

STATE OF MINNESOTA
IN SUPREME COURT
Nos. 46994, A-8

SUPREME COURT
FILED

JUL 23 1982

JOHN McCARTHY,
CLERK

ORDER AMENDING MINNESOTA
RULES ON LAWYERS PROFESSIONAL
RESPONSIBILITY

WHEREAS, the Lawyers Professional Responsibility Board filed a petition on February 12, 1982 requesting amendments to Minnesota Rules on Lawyers Professional Responsibility;

WHEREAS, the text of the proposed amendments was published by FINANCE AND COMMERCE and BENCH AND BAR in April, 1982;

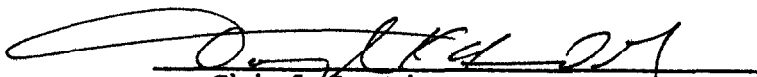
WHEREAS, on May 7, 1982, the Supreme Court held a public hearing regarding the proposed amendments;

WHEREAS, the Supreme Court considered such amendments at meetings on June 10, 1982 and June 29, 1982 and has given due consideration to such amendments;

IT IS HEREBY ORDERED that the attached amendments be adopted.

DATED: July 22 , 1982.

BY THE COURT


Chief Justice

**AMENDMENTS TO RULES ON
LAWYERS PROFESSIONAL RESPONSIBILITY**

(ADOPTED AT COURT MEETING,
June 10, 1982)

AMENDMENT TO RULE 2:

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that ~~complaints~~ cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of and that disability or disciplinary proceedings be ~~brought~~ commenced in those cases where investigation discloses ~~it is~~ they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

AMENDMENT TO RULE 4(a)(2):

(a) Twelve lawyers having their principal office in this state, six of whom the Minnesota State Bar Association may nominate, and nine nonlawyers 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 as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which

he was originally appointed and any period served as Chairman.

STRIKE RULE 4(a) (3)

(3) Unless any lawyer members nominated by the Minnesota State Bar Association shall leave the Board for any reason or decline reappointment to the Board, the number of lawyer members nominated by the Minnesota State Bar Association shall be as follows within the periods indicated:

PERIOD	TOTAL NUMBER	ASSOCIATION NOMINEES
From the date hereof through January 31, 1979	15	9
February 1, 1979 through January 31, 1981	14	8

AMENDMENT TO RULE 4(b):

(b) Compensation. The Chairman, other Board members, and other panel members shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

AMENDMENT TO RULE 4(d):

(d) Panels. The Chairman shall divide the Board into four Panels, each consisting of not less than three lawyer Board members and two nonlawyer members at least one of whom is a nonlawyer, and shall designate a Chairman and a Vice-Chairman for each Panel. The Board's Chairman or the Vice-

Chairman, ~~if any~~ is a Panel member at any Panel proceeding he attends. ~~Four~~ Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. If a ~~quorum~~ cannot be obtained The Board's Chairman or, ~~if he is unavailable~~, the Vice-Chairman may ~~assign~~ either designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board.

AMENDMENT TO RULE 4(f):

(f) Approval of petitions. Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

AMENDMENT TO RULE 5(b):

(b) Duties. The Director shall be responsible and accountable to the Board and to this Court ~~and, unless this Court otherwise directs, to the Board~~, for the proper administration of these Rules. The Director shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system and shall make such other reports to this Court as it may order.

AMENDMENT TO RULE 6(a):

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules.

AMENDMENT TO RULE 7(a), (b), (e), re-numbering of Rule 8(a):

(a) Assignment; assistance. The District Chairman may investigate or assign investigation of the complaint to any one or more of the Committee's members, and may request the director's assistance in making the investigation. ~~The District Chairman may request some or all Committee members to consider the matter.~~ The investigation may be conducted by means of written and telephonic communication and personal interviews.

(b) Report. The District Chairman or his designee shall report the results of the investigation to the Director. The report shall include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue a ~~private warning~~, an admonition;
- (3) Refer the matter to a Panel, ~~either with or without a recommendation as to the matter's ultimate disposition~~; or
- (4) Investigate the matter further.

~~{Rule 9}(a)~~ [Rule 7] (e) Notice to complainant. The Director shall keep the complainant advised of the progress of the proceedings, and shall appropriately notify him of each stage of the proceedings, including:

- ~~(1)~~ Receipt of the complaint by a District Committee or the Director;
- ~~(2)~~ Notification of reasons for delay under Rule 7(e);
- ~~(3)~~ Removal of a complaint under Rule 7(d); and
- ~~(4)~~ Receipt of a report under Rule 7(b).

