

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2140

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

ORDER

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on February 1, 1991, at 9:00 a.m., to consider the petition of the Lawyers Professional Responsibility Board to amend the Rules on Lawyers Professional Responsibility. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, Room 245, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before January 28, 1991, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before January 28, 1991.

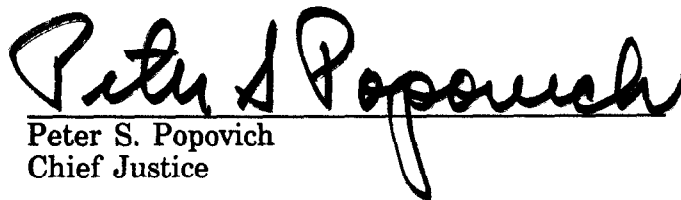
Dated: November 28, 1990

BY THE COURT:

OFFICE OF
APPELLATE COURTS

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FILED


Peter S. Popovich
Chief Justice

MEDARD B. KAISERSHOT
ATTORNEY AT LAW

5701 KENTUCKY AVE. NORTH, SUITE 180
CRYSTAL, MINNESOTA 55428
612/535-9027

December 18, 1990

OFFICE OF
APPELLATE COURTS

Mr. Frederick Grittner
Clerk of Appellate Court
Room 245
Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN 55155

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Re: Proposed amendment to Lawyers Rules of Professional Responsibility

Hello:

I believe that proposed Rule 12(d) (re: Reciprocal Discipline) is ambiguous.

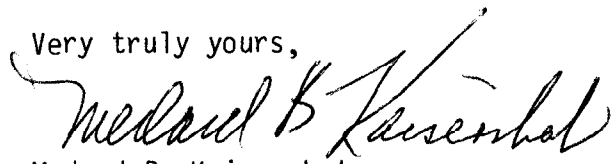
The proposed second full sentence of that proposed rule states, "A lawyer subject to such charges or discipline shall notify the Director."

The ambiguity occurs because :

1. It does not identify whether it relates to the disciplinary action of the other state or to the potential proceeding in Minnesota.
2. It does not specify "of what" the Director is to be notified.
3. It does not specify "when" the Director is to be notified.

Maybe the ABA Model Rule needed condensing but the proposed result clouded the intended effect in the process of condensation.

Very truly yours,



Medard B. Kaisershot

MBK/kr



KENNETH A. SANDVIK
JUDGE OF THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
LAKE COUNTY COURT HOUSE
TWO HARBORS, MINNESOTA 55616
TELEPHONE (218) 834-5581

OFFICE OF
APPELLATE COURTS

DEC 31 1990

FILED

December 18, 1990

Frederick Grittner
Clerk of Appellate Courts
Room 245, Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Mn. 55155-6102

RE: Proposed Amendments to the Rules for Lawyers
Professional Responsibility

CI-84-2140

Dear Mr. Grittner:

I enclose this original and twelve copies. Please consider the same a filing with respect to the above-identified. My concerns are with respect to item numbered XVI in the proposed changes.

XVI - Rule 20 - Confidentiality; Expunction: I think ought be further modified to provide that the response of the attorney be disclosed as a matter of course to all complainants. I do not think there should be discretion with individual investigators or the Director to withhold a response from the person making the complaint. There exist many good reasons which support disclosure to non-client complainants of the response of the attorney.

First and foremost, while I am appreciative of the desire for confidentiality and appreciative of the dangers and problems which can arise from the publication of such matters, I am convinced that, at least with respect to persons in the position of non-client complaints, that their confidence in the integrity of the system will be advanced and encouraged by knowledge of what in fact the complained of attorney's response is to their complaint. My experience in all matters, both professional and personal, is that when information is withheld, for whatever reasons, from persons with interest in that information, that perceptions of unfairness and improper conduct exist. I think public confidence in the system is also advanced by such disclosure.

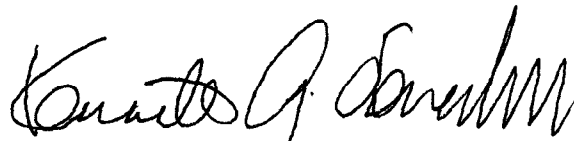
Second, implied in the discretionary disclosure provision is some measure or ability on the part of someone (the assigned investigator?) to determine the good faith or lack thereof of the complainant and the good faith or lack thereof on the part of the lawyer complained of. To the extent that such forms a basis for the rule, I think it ought not.

Third, while the proceedings are not adversarial proceedings in the sense that we typically view them, at least between the complainant and the attorney complained of, it clearly is the case that their position with respect to the matter at hand is different and, if in fact the investigator is at least in part functioning as a fact finder, the opportunity for the complainant to challenge matters represented by the attorney complained of ought only advance the investigation. While the analogy is not perfect, this strikes me as comparable to the determination of probable cause in a criminal proceeding where the accused would be given the complaint and the police reports which would be furnished to the Court and the Court would solicit a response from the accused but not share that response with the prosecutor when determining the existence of probable cause.

Fourth, knowledge that the complainant will be informed of what response is given should, in most circumstances, encourage a more reasoned response by the lawyer complained of.

Last, there is some perception of unfairness (rightly or wrongly) in treating complainants differently depending on their relation or lack thereof to the attorney complained of.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kenneth A. Sandvik".

Kenneth A. Sandvik

KAS:rcb