

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility

OFFICE OF
APPELLATE COURTS
FILED

DEC 02 1985

WAYNE TSCHAMPERS
CLERK

WHEREAS, by order dated August 31, 1984 the Supreme Court appointed an Advisory Committee on Lawyer Discipline, "to study the lawyer discipline process, procedures and operations of the Minnesota Lawyers Professional Responsibility Board, to report the results of the study to the Court and the Bar, and, if changes are deemed needed, to recommend such changes for the consideration of the Court," and

WHEREAS, the Advisory Committee filed its report with the Court on April 15, 1985, proposing amendments to the Rules on Lawyers Professional Responsibility and the adoption of certain administrative procedures in the Office of the Director of Lawyers Professional Responsibility, and

WHEREAS, since the time of filing of the original report, the Advisory Committee has received written comments regarding its recommendations from attorneys, the public and members of the Lawyers Professional Responsibility Board, which has resulted in the filing with the Court of a supplemental report on December 2, 1985.

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APPELLATE COURTS
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WAYNE F. SCHLITZ
CLERK

SUPPLEMENTAL REPORT
SUPREME COURT ADVISORY COMMITTEE
ON LAWYER DISCIPLINE

DECEMBER 2, 1985

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SUPREME COURT ADVISORY COMMITTEE
ON LAWYER DISCIPLINE

DECEMBER 2, 1985

COMMITTEE MEMBERSHIP

CHAIR	NANCY C. DREHER
MEMBERS	WILLIAM J. BAUDLER
	JAMES R. BETTENBURG
	HOWARD M. GUTHMANN
	TERRY HOFFMAN
	DAVID P. MURRIN
	ARTHUR NAFTALIN
	RICHARD L. PEMBERTON
	EUGENE M. WARLICH

Petition of the Supreme Court Advisory
Committee on Lawyer Discipline to Amend
the Rules on Lawyers Professional
Responsibility and to Implement Certain
Administrative Procedures in the Office
of the Director of Lawyers Professional
Responsibility

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WHEREAS, the Advisory Committee filed its report with the Court on April 15, 1985, proposing amendments to the Rules on Lawyers Professional Responsibility and the adoption of certain administrative procedures in the Office of the Director of Lawyers Professional Responsibility, and

WHEREAS, since the time of filing of the original report, the Advisory Committee has received written comments regarding its recommendations from attorneys, the public and members of the Lawyers Professional Responsibility Board, which has resulted in the filing with the Court of a supplemental report on December 2, 1985.

NOW, THEREFORE, the Supreme Court Advisory Committee on Lawyer Discipline respectfully petitions the Court to hold a public hearing concerning amendments to the Rules on Lawyers Professional Responsibility and the implementation of administrative procedures in the Office of the Director of Lawyers Professional Responsibility, as attached to this Petition.

DATED: December 2, 1985

SUPREME COURT ADVISORY COMMITTEE ON
LAWYER DISCIPLINE

BY *Nancy C. Dreher*
Nancy C. Dreher, Chairperson

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RECOMMENDATIONS AGREED TO IN PRINCIPLE	
	A. Recommendations 2, 3, 9, 14, 27	2
	B. Recommendations 35, 42, 59	3
	C. Recommendation 60	5
III.	RECOMMENDATIONS NOT AGREED TO BY THE BOARD	
	A. Recommendation 15	6
	B. Recommendation 22	6
	C. Recommendation 24	7
	D. Recommendation 40	8
	E. Recommendation 45	9
	F. Recommendation 53	9
	G. Recommendation 54	10
	H. Recommendation 61	11
	I. Recommendation 63	11
	J. Recommendations 38, 41	11
	K. Recommendation 43	18
IV.	ADDITIONAL MISCELLANEOUS BOARD COMMENTS	19
V.	CONCLUSION	21
	EXHIBIT A - PROPOSED REVISIONS TO RULES ON LAWYER PROFESSIONAL RESPONSIBILITY	
	EXHIBIT B - REVISIONS TO COMMITTEE'S APRIL 15, 1985 PROPOSALS FOR RULES CHANGES	

SUPPLEMENTAL REPORT
OF
SUPREME COURT ADVISORY COMMITTEE ON LAWYER DISCIPLINE

I. INTRODUCTION

At the time the Advisory Committee ("the Committee") submitted its original Report on April 15, 1985, it urged the Court to circulate the Report widely for comment. The purpose was to provide persons familiar with the lawyer discipline system an opportunity to comment before major rules changes were adopted. In particular, the Committee was concerned that the substance of its proposed changes in the Rules accurately reflect the Committee's intent in making recommendations.

Since April 15, the Committee has received written comments from members of the Bar, the public, and the Lawyers Professional Responsibility Board ("the Board"). The Board has submitted written comments directed both to the wording of recommended changes in the Rules and to the substance of the recommendations themselves. The Committee appreciates the assistance of all who submitted their comments. In particular, the Committee thanks the Board for the detailed and thoughtful response it has provided to the Court and the Committee. While there remain a limited number of areas in which the Committee and the Board disagree, this written exchange has served to focus the issues, to assist the Committee in clarifying its position on several matters, and to eliminate areas of potential disagreement.

The Committee has received a number of comments which ask it to address new issues, for example, funding for trusteeships necessitated when attorneys abandon their practice and the question

of the relationship between the Board and the Board on Judicial Standards in the case of alleged judicial improprieties. The Committee declines to address these new issues. While the Committee does not diminish the importance of these newly articulated issues, having concluded its evidence-taking phase, the Committee believes it more appropriate that they be addressed by the Board itself.

In its written response of September 6, 1985 the Board expressed agreement with forty-four (44) of the Committee's recommendations; agreement in principle, subject to minor qualifications with ten (10) of the Committee's recommendations; and, disagreement with twelve (12) of the Committee's recommendations. It also made several comments with respect to draftsmanship of particular recommendations and several recommendations of its own for change in the Rules. This supplemental report will deal with the Board's response in the order in which the matters were presented in that response.

II. RECOMMENDATIONS AGREED TO IN PRINCIPLE

The Board's response (pages 20-24) listed ten (10) recommendations with which it agreed in principle, subject to minor qualifications.

With respect to Recommendations 2, 3, 9, 14 and 27, the Committee agrees that the Board and the Director should be allowed considerable leeway in their implementation. While the Committee is convinced that attorneys' time records should definitely be kept, in this period of transition the Board and the Director should use their discretion to implement the remaining recommendations. Should it appear that problems experienced in the past reoccur, the Board should consider implementing some or all of these recommendations in

the future.

The Committee believes that the Board should be able to implement Recommendation 35 with all DEC's in the very near future. If certain DEC's are perpetually late in reporting, the solution does not appear to be in granting them exempt status from performing their tasks, but instead in taking steps to bring them to timely reporting, as otherwise recommended in the Committee's Report.