AMENDMENTS TO RULE 8:

DIRECTOR'S INVESTIGATION

~~(b)~~ (a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, the Director may make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers.

(b) Investigatory subpoena. With the Board Chairman or Vice-Chairman's approval upon the Director's application showing that it is necessary to do this before issuance of charges under Rule 9(a), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have

jurisdiction over issuance of subpoenas and over motions arising from the examination.

(c) Disposition

(1) Determination discipline not warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted he shall so notify the lawyer involved, the complainant, and the Chairman of the District Committee, if any, that has considered the complaint. The notification:

(i) May set forth an explanation of the Director's conclusion;

~~(ii)~~ The notification to the lawyer shall set forth the complainant's identity and the complaint's substance; and

~~(iii)~~ (iii) Shall inform the complainant of his right to appeal under subdivision (d).

(2) Warning Admonition. If In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, he may issue an admonition. ~~does not warrant discipline but warrants a warning,~~ he The Director shall notify the lawyer of the warning and that in writing:

(i) Of the admonition;

(ii) That the admonition warning is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;

(iii) That the lawyer may within a specified reasonable time, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and

~~(iii)~~ (iv) That unless the lawyer so demands the Director after that time will notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, that the Director has issued the warning admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform him of his right to appeal under subdivision (d).

(3) Stipulated probation. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and the Board Chairman or Vice-Chairman approves, the Director and the lawyer may agree that the proceedings will be held in abeyance for a

specified period up to two years and thereafter terminated, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chairman or Vice-Chairman's approval, the parties may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform him of his right to appeal under subdivision (d). The Director may reinstitute the underlying proceedings if the lawyer consents or a Panel determines that the lawyer has violated the conditions.

~~(3)~~ (4) Submission to Panel. The Director shall submit the matter to a Panel under Rule 9 if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted; or if

(ii) The lawyer makes a demand under Rule ~~8(e)(2)(iii)~~ subdivision (c)(2)(iii);

(iii) The lawyer consents or a Panel determines that the lawyer has violated conditions under subdivision (c)(3); or

(iv) A Panel chairman so directs upon an appeal under subdivision (d).

the Director shall submit the matter to a Panel under Rule 9.

(d) Complainant's appeal. If the complainant is not satisfied with the Director's disposition under Rule 8(c)(1), (2) or (3), he may appeal the matter by notifying the Director in writing within fourteen days. The Director shall notify the lawyer of the appeal and assign the matter to a Panel chairman by rotation. The Panel chairman may approve the Director's disposition or direct that the matter be submitted to a Panel other than his own.

AMENDMENTS TO RULE 9:

RULE 9 PANEL PROCEEDINGS

(a) Charges; setting pre-hearing meeting. If the matter is to be submitted to a Panel, the Director shall prepare charges of unprofessional conduct, set a time and place for hearing by a Panel, on the charges assign them to a Panel by rotation, schedule a prehearing meeting, and notify the lawyer of:

(1) The charges; and hearing and of the lawyer's right to be heard at the hearing

(2) The name, address, and telephone number of the Panel chairman and vice-chairman;

(3) The time and place of the pre-hearing meeting; and

(4) The lawyer's obligation to appear at the time set unless the meeting is rescheduled by agreement of the parties or by order of the Panel chairman or vice-chairman.

The Director shall also notify the complainant, if any, of the hearing's time and place.

~~(b)~~ Subpoenas. At the instance of the Director or the lawyer, attendance of witnesses and production of documentary or tangible evidence shall be compelled as provided in Rule 45, Rules of Civil Procedure. The District Court of the District where the hearing will be held shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege.

~~(e)~~ (b) Admission of charges. The Director shall, if possible, contact the lawyer to determine whether he desires to admit any charges. The lawyer may, if he so desires:

(1) Admit some or all charges; or

(2) Tender an admission of some or all charges conditioned upon a stated disposition.

If a lawyer makes such an admission or tender, the Director may proceed under Rule 10(b).

(c) Request for admission. Either party may serve upon the other a request for admission. The request shall be made before the pre-hearing meeting or within ten days thereafter. The Rules of Civil Procedure for the District Courts applicable to requests for admissions, govern except that the time for answers or objections is ten days and the Panel chairman or vice-chairman shall rule upon any objections. If a party fails to admit, the Panel may award expenses as permitted by the Rules of Civil Procedure for the District Courts.

