

OFFICE OF
APPELLATE COURTS

SEP 21 1999

FILED

JOINT PETITION OF
MINNESOTA STATE BAR ASSOCIATION
AND
LAWYERS CONCERNED FOR LAWYERS

C8-84-1650 &

C9-81-1206

C4-91-1728

LIST OF EXHIBITS

to

JOINT PETITION OF THE

MINNESOTA STATE BAR ASSOCIATION

and

LAWYERS CONCERNED FOR LAWYERS

- Exhibit 1: Joint Report and Proposal of the MSBA Depression Task Force and Lawyers Concerned for Lawyers (with attached proposed budget)
- Exhibit 2: Report on the Deliberations of the MSBA Depression Task Force
- Exhibit 3: Minnesota State Bar Association Rules of Professional Conduct Committee Report and Recommendation Concerning Proposed Amendments to Rule 8.3, Minnesota Rules of Professional Conduct
- EXhibit 4: L.A.P. Funding Mechanisms Considered by the Depression Task Force

No. C8-84-1650 &
No. C9-81-1206
**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Amendment to the Minnesota Rules of
Professional Conduct

and

Creation of and Funding for a Minnesota
Lawyers Assistance Program

**PETITION OF
MINNESOTA STATE BAR ASSOCIATION
AND
LAWYERS CONCERNED FOR LAWYERS**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Joint Petitioners Minnesota State Bar Association ("MSBA") and Lawyers Concerned for Lawyers ("LCL") respectfully submit this pleading to petition this Honorable Court to amend the Minnesota Rules of Professional Conduct by modifying existing Rule 8.3 and to create and fund a Minnesota lawyers assistance program (requiring an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys). In support of this Petition, MSBA would show the following:

1. Petitioner MSBA is a non-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota. Petitioner LCL is a non-profit corporation of attorneys dedicated to helping members of the legal profession in this state who suffer from alcohol abuse or chemical dependency. LCL is a registered 501(c)(3) charitable institution.

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 and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Legislature. *See* MINN. STAT. § 480.05 (1998).

3. This Honorable Court also promulgates the Rules regarding registration of attorneys in the state of Minnesota. *See* Rules of the Supreme Court for Registration of Attorneys.

4. The MSBA has, for a period of decades, supported various efforts and initiatives to provide assistance to lawyers who are experiencing difficulties relating to chemical dependency or mental health problems that interfere with their abilities to practice law consistent with the highest goals of the legal profession.

5. Petitioner LCL was first created in 1976 and has been actively involved in the recovery process of over 500 members of the legal community. LCL assists family members in conducting interventions designed to persuade the chemically dependent attorney to obtain treatment and performs support services for attorneys in all stages of recovery. In the process of that work, LCL has learned that

confidentiality is important if lawyers and judges are to come forward about their problems. To date, LCL has been self-supporting through donations, an effort that requires the majority of donated attorney time, throughout the year.

6. In its current form, LCL maintains a small office with one full-time staff member and a network of approximately 400 attorney volunteers. LCL has focused on chemical dependency issues, and does not currently possess the resources to assist lawyers and judges with other forms of mental illness, including but not limited to anxiety and depression. LCL has been in the unenviable position of turning away lawyers who self-identify as suffering from depression and other forms of mental illness, because no program had been developed.

7. It is now generally recognized that mental health impairments (e.g., depression and bi-polar disorder) affect significant numbers of the legal profession, and thus also affect the courts and the public. It is often difficult to separate chemical dependency from depression, and it is well accepted that people cannot fully recover from one, without recovering from the other.

8. In 1976, LCL pioneered a program to provide assistance to attorneys abusing alcohol or drugs. The LCL model has been instrumental in aiding many other states and Canadian provinces in setting up their own programs to help chemically dependent lawyers and judges. Unfortunately, Minnesota now lags behind other states, many of which have already adopted *expanded* programs, designed to assist lawyers with all types of mental health issues.

9. LCL is uniquely qualified to be the lawyers assistance program in Minnesota, because it has functioned exceptionally well in assisting chemically dependent lawyers and judges for over 23 years. It has never sought profit for this work, but has been motivated by the sincere desire of its stable of volunteers to help other lawyers and judges get help. These volunteers, and the general experience of LCL, are valuable resources to the new venture.

10. Adoption of an expanded program was attempted once in Minnesota. In 1990, several attorneys spearheaded an effort to utilize attorney license fees to fund a lawyers assistance program. The proposal sought \$20/attorney from license fees, largely because it was to be operated exclusively by a commercial employee assistance program. LCL did not support an expansion at that time, and ultimately the proposal failed to gain the endorsement of the MSBA, and was not adopted.

11. In 1998, after learning from seminar materials published by the Conference of Bar Association Presidents that lawyers have the highest rate of depression of any field of work, the MSBA Life and the Law Committee formed the Depression Task Force ("DTF") to study the impact of depression on the legal community. The DTF met for a year, studying alternatives and weighing priorities. (See Exhibit 2 for a description of the matters considered by the DTF, and the bases for its conclusions.) The DTF concluded that the stigma surrounding depression and other mental impairments had changed significantly since 1990.

12. Nonetheless, the DTF recognized the importance of confidentiality for impaired lawyers, and sought ways to encourage lawyers to truthfully report their

symptoms. The DTF believes that the mandatory reporting requirement of Rule 8.3 of the Minnesota Rules of Professional Conduct would deter impaired lawyers from seeking assistance, for fear that disclosing private mental health information to others lawyers would trigger a duty to report. The DTF learned that other states had memorialized an exception to the reporting rule, for just this reason.

13. Petitioners believe that Rule 8.3 should be amended to create an express, but limited, exception to the reporting requirements of the Rule. (See The Report and Recommendation of the MSBA Rules of Professional Conduct Committee on Rule 8.3, attached as Exhibit 3).

14. Petitioners have drafted an amendment to Rule 8.3 of the Minnesota Rules of Professional Conduct that would implement the relief requested in this petition, and that rule and the proposed amendment is set forth as follows:

1 **RULE 8.3 REPORTING PROFESSIONAL**
2 **MISCONDUCT**

3 (a) A lawyer having knowledge that another lawyer has committed
4 a violation of the Rules of Professional Conduct that raises a substantial
5 question as to that lawyer's honesty, trustworthiness or fitness as a lawyer
6 in other respects, shall inform the Office of Lawyers Professional
7 Responsibility.

8 (b) A lawyer having knowledge that a judge has committed a
9 violation of applicable rules of judicial conduct that raises a substantial
10 question as to the judge's fitness for office shall inform the Board on
11 Judicial Standards.

12 (c) This Rule does not require disclosure of information that Rule
13 1.6 requires or allows a lawyer to keep confidential or information gained
14 by a lawyer or judge while participating in a lawyers assistance program
15 or other organization providing assistance, support or counseling to
16 persons who are chemically dependent or have other mental disorders.