With respect to Recommendation 42, the Committee assumes that the recommended change in wording from "fails to find probable cause" to "finds no probable cause" is a matter of form and not intended as a change in substance. Based on that assumption, the Committee agrees with the proposed change in wording.

The Board has urged that proposed Rule 19(b)(4) as revised in Recommendation 59 be amended so as to make clear that proof of prior misconduct warranting public discipline and facts relating thereto should be allowed to prove a pattern of "related" conduct "the cumulative effect of which constitutes an ethical violation." The Board's position is that prior instances of discipline imposed should be allowed to prove the misconduct alleged, if such prior discipline is recent, serious and of the same type as the misconduct being alleged. The Board's position is well taken. The Committee has taken a similar position with respect to prior disciplinary proceedings where discipline was found not to be warranted and there is every reason to allow it for this same purpose where discipline has been found necessary.

The Board's comments have caused the Committee to review the current Rule 19(b) and its original proposed revision thereto. As

currently drafted, the Committee believes that proposed Rules 19(b)(1) and (4) may be found to be inconsistent, because Rule 19(b)(1) suggests that prior disciplinary proceedings (except those where discipline was found not to be warranted) is admissible in all instances, while proposed Rule 19(b)(4) indicates the opposite. After reviewing Rule 19(b) with the Director, it was determined that Rule 19 should be substantially redrafted to clarify the language of the Rule and to implement the Committee's intention that previous conduct which resulted in a disposition of dismissal shall not be used, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation, and that previous instances of misconduct warranting discipline is admissible for the purposes set forth in Rule 404(b), Rules of Evidence; to prove a pattern of related conduct, the cumulative effect of which constitutes an ethical violation; for impeachment purposes; for purposes of proving the very offense alleged; and, after the offense has been found to have occurred, to prove the nature of the discipline which should follow. See Exhibit B-1, Revised Proposed Rule 19(b).

The Director has asked the Committee to make clear that Rule 19(b)(1) is an evidentiary rule and it is not to be construed as preventing the Board from reopening a prior charge wherein discipline has been found not warranted, if new evidence comes to light. The Committee's intent is consistent with that of the Director.

The Committee does not agree with the Board's response to Recommendation 60. Recommendation 60 was intended to require the Executive Committee and the Board to develop a formalized training

program. It did not mandate that the Board members themselves conduct such training programs. The Committee still feels strongly that increased resources must be devoted to training of Board and DEC members and that more must be done than holding an annual voluntary seminar and providing a manual.

The Committee agrees with the Board's suggestion that Recommendation 66 be modified so as to call for the Board to report to the Court on the implementation of these recommendations in January, 1987. It still recommends, however, that another review of the system be considered in 3-5 years. Obviously, the progress that has been made in implementing this Committee's recommendations should be a factor in determining whether to do so.

III. RECOMMENDATIONS NOT AGREED TO BY THE BOARD

At pages 25 to 41 of the Board's response, the Board disagreed with twelve (12) of the Committee's recommendations.

Recommendation 15 (Petition Process For Dismissal of Cases of Extraordinary Delay)

The Board's response indicates that the Executive Committee is currently addressing the problem of delay and intends to implement other Committee recommendations designed to alleviate delay. Under these circumstances, the Committee concurs that there is no current need to implement Recommendation 15. The concept should be reconsidered if later reports from the Board to the Court demonstrate that delay remains a problem in the future.

Recommendation 22 (Director's 2-Year Renewable Term)

The Committee abides by its original recommendation that the Director have a two-year renewable term. The Committee believes adoption of the concept of a two-year renewable term provides several tangible benefits to the Director and the Court. These include the benefit both the Director and the Court derive from having a fixed time-line for action relating to continued employment of the Director.

The Board has suggested that Rule 5(a) make clear that it is the Board, and not the Executive Committee, which makes recommendations to the Court with respect to hiring and termination of the Director and points out that Recommendation 19 seems to have contemplated such a result. The Committee agrees. See Exhibit B-2, Revised Proposed Rule 5(a).

Recommendation 24 (Executive Committee Members Not to Participate
In Panels; Role In Supervision of the Director's Office)

The Board has two basic disagreements with the substance of this Committee recommendation. First, it asserts that Executive Committee members ought to be allowed to sit on panels. Second, it asserts the Executive Committee should not be involved in day-to-day supervision of the Director's Office on a detailed basis. The Committee disagrees with the Board with respect to the first response and clarifies its position with respect to the second.

The Committee believes that the Executive Committee members should not be assigned to panels during their tenure on that Committee. Removing Executive Committee members from serving on panels divorces the management function (which often addresses specific case-intensive issues) from the adjudicatory function (where these very same cases are likely to be adjudicated). It is important to the litigants, to the public and the Bar that judges not only be neutral, but that they be perceived as neutral.¹

Addressing the Board's second substantive point, it was never the intention of the Committee to suggest that the Executive Committee become directly involved in the details of the day-to-day management decisions. Instead, the recommendation referred to general oversight of functions such as those mentioned in the text of the Report itself. Rule 4(d) has thus been modified to make the

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¹ On November 20, 1985, the Director advised the Committee Chair that, at the Board's meeting of November 15, a motion was passed withdrawing the Board's opposition to Recommendations 24 and 25. The Board now concurs that Executive Committee members not serve on Panels and that Board membership be increased by one.

Committee's original intent clear by substituting the word "general" for the word "day-to-day." See Exhibit B-3, Revised Proposed Rule 4(d).

The Board has also requested clarification in Rule 4(d) regarding use of the State Court Administrator's staff. The Committee has accepted this proposed change in the wording of the Rule which makes clear that the State Court Administrator's Office provide assistance when requested by the Executive Committee. See Exhibit B-3, Revised Proposed Rule 4(d).

Recommendation 40 (Expanding Options of Panel Chairs
In Complainants' Appeals)

The Board expresses two reasons for its objections to the Committee's recommendation that expanded options be made available to Panel Chairs in the case of complainants' appeals. First, the Board feels that the appeal process will be too burdensome if such appeals remain confined to Panel Chairs. Second, it asserts that this change will impair consistency in the disciplinary process. While the committee is persuaded by the first point, it is not persuaded by the second.

The Committee agrees that it will be desirable that complainants' appeals be taken to any Board member appointed by the Chairman of the Board. Rules 8(c)(4)(iv) and 8(d) have been revised to reflect this position. See Exhibit B-4, Revised Proposed Rule 8(c)(4)(iv) and 8(d).

The Committee is not persuaded with the Board's arguments against expanding the options available to such Board member in the case of such appeals. As is explained more fully in the Committee's

discussion of the Board's response to Recommendations 38 and 41 (infra, pp 12-18) the Committee has made its systemic recommendations believing that they should be adopted "as a package." It remains convinced that the benefits to be gained from allowing a wider range of options on complainants' appeals outweighs any potential problems of inconsistent decisions. The Committee has recommended that full Board meetings be used to educate Board members so as to diminish such inconsistencies, if any.

