs and Disbursements

5. At its March 1995 meeting the LPRB, directed its Rules Committee to consider whether an increase in Rule 24, RLPR, costs was warranted. Rule 24 costs were last increased July 1, 1987, from \$500 to \$750.

6. Over the past nine years, collection of costs and disbursements pursuant to Rule 24 has constituted one to three percent of the budget of the Office of the Director of Lawyers Professional Responsibility.

7. At its September 1995 meeting the LPRB determined that an increase in Rule 24 costs was necessary and appropriate. The \$150 proposed increase represents a twenty percent increase which is the same percentage increase being requested for the discipline system through increased attorney registration fees. A petition for a \$20 increase in attorney registration fees is being filed simultaneously with this petition.

8. The LPRB respectfully recommends and requests this Court to amend Rule 24(a), Rules on Lawyers Professional Responsibility, as follows:

(a) Costs. Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding decided by this Court shall recover costs in the amount of ~~\$750.~~ \$900.

Rule 30: Administrative Suspension

9. In January 1995 the LPRB began considering the appropriate response to reports from county support agencies pursuant to Minn. Stat. § 518.551(12)(b) (amended August 1, 1994) that attorneys were in arrears in payment of child support or maintenance. Prior to August 1, 1994, the statute only authorized reports to the LPRB by the courts.

10. During the 1995 legislative session the Legislature amended Minn. Stat. § 518.551(12) to provide for substantial due process before county support agencies made a report of support defalcation to the LPRB. A copy of the statutory provisions are attached as Exhibit 1.

11. At its March and June 1995 meetings, the LPRB considered possible rule changes to address these reports through the imposition of professional discipline under the Minnesota Rules of Professional Conduct. The LPRB directed its Rules Committee to draft a proposed rule which would be fair and efficient and would hold

attorneys accountable for payment of support to at least the same degree as other licensees.

12. In September 1995 the LPRB considered the rule proposed herein and respectfully recommends and requests this Court to amend the Rules on Lawyers Professional Responsibility to add a new Rule 30 as follows:

Rule 30, Rules on Lawyers Professional Responsibility

(a) Upon receipt of a district court order or a report from an Administrative Law Judge or public authority pursuant to Minn. Stat. § 518.551(12) finding that a licensed Minnesota attorney is in arrears in payment of maintenance or child support and has not entered into or is not in compliance with an approved payment agreement for such support, the Director's Office shall serve and file with the Supreme Court a motion requesting the administrative suspension of the attorney until such time as the attorney has paid the arrearages or entered into or is in compliance with an approved payment plan. The Court shall suspend the lawyer or take such action as it deems appropriate.

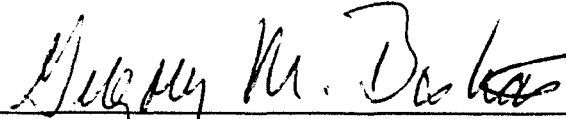
(b) Any attorney administratively suspended under this rule shall not practice law or hold himself or herself out as authorized to practice law until reinstated pursuant to paragraph (c). The attorney shall, within 10 days of receipt of an order of administrative suspension, send written notice of the suspension to all clients, adverse counsel and courts before whom matters are pending and shall file an affidavit of compliance with this provision with the Director's Office.

(c) An attorney administratively suspended under this rule may be reinstated by filing an affidavit with supporting documentation averring that he or she is no longer in arrears in payment of maintenance or child support or that he or she has entered into and is in compliance with an approved payment agreement for payment of such support. Within 15 days of the filing of such an affidavit the Director's Office shall verify the accuracy of the attorney's affidavit and file a proposed order for reinstatement of the attorney requesting an expedited disposition.

(d) Nothing in this rule precludes disciplinary proceedings, if the attorney's conduct also violates the Minnesota Rules of Professional Conduct.

Based upon the foregoing, the Lawyers Professional Responsibility Board respectfully requests this Honorable Court to implement the rules proposed in paragraphs 8 and 12 above.

Dated: February 12, 1996.



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Subd. 12. Occupational license suspension. (a) Upon motion of an obligee, if the court finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state agency or board that issues an occupational license and the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the administrative law judge, or the court shall direct the licensing board or other licensing agency to suspend the license under section 214.101. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages. The payment agreement must be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages after the 90 days expires, the court's order becomes effective. If the obligor is a licensed attorney, the court shall report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the court.

(b) If a public authority responsible for child support enforcement finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state agency or board that issues an occupational license and the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the court, an administrative law judge, or the public authority shall direct the licensing board or other licensing agency to suspend the license under section 214.101. If the obligor is a licensed attorney, the public authority may report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the public authority.