17 **Comment:19919**

18 Self-regulation of the legal professional requires that members
19 of the professional initiate disciplinary investigation when they know of
20 a violation of the Rules of Professional Conduct. Lawyers have a
21 similar obligation with respect to judicial misconduct. An apparently
22 isolated violation may indicate a pattern of misconduct that only a
23 disciplinary investigation can uncover. Reporting a violation is
24 especially important where the victim is unlikely to discover the
25 offense.

26 A report about misconduct is not required where it would
27 involve violation of Rule 1.6. However, a lawyer should encourage a
28 client to consent to disclosure where prosecution would not substantially
29 prejudice the client's interests. See the comment to Rule 1.6.

30 If a lawyer were obliged to report every violation of the Rules,
31 the failure to report any violation would itself be a professional offense.
32 Such a requirement existed in many jurisdictions but proved to be
33 unenforceable. This Rule limits the reporting obligation to those
34 offenses that a self-regulating profession must vigorously endeavor to
35 prevent. A measure of judgment is, therefore, required in complying
36 with the provisions of the Rule. The term "substantial" refers to the
37 seriousness of the possible offense and not the quantum of evidence of
38 which the lawyer is aware. A report should be made to the bar
39 disciplinary agency unless some other agency, such as a peer review
40 agency, is more appropriate in the circumstances. Similar
41 considerations apply to the reporting of judicial misconduct.

42 The duty to report professional misconduct does not apply to
43 a lawyer retained to represent a lawyer whose professional conduct is
44 in question. Such a situation is governed by the rules applicable to the
45 client-lawyer relationship.

46 ~~While a lawyer is forbidden to report, without client consent,~~
47 ~~the serious misconduct of another lawyer when he or she learns of that~~
48 ~~misconduct through a privileged attorney-client communication, the~~
49 ~~lawyer may, in his or her discretion, disclose client secrets in order to~~
50 ~~report. See Rule 1.6(b)(6) and the accompanying Comment.~~

51 Information about a lawyer's or judge's misconduct or fitness
52 may be received by a lawyer in the course of that lawyer's participation
53 in a bona fide lawyers assistance program or other organization that
54 provides assistance, support or counseling to persons, including lawyers
55 and judges who may be impaired due to chemical abuse or dependency,
56 behavioral addictions, depression or other mental disorders. Twelve-
57 step programs like Alcoholics Anonymous and other self-help
58 organizations are included in this category. In that circumstance,
59 providing for the confidentiality of information obtained by a lawyer-
60 participant encourages lawyers and judges to participate and seek
61 treatment through such programs. Conversely, without such

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confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The Rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the Rule may nevertheless report serious misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.

15. The proposed Rule was approved by the DTF, the MSBA Rules of Professional Conduct Committee, and ultimately approved by the MSBA Board of Governors and its House of Delegates on January 15, 1999.

16. Petitioners respectfully request that the proposed amendment to Rule 8.3 will constitute a significant advance in the administration of lawyer discipline and will serve the courts, lawyers, and public well.

CREATION OF AND FUNDING FOR A MINNESOTA LAWYERS ASSISTANCE PROGRAM

17. After examining the programs offered by several other states, the DTF determined that to provide services to a broader spectrum of impaired attorneys, an effective lawyers assistance program must offer:

- a. A 24-hour crisis line;
- b. access to a network of mental health professionals and providers to perform face-to-face evaluations of impaired lawyers);
- c. intervention services (for alcoholism, chemical dependency, depression and other mental health concerns);

- d. volunteer services (through maintaining and expanding a volunteer roster and training volunteers);
- e. support groups for specific issues (e.g., depression, family issues);
- f. case management and follow-up services; and
- g. education for members of the legal community and for families of those who suffer.

18. The DTF determined that all of the above services could and should be provided by an expanded LCL organization, with the exception of an around-the-clock crisis line and professional evaluations, which could both be provided by an employee assistance program ("EAP") that offered the most appropriate services at the best price. The DTF interviewed and negotiated with third-party EAPs and received competitive bids from several well-qualified providers.

19. After ensuring that the LCL Board was in favor of expanding its functions to services lawyers with various mental health impairments, the DTF examined the current LCL budget. The DTF reviewed each line item of the LCL budget with the goal of providing the new services at the lowest possible cost. One staff member was added, to provide case management and follow up, and to assist with education and "spreading the word" about the new expanded program. The proposed budget is attached to Exhibit 1.

20. The DTF plans to raise start-up capital costs from donations. Donations will also provide funds for an emergency loan fund, designed for lawyers

who need financial assistance in order to receive professional services in a timely manner.

21. Because mental illness strikes attorneys of all ages and specialties, in all areas of the state, the DTF determined that funding should come from all Minnesota attorneys, not just those who pay bar association dues, or who elect to make a private donation to LCL. LCL Board members shared with the DTF the frustrations of attempting to support LCL's current budget, including the fact that private donors were few and far between, and grant proposals and donations had to be pursued each and every year. This required an inordinate amount of time by LCL volunteers. The DTF also recognized that time donated by lawyer volunteers would be most valuable in relating one-on-one with impaired lawyers, rather than seeking grants and private funding.

22. LCL has formally adopted the recommendations of the DTF and it supported the DTF's report and recommendation to the MSBA. On July 1, 1999, MSBA Board of Governors and the General Assembly adopted the joint recommendation of the DTF and LCL for an expanded lawyers assistance program to be funded through an increase in the attorney registration fee (*see* Exhibit 1). An overwhelming number of MSBA members approved the proposal in the General Assembly. LCL has also formally agreed to provide its name, reputation and good will to this lawyers assistance program venture, hereafter to be known as "Lawyers Concerned for Lawyers."

23. In September 1999, the Conference of Chief Judges and the Minnesota State District Judges Association endorsed the LCL/DTF proposal.

24. Petitioners have drafted an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys (*see* Exhibit 4), which adds an additional \$8.00 per attorney per year (or a portion of same, as outlined in Rule 2) to the current license fee. Such an increase in license fees will be sufficient to fund the operating costs of the expanded LCL on an annual basis.

25. Petitioners have studied various methods of disbursing funds to the expanded LCL, and have developed three alternative proposals (*see* Exhibit 4). Petitioners recommend Alternative 2 and the attendant amendment language as set forth in Exhibit 4, that the funds be disbursed to the Lawyer Trust Account Board ("LTAB"), but ear-marked for LCL. Petitioners have discussed this method of disbursement with the Executive Director of the LTAB, who agrees that this is a plausible method of disbursement of the funds. Petitioners recognize that this Honorable Court may prefer a different method of disbursement, and have provided two additional alternatives in Exhibit 4.

26. Petitioners believe that the creation and funding of an expanded LCL, designed to include services to lawyers with mental illnesses other than chemical dependency, will enhance the well-being of the Minnesota legal community, assist in the monitoring and discipline of Minnesota lawyers, and help to protect the public.