Recommendation 45 (Advisory Opinions)

The Committee has spent considerable time discussing with the Director the Board's objections to this proposal. It has been furnished with no authority to suggest that the Committee's proposal will not withstand antitrust scrutiny. It still believes that the Bar is much better served by oral and written opinions furnished by experienced members of the Bar, rather than by a most junior attorney of the Director's staff. It appears that the Board's true concern is with the feasibility of this proposal. The Board is apparently concerned that the Bar cannot organize and sustain such an effort. While it may take concerted effort by the Bar, the Committee believes it is feasible. The recommendation was first suggested by leaders of the Bar. Its implementation is now being considered by an Ad Hoc Minnesota State Bar Association Committee. Similar systems are known to work well in other professions. Accordingly, the Committee abides by its original recommendation. Moreover, the Committee believes that, as originally recommended, and in spite of the Board's concerns, the Director's office definitely can and should approve the wording of all written opinions.

Recommendation 53 (Director's Office to Notify DEC of
Director's Preliminary Determination of Rules in Question

The Committee recommended that the Director's Office preliminarily identify the Rule of Professional Conduct called into question by a complaint based on testimony from DEC Chairs who urged that this would be of help to them. The Committee remains committed to this recommendation. It seems fundamentally fair and patently more economical for the attorney and the DEC to be advised at the earliest possible time regarding the nature of the Rules called into question. Such advice should come from the Director's Office, if at all feasible. Such preliminary determinations should be made expeditiously. Whatever additional time is needed at this point should improve the processing time at the DEC level.

Recommendation 54 (Director's Discovery Requests)

The Board appears to have three basic disagreements with the Committee with respect to its recommendations for change in Rule 25. It asserts that (1) the Committee goes beyond In re N.P., 361 N.W. 2nd 386 (1985), when it recommends a Rule change which refers to "arguable basis in law," instead of "good faith," (2) lawyers ought to be required to "furnish" (i.e., deliver) their files, as opposed to simply making them available, and (3) the Director's discovery requests ought not be limited to those which conform to the nature and gravity of the charge. While the Committee agrees that the words "good faith" should be substituted for "arguable basis in law" (see Exhibit B-5, Revised Proposed Rule 25(b)), it disagrees with the Board's other two objections. The Committee believes that its recommended changes in this Rule offer simplicity and comport with

fundamental fairness.

The Board's suggestion that all respondents be denominated by randomly selected initials or numbers in any discovery proceeding is an excellent one and the Committee has modified Rules 9(d), 9(g), 9(k), 9(l) and 25(a) to accord with this suggestion. See Exhibit B-6, Revised Proposed Rules 9(d), 9(g), 9(k), 9(l) and 25(a).

Recommendation 61 (Function of Non-Executive Board Members When Not Sitting On Panels)

There is no basic disagreement between the Board and the Committee with respect to the role to be played by non-Executive Committee Board members when not engaged in Panel functions. Recommendation 61 simply states that a (not the only) purpose of Board meetings be educational. Certainly, another primary purpose is policy-making. The Committee did not contemplate, nor intend to suggest, that non-Executive Committee members of the Board be restricted principally to Panel hearings. Certainly, all Board members should play a role in making or passing upon matters of disciplinary policy.

Recommendation 63 (Ex Parte Communications)

The Committee is convinced that there is some benefit to be gained from explicitly stating in the Rules the Court's position with respect to ex parte communications. It is not convinced that Rule 3.5(g) of the Rules of Professional Conduct cover all instances of ex parte communications which have occurred in the past or may occur in the future.

Recommendation 38 (Expanded Dispositional Authority of Board Panels); Recommendation 41 (Board Panel Finding of Probable Cause as to Each Charge)

The Committee's recommendation for expanding the dispositional authority of Board panels to include admonition and stipulated probation (Recommendation 38), along with its recommendation that panels determine probable cause as to each charge (Recommendation 41), were expected to be the most controversial aspect of the Committee's report. Indeed, these recommendations were the subject of particularly strong dissent by the Board. However, after careful consideration of the opposing views set forth in the Board's response, the Committee continues to advocate strongly the adoption of its original recommendations for change in these areas.

The Board's opposition to the Committee's recommendations is essentially two-fold. First, the Board argues that the perception of unfairness is an insubstantial basis for the recommended changes. Second, it contends that "the (current) system has saved enormous resources of the Director, Board and Court," and that the Committee's recommendations would "turn the clock back" (Response, p. 38). The Committee is unpersuaded by either of these arguments.

Our judicial system is grounded in the notion that justice must not only be done, but must also appear to be done. Our codes of judicial ethics and professional responsibility eschew not only impropriety and conflict of interest, but also the appearance of impropriety and the appearance of conflict of interest. This is so because perceptions regarding the fairness of the justice system are essential to the maintenance of the rule of law.

The Committee understood one of the principal reasons for its formation to be the perception of possible unfairness regarding the discipline system held by a significant segment of the bar. This perception was reaffirmed by testimony received during the Committee's deliberations.

It is the Committee's view that the adoption of its recommendations to restore dispositional authority to the Board panels and to require a probable cause finding as to each charge will insure a thorough review by a neutral panel at an early, pre-publicity point. It should be noted that under the ABA disciplinary standards a three-person Board panel fully reviews all public discipline charges presented by disciplinary counsel and reaches a dispositional decision on the merits of each case.² Thus, the Committee's recommendations would go no further in according due process guarantees to respondents than is provided under the ABA Standards and would do much to enhance the perception of fairness within the Minnesota discipline system.

As noted in the Committee's report, it found overwhelming agreement that expanded dispositional authority should be given to the Board panels. Most individuals testifying before the Committee and all Board members who served prior to the 1982 Rules changes strongly supported restoring vitality to the panel hearings.

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² Indeed, concern relative to unfiltered Director dispositions in the ABA model extends to private dispositions as well. Unlike Minnesota's rules where no prior review is required of the Director's private discipline decisions, ABA Standards 8.11 requires the Disciplinary Counsel to present his recommendations for private disposition to a Board panel chairman for approval, modification, rejection or further investigation.

The Board also contends that increased time commitments will be required by these recommendations which will result in more delay in the system, particularly at the crucial point of notice to the public. It further contends that these adverse consequences outweigh any benefits to be derived from an enhanced perception of fairness. The Committee disputes the Board's conclusions that significant additional time commitments will result, and that further delay is inevitable.

It should be remembered that the number of cases affected by the Committee's recommendations is small. Last year there were 10 cases brought before Board panels. The committee's recommendation will increase the number, but the Director estimates it will not exceed 35 cases annually. Even at this higher caseload, each Board panel would be required to meet only six times per year.

Nor is the length of each panel hearing expected to be prohibitive. Some Board panels presently hold expanded evidentiary hearings similar to those contemplated under the proposed changes and have not found their length unduly burdensome. Even under the pre-1982 Rules, a panel hearing extending beyond one day was the exception rather than the rule. Board members who testified indicated that such a time commitment is not unreasonable to ask of a volunteer Board. For these reasons, the Committee believes that neither significant new time demands nor case processing delay will occur as a result of the impact of the proposed changes on the Board panels.

In contrast, the Committee recognizes that its proposals will result in an increased time commitment by the Director's office in

preparing and presenting cases that now by-pass the panel and, in some instances, referee hearings. The question of the extent of that increase and the capacity to absorb it, however, is in dispute. In its response, the Board indicates that over the nearly 1-1/2 year period from January 1, 1984 - May 17, 1985, 25 matters were filed in the Supreme Court by stipulation. While some of the stipulations achieved during this period may not have been possible under the proposed rules, it has not been established that a one-for-one reduction in stipulations would occur. The Committee is not convinced that its recommendations will eliminate stipulated settlements from the discipline system. Clearly, there will always be reasons why some respondents will choose a negotiated disposition.

The Committee also urges the Court to remember that this increased Board panel workload was handled by the Director's office prior to 1982 under the old rules and, although delays may have been occasioned thereby, it should be noted that the number of staff available to handle the caseload has increased by 100 percent from nearly 10 full time equivalent positions in 1981 to 20 full time equivalent positions today.

Moreover, the Committee found in its substantive file audit of the Director's office a tendency toward shotgun charging. It is the Committee's view that full presentations to Board panels will have the salutary effect of forcing the Director to exercise greater prosecutorial discretion in the number of offenses charged and will require the office to concentrate its finite resources on the strongest counts. Prosecution of only the strongest counts in each case will free up some resources necessary for the increased panel

workload.

The Committee believes that Recommendations 38 and 41 are a part of a single, interrelated package relating to proposed changes in the organization and administration of the discipline system. Recommendations have been aimed at streamlining the process to reduce time commitments in one area so that greater attention can be given to other areas. For example, the Committee has recommended the establishment of an Executive Committee of the Board to supervise generally the operations of the Director's office, thereby permitting a reduction in the number of full Board meetings, making more time available for panel hearings, educational activities and general discipline system policy-making. Similarly, the Committee has formulated a number of recommendations designed to reorganize the administrative structure and practice of the Director's office to increase the amount of available attorney time and to cut case processing delay; to reduce some of its current workload by diverting admonition drafting, advisory opinion service and corporation registration responsibilities to other entities; and to maximize the effectiveness of its scarce resources by encouraging the development of streamlined litigation plans for complex cases and the concentration on the strongest counts in all of its cases.

The Committee is confident that the time made available to the Board and Director's office under its various recommendations makes possible the increased time commitments required for full panel hearings. The package recommended by the Committee represents some adjustments of system priorities -- shifting time commitments within a fixed level of resources, not "turning the clock back." These

proposals will enhance the fundamental fairness of the system without increasing significantly the overall time burdens of the Board or the Director's office. The Committee believes these recommendations to be essential to strengthening the discipline system and urges their adoption by the Court.

The Committee, however, received comments indicating the need to clarify its recommended revision to Rule 9(i) requiring a finding of probable cause by Board panels. Rule 9(i) has been modified accordingly. See Exhibit B-7, Revised Proposed Rule 9(i). A clarifying amendment has also been made to Rule 9(1) (Recommendation 39) as suggested by the Board. See Exhibit B-6, Revised Proposed Rule 9(1).

Finally, in its discussion of recommendations on panel proceedings, the Board recommended changes to Rules 10 and 16 which were not addressed by the Committee in its April 15, 1985 Report. In its response, the Board recommends revision to Rule 10 to permit the Director to file a public petition upon approval only of the panel chair:

"in cases in which there are admissions or clear evidence of misappropriation of client funds, non-filing of tax returns, civil judgments with findings equivalent to serious breaches of disciplinary rules, and other cases in which the misconduct has regularly resulted in suspension or disbarment by the Court." (Response, p. 34)

The Board also recommends an amendment to Rule 16 to provide for the automatic suspension of a respondent pending final determination of the case upon a referee disbarment recommendation unless the referee directs otherwise or the Court otherwise orders. (Response, p. 37)

The Committee believes each of these Board recommendations merits serious consideration by the Court. However, these proposals were neither raised nor reviewed by the Committee during its evidence-taking phase. For that reason, the Committee believes it inappropriate to take a position on the Board's proposed changes to Rules 10 and 16.

Recommendation 43 (Prohibiting The Subsequent Adding Of Charges Where Facts Were Known At the Time Of Panel Hearing But Charges Were Not Brought)

The Board's response also indicated strong opposition to Recommendation 43 which would limit the Director's ability to add charges following a Board panel hearing. The Committee is persuaded that this recommendation would have the undesirable effect of delaying the Board panel hearing significantly and thus, notice to the public of possible attorney misconduct. For that reason, and since the Committee continues to believe that a lawyer should be entitled to some review before the public filing of a charge, it urges the Court to adopt the compromise position suggested by the Board in its response. Under this proposal the approval of only the panel chair would be required before supplemental charges, not made to the panel, were added to the public petition. See Exhibit B-8, Revised Proposed Rule 10(d).

IV. ADDITIONAL MISCELLANEOUS BOARD COMMENTS

Pages A-1 to A-9 of the Board's response contain specific comments on the language (not substance) of several proposed Rules changes. The Board's comments with respect to Recommendations 19, 22, 24, 38, 39, 40, 41, 42, 43, 54 and 59 have been discussed earlier in this Supplemental Report. In addition, the Board has submitted comments with respect to Recommendations 29 and 32, 33 and 34.

The Committee disagrees with the Board's comments on Recommendation 29 relating to prior approval of Director-initiated complaints. The Committee is convinced that these complaints are neither numerous, nor time critical. It would be consistent with the Committee's recommendation for the full Executive Committee to establish a written policy delegating to the Director the right to open such files where a lawyer is convicted of a felony. But, any additional delegation should be avoided, and delegation should be the exception, not the rule.

With respect to recommendations 32, 33 and 34, the Board has made a helpful suggestion with respect to proposed changes in Rule 7(b) by suggesting that the DEC Chair be allowed to use a designee to review the investigatory report. The Committee agrees. See Exhibit B-9, Revised Proposed Rule 7(b).

Finally, in a letter dated September 16, Director Wernz advised the Committee that, while the Board agreed with Recommendation 55, the Director and the Chair and Vice-Chair of the Board were concerned that proposed Rule 6(c) might be construed as allowing respondents to obtain the Director's work product. The Director also indicates that the Board itself would likely be proposing its own Rule change at

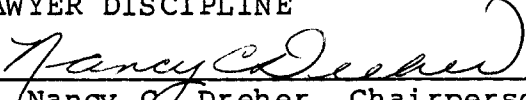
some time in the future. The Committee believes that the DEC investigatory report and a similar type of report, if any, prepared by the Director's Office should be made available to the respondent, but that work product (particular opinion work product) must be protected. The Committee believes that Rule 6(c) should be adopted, as is, and that the Board should propose such modified language as it feels appropriate to make "work product" protection clear.

V. CONCLUSION

Based on its original Report dated April 15, 1985, with modifications included in this Supplemental Report, the Committee is petitioning the Court for adoption of proposed changes to the Rules on Lawyer Professional Discipline appended hereto as Exhibit A. The Committee wishes to thank the Court and all persons who have given of their considerable time and efforts to the completion of this task.

Respectfully submitted,

SUPREME COURT ADVISORY COMMITTEE ON
LAWYER DISCIPLINE



Nancy Q. Dreher, Chairperson

Members:

William J. Baudler
James R. Bettenburg
Howard M. Guthmann
Terry Hoffman
David P. Murrin
Arthur Naftalin
Richard L. Pemberton
Eugene M. Warlich

Dated: December 2, 1985

EXHIBIT A
PROPOSED REVISIONS TO
RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

LAWYERS PROFESSIONAL RESPONSIBILITY

RULE 1. DEFINITIONS

As used in these Rules:

- (1) "Board" means the Lawyers Professional Responsibility Board.
- (2) "Chairman"* means the Chairman of the Board.
- (3) "Executive Committee" means the committee appointed by the Chairman under Rule 4(d).
- (4) "Director" means the Director of the Office of Lawyers Professional Responsibility.
- (5) "District Bar Association" includes the Range Bar Association.
- (6) "District Chairman" means the Chairman of a District Bar Association's Ethics Committee.
- (7) "District Committee" means a District Bar Association's Ethics Committee.
- (8) "Notify" means to give personal notice or to mail to the person at his last known address or the address maintained on this Court's attorney registration records.
- (9) "Panel" means a panel of the Board.

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of with fairness and justice, having in mind the public, the lawyer complained of and the profession as a whole, and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

RULE 3. DISTRICT ETHICS COMMITTEE

(a) Composition. Each District Committee shall consist of:

(1) A Chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chairman; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. 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 District Chairman. At least 20 percent of each

Note: In all instances throughout these Rules, the use of the masculine form of a word is intended to be gender-neutral.

District Committee's members shall be nonlawyers. Every effort shall be made to appoint lawyer members from the various areas of practice. The Board shall monitor District Committee compliance with this objective and the District Committee shall include information on compliance in its annual report to the Court.

(b) Duties. The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules in a format prescribed by the Executive Committee. It shall meet at least annually and from time to time as required. The District Chairman shall prepare and submit an annual report to the Board and this Court in a format specified by the Executive Committee and make such other reports as the ~~Director~~ Executive Committee may require.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) Composition. The Board shall consist of:

(1) A Chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chairman; and

(2) ~~Twelve~~ Thirteen 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. To the extent possible, members shall be geographically representative of the state and lawyer members shall reflect a broad cross section of areas of practice.

(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.

(c) Duties. The Board shall have general supervisory authority over the administration of the Office of Lawyers Professional Responsibility and these Rules, ~~shall advise and assist the Director in the performance of his duties,~~ and may, from time to time, issue opinions on questions of professional conduct. The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system. The Board may elect a Vice-Chairman and specify his duties, ~~and may elect an Executive Committee and authorize it to perform specified duties of the Board between Board meetings.~~

(d) Executive Committee. The Executive Committee, consisting

of the Chairman, and two lawyers and two nonlawyers designated annually by the Chairman, shall be responsible for carrying out the duties set forth in these Rules and for the general supervision of the Office of Lawyers Professional Responsibility. The Executive Committee shall act on behalf of the Board between Board meetings. If requested by the Executive Committee, it shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(de) Panels. The Chairman shall divide the Board into Panels, each consisting of not less than three Board members and 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 is a Panel member at any Panel proceeding he attends.~~ Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned to a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. The Board's Chairman or the Vice-Chairman may 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, excluding members of the Executive Committee.

(ef) Assignment to Panels. The Director shall assign matters to Panels in rotation; provided, however, that the Executive Committee may redistribute case assignments to balance workloads among the Panels or to utilize Board member expertise.

(fg) 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.

RULE 5. DIRECTOR

(a) Appointment. The Director shall be appointed by and serve at the pleasure of this Court, for a term of two years, and shall be paid such salary as this Court shall fix. The Director may be reappointed for successive terms. The Board shall make recommendations to the Court concerning the hiring and termination of the Director, which recommendations shall be accepted unless they are arbitrary and capricious. The Court may, however, remove the Director prior to the expiration of any term with or without cause.

(b) Duties. The Director shall be responsible and accountable directly to the Board and through the Board to this Court for the proper administration of the Office of Lawyers Professional Responsibility and these Rules. The Director shall prepare and submit to this Court the Board an annual report covering the

operation of the Office of Lawyers Professional Responsibility lawyer-discipline-and-disability-system and shall make such other reports to the Board as the Board or as this Court through the Board as it may order.

(c) Employees. The Director when authorized by the Board ~~this Court~~ ~~and on this Court's behalf~~ may employ, on behalf of this Court, persons at such compensation as the Board shall recommend and as this Court may approve.

RULE 6. COMPLAINTS

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules. No District Committee or Director's Office investigator shall be assigned to a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct.

(b) Notification: referral. If a complaint of a lawyers' alleged unprofessional conduct is submitted to a District Committee, the District Chairman promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, he shall refer it for investigation to the District Committee of the district where the lawyer has his principal office unless he determines to investigate it without referral or that discipline is not warranted.

(c) Copies of Investigator's Report. Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) Assignment; assistance. The District Chairman may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the director's assistance in making the investigation. 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 investigator's report and recommendations shall be submitted for review and approval to the District Chairman, his designee or to a committee designated for this purpose by the District Chairman, prior to its submission to the Director. The report shall include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue an admonition;
- (3) Refer the matter to a Panel; or
- (4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) Time. The investigation shall be completed and the report made promptly and, in any event, within 45 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 45 days, the District Chairman or his designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the 45 day limitation, the Director shall advise the Board and the Chairman shall seek to remedy the matter through the President of the appropriate District Bar Association.

(d) Removal. The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chairman of the removal.

(e) Notice to complainant. The Director shall keep the complainant advised of the progress of the proceedings.

RULE 8. DIRECTOR'S INVESTIGATION

(a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

(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) Shall set forth the complainant's identity and the complaint's substance; and

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

(2) Admonition. 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. The Director shall notify the lawyer in writing:

(i) Of the admonition;

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

(iii) That the lawyer may, 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

(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 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.

(i) 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.

(ii) At any time during the period, with the Board Chairman or Vice-Chairman's approval, the ~~parties~~ Director and the lawyer 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.

(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;

(ii) The lawyer makes a demand under 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~~ reviewing Board member so directs upon an appeal under subdivision (d)

(d) ~~Complainant's appeal~~ Review by Lawyers Board. 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 to a Board member, other than an Executive Committee member, appointed by the chairman. The ~~Panel=chairman~~ reviewing Board member may approve the Director's disposition ~~or~~ direct that the matter be submitted to a Panel other than his own, direct that further investigation be undertaken, or direct the issuance of a disposition pursuant to Rule 8(c)(1), (2) or (3). If the respondent is not satisfied with the reviewing Board member's disposition, he may appeal the matter to a Panel on which the reviewing Board member does not sit by notifying the Director in writing within fourteen days.

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, assign them to a Panel by rotation, schedule a prehearing meeting, and notify the lawyer of:

(1) The charges;

(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.

(b) Admission of 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) 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 number or randomly selected 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 number or randomly selected 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~~ each charge, and that the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause (or, if ~~the Director has issued~~ an admonition has been issued under Rule 8(c)(2) or 8(d), 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 proposed 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.

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

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

(2) determine that private discipline is warranted and issue an admonition based on clear and convincing evidence or, with the consent of the lawyer, order probation subject to the same terms and conditions as provided under Rule 8(c)(3), except that the consent of the Panel shall be permitted in lieu of the approval by the Director, required under Rule 8(c)(3)(i); or

(3) affirm or reverse an admonition issued by the Director under Rule 8(c)(2) or affirm or reverse a decision of a reviewing Board member under Rule 8(d); or

(4) If it finds determine that probable cause exists to believe that public discipline is warranted, and instruct the Director to file in this court a petition for disciplinary action. Except as provided in Rule 10(d), the petition shall contain only those charges, individually or taken together, for which the Panel found probable cause to believe that public discipline is warranted. The Panel shall not make a recommendation as to the matter's ultimate disposition.

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

(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 number or randomly selected 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) Respondent's appeal to Supreme Court. The lawyer may appeal the Panel's ~~affirmance of the Director's~~ admonition by filing a notice of appeal and nine copies thereof with the Clerk of Appellate Courts and by serving a copy on the Director within 30 days after being notified of the Panel's action. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court may review the matter on the record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may either affirm the ~~admonition~~ decision or make such other disposition as it deems appropriate.

(m) 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.

(n) 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.

RULE 10. 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 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 file a petition for disciplinary action together with the lawyer's admission 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 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, willful 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~~ must present the matter to ~~the Panel chair for approval~~ 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).

RULE 11. RESIGNATION

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's petition to resign from the bar. A lawyer's petition to resign from the bar shall be served upon the Director. The original petition with proof of service and one copy shall be filed with this Court. If the Director does not object to the petition, he shall promptly advise the Court. If he objects, he shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

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. An original and nine copies shall be filed. The petition shall set forth the unprofessional conduct charged.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) Suspension. If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of

this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) Order to show cause. If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

RULE 13. ANSWER TO PETITION FOR DISCIPLINARY ACTION

(a) Filing. Within 20 days after service of the petition, the respondent shall file an original and nine copies of an answer in this Court. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) Conditional admission. The answer may tender an admission of some or all accusations conditioned upon a stated disposition.

(c) Failure to file. If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may proceed under Rule 15.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action.

(b) Conduct of hearing before referee. Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) Record. The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(d) Referee's findings, conclusions, and recommendations. The referee shall make findings of fact, conclusions, and

recommendations, file them with this Court, and notify the respondent and Director of them. Unless the respondent or Director within five days orders a transcript and so notifies the Court, the findings of fact and conclusions shall be conclusive. One ordering a transcript shall make satisfactory arrangements with the reporter for his payment and shall specify in his initial brief to the Court the referee's findings of fact, conclusions and recommendations he disputes, if any. The reporter shall complete the transcript within 30 days.

(d) Hearing before Court. This Court within ten days of the referee's findings, conclusions, and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. The matter shall be heard upon the record, briefs, and arguments.

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) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;
- (7) Make such other disposition as this Court deems appropriate; or
- (8) Dismiss the petition for disciplinary action.

(b) Protection of clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS

(a) Petition for temporary suspension. 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 may file with this Court an original and nine copies of 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 a Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an original and nine copies of an answer to the petition for temporary suspension. If he fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law may result in risk of injury to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

RULE 17. FELONY CONVICTION

(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.

(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.

RULE 18. REINSTATEMENT

(a) Petition for reinstatement. A suspended, disbarred, or resigned lawyer's petition for reinstatement to practice law shall be served upon the Director and the President of the State Bar Association. The original petition, with proof of service, and nine copies, shall then be filed with this Court.

(b) Investigation; report. The Director shall investigate and report his conclusions to a Panel.

(c) Recommendation. The Panel may conduct a hearing and shall make its recommendation. The recommendation shall be served upon

the petitioner and filed with this Court.

(d) Hearing before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. This Court may appoint a referee. If a referee is appointed, the same procedure shall be followed as under Rule 14.

(e) General requirements for reinstatement. Unless such examination is specifically waived by this Court, no lawyer ordered reinstated to the practice of law after having been disbarred by this Court shall be effectively reinstated until he shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners, and no lawyer ordered reinstated to the practice of law after having been suspended by this Court shall be effectively reinstated until he shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following his suspension or disbarment by this Court until he shall have satisfied the requirements imposed under the rules for Continuing Legal Education on members of the bar as a condition to a change from a restricted to an active status.

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.

(1) Conduct previously considered where discipline was not warranted. Proceedings under these Rules may be based upon Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction even if it was determined in the previous proceedings is inadmissible if it was determined in the proceedings that discipline was not warranted, or that the proceedings should be discontinued after the lawyer's compliance with conditions except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation.

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

(3) Previous discipline. ~~Subject to Rule 404(b), Rules of Evidence, the fact that the lawyer received a reprimand, probation, suspension, disbarment, or equivalent discipline in the previous disciplinary proceedings is admissible in evidence in proceedings under these Rules to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that he acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:~~

- a. A pattern of related conduct, the cumulative effect of which constitutes a violation;
- b. The current charge (e.g., the lawyer has continued to practice despite suspension);
- c. For purposes of impeachment (e.g., the lawyer testifies he has never been disciplined before);
or
- d. Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

(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.

RULE 20. CONFIDENTIALITY; EXPUNCTION

(a) General rule. The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board, and Director in furtherance of their duties;

(2) In proceedings before a referee or this Court

under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) ~~Upon request of~~ To the lawyer affected;

(5) Where permitted by this Court; or

(6) Where required or permitted by these Rules.

(b) Special matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) The fact that the Director has ~~either determined that discipline is not warranted, or~~ issued an admonition;

(3) The Panel's disposition under these Rules;

(4) The fact that stipulated probation has been approved under Rule 8(c)(3) ~~or 8(d)~~.

Notwithstanding any other provision of this rule, the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between the Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Referee or Court proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(d) Expunction of records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction schedule. All records or other evidence of the existence of a dismissed complaint shall be destroyed ~~five~~ three years after the dismissal; ~~except that the Director shall keep a docket showing the names of each respondent and complainant, the final disposition, and the date all records relating to the matter were expunged;~~

~~(2) Effect of expunction. After a file has been expunged, any Director response to an inquiry requiring a reference to the matter shall state that it was dismissed and that any other record the Director may have had of such matter has been expunged. The respondent may answer any inquiry requiring a reference to an expunged matter by~~

~~stating that the complaint was dismissed and thereafter expunged~~

(32) Retention of records. Upon application to a Panel by the Director, for good cause shown and with notice to the respondent and opportunity to be heard, records which should otherwise be expunged under this rule may be retained for such additional time not exceeding ~~five~~ three years as the Panel deems appropriate.

The Director may, for good cause shown and with notice to the respondent and opportunity to be heard, seek a further extension of the period for which retention of the records is authorized whenever a previous application has been granted for the maximum period (~~five~~ three years) permitted hereunder.

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, 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.

RULE 22. PAYMENT OF EXPENSES

Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by him under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

RULE 23. SUPPLEMENTAL RULES

The Board and each District Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

RULE 24. COSTS AND DISBURSEMENTS

(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.

(b) Disbursements. Unless otherwise ordered by this Court, the

prevailing party in any disciplinary proceedings 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 12. Recoverable disbursements in proceedings before a referee or this Court shall include 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 court.

(c) 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) Judgment for costs and disbursements. Costs and disbursements 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 taxed under this Rule has not been fully paid.

RULE 25. REQUIRED COOPERATION

(a) Lawyer's duty. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director or his staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

(1) ~~Furnish~~ Make available designated papers, documents or tangible objects;

(2) Furnish in writing a full and complete explanation covering the matter under consideration;

(3) Appear for conferences and hearings at the times and places designated.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The respondent shall furnish for reproduction the original at the Director's request. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of discipline. Violation of this rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

RULE 26. DUTIES OF DISCIPLINED OR RESIGNED LAWYER

(a) Notice to clients in non-litigation matters. Unless this court orders otherwise, a disbarred, suspended or resigned lawyer shall notify each client being represented in a pending matter other than litigation or administrative proceedings of the disbarred, suspended or resigned lawyer's inability to represent the client. The notification shall urge the client to seek legal advice of the client's own choice elsewhere.

(b) Notice to parties and tribunal in litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer shall notify each client, opposing counsel and the tribunal involved in pending litigation or administrative proceedings of the disbarred, suspended or resigned lawyer's inability to represent the client. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended or resigned lawyer.

(c) Manner of notice. Notices required by this rule shall be sent by certified mail, return receipt requested, within ten (10) days of the disbarment, suspension or resignation order.

(d) Client papers and property. A disbarred, suspended or resigned lawyer shall make arrangements to deliver to each client being represented in a pending matter, litigation or administrative proceeding any papers or other property to which the client is entitled.

(e) Proof of compliance. Within fifteen (15) days after the effective date of the disbarment, suspension or resignation order, the disbarred, suspended or resigned lawyer shall file with the Director an affidavit showing:

1. That the affiant has fully complied with the provisions of the order and with this rule;
2. All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and
3. The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended or resigned lawyer shall be attached to the affidavit.

(f) Maintenance of records. A disbarred, suspended or resigned lawyer shall keep and maintain records of the actions taken to comply with this rule so that upon any subsequent proceeding being instituted by or against the disbarred, suspended or resigned lawyer, proof of compliance with this rule and with the disbarment, suspension or resignation order will be available.

(g) Condition of reinstatement. Proof of compliance with this rule shall be a condition precedent to any petition for reinstatement made by a disbarred, suspended or resigned lawyer.

RULE 27. TRUSTEE PROCEEDING

(a) Appointment of trustee. Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred or resigned lawyer has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(b) Protection of records. The trustee shall not disclose any information contained in any inventoried file without the client's consent, except as necessary to execute this Court's order appointing the trustee.

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.

RULE 29. EX PARTE COMMUNICATIONS

Ex parte communications to any adjudicatory body including panels, referees and this Court are strongly disfavored. Such communications should not occur except after first attempting to contact the adversary and then only if the adversary is unavailable and an emergency exists. Such communications should be strictly limited to the matter relating to the emergency and the adversary notified at the earliest practicable time of the prior attempted contact and of the ex parte communication.

EXHIBIT B
REVISIONS TO COMMITTEE'S APRIL 15, 1985
PROPOSALS FOR RULES CHANGES

NOTE: Words typed in capital letters represent revisions to the
Committee's April 15, 1985 proposal for Rules changes.

Rule 19(b)

(b) Disciplinary proceedings

- (1) Conduct previously considered ~~unless it was determined in previous proceedings that~~ WHERE discipline was not warranted. ~~Proceedings under these Rules may be based upon~~ Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction ~~even if it was determined in the previous proceeding~~ IS INADMISSIBLE IF IT WAS DETERMINED IN THE PROCEEDINGS THAT ~~discipline was not warranted THAT DISCIPLINE WAS NOT WARRANTED or that the proceedings should be discontinued after the lawyer's compliance with conditions or provided however that previous conduct which resulted in a disposition of dismissal may be used to show a pattern of conduct the cumulative effect of which constitutes an ethical violation~~, EXCEPT TO SHOW A PATTERN OF RELATED CONDUCT THE CUMULATIVE EFFECT OF WHICH CONSTITUTES AN ETHICAL VIOLATION.
- (2) Previous finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting ~~reprimand probation suspension disbarment or equivalent~~ DISCIPLINE is, in proceedings under these Rules, ~~prima facie~~ CONCLUSIVE evidence that he committed the conduct.
- (3) Previous discipline. ~~Subject to Rule 404(b) Rules of Evidence~~ The fact that the lawyer received a ~~reprimand probation suspension disbarment or equivalent~~ DISCIPLINE in the previous disciplinary proceedings is admissible ~~in evidence in proceedings under these Rules~~ TO DETERMINE THE NATURE OF THE DISCIPLINE TO BE IMPOSED, BUT IS NOT ADMISSIBLE TO PROVE THE CHARACTER OF THE LAWYER IN ORDER TO SHOW THAT HE ACTED IN CONFORMITY THEREWITH; PROVIDED, HOWEVER, THAT EVIDENCE OF SUCH PRIOR DISCIPLINE MAY BE USED TO PROVE:
 - a. A PATTERN OF RELATED CONDUCT, THE CUMULATIVE EFFECT OF WHICH CONSTITUTES A VIOLATION;
 - b. THE CURRENT CHARGE (E.G., THE LAWYER HAS CONTINUED TO PRACTICE DESPITE SUSPENSION);
 - c. FOR PURPOSES OF IMPEACHMENT (E.G., THE LAWYER TESTIFIES HE HAS NEVER BEEN DISCIPLINED BEFORE); OR
 - d. MOTIVE, OPPORTUNITY, INTENT, PREPARATION, PLAN, KNOWLEDGE, IDENTITY, OR ABSENCE OF MISTAKE OR ACCIDENT.

~~(4) = limitation on consideration = Notwithstanding (2) and (3) = hereof = findings of previous misconduct warranting discipline and facts relating to previous discipline imposed shall only be made known and used in connection with the nature of the discipline being considered and not in determining whether a violation has occurred.~~

Rule 5(a):

(a) Appointment. The Director shall be appointed by and serve at the pleasure of this Court, for a term of two years, and shall be paid such salary as this Court shall fix. The Director may be reappointed for successive terms. The ~~Executive-Committee~~ BOARD shall make recommendations to the Court concerning the hiring and termination of the Director, which recommendations shall be accepted unless they are arbitrary and capricious. The Court may, however, remove the Director prior to the expiration of any term with or without cause.

Rule 4(d)

(d) Executive Committee. The Executive Committee, consisting of the Chairman, and two lawyers and two nonlawyers designated annually by the Chairman, shall be responsible for carrying out the duties set forth in these Rules and for the day-to-day GENERAL supervision of the Office of Lawyers Professional Responsibility. The Executive Committee shall act on behalf of the Board between Board meetings. IF REQUESTED BY THE EXECUTIVE COMMITTEE, it shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

Rule 8(c)(4)(iv):

(iv) A ~~Panel=chairman~~ REVIEWING BOARD MEMBER so directs upon an appeal under Subdivision (d).

Rule 8(d):

(d) ~~Complainant=s=appeal~~ Review by Panel=Chairman LAWYERS BOARD. 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 TO A BOARD MEMBER, OTHER THAN AN EXECUTIVE COMMITTEE MEMBER, APPOINTED BY THE CHAIRMAN. The ~~Panel=chairman~~ REVIEWING BOARD MEMBER may approve the Director's disposition ~~or~~, direct that the matter be submitted to a panel other than his own, direct that further investigation be undertaken, or DIRECT THE ISSUANCE OF A DISPOSITION PURSUANT TO ~~exercise=the=same powers=of=private=discipline=given=to=the=Director=under Rule 8(c)(1), (2) or (3).~~ If the respondent is not satisfied with the Panel=s REVIEWING BOARD MEMBER'S disposition, he may appeal the matter to a Panel on which the reviewing Panel=chairman BOARD MEMBER does not sit by notifying the Director in writing within fourteen days.

Rule 25(b):

(b) Grounds of discipline. Violation of this rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, ~~has an arguable basis in law~~ IS IN GOOD FAITH and is asserted for a substantial purpose other than delay.

Rule 9(d)

(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 NUMBER OR RANDOMLY SELECTED initials in any District Court proceeding.

Rule 9(g)

(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 Court. 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 NUMBER OR RANDOMLY SELECTED initials in any district court proceeding.

Rule 9(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 NUMBER OR RANDOMLY SELECTED 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.

Rule 9(1)

(1) Respondent's appeal to Supreme Court. The lawyer may appeal the Panel's ~~affirmance of the Director's decision~~ ADMONITION by filing a notice of appeal and nine copies thereof with the Clerk of Appellate Courts and by serving a copy on the Director within 30 days after being notified of the Panel's action. THE RESPONDENT SHALL BE DENOMINATED BY NUMBER OR RANDOMLY SELECTED INITIALS IN THE PROCEEDING. This Court may review the matter on the record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may either affirm the ~~admonition~~ decision or make such other disposition as it deems appropriate.

Rule 25(a)

(a) Lawyer's duty. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under the Rules to cooperate with the District Committee, the Director or his staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

- (1) ~~Furnish~~ Make available designated papers, documents or tangible objects;
- (2) Furnish in writing a full and complete explanation covering the matter under consideration;
- (3) Appear for conference and hearings at the times and places designated.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. the lawyer shall be denominated by NUMBER OR RANDOMLY SELECTED initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The respondent shall furnish for reproduction the original at the Director's request. The Director shall promptly return the originals to the respondent after they have been copied.

Rule 9(i):

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

(1) ~~As to each charge, determine that there is or is not probable cause to believe that public discipline is not warranted for, if the Director has issued an admonition under Rule 8(c)(2), affirm or reverse the admonition, AND DISMISS THE COMPLAINT; or~~

(2) ~~As to each charge where probable cause has not been found to believe that public discipline is warranted~~

~~(i) determine that discipline is not warranted;~~

~~or~~

~~(ii) with the consent of the lawyer, order probation subject to the same terms and conditions as provided under Rule 8(c)(3), except that the consent of the Panel shall be permitted in lieu of the approval by the Director, required under Rule 8(c)(3)(i);~~

DETERMINE THAT PRIVATE DISCIPLINE IS WARRANTED AND ISSUE AN ADMONITION BASED ON CLEAR AND CONVINCING EVIDENCE OR ~~iii~~ with the consent of the lawyer, order probation subject to the same terms and conditions as provided under Rule 8(c)(3), except that the consent of the Panel should be permitted in lieu of the approval by the Director, required under Rule 8(c)(3)(i); or

(3) AFFIRM OR REVERSE AN ADMONITION ISSUED BY THE DIRECTOR UNDER RULE 8(C)(2) OR AFFIRM OR REVERSE A DECISION OF A REVIEWING BOARD MEMBER UNDER RULE 8(D); OR

(4) ~~If it finds~~ DETERMINE THAT probable cause EXISTS to believe that public discipline is warranted, AND instruct the Director to file in this court a petition for disciplinary action. EXCEPT AS PROVIDED IN RULE 10(D), THE PETITION SHALL CONTAIN ONLY THOSE CHARGES, INDIVIDUALLY OR TAKEN TOGETHER, FOR WHICH THE PANEL FOUND PROBABLE CAUSE TO BELIEVE THAT PUBLIC DISCIPLINE IS WARRANTED. The Panel shall not make a recommendation as to the matter's ultimate disposition.

Rule 10(d):

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

Rule 7(b)

(b) Report. ~~The District Chairman or his designee shall report the results of the investigation to the Director.~~ The investigator's report and recommendations shall be submitted for review and approval to the District Chairman, HIS DESIGNEE or to a committee designed for this purpose by the District Chairman, prior to its submission to the Director. The report shall include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue an admonition;
- (3) Refer the matter to a Panel; or
- (4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.