(d) Conditional stay. The Panel may, if the Director and the lawyer agree, consent to hold the proceedings in abeyance for a specified period and thereafter discontinue them, provided the lawyer throughout the period complies with specified reasonable conditions.

(d) Deposition. Either party may take a deposition as provided by the Rules of Civil Procedure for the District Courts. A deposition under this Rule may be taken before the pre-hearing meeting or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the deposition. The lawyer shall be denominated by initials in any District Court proceeding.

(e) Pre-hearing meeting. The Director and the lawyer shall attend a pre-hearing meeting. At the meeting:

(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing;

(2) Each party shall mark and provide the other party a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre-hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Procedure for the District Courts. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel's permission; and

(3) The parties shall prepare a pre-hearing statement.

(f) Setting Panel hearing. Promptly after the pre-hearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:

(1) The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by agreement of the parties or by order of the Panel chairman or vice-chairman. The Director shall also notify the complainant, if any, of the hearing's time and place. The Director shall send each Panel member a copy of the charges, of any stipulations, of the pre-hearing statement, and, unless the parties agree or the Panel chairman or vice-chairman orders to the contrary, of all documentary exhibits marked at the pre-hearing meeting.

(g) Form of evidence at Panel hearing. The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

(1) The lawyer;

(2) A complainant who affirmatively desires to attend; and

(3) A witness whose testimony the Panel chairman or vice-chairman authorized for good cause.

If testimony is authorized, it shall be subject to cross-examination and the Rules of Evidence and a party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Rules of Civil Procedure for the District Courts. The District Court of Ramsey

County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by initials in any district court proceeding.

(h) Procedure at Panel hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The Chairman shall explain that the hearing's purpose is to determine whether there is probable cause to believe that public discipline is warranted on any charge, and that the Panel will terminate the hearing whenever it is satisfied that there is or is not such probable cause (or, if the Director has issued an admonition under Rule 8(c)(2), that the hearing's purpose is to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court);

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining

for resolution, and the proof which he proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments; and

(6) The Panel shall either recess to deliberate or take the matter under advisement.

~~(e)~~ (i) Disposition. After the hearing, the Panel shall either:

(1) Determine that discipline is not warranted there is not probable cause to believe that public discipline is warranted (or, if the Director has issued an admonition under Rule 8(c)(2), affirm or reverse the admonition); or

~~(2) Instruct the Director to give a warning;~~

~~(3) Make a finding of unprofessional conduct and issue a reprimand; or~~

~~(4)~~ (2) If it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disci-

plinary action. ~~with or without~~ The Panel shall not make a recommendation as to the matter's ultimate disposition.

~~(f)~~ (j) Notification. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has ~~considered~~ the complaint, of the Panel's ~~action under subdivision (d) or (e)~~ disposition. If the Panel did not determine that there was probable cause to believe that public discipline is warranted, the notification to the complainant, if any, shall inform him of his right to petition for review under subdivision (k).

(k) Complainant's petition for review. If the complainant is not satisfied with the Panel's disposition, he may within 14 days file with the clerk of the Supreme Court a petition for review. The clerk shall notify the respondent and the Board Chairman of the petition. The respondent shall be denominated by initials in the proceeding. This Court will grant the review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the

filing of a petition for disciplinary action, or take any other action as the interest of justice may require.

(l) Manner of recording. Proceedings at a Panel hearing or deposition may be recorded by sound recording or audio-video recording if the notification thereof so specifies. A party may nevertheless arrange for stenographic recording at his own expense.

(m) Panel chairman authority. Requests or disputes arising under this Rule before the Panel hearing commences may be determined by the Panel chairman or vice-chairman. For good cause shown, the Panel chairman or vice-chairman may shorten or enlarge time periods for discovery under this Rule.

AMENDMENTS TO RULE 10:

RULE 10. PROCEDURE UPON ADMISSION OF CHARGES

DISPENSING WITH PANEL PROCEEDINGS

(a) Agreement of parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission or tender of conditional admission. If the Panel ~~so instructs~~ lawyer admits some or all charges, or tenders an admission of some or all charges conditioned upon a stated disposition, the Director may dispense with some or all procedures under Rule 9 and ~~shall~~ file a petition for

disciplinary action together with the lawyer's admission of charges or tender of conditional admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14. If this Court rejects a tender of conditional admission, the matter may be remanded to the same or a different Panel for proceedings under Rule 9.

