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September 26, 1984

The Honorable Lawrence R. Yetka
Associate Justice, Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

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Dear Justice Yetka:

Last week I attended a seminar sponsored by the Lawyers' Professional Responsibility Board. In it was a discussion of the proposed Rules on lawyers' professional responsibility.

Larry, I would not have you believe that I have studied these rules with all the diligence that one should perhaps give to them, but I am appalled at Rule 3.7(b). This indicates that a lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness. There are a couple of exceptions to this rule, but I am not concerned about the exceptions; it is the Rule in general. Let me give you a hypothesis. Lawyer A witnesses an automobile accident in which there are serious injuries. His firm ends up representing one of the injured claimants. Let us assume further that the firm takes the case on a contingency basis and it becomes essential from the firm's standpoint to prove that the other car ran a red light. On this issue, the testimony of the lawyer witness becomes crucial.

It seems to me that under such a hypothetical situation to permit the law firm to represent the claimant, particularly on a contingency fee basis when the partner's testimony is so crucial to the outcome, is just not proper. The public sees us now as greedy; how will they view this testimony no matter how honest and straightforward it is.

The present rule, as I understand it, makes it improper for a lawyer to appear as an advocate when someone else in his firm is going to appear as a witness. I think that is a good rule and it ought to be continued in full force and effect.

Since I cannot be present at the time these Rules are set for public hearing, I am taking the liberty of advising you of my feelings in this informal way. I have also sent a copy of this letter to the Lawyers' Professional Responsibility Board.

Very truly yours,


James Harper

JH/brc

cc: Lawyers' Professional Responsibility Board

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and Commr.

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