Accordingly, Petitioners Minnesota State Bar Association and Lawyers Concerned for Lawyers respectfully request this Honorable Court to:

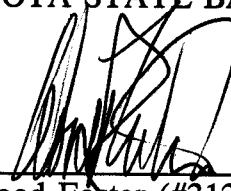
1. Amend Rule 8.3 of the Minnesota Rules of Professional Conduct as set forth in Paragraph 14, above; and
2. Create and fund a Minnesota lawyers assistance program (the expanded Lawyers Concerned for Lawyers), through an amendment to Rule 2 of the Rules of the Supreme Court for Registration of Attorneys, as set forth in Exhibit 4.

Dated: September 20, 1999.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

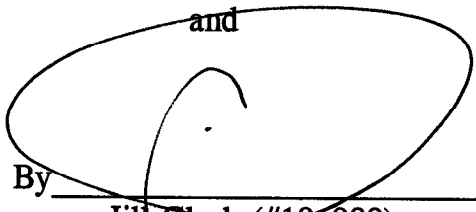
By



Wood Foster (#31288)
Its President

and

By



Jill Clark (#196988)
Chair, Depression Task Force
2005 Aquila Avenue North
Golden Valley, MN 55427
(612) 417-9102

and

LAWYERS CONCERNED FOR LAWYERS

By  _____

E. George Widseth (#116877)

Chair of the Board

A-2000 Government Center

300 South 6th Street

Minneapolis, MN 55487

(612) 348-6586

JOINT REPORT AND PROPOSAL OF THE MSBA DEPRESSION TASK FORCE AND LAWYERS CONCERNED FOR LAWYERS

INTRODUCTION

The MSBA Depression Task Force (DTF) and Lawyers Concerned for Lawyers (LCL) request the MSBA's approval of the development of a Lawyers Assistance Program (LAP).

THE MSBA DEPRESSION TASK FORCE

In the 1998-99 MSBA Term, the Life & The Law Committee established the DTF to explore the problem of depression and other mental illnesses in our legal community.

The DTF (lawyers, judges and mental health professionals) met throughout the Term, discussing such wide-ranging issues as the symptoms of bi-polar disorder, and the possibility of intervening on depressed lawyers, to the response of law firms to lawyers with depression. At its last meeting, the DTF unanimously voted to launch an LAP, a resource designed to help lawyers deal with mental health issues that overwhelm their lives and their practices.

The DTF reviewed the LAP programs now active in other states and the recommendations of the Conference of Chief Justices National Action Plan (which recommended both the services proposed below, and funding from the mandatory license fee). We also reviewed the success of LCL, which has been assisting lawyers with problems of alcoholism and chemical dependency for 23 years. To save on costs and stay with a winning team, the DTF decided to request that LCL expand mission to include resources for depression and other forms of mental illness. To do this, we need your help.

LAWYERS CONCERNED FOR LAWYERS

Minnesota lawyers created LCL in 1976 to provide confidential services to alcoholic and chemically dependent law students, attorneys and judges and their families. LCL has been actively involved in the recovery process of over 500 members of the profession, offering follow-up services and often joining family members in conducting interventions designed to persuade the attorney to enter chemical dependency treatment. On many occasions, LCL has been called by law firms who are concerned about one of their lawyers and LCL has answered the call.

LCL has historically maintained an office with one full-time staff member, a person trained in chemical dependency issues. In addition, LCL has always relied on a network of recovering lawyer volunteers throughout his state.

Fundraising has always been challenging for LCL. Although people are sympathetic with the mission, many assume that someone else will carry the financial burden. Organizations that have given, have limited support to one year at a time. LCL's fundraising base has been diminishing over the past few years; it has become apparent that even to continue in its current form, additional fundraising methods must be implemented.

LCL's current form cannot provide services for other mental-health issues. Many lawyers who came to LCL to deal with chemical dependency issues have discovered other mental-health issues co-existing with their chemical dependency. Unfortunately, LCL has not had the resources to address these problems, and lawyers have been forced to find their own resources.

THE 1990 STORY

In 1990, several attorneys sought MSBA support for an LAP. They requested \$20/lawyer from license fees, and proposed to retain an employee assistance program (EAP) for all services. LCL did not then agree to broaden its mission and services to include depression and mental illness. That effort ultimately failed. But times have changed. LCL joins in this request, and is honored to be the home of the new Minnesota LAP -- a development that reduces the license fee to \$8/full-time lawyer (see below).

THE NEW MINNESOTA LAWYERS ASSISTANCE PROGRAM

When LCL was formed, it was at the forefront of the movement to provide assistance to attorneys suffering from chemical dependency. Since then, many other states have moved past Minnesota, and now provide a broad range of services for impaired attorneys. Since people rarely fit neatly into one category, but often, in fact, suffer from a range of issues, the DTF concluded that the LAP must be able to address all mental health issues. The resources and programming available for any particular resources would depend, in part, on the frequency of the problem within the legal community.

In addition to the services already provided by LCL, the new LAP would provide the following **CONFIDENTIAL** services:

- A 24-hour crisis line;
- A network of mental health providers to perform face-to-face evaluations;
- Intervention services (alcoholism, chemical dependency and perhaps depression and other mental health interventions);
- Volunteer services (through maintaining and expanding a volunteer roster and training);
- Support groups for specific issues;
- Case management and follow-up services; and
- Education for the bar at large and families of sufferers;

The DTF started with the current LCL budget, and sought to keep costs as low as possible. The DTF reviewed each line item of the LCL budget, extrapolating for one additional staff and the new services. We interviewed and negotiated with several EAP providers to staff the 24-hour crisis line, and have received a modest bid from a well-qualified provider. The attached proposed budget is the DTF's best forecast for start-up and ongoing operation costs. Only the operating costs will be funded through the license fee. Start-up costs and donations to an emergency loan fund for lawyers seeking treatment, will be met by fundraising efforts.

FUNDING THE NEW MINNESOTA LAP

We studied various ways of funding the new Minnesota LAP. We asked the traditional supporters of LCL to continue their stipend in upcoming years for the new LAP. A "capital campaign" will cover start-up costs (the left-hand column will not be funded by the license fee).

We believe that the health and professionalism of our legal community is the responsibility of us all, not just a select few who are willing to give annual donations. Accordingly, the DTF plans to propose to the Supreme Court of the State of Minnesota that the attorney license fee be raised to cover operating costs of the LAP. This is not the only resource of funding. Rather, it is a vote of confidence from the legal community that this service is necessary and valuable.

Others states fund their LAP's 100% through a license surcharge. Tennessee recently voted to add \$10 to each license; Pennsylvania adds \$10/attorney and Colorado adds \$9. The DTF has organized this project such that the license surcharge would be much less.

Based on the attached projected annual operating budget of \$139,000, divided by the number of attorneys with an active license (we used 18,000 attorneys, approximately 16,000 full-time and 2,000 attorneys who pay 50% of the license fee) the surcharge would be \$8.00/full-time attorney per year (part-time attorneys would pay \$4.00). This fee would service all of the 24,000 attorneys in the state. The \$8/yearly amount is much less than an attorney would pay for one session with a professional to discuss issues related to mental health or chemical dependency. If you are not in need of these services yourself, perhaps you know someone who is, and can view your license fee as a donation to that lawyer or judge in need.