(c) Criminal conviction. If a lawyer is convicted of a felony under Minnesota statute, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, wilfull extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may either submit the matter to a Panel or, with the approval of the chairman of the Board, file a petition under Rule 12.

(d) Additional charges. If a petition under Rule 12 is pending before this Court, the Director need not present the matter to a Panel before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(e) Discontinuing Panel proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(c)(1), (2) or (3).

AMENDMENTS TO RULES 12; 15:

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10, the Director shall file with this Court a petition for disciplinary action. The petition shall set forth the unprofessional conduct charged.

10. Amending subsection (a) of Rule 15 of said Rules to read as follows:

RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

- (1) Disbar the lawyer;
- (2) Suspend him indefinitely or for a stated period of time;
- (3) Order the lawyer to pay a fine, costs, or both.

[Clauses (4)-(6) unchanged]

(9-1-82 -- This Rule, No. 15, is numbered incorrectly. See materials at front of this packet)

AMENDMENT TO RULE 16:

RULE 16. TEMPORARY SUSPENSION PENDING
DISCIPLINARY PROCEEDINGS

(a) Petition for temporary suspension. Whenever In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of the lawyer's authority to practice law pending final determination of the disciplinary proceeding may result in risk of injury to the public, the Director ~~on direction of a Panel,~~ shall may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by ~~the~~ a Panel, court records, documents or affidavits.

AMENDMENTS TO RULE 17:

RULE 17. FELONY CONVICTION

(a) ~~Non-final conviction.~~ Whenever a lawyer is convicted, other than upon his plea of guilty or nolo contendere, of a felony under Minnesota statute or of a crime under the laws of the United States, any state or territory thereof, or any foreign country, punishable by incarceration for more than one year, the Director shall investigate and determine whether a continuation of the lawyer's authority to practice law pending final determination of

disciplinary proceedings may result in risk of injury to the public. If he determines in the affirmative, he shall proceed under Rule 16. If he determines in the negative, he shall so notify the Board.

(b) Final conviction. Whenever a lawyer is convicted, upon his plea of guilty or nolo contendere or upon a judgment not subject to direct appellate review, of an offense specified in Rule 17(a), the Director shall investigate and submit the matter to a Panel under Rule 9. If appropriate, he shall also proceed under Rule 16.

(a) Clerk of court duty. Whenever a lawyer is convicted of a felony, the clerk of district court shall send the Director a certified copy of the judgment of conviction.

(e) (b) Other cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

AMENDMENTS TO RULE 19:

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(a) Criminal conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in pro-

ceedings under these Rules, conclusive evidence that he committed the conduct for which he was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(b) Disciplinary proceedings.

[Clause (1) unchanged]

(2) Previous finding. A finding by a Panel or equivalent or by a Court in the previous disciplinary proceedings that a lawyer committed conduct warranting reprimand, probation, suspension, disbarment, or equivalent is, in proceedings under these Rules, prima facie evidence that he committed the conduct.

(3) Previous discipline. Subject to Rule 404(b), Rules of Evidence, the fact that the lawyer received a warning directed by a Panel or equivalent reprimand, probation, suspension, disbarment, or equivalent in the previous disciplinary proceedings is admissible in evidence in proceedings under these Rules.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct is admissible in evidence in proceedings under these Rules.

AMENDMENTS TO RULE 21:

RULE 21. PRIVILEGE: IMMUNITY

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, ~~including proceedings under Rule 6(e)~~, or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other panel members, District Committee members, the Director, and his staff, shall be immune from suit for any conduct in the course of their official duties.

AMENDMENTS TO RULE 28:

RULE 28. DISABILITY STATUS

(a) Transfer to disability inactive status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents him

from competently representing clients shall be transferred to disability inactive status.

(b) Immediate transfer. This Court shall immediately transfer a lawyer to disability inactive status upon proof that:

(1) The lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, or inebriate person; or

(2) The lawyer has alleged during a disciplinary proceeding that he is incapable of assisting in his defense due to mental incapacity.

(c) Transfer following hearing. In cases other than immediate transfer to disability inactive status, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel shall be appointed to represent him; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since his transfer to disability inactive status.

(e) Asserting disability in disciplinary proceeding. A lawyer's asserting disability in defense or mitigation in a disciplinary proceeding shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates.

