

**.DIRECTOR OF
LAWYERS PROFESSIONAL RESPONSIBILITY**

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April 5, 1984

PERSONAL AND CONFIDENTIAL

Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

A-8

Re: In Re Petition to Amend Rule 24, Minnesota Rules on
Lawyers Professional Responsibility

Dear Mr. Tschimperle:

Enclosed are the original and nine copies of petition to amend
Rule 24, Minnesota Rules on Lawyers Professional Responsibility,
and Director's memorandum in support of the petition.

Very truly yours,



Michael J. Hoover
Director

MJH:crm
Enclosures
cc: Justice Glenn E. Kelley
Robert F. Henson

A-8

STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
FILED

APR 5 1984

WAYNE TSCHIMPERLE
CLERK

PETITION

In re Petition to Amend Rule 24,
Minnesota Rules on Lawyers
Professional Responsibility

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Lawyers Professional Responsibility Board (Board) and the Director of Lawyers Professional Responsibility (Director) hereby petition the court to amend Rule 24, Minnesota Rules on Lawyers Professional Responsibility (RLPR), to read as follows:

RULE 24. COSTS, AND DISBURSEMENTS, EXPENSES AND LEGAL FEES

(a) **Costs.** Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding decided by this Court shall recover costs in the amount of \$500 \$1,000.

(b) **Disbursements.** Unless otherwise ordered by this Court, orders otherwise, the prevailing party in any disciplinary proceeding decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action,

under Rule 42. Recoverable disbursements in proceedings before a referee or this Court shall include including those normally assessed in appellate proceedings in this Court together with those which are normally recoverable by the prevailing party in civil actions in the district courts.

(c) Director's Expenses. In cases where this Court imposes discipline, this Court may also require the respondent to pay all or part of the other expenses reasonably incurred by the Director in the investigation and proceeding, including but not limited to reimbursement for the service of process, certified copies of records in any public office, reproduction costs, brief printing, postage, telephoning, adverse examinations, depositions and copies, court reporter fees, expert witness fees, witness fees and expenses, and compensation and reasonable expenses of experts and investigators employed on a contractual basis.

(d) Director's legal fees. In cases where this Court imposes discipline, this Court may also require respondent to reimburse the Director for all or part of the time spent by the

Director and his staff in investigating and presenting the matter.

~~(c)~~ (e) Time and manner for taxation of costs and disbursements. The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

~~(d)~~ (f) Judgment for costs, and disbursements, expenses and legal fees. Costs, and disbursements, expenses and legal fees taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension or disbarment is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs, and disbursements, expenses, and legal fees taxed under this Rule has not been fully paid, unless this Court orders otherwise.

In cases where respondent is disciplined but not suspended or
disbarred, respondent's right to continue the practice of law
shall be conditioned upon payment of assessed costs, disbursements,
expenses and legal fees within a reasonable time period as fixed
by this Court, unless this Court orders otherwise.

Petitioners request that this amendment apply to all cases wherein a referee hearing is held after the date of the court's order amending Rule 24, RLPR, and that it apply to all costs, disbursements, expenses and legal fees incurred in said cases whether incurred before or after the amendment.

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

Dated: Feb 9, 1984 By Robert F. Henson
Robert F. Henson, Chairman
Attorney No. 44271

The Director of Lawyers Professional Responsibility hereby joins in the above petition.

Dated: 2-3-84 Michael J. Hoover
Michael J. Hoover
Director of Lawyers Professional
Responsibility
Attorney No. 47053
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STATE OF MINNESOTA
IN SUPREME COURT

In re Petition to Amend Rule 24,
Minnesota Rules on Lawyers
Professional Responsibility

DIRECTOR'S
MEMORANDUM

This memorandum is submitted by the Director of Lawyers Professional Responsibility in support of the accompanying petition to amend Rule 24, Minnesota Rules on Lawyers Responsibility (RLPR).

This memorandum addresses the question whether the taxation permitted under proposed Amended Rule 24, RLPR, constitutes a "fine" so as to require a "jury." The rationale behind proposed Rule 24, RLPR, supports the position that such taxation is not a fine and is therefore permissible without a "jury" hearing.

The purpose of a disciplinary proceeding is not to punish an attorney, but to guard the administration of justice and to protect courts, the legal profession, and the public. See In re Hanson, 258 Minn. 231, 103 N.W.2d 863 (1960). Another authority summed up this rationale as follows:

A "disciplinary proceeding" against an attorney is not the trial of an action or a suit between adverse parties, but an inquiry or investigation by the court into the conduct of one of its own officers to determine his fitness to continue as a member of the legal profession.

In re Rerat, 224 Minn. 124, 28 N.W.2d 168 (1947).

As such, the taxation imposed under Rule 24, RLPR, was clearly not intended to be punishment in the form of a fine. The taxation permitted under Rule 24 is merely a reimbursement for

costs, disbursements, expenses and legal fees. This conclusion is clear in light of the civil nature of a disciplinary proceeding as well as the nature of costs themselves.

The weight of case law authority holds that costs are not considered to be penalties. One such authority stated:

"Costs" are not a penalty imposed on the losing party for his misconduct but are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in court.

Harmon v. Pac. Tel. & Tel. Co., 201 Cal. App. 2d 453, 20 Cal. Rptr. 118 (1962). See also Golub v. Golub, 336 So.2d 693 (Fla. App. 1976), Harvey v. Lewis, 10 Mich. App. 23, 158 N.W.2d 809 (1968), and Hayman v. Morris, 37 N.Y.S.2d 884 (1942).

Since costs are not penalties, it follows that costs are not fines. In drawing this distinction, one court declared:

A fine is a sum of money exacted, as a pecuniary punishment, from a person guilty of an offense, while costs are but statutory allowances to a party for his expenses incurred in an action. The former is, in its nature at least, a penalty, while the latter approaches more nearly a civil debt.

Bergman v. State, 187 Wash. 622, 60 P.2d 699 (1936). Clearly, then, costs are not fines. LaRue v. Burns, 268 N.W.2d 639 (Iowa, 1978).

Closely paralleling this rationale, the weight of authorities have concluded that costs are a part of the burden of litigation and, as such, no litigant is deprived of a constitutional right by statutes which impose such costs. Harmon v. Pac. Tel. & Tel. Co., 201 Cal. App.2d 453, 20 Cal. Rptr. 118 (1962), Harvey v. Lewis, 10 Mich. App. 23, 158 N.W.2d 809 (1968), and Hayman v. Morris, 37 N.Y.S.2d 884 (1942).

Specifically, a leading authority stated:

Costs are statutory allowances recoverable by the successful party as an incident to the main adjudication. They are neither part of the damages claimed, nor a penalty and need not be specifically pleaded or claimed.

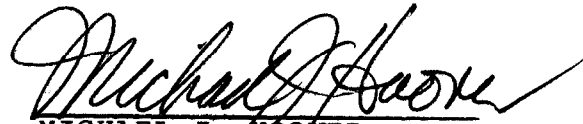
Golub v. Golub, 336 So.2d 693 (Fla. App. 1976). Therefore, the taxation of costs does not require a "jury" to afford the unsuccessful party an opportunity to be heard.

Conclusion

Since a judgment in a disciplinary proceeding is not intended as punishment or a penalty, the taxation imposed under Rule 24, RLPR, is not a fine and thus, no jury is required. The taxation is permissible as a reimbursement for costs, disbursements, expenses and legal fees.

Dated: March 30, 1984.

Respectfully submitted,



MICHAEL J. HOOVER
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