REQUEST FOR APPROVAL

Lawyers Concerned for Lawyers and the Depression Task Force respectfully requests your approval of the concept, plan for services, and license fee increase outlined in this Proposal. The Governance and Finance Committee of the MSBA has signaled its support of the new LAP by recommending an increased donation for next year from \$12,500 to \$15,000. The approval of the MSBA is critical to this effort. It will not only make a strong statement to the Supreme Court, but it will send a strong message to impaired attorneys throughout the state -- you are not alone and help is at hand.

Respectfully submitted,

Jill Clark, Esq.
Chair, Depression Task Force
Life & the Law Committee

Gerald R. Freeman, Esq.
Member, Depression Task Force
Member, Lawyers Concerned for Lawyers

E. George Widseth, Esq.
Member, Depression Task Force
Chair-elect, Lawyers Concerned for Lawyers

May 28, 1999

**Lawyers Assistance Program
Estimated Budget**

Page 1

Revenue			
	One-Time Startup (Not license fee)	Annual Operating Budget (License fee)	
Grants			
Member & Non- Member Donations			
DCD - Office Sharing			
Interest			
TOTAL REVENUE			
Expenses			
EAP Provider		\$13,500	Current program does not utilize an outside EAP program. New program will rely on outside program for initial contact and some follow up. Costs are based on preliminary bids from <i>Team</i> and assume 100 calls that turn into a counseling relationship.
Rent		\$7,200	Expansion of program will require additional space for increased staff and conference room needs.
Telephone		\$3,750	Assumes two lines and a cell phone with some flexibility for a third line if needed. Also includes internet/email service.
Salary		\$65,000	Two full time staff with director responsible for operations, program communications, and service delivery. Assistant is responsible for clerical duties and service delivery.
Taxes and Benefits		\$20,000	Benefits include basic medical, life, and disability insurance.
Office Supplies		\$1,500	
Postage	\$5,000	\$5,000	Startup postage cost includes plans for three mailings in the first year to make lawyers and their families aware of the new program. Ongoing postage costs are for basic communication needs.
Printing	\$5,000	\$5,000	Same as postage.
Insurance		\$4,500	Includes cost of workers compensation insurance, fidelity bond, and errors and omission insurance.
Equipment Maintenance		\$1,000	Computer, copier and other maintenance contracts.
Audit/Accounting Fees		\$2,000	Assumes bookkeeping functions would be performed by staff. If bookkeeping services were performed outside the cost would be \$6,000.

**Lawyers Assistance Program
Estimated Budget
Page 2**

Travel/Meals/Parking/ Lodging	\$4,500	\$3,000	Costs for first year are projecting substantial travel by staff and volunteers to provide lawyers with information on the new program.
Meetings/ Conferences	\$4,500	\$3,000	Includes cost of board meetings, MSBA convention, and district meetings.
Staff/Volunteer Training	\$3,000	\$5,000	Includes intervention training, outreach to lawyers, and support group facilitator training.
Capital Expenses	\$6,600		Includes software at \$2,000; computer at \$2,000; furniture at \$1,000; photocopier at \$1,000; and telephones at \$600.
TOTAL EXPENSES	\$28,600	\$139,450	

Once start-up costs are secured through foundation and private donations, future donations will contribute to an emergency loan fund to assist attorneys in obtaining treatment.

Exhibit

**REPORT ON THE DELIBERATIONS OF THE
MSBA DEPRESSION TASK FORCE**

In the 1995-96 Minnesota State Bar Association (MSBA) Term, then President Lewis Remele formed a task force to begin the discussion in the legal community about the issues that had always been "swept under the carpet." That task force eventually became the Life and the Law Committee of the MSBA.

Part of that Committee spread the word about alternative careers as a possible cure for dissatisfaction within the profession; others disseminated information about chemical dependency, alcoholism, co-dependency, and mental illness.

As Chair of the Life and the Law Committee, I was sent materials from an American Bar Association (ABA)/Council of Chief Judges seminar, that identified law as the field of work with the highest rate of depression. In the 1998-99 Term, that Committee spawned the Depression Task Force (DTF).

The mission of the DTF was to discern what impact depression and other forms of mental illness had on the profession and the public, and to suggest redress.

At the first meeting in Fall 1998, DTF members introduced themselves and shared why they wanted to take part in this venture. Members who had been involved in Lawyers Concerned for Lawyers (LCL) shared their frustration over having to turn away lawyers who had genuine mental health needs, but did not fit within its proscribed mission of providing services to lawyers with alcoholism and chemical dependency.

We heard stories of alcoholics who quit drinking, but couldn't become fully functional until they addressed the underlying clinical depression. Other DTF members shared personal stories of the affects of depression on their firms, friends, clients and families. Some shared stories of informal interventions, and of monitoring lawyers whose practices had become disheveled. The room was silenced when members shared stories of suicides.

By the close of that first meeting, we were already convinced that depression was having a profound impact on the entire legal community. We also agreed that, although perhaps not as prevalent, other forms of mental illness demanded as much attention, as they are equally as crippling to members of our profession. From that point on, "depression" came to mean depression and other forms of mental illness.

The rest of the Term was spent collecting information, deliberating alternatives, and taking action.

The DTF was a pleasure to work with. Members made a real commitment to the project, attending meetings regularly, sharing ideas and insights, and rolling up their sleeves to do the work.

We discussed the importance of confidentiality, the other states providing lawyers assistance programs, the importance of lawyer support groups, education of lawyers and concerned others, referrals to professionals for treatment, interventions, that symptoms make it difficult to motivate lawyers to action, and the challenge of servicing out-state lawyers.

We made a "wish list" of services -- everything we could think of that might assist attorneys with mental health issues. We turned the wish list into a flow chart, indicating how calls from lawyers or concerned others would be handled.

We learned from LCL that its Board had previously been hesitant to expand its services to include other forms of mental illness, but that the current configuration of the Board welcomed the opportunity to help address the issue.

We spent a meeting with an experienced clinical psychiatrist, and learned that depression can respond to a formal intervention, just like alcoholism. In fact, intervention leading to voluntary treatment is the last alternative to civil commitment for serious cases of mental illness.

We sent a member to the ABA Commission on Lawyer Assistance Programs (CoLAP) convention in Montreal, which provided massive amounts of information on servicing lawyers with mental illness, and lawyer assistance programs around the country.

We reviewed A National Action Plan on Lawyer Conduct and Professionalism, A Report of the Working Group on Lawyer Conduct and professionalism, submitted to the CCJ Committee on Professionalism and Lawyer Competence August 13, 1998 (the Report was adopted by that Committee on that date and in January 1999 by the entire Conference of Chief Justices), which recommended that states establish lawyers assistance programs to assist lawyers with mental health problems. The Report specifically recommended that the lawyers assistance programs be funded through mandatory registration fees.

