

STATE OF MINNESOTA
IN SUPREME COURT

C9-81-1206
C8-84-1650
C4-91-1728

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES RELATING TO
REGISTRATION OF ATTORNEYS AND RULE OF PROFESSIONAL CONDUCT**

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 15, 1999 at 10:00 a.m., to consider the joint petition of the Minnesota State Bar Association and Lawyers Concerned for Lawyers to amend the Rules Relating to Registration of Attorneys and the Rules of Professional Conduct. A copy of the joint petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before December 8, 1999 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before December 8, 1999.


Dated: September 24, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS

SEP 24 1999

FILED



Kathleen A. Blatz
Chief Justice

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:

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(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:1994

Self-regulation of the legal professional requires that members of the professional 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.

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.

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 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.

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.

~~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.

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,

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and

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