(c) At least 90 days before notifying a licensing authority or the lawyers professional responsibility board under paragraph (b), the public authority shall mail a written notice to the license holder addressed to the license holder's last known address that the public authority intends to seek license suspension under this subdivision and that the license holder must request a hearing within 30 days in order to contest the suspension. If the license holder makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the license holder must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the license holder. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice, and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge or the public authority within 90 days of the date of the notice, the public authority shall direct the licensing board or other licensing agency to suspend the obligor's license under paragraph (b), or shall report the matter to the lawyers professional responsibility board.

(d) The administrative law judge, on behalf of the public authority, or the court shall notify the lawyers professional responsibility board for appropriate action in accordance with the rules of professional responsibility conduct or order the licensing board or licensing agency to suspend the license if the judge finds that:

(1) the person is licensed by a licensing board or other state agency that issues an occupational license;

(2) the person has not made full payment of arrearages found to be due by the public authority; and

(3) the person has not executed or is not in compliance with a payment plan approved by the court, an administrative law judge, or the public authority.

(e) Within 15 days of the date on which the obligor either makes full payment of arrearages found to be due by the court or public authority or executes and initiates good faith compliance with a written payment plan approved by the court, an administrative law judge, or the public authority, the court, an administrative law judge, or the public authority responsible for child support enforcement shall notify the licensing board or licensing agency or the lawyers professional responsibility board that the obligor is no longer ineligible for license issuance, reinstatement, or renewal under this subdivision.

Subd. 4. Contested administrative proceeding. (a) All counties shall participate in the contested administrative process established in this section as designated in a statewide implementation plan to be set forth by the commissioner of human services. No county shall be required to participate in the contested administrative process until after the county has been trained. The contested administrative process shall be in operation in all counties no later than July 1, 1998, with the exception of Hennepin county which shall have a pilot program in operation no later than July 1, 1996.

The Hennepin county pilot program shall be jointly planned, implemented, and evaluated by the department of human services, the office of administrative hearings, the fourth judicial district court, and Hennepin county. The pilot program shall provide that one-half of the case load use the contested administrative process. The pilot program shall include an evaluation which shall be conducted after one year of program operation. A preliminary evaluation report shall be submitted by the commissioner to the legislature by March 1, 1997. A final evaluation report shall be submitted by the commissioner to the legislature by January 15, 1998. The pilot program shall continue pending final decision by the legislature, or until the commissioner determines that the pilot program shall discontinue and that Hennepin county shall not participate in the contested administrative process.

In counties designated by the commissioner, contested hearings required under this section shall be scheduled before administrative law judges, and shall be conducted in accordance with the provisions under this section. In counties not designated by the commissioner, contested hearings shall be conducted in district court in accordance with the rules of civil procedure and the rules of family court.

(b) An administrative law judge may conduct hearings and approve a stipulation reached on a contempt motion brought by the public authority. Any stipulation that involves a finding of contempt and a jail sentence, whether stayed or imposed, shall require the review and signature of a district court judge.

(c) A party, witness, or attorney may appear or testify by telephone, audiovisual means, or other electronic means, at the discretion of the administrative law judge.

(d) Before implementing the process in a county, the chief administrative law judge, the commissioner of human services, the director of the county human services agency, the county attorney, the county court administrator, and the county sheriff shall jointly establish procedures, and the county shall provide hearing facilities for implementing this process in the county. A contested administrative hearing shall be conducted in a courtroom, if one is available, or a conference or meeting room with at least two exits and of sufficient size to permit adequate physical separation of the parties. The court administrator shall, to the extent practical, provide administrative support for the contested hearing. Security personnel shall either be present during the administrative hearings, or be available to respond to a request for emergency assistance.

(e) The contested administrative hearings shall be conducted under the rules of the office of administrative hearings, Minnesota Rules, parts 1400.5275, 1400.5500, 1400.6000 to 1400.6400, 1400.6600 to 1400.7000, 1400.7100 to 1400.7500, 1400.7700, 1400.7800, and 1400.8100, as adopted by the chief administrative law judge. For matters not initiated under subdivision 2, documents from the moving party shall be served and filed at least 21 days prior to the hearing and the opposing party shall serve and file documents raising new issues at least ten days prior to the hearing. In all contested administrative proceedings, the administrative law judge may limit the extent and timing of discovery. Except as provided under this section, other aspects of the case, including, but not limited to, discovery, shall be conducted under the rules of family court, the rules of civil procedure, and chapter 518.

(f) Pursuant to a contested administrative hearing, the administrative law judge shall make findings of fact, conclusions, and a final decision and issue an order. Orders issued by an administrative law judge may be enforceable by the contempt powers of the district courts.

(g) At the time the matter is scheduled for a contested hearing, the public authority shall file in the district court copies of all relevant documents sent to or received from the parties, in addition to the documents filed under subdivision 2, paragraph (e). For matters scheduled for a contested hearing which were not initiated under subdivision 2, the public authority shall obtain any income information available to the public authority through the department of economic security and serve this information on all parties and file the information with the court at least five days prior to the hearing.

(h) The decision and order of the administrative law judge is appealable to the court of appeals in the same manner as a decision of the district court.