We learned that Tennessee and Massachusetts were both in the process of expanding its chemical dependency program to provide services for other mental illnesses, and that they had just increased mandatory registration fees by \$10.00 per lawyer.

We got input from the Minnesota Office of Professional Responsibility (OPR), that depression had replaced alcoholism as the most-cited mitigating circumstance, and that staff attorneys should not be expected to prosecute violations, and at the same time act as counselors on issues of mental illness. We discussed how a Minnesota lawyers assistance program might cooperate with the OPR.

We interviewed staff directors of various lawyers assistance programs around the country. We spent one entire meeting with the director of the Pennsylvania lawyers assistance program, learning what had worked, what had failed, and how it had been funded.

From Pennsylvania we learned that its massive effort to raise voluntary contributions from Pennsylvania lawyers had failed. In fact, the effort to obtain funds (e.g., printing and mailing costs) had exceeded the amount raised. We learned that Pennsylvania (like many other states) had finally concluded that funding the lawyers assistance program through the license fee was the only viable, and fair option.

We learned that the Pennsylvania program welcomed lawyers with all types of "issues," including stress and family problems, and of course all forms of mental illness. The director told us that broadening its mission (which had previously been just chemical dependency), it was actually able to assist more lawyers with chemical dependency. In other words, some lawyers felt more comfortable picking up the phone, and saying that they were calling about stress or depression, when the evaluation showed that they were dealing with issues of alcoholism or chemical dependency. Of course, some of these lawyers suffered from multiple issues; whatever got them in the door allowed them to seek treatment for the whole range of issues affecting their lives and practices.

This was important information. It helped us to realize that the name of the issue is not as important as getting the lawyer in the door to seek services. We realized that we had to focus on treating the whole person, not on a particular set of symptoms, or a particular issue.

We modified our working flow chart to more closely resemble the Pennsylvania model, and we deleted "wishes" that we determined were too difficult to provide at this time, or too expensive.

In short, we concluded that our community most needed a way to manage crisis in our population, with a plan for moving those in crisis into an evaluation, and eventually a long-range treatment plan. We determined that a 24-hour crisis line was essential, as more crisis occur in the wee hours of the morning, than during the business day. We determined that hiring a personnel to staff that crisis line was cost-prohibitive, and not a good use of resources (the calls were likely to come in bunches, and then the line would be silent for some time).

A subcommittee of the DTF spent a number of months developing criteria and then interviewing a number of commercial employee assistance programs (EAPs), companies that provide contract services to employers. We learned that the outside EAPs would staff the 24-hour crisis line, talk to the lawyer in crisis as long as necessary, with the goal of setting up an appointment for a psychological evaluation with a generalist. The generalist would then recommend a specialist for continuing treatment. The lawyers assistance program would cover the cost through the generalist evaluation. Treatment would be the responsibility of the individual lawyer.

The DTF asked for competitive bids from several EAPs that we deemed qualified to provide the services we desires. The DTF subcommittee then negotiated with these providers to reduce the per lawyer fee. We chose the EAP that was both most competitive in its pricing, and that we had determined was most qualified to services our profession.

The staff director at LCL (who is a chemical dependency counselor) had an opportunity

to work with this EAP on a case. A lawyer's family had called LCL, reporting minimal alcohol use, but symptoms of major depression, including being unable to open his office mail and make deadlines. She reported to the DTF that the EAP had proven its ability to quickly network within the psychological community.

Within one hour, the EAP had phoned her back with the name of a psychologist who was willing to evaluate this lawyer for a reduced fee. The lawyer's family assisted the lawyer in keeping the appointment, and he was convinced by the psychologist to continue treatment. LCL was pleased not to have to turn this lawyer away.

The DTF discussed setting up a new lawyers assistance program, that would service lawyers will all types of problems. In so doing, we could not ignore the extremely successful, up-and-running, pioneer in its field - LCL. We quickly determined that, rather than reinventing the wheel, it made more sense to expand the existing services of LCL to include other forms of mental illness.

This conclusion was based on a number of factors. First, since LCL was already in existence, a lot of the creation costs would be unnecessary or minimalized. The costs of expanding appeared to us to be much less than building an organization from scratch. Second, LCL already shared a reputation in the local community and beyond, for assisting lawyers with problems. We did not want to compete with this organization for cases. Rather, we wanted to utilize the existing reputation of the LCL program to gain credibility.

Third, we wanted to make use of the volunteer network already enjoyed by LCL, and expand it to include lawyers who had some experience with depression and other forms of mental illness. And finally, we wanted an organization that (although ultimately funded by license fees), was unconnected to the public, quasi-public or disciplinary arms of the legal community. This concern was fueled by our desire to keep individual lawyer data confidential, and not to give the appearance to suffering lawyers that their conduct would be reported to the authorities.

Although we now refer to this conclusion as the "expansion" of LCL, the decision was really made in the reverse. We first decided that we needed a "full service" lawyers assistance program, and then decided that the cheapest way to provide quality services, was to build on the existing LCL organization.

Finally, we considered funding. We learned from LCL members, that fundraising had been an exhausting and frustrating experience for many years. Individual members of the bar simply did not make numerous or large contributions to LCL. A couple of private law firms made minimal donations, but this was not enough to run the organization. LCL spent numerous volunteer hours writing grant applications and visiting with foundations and bar associations, in order to obtain enough for one year of service at a time.

We were concerned that funding should be so volatile, that we could be up and running one year, only to have to close the doors in the next, due to insufficient graciousness by the various foundations and bar associations. After a major push to educate the bar about the

services, it would be a shame to have to terminate the program due to lack of funding.

The DTF knew the quality of the LCL volunteers that spent numerous hours each year seeking funding. Since intervention had shown itself to be an integral part of managing a lawyer's crisis, the DTF concluded that the time of quality volunteers was better spent working one-on-one with the suffering lawyers, rather than writing grant applications and sitting in boardrooms.

We returned to the logic of the Pennsylvania program, that the only viable and fair way to provide services to all lawyers in the state, was to fund the lawyers assistance program through the license fee.

We brainstormed every possible objection to funding from license fees. We knew the objections that had salvaged the effort to create a lawyers assistance program in 1991.

We decided it was unfair to expect funding to flow only from bar associations, as that had the effect of heavily taxing bar association members for services offered to all lawyers in the state.

We started with the LCL budget, and extrapolated to add an additional staff member, and funding to educate the bar about the expanded services.

We committed the DTF to raise the initial start-up costs of approximately \$25,000, which included capital expenditures for office furniture, a computer, a fax machine. Since LCL had already achieved commitments from the MSBA Foundation and several bar associations for the upcoming year, we are confident that these funds can be directed toward the expanded LCL.

We created a subcommittee to raise funds and develop criteria for an emergency loan program, designed to provide crisis funding to lawyers who either cannot afford treatment, or who have a delay in receiving health insurance benefits.

The DTF has never proposed that either the emergency loan fund or the start-up capital costs be funded by the mandatory registration fee.

Once we crunched the numbers, we determined that a low-cost, \$8.00 per attorney fee would fund the ongoing operations of the Minnesota lawyers assistance program, known as LCL. We determined that \$8.00 per lawyers was a reasonable cost to the bar at large, and in fact much less than the cost of a psychological evaluation.

We crystalized our conclusions into a report, which was fully adopted by the LCL Board. We floated an informational copy of the Joint Report and Proposal of the MSBA Depression Task Force and Lawyers Concerned for Lawyers at the April meeting of the MSBA Board of Governors and House of Delegates. We pleaded for feedback, criticisms and questions. The feedback was amazingly positive. We were flocked in the hall by well-wishers, and congratulators. No one said that the funding should not come from the license fee, or that we were asking for too much money. One delegate asked that we look into the reasons for the high

rate of depression in our community.

Over the next few months, we receive no negative feedback, and no questions. We formally presented the proposal at the July 1999 MSBA Convention in Duluth. We asked MSBA members not to simply analyze the proposals as left-brained lawyers, but to look into their hearts, and be willing to spend \$8.00/year to help save our dying members.

Members of the DTF made ourselves available throughout the Convention to answer questions. The Proposal passed the Board of Governors unanimously. It passed the General Assembly with only a few "no" votes, which appeared to have been made based on misunderstandings about the Proposal.

After the vote at the Convention, the DTF met with the LCL Board to discuss this Petition to the Honorable Supreme Court, and the practical implementation of the Proposal, should the High Court approve our Petition. The LCL Board voted to formally offer the name of Lawyers Concerned for Lawyers to the project, with all its attendant reputation and good will.

As the provision of crisis management for mentally ill lawyers moves toward fruition, we are conscious that future tasks remain. Members of the DTF and the LCL Board (which has been expanded to include members of the DTF) are committed to the success of this project. The volunteer hours that have gone into the recommendation you have before you is but the tip of the iceberg. We are all anxious to be able to turn our volunteer efforts to working one-on-one with distressed lawyers, to assist them in coping with their mental challenges, and to once again become productive members of our community.

We believe strongly that providing mental health assistance to our legal community will protect and benefit the public, and that it is in fact a obligation necessitated by our duty to police our own.

Respectfully submitted,

MSBA DEPRESSION TASK FORCE



By: Jill Clark, Chair

**MINNESOTA STATE BAR ASSOCIATION
Rules of Professional Conduct Committee**

**Report and Recommendation
Concerning Proposed Amendments
to
Rule 8.3, Minnesota Rules of Professional Conduct**

RECOMMENDATION

RESOLVED, that the Minnesota State Bar Association petition the Minnesota Supreme Court to amend Rule 8.3, Minnesota Rules of Professional Conduct as shown in the attached report to provide for an exemption from the requirement to report serious misconduct for lawyers participating in lawyers assistance programs or organizations which provide assistance, support or counseling to persons who are chemically dependent or have other mental disorders.

REPORT

This proposal originated with the MSBA's Depression Task Force, a group formed to propose methods to deal with the effects of depression and related impairments on lawyers, judges and the practice of law in Minnesota. An objective was to create a lawyers assistance program similar to the successful program for alcohol and drug dependency intervention and services provided by Lawyers Concerned for Lawyers.

One concern of the Task Force was promoting mechanisms to encourage impaired lawyers to come forward for assistance. Rule 8.3 of the Minnesota Rules of Professional Conduct requires a lawyer who has knowledge that another lawyer or judge has committed a serious violation of the applicable disciplinary rules to report the violation to the appropriate disciplinary authority - the Office of Lawyers Professional Responsibility or the Board on Judicial Standards. The Task Force was concerned that this reporting requirement would deter impaired lawyers - who may have committed serious violations of the disciplinary rules because of their impairment - from seeking assistance from a lawyers assistance program.

The Task Force learned that Lawyers Concerned for Lawyers has an informal understanding with the Director of Lawyers Professional responsibility that the Director will not seek discipline of a lawyer participating in LCL for failure to report disciplinary violations which the lawyer learns of in counseling or assisting the offending lawyer. While there have been no perceived problems with this informal arrangement, the Task Force is concerned that many lawyers needing assistance from LCL or similar organizations are not aware of this understanding and are thus deterred from seeking help.

The American Bar Association's Model Rule 8.3(c) contains a provision providing a limited exemption from the reporting requirements of Rules 8.3(a) and (c) for lawyers serving in approved lawyers assistance programs. The Model Rule reads as follows:

This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

(Italics added). This rule or a variation thereof has been adopted in 34 jurisdictions.

The Task Force prepared and submitted to the MSBA House of Delegates a report and recommendation which would amend the present Minnesota Rule 8.3(c) to incorporate the italicized language from the model rule. As part of the submission process, the Task Force's recommendation was referred to our committee. We became concerned that the model rule language is both overinclusive and underinclusive in achieving the result desired. Our committee invited members of the Task Force to meet with us and respond to some of the concerns raised by the committee. As a result of that meeting and subsequent consultation with the Task Force, our committee has proposed the attached amendments to Rule 8.3 as a substitute for the Task Force Recommendation.

Our committee had several concerns with the model rule. They are addressed as follows.

1. *The attorney-client privilege as the legal standard.* The Minnesota Rules of Professional conduct do not otherwise use or refer to the attorney-client privilege as a standard for determining a lawyer's professional obligations or imposing discipline. An attorney's professional obligation to preserve the confidences and secrets of a client for disciplinary purposes are set out in Rule 1.6 of the Rules of Professional Conduct. Doing so avoids many of the uncertainties and exceptions which attend the application of the attorney-client privilege. One such exception is the rule that the presence in a communication, otherwise subject to the privilege, of a third party destroys the privilege, *see, e. g., Schwartz v. Wenger*, 267 124 N.W.2d 489 (Minn. 1963). When a lawyers assistance program conducts an intervention with an impaired lawyer or judge, third parties, such as family members and employers are frequently present and overhear conversations. The presence of such third parties would arguably destroy the attorney-client privilege. Moreover, the attorney client privilege protects only communications with the client, not information the lawyer learns from other sources during the course of working for the client. Our committee felt that the attorney-client privilege is an unnecessarily restrictive and problematic measure of what an attorney cannot, may or must disclose to disciplinary authorities when working with impaired lawyers or judges.

2. *The limitation of the exception to lawyer assistance programs.* While lawyer assistance programs, and particularly Minnesota's pioneer program, Lawyers Concerned for Lawyers, have been successful in focusing on impaired lawyers and judges, lawyers also participate in a vast array of other organizations which provide assistance, peer counseling and support to people who suffer from the effects of chemical dependency and mental disorders.

The most well-known example is Alcoholics Anonymous, an organization in which alcoholics help each other to recognize their condition and recover from its effects. One of the ways that members help each other is by encouraging them to tell others about the effect of alcohol on their lives. The fifth step of AA calls on members to "...admit[] to God, to ourselves and to another human being the exact nature of our wrongs." A lawyer or judge who participates in AA may well hear another lawyer or judge admit wrongs which encompass a reportable violation of the Rules of Professional Conduct. Our committee believes that the same policy of encouraging impaired lawyers to seek assistance should apply to AA, other 12 step groups, and other organizations which provide assistance, counseling and support to lawyers who suffer from chemical dependency or other mental disorders. Our proposed amendment would extend the reporting exemption of Rule 8.3(c) to a lawyer's participation in other bona fide organizations which provide these services. The term "mental disorders" is the descriptive term used in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, which provides nomenclature commonly used and accepted among professionals in the mental health field to describe conditions which cause distress, disability, or significantly increased risk of suffering death, pain, disability or an important loss of freedom, but which are not merely an expectable response to normal stressful events of life.

3. *Program approval.* The model rule applies the exemption only to lawyers who are serving in "approved" lawyer assistance programs. The rule does not indicate how a program becomes approved, who provides the approval, or what standards are to be applied in granting or withholding approval. We anticipate that if the model rule were to be adopted, the Supreme Court would have to adopt standards for approval and a mechanism for programs to apply for and obtain approval. Our committee does not believe that this is necessary or desirable. We believe that the exemption should be available for lawyers who participate in any bona fide organization described in the rule.

4. *Reporting future conduct.* The attorney client privilege does not protect the confidentiality of a client's intention to commit a crime or fraud., *Kahl v. Minnesota Wood Specialty, Inc.*, 277 N.W. 2d 395 (Minn. 1979), see, *In re Murphy*, 560 F.2d 326 (8th Cir. 1977), *In re Berkley & Co.* 628 F.2d 548 (8th Cir. 1980). If the attorney-client privilege were the standard to determine the scope of the Rule 8.3(c) exception, then a lawyer participating in an organization covered by the rule would be required to report a lawyer's intent to commit serious violations of the Rules, at least if the violations would also constitute a crime or fraud. But Minnesota's Rule 1.6 makes the disclosure of a client's intent to commit a crime and the information necessary to prevent a crime permissive, not mandatory. Because the proposed Rule 8.3(c) is an exception to the *mandatory* reporting requirements of subparts (a) and (b) of the rule, all the exception does is to make reporting optional. This makes the rule consistent with Rule 1.6. A lawyer who qualifies for the exemption may nevertheless report a serious violation, but cannot be disciplined for failing to do so. Obviously, a lawyer who learns of intended misconduct which will subject innocent parties to serious harm may feel compelled to report the misconduct. This rule will neither prohibit the disclosure nor sanction it. It is intended to provide some maneuvering room to a lawyer who is trying, in good faith, to help others. In this regard, a lawyer may consider the commitments he made to the organization and the impaired lawyer or judge in agreeing to provide assistance.

MINNESOTA STATE BAR ASSOCIATION
Rules of Professional Conduct Committee

Amendments to

Rule 8.3, Minnesota Rules of Professional Conduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the Office of Lawyers Professional Responsibility.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Board on Judicial Standards.

(c) This Rule does not require disclosure of information that Rule 1.6 requires or allows a lawyer to keep confidential *or information gained by a lawyer or judge while participating in a lawyers assistance program or other organization providing assistance, support or counseling to persons who are chemically dependent or have other mental disorders.*

Comment:

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests. *See the comment to Rule 1.6.*

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This

requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of the Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

~~[5] While a lawyer is forbidden to report, without client consent, the serious misconduct of another lawyer when he or she learns of that misconduct through a privileged attorney-client communication, the lawyer may, in his or her discretion, disclose client secrets in order to report. See Rule 1.6(b)(6) and the accompanying Comment.~~

Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in a bona fide lawyers assistance program or other organization that provides assistance, support or counseling to persons, including lawyers and judges who may be impaired due to chemical abuse or dependency, behavioral addictions, depression or other mental disorders. Twelve-step programs like Alcoholics Anonymous and other self-help organizations are included in this category. In that circumstance, providing for the confidentiality of information obtained by a lawyer-participant encourages lawyers and judges to participate and seek treatment through such programs. Conversely, without such confidentiality, lawyers and judges may hesitate to seek assistance, which may then result in additional harm to themselves, their clients, and the public. The Rule therefore exempts lawyers participating in such programs from the reporting obligation of paragraphs (a) and (b) with respect to information they acquire while participating. A lawyer exempted from mandatory reporting under part (c) of the Rule may nevertheless report serious misconduct in the lawyer's discretion, particularly if the impaired lawyer or judge indicates an intent to engage in future illegal activity, for example, the conversion of client funds. See the comments to Rule 1.6.

Exhibit

L.A.P. FUNDING MECHANISMS CONSIDERED BY THE DEPRESSION TASK FORCE

The Depression Task Force (DTF) took several steps in preparing to make a recommendation to the Court for the lawyers' assistance program (l.a.p.) funding mechanism. The DTF first determined to provide the Court an opportunity to consider different options for a funding mechanism. The DTF also decided to try to learn from other states' experiences with regard to funding mechanisms as it did with the service model it adopted. Based on these decisions, a committee member conducted research into other states' l.a.p. funding mechanisms and prepared a memorandum of his findings for the committee's consideration. In addition, discussions were held with Supreme Court staff familiar with the functions and financial procedures of existing boards.

The next step was for the options to be drafted. This task was performed by Tim Groshens, Executive Director of the M.S.B.A. and DTF member. The result was a set of three (3) options for funding mechanisms from attorney registration fees. The DTF considered these options and subsequently made some revisions. A summary of those options follows:

- alternative one provides direct funding of Lawyers Concerned for Lawyers (LCL);
- alternative two provides funding of LCL through the Lawyers Trust Account Board (LTAB); and
- alternative three provides funding of a lawyers assistance program through the LTAB, as well as amendments to the LTAB Rules mandating both that the funds go to a single organization with appropriate experience and volunteer attorney participation and the inclusion of additional Board members with experience in the treatment of the impairments being addressed.

After significant debate, the DTF chose alternative two. This alternative was discussed with Judith Rehak, LTAB Executive Director, who indicated her belief that this funding mechanism is a workable arrangement. The DTF chose to name LCL as the recipient of the funds primarily because of LCL's unique history, reputation, and goodwill in this field (see Exhibit). Naming

LCL in the rule prevents any administrative decisions from eroding the clear mandate for funding LCL to provide these services. Overwhelming support for this position has been provided by the MSBA Board of Governors and Delegate Assembly, as well as the Conference of Chief Judges and the District Court Judge's Association. The decision to have the funds flow through the LTAB was due to the DTF's belief that the Court would be more comfortable with this arrangement than it would be with direct funding of a non-public agency.

Following are the three sets of alternatives considered by the DTF. Alternative two is the DTF's recommended funding mechanism for the l.a.p.'s operating costs.

Alternative One - Direct Funding for Lawyers Concerned for Lawyers

**RULES OF THE SUPREME COURT
FOR
REGISTRATION OF ATTORNEYS**

Rule 2. Registration Fee

A. In order to defray the expenses of examinations and investigation for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exception hereafter enumerated, each attorney admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall hereinafter annually pay to the clerk of the appellate courts a registration fee in the sum of ~~Two Hundred and Seven Dollars (\$207.00)~~ Two Hundred and Fifteen Dollars (\$215.00) or in such lesser sum as the court may annually hereafter determine. Such fee, or portion thereof, shall be paid on or before the first day of January, April, July or October of each year as requested by the clerk of the appellate courts.

All sums so received shall be allocated as follows:
\$20.00 to the State Board of Law Examiners
\$14.00 to the State Board of Continuing Legal Education
\$110.00 to the Lawyers Professional Responsibility Board
\$13.00 to the Minnesota Client Security Board
\$50.00 to the Legal Services Advisory Committee.
\$8.00 to Lawyers Concerned for Lawyers.

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~One Hundred Eighty-two Dollars (\$182.00)~~ One Hundred Ninety Dollars (\$190.00). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-Five Dollars (\$25.00).

B. The following attorneys and judges shall pay an annual registration fee of ~~One Hundred and One Dollars (\$101.00)~~ One Hundred and Nine Dollars (\$109.00):
(a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within the state;
(b) Any attorney while on duty in the armed forces of the United States.

The ~~One Hundred and One Dollars (\$101.00)~~ One Hundred and Nine Dollars (\$109.00) so received shall be allocated as follows:

\$20.00 to the State Board of Law Examiners
\$7.00 to the State Board of Continuing Legal Education
\$24.00 to the Lawyers Professional Responsibility Board
\$50.00 to the Legal Services Advisory Committee
\$8.00 to Lawyers Concerned for Lawyers.

An attorney who certified that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-Five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~Seventy-six Dollars (\$76.00)~~ Eighty-four Dollars (\$84.00). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-Five Dollars (\$25.00).

C. Any attorney who has not been admitted to practice for more than three years shall pay an annual registration fee of ~~Ninety-six Dollars (\$96.00)~~ One Hundred and Four Dollars (\$104.00).

The ~~Ninety-six Dollars (\$96.00)~~ One Hundred and Four Dollars (\$104.00) so received shall be allocated as follows:

\$20.00 to the State Board of Law Examiners
\$14.00 to the State Board of Continuing Legal Education
\$24.00 to the Lawyers Professional Responsibility Board
\$13.00 to the Client Security Fund
\$25.00 to the Legal Services Advisory Committee
\$8.00 to Lawyers Concerned for Lawyers

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-Five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~Eighty-Three Dollars and fifty cents (\$83.50)~~ Ninety-one Dollars and fifty cents (\$91.50). The allocation to the Legal Services Advisory Committee shall be reduced by Twelve Dollars and fifty cents (\$12.50).

Alternative Two - Funding for Lawyers Concerned for Lawyers through Lawyer Trust Account Board

RULES OF THE SUPREME COURT FOR REGISTRATION OF ATTORNEYS

Rule 2. Registration Fee

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\$110.00 to the Lawyers Professional Responsibility Board
\$13.00 to the Minnesota Client Security Board
\$50.00 to the Legal Services Advisory Committee.

\$8.00 to Lawyer Trust Advisory Board (for Lawyers Concerned for Lawyers).

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~One Hundred Eighty-two Dollars (\$182.00)~~ One Hundred Ninety Dollars (\$190.00). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-Five Dollars (\$25.00).

B. The following attorneys and judges shall pay an annual registration fee of ~~One Hundred and One Dollars (\$101.00)~~ One Hundred and Nine Dollars (\$109.00):

- (a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within the state;
- (b) Any attorney while on duty in the armed forces of the United States.

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Alternative Three - Funding for a lawyers assistance program through the Lawyer Trust Account Board.

**RULES OF THE SUPREME COURT
FOR
REGISTRATION OF ATTORNEYS**

Rule 2. Registration Fee

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An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~One Hundred Eighty-two Dollars (\$182.00)~~ One Hundred Ninety Dollars (\$190.00). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-Five Dollars (\$25.00).

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The ~~Ninety-six Dollars (\$96.00)~~ One Hundred and Four Dollars (\$104.00) so received shall be allocated as follows:
\$20.00 to the State Board of Law Examiners
\$14.00 to the State Board of Continuing Legal Education
\$24.00 to the Lawyers Professional Responsibility Board
\$13.00 to the Client Security Fund
\$25.00 to the Legal Services Advisory Committee
\$8.00 to Lawyer Trust Advisory Board (for a lawyers assistance program).

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-Five Thousand Dollars (\$25,000.00) per year, shall pay a registration fee in the sum of ~~Eighty-Three Dollars and fifty cents (\$83.50)~~ Ninety-one Dollars and fifty cents (\$91.50). The allocation to the Legal Services Advisory Committee shall be reduced by Twelve Dollars and fifty cents (\$12.50).

**RULES OF LAWYER TRUST
ACCOUNT BOARD**

Rule 1. Composition

The Lawyer Trust Account Board shall consist of ~~six~~ eight lawyers having their principal offices in this state, three of whom the Minnesota State Bar Association may nominate, and ~~three~~ four public members resident in this state, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that one-third of all terms expire each February 1st. No person may serve more than two three-year terms, in addition to any initial shorter term. At least two of the lawyer members and one of the public members shall have substantial experience with chemical dependency or the treatment of mental illness.

Rule 2. Powers and Duties

(a) **General.** The Board shall have general supervisory authority over the administration of these Rules.

(b) **Receipt and investment of funds.** The Board shall receive funds from lawyers' interest bearing trust accounts and make appropriate temporary investments of such funds pending disbursement of them.

(c) **Disbursement of funds.** The Board shall, by grants and appropriations it deems appropriate, disburse funds for the tax exempt public purposes which the Board may prescribe from time to time consistent with Internal Revenue Code Regulations and rulings, including those under Section 501(c)(3).

(d) **Records and reports.** The Board shall maintain adequate books and records reflecting all transactions, shall report quarterly to the Court, and shall report annually to the Minnesota State Bar Association and the public.

Rule X. Lawyers Assistance Program

In addition to its other responsibilities set forth in these rules, the Lawyer Trust Account Board shall be responsible for receiving funds from the attorney registration fee that are for the purpose of funding a lawyers assistance program. The Board shall make grants to the program which provides services to lawyers suffering from chemical dependency, alcoholism, or mental illness. In making such grants the Board shall give preference to organizations which have an established history of providing such services and incorporating into the delivery of these services the substantial involvement of volunteer lawyers. In establishing guidelines for submitting annual reports and records, the Board shall avoid requiring information which would violate the program's need for confidentiality in delivering its services.