August 25, 1982

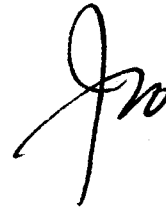
MEMORANDUM

TO: Laurry Harmon
FROM: Justice Otis
RE: Rule 15A3, Amended Rules on Professional Responsibility

Mike Hoover has called my attention to the fact that in amending the LPRB Rules we inserted a new clause which we labeled 15(a)3 which provides for fines, without renumbering the remaining four paragraphs.

Would you be good enough to see that the present paragraphs numbered 3, 4, 5, and 6, are renumbered 4, 5, 6, and 7?

JCO/br
cc Michael Hoover
Robert Henson

A handwritten signature in black ink, appearing to be 'JCO' or similar, located to the right of the typed name Robert Henson.

(e) Discontinuing Panel proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(c) (1), (2) or (3).

AMENDMENTS TO RULES 12; 15:

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10, the Director shall file with this Court a petition for disciplinary action. The petition shall set forth the unprofessional conduct charged.

10. Amending subsection (a) of Rule 15 of said Rules to read as follows:

RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

- (1) Disbar the lawyer;
- (2) Suspend him indefinitely or for a stated period of time;
- (3) Order the lawyer to pay a fine, costs, or both;
- (4) Place him on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;

(5) Reprimand him;

(6) Make such other disposition as this Court deems appropriate; or

(7) Dismiss the petition for disciplinary action.

AMENDMENT TO RULE 16:

RULE 16. TEMPORARY SUSPENSION PENDING
DISCIPLINARY PROCEEDINGS

(a) Petition for temporary suspension. Whenever In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of the lawyer's authority to practice law pending final determination of the disciplinary proceeding may result in risk of injury to the public, the Director on direction of a Panel, shall may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by the a Panel, court records, documents or affidavits.

AMENDMENTS TO RULE 17:

RULE 17. FELONY CONVICTION

(a) ~~Non-final conviction.~~ Whenever a lawyer is convicted, other than upon his plea of guilty or nolo contendere, of a felony under Minnesota statute or of a

crime under the laws of the United States, any state or territory thereof, or any foreign country, punishable by incarceration for more than one year, the Director shall investigate and determine whether a continuation of the lawyer's authority to practice law pending final determination of disciplinary proceedings may result in risk of injury to the public. If he determines in the affirmative, he shall proceed under Rule 16. If he determines in the negative, he shall so notify the Board.

(b) Final conviction. Whenever a lawyer is convicted, upon his plea of guilty or nolo contendere or upon a judgment not subject to direct appellate review, of an offense specified in Rule 17(a), the Director shall investigate and submit the matter to a Panel under Rule 9. If appropriate, he shall also proceed under Rule 16.

(a) Clerk of court duty. Whenever a lawyer is convicted of a felony, the clerk of district court shall send the Director a certified copy of the judgment of conviction.

(e) (b) Other cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

AMENDMENTS TO RULE 19:

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(a) Criminal conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that he committed the conduct for which he was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(b) Disciplinary proceedings.

[Clause (1) unchanged]

(2) Previous finding. A finding by a Panel or equivalent or by a Court in the previous disciplinary proceedings that a lawyer committed conduct warranting reprimand, probation, suspension, disbarment, or equivalent is, in proceedings under these Rules, prima facie evidence that he committed the conduct.

(3) Previous discipline. Subject to Rule 404(b), Rules of Evidence, the fact that the lawyer received a warning directed by a Panel or equivalent reprimand, probation, suspension, disbarment, or equivalent in the previous disciplinary proceedings is admissible in evidence in proceedings under these Rules.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct is admissible in evidence in proceedings under these Rules.

AMENDMENTS TO RULE 21:

RULE 21. PRIVILEGE: IMMUNITY

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, ~~including proceedings under Rule 6(e),~~ or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other panel members, District Committee members, the Director, and his staff, shall be immune from suit for any conduct in the course of their official duties.

AMENDMENTS TO RULE 28:

RULE 28. DISABILITY STATUS

(a) Transfer to disability inactive status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents him from competently representing clients shall be transferred to disability inactive status.

(b) Immediate transfer. This Court shall immediately transfer a lawyer to disability inactive status upon proof that:

(1) The lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, or inebriate person; or

(2) The lawyer has alleged during a disciplinary proceeding that he is incapable of assisting in his defense due to mental incapacity.

(c) Transfer following hearing. In cases other than immediate transfer to disability inactive status, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel shall be appointed to represent him; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since his transfer to disability inactive status.

(e) Asserting disability in disciplinary proceeding. A lawyer's asserting disability in defense or mitigation in a disciplinary proceeding shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates.