

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2140

PROMULGATION OF AMENDMENTS TO
THE RULES ON LAWYERS PROFESSIONAL
RESPONSIBILITY

ORDER

WHEREAS, the Lawyers Professional Responsibility Board filed a petition with this Court on October 8, 1990, proposing amendments to the Rules on Lawyers Professional Responsibility, and


WHEREAS, the Supreme Court held a hearing on these amendments on February 1, 1991 and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Rules on Lawyers Professional Responsibility be, and the same hereby are, prescribed and promulgated for regulating the investigation and disposition of lawyer misconduct cases in the State of Minnesota.
2. These amended Rules on Lawyers Professional Responsibility shall govern all lawyer disciplinary actions commenced on or after March 1, 1991.

DATED: February 11, 1991

BY THE COURT:



A.M. Keith
Chief Justice

OFFICE OF
APPELLATE COURTS

FEB 11 1991

FILED

AMENDMENTS TO THE RULES ON LAWYER'S PROFESSIONAL RESPONSIBILITY

Promulgated February 11, 1991

Effective March 1, 1991

RULE 1. DEFINITIONS

As used in these Rules:

(2) "~~Chairman~~" "Chair" means the ~~Chairman~~ Chair of the Board.

(3) "Executive Committee" means the committee appointed by the ~~Chairman~~ Chair under Rule 4(d).

(6) "District ~~Chairman~~ Chair" means the ~~Chairman~~ Chair of a District Bar Association's Ethics Committee.

(8) "Notify" means to give personal notice or to mail to the person at the person's last known address or the address maintained on this Court's attorney registration records, or to the person's attorney if the person is represented by counsel.

RULE 3. DISTRICT ETHICS COMMITTEE.

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

(1) A ~~Chairman~~ Chair 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~~ Chair; 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 consecutive three-year terms, nor more than a total of four three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as District ~~Chairman~~ Chair. At least 20 percent of each 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~~ Chair 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 Executive Committee may require.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) **Composition.** The Board shall consist of:

(1) A ~~Chairman~~ Chair 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~~ Chair; and

(2) 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 the person was originally appointed and any period served as ~~Chairman~~ Chair. 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~~ Chair, 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, 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~~ Chair and specify the ~~Vice-Chairman's~~ Chair's duties.

(d) **Executive Committee.** The Executive Committee, consisting of the ~~Chairman~~ Chair, and two lawyers and two nonlawyers designated annually by the ~~Chairman~~ Chair, 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.

(e) **Panels.** The ~~Chairman~~ Chair 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~~ Chair and a ~~Vice-Chairman~~ Chair for each Panel. 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~~ Chair or the ~~Vice-Chairman~~ Chair 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.

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 investigate a matter in which disqualification would be required of a judge under Canon 3 of the Code of Judicial Conduct. No employee of the office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Canon 3 of the Code of Judicial Conduct.

(b) **Notification; Referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District ~~Chairman~~ Chair promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

RULE 7. DISTRICT COMMITTEE INVESTIGATION.

(a) **Assignment; Assistance.** The District ~~Chairman~~ Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the ~~d~~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 investigator's report and recommendations shall be submitted for

review and approval to the District ~~Chairman~~ Chair, the ~~Chairman's~~ Chair's designee or to a committee designated for this purpose by the District ~~Chairman~~ Chair, 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~~ Chair or the ~~Chairman's~~ Chair's 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~~ Chair 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~~ Chair of the removal.

RULE 8. DIRECTOR'S INVESTIGATION.

(c) **Investigatory Subpoena.** With the Board ~~Chairman~~ Chair or Vice-~~Chairman's~~ Chair'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.

(d) Disposition.

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

(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, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in Rule 8(e). * * *

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

(3) Stipulated Probation.

(i) In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and that a private probation is appropriate, and the Board ~~Chairman~~ Chair or Vice-~~Chairman~~ Chair approves, the Director and the lawyer may agree that the lawyer will be subject to private probation ~~proceedings will be held in~~ abeyance for a specified period up to two years ~~and thereafter terminated,~~ provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board ~~Chairman~~ Chair or Vice-~~Chairman~~ Chair's approval, the 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 maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the ~~Chairman~~ Chair 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 the complainant of the right to appeal under subdivision (e). ~~The Director may reinstitute the underlying proceedings if the lawyer consents or a Panel determines that the lawyer has violated the conditions.~~

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair chosen in rotation, file a petition for disciplinary action under Rule 12. A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(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 (d) (2) (iii); or (iii) ~~The lawyer consents or a Panel determines that the lawyer has violated conditions under subdivision (d)(3); or~~

~~(iv)~~ (iii) A reviewing Board member so directs upon an appeal under subdivision (e).

(e) **Review by Lawyers Board.** If the complainant is not satisfied with the Director's disposition under Rule 8(d) (1), (2) or (3), the complainant 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 by rotation to a Board member, other than an Executive committee member, appointed by the ~~Chairman~~ Chair. The reviewing Board member may:

- (1) approve the Director's disposition; or
- (2) direct that further investigation be undertaken; or
- (3) if a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or
- (4) in any case, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

RULE 9. PANEL PROCEEDINGS.

(a) Charges; Setting Pre-Hearing Meeting.

(2) The name, address, and telephone number of the Panel ~~Chairman~~ Chair and Vice-~~Chairman~~ Chair; * * *

(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 ^{Chair} ~~Chairman~~ or Vice-~~Chairman~~ Chair.

(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~~ Chair or ~~Vice-Chairman~~ Chair 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 District Courts.

(f) Setting Panel Hearing.

* * *

(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~~ Chair or ~~Vice-Chairman~~ Chair. 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, and of the pre-hearing statement. Each party shall provide to each panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the pre-hearing meeting, unless the parties agree otherwise or the Panel ~~Chairman~~ Chair or ~~Vice-Chairman~~ Chair orders to the contrary.

(g) Referee Probable Cause Hearing. Upon the certification of the Panel ~~Chairman~~ Chair and the Board ~~Chairman~~ Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, because of exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct a probable cause hearing acting as a Panel would under this Rule, or the Court may remand the matter to a Panel under this Rule with instructions, or the Court may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is probable cause as to any charge and a petition for disciplinary action is filed in this Court, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule

14. If a referee appointed under Rule 14 considers all of the evidence presented at the probable cause hearing, a transcript of that hearing shall be made part of the public record.

(h) Form of Evidence at Panel Hearing.

(3) A witness whose testimony the Panel ~~Chairman~~ Chair or Vice-~~Chairman~~ Chair 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 proceedings.

(i) Procedure at Panel Hearing.

* * *

(1) The ~~Chairman~~ Chair shall explain that the hearing's purpose is to determine whether there is probable cause to believe that public discipline is warranted on 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 an admonition has been issued under Rule 8(d) (2) or 8(e), 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);

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

(1) if the hearing was held on charges of unprofessional conduct

(i) determine that there is not probable cause to believe that public discipline is warranted; or

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition; or

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and non-serious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition.

(2) If the hearing was on a lawyer's appeal of an admonition issued under Rule 8(d) (2), the Panel shall affirm or reverse the admonition.

(l) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the Complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The clerk shall notify the respondent and the Board ~~Chairman~~ Chair of the petition. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant 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.

(m) Respondent's Appeal to Supreme Court. The lawyer may appeal ~~the~~ a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal and seven 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 decision or make such other disposition as it deems appropriate.

(o) ~~Panel Chairman Chair~~ Chair Authority. Requests or disputes arising under this Rule before the panel hearing commences may be determined by the Panel ~~Chairman Chair~~ or Vice-~~Chairman Chair~~. For good cause shown, the Panel ~~Chairman Chair~~ or Vice-~~Chairman Chair~~ Chair may shorten or enlarge time periods for discovery under this Rule.

RULE 10. DISPENSING WITH PANEL PROCEEDINGS

(b) ~~Admission, or Tender of Conditional Admission.~~ If the lawyer admits some or all charges, ~~or tenders and 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 or conditional admission, the matter may be remanded for proceedings under Rule 9.~~

(c) **Criminal Conviction or Guilty Plea.** If a lawyer pleads guilty to or is convicted of a felony under Minnesota statutes, 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~~ Chair of the Board, file a petition under Rule 12.

(d) Other Serious Matters. In matters in which there are an attorney's admissions, civil findings, or apparently clear and convincing documentary evidence of an offense of a type for which the Court has suspended or disbarred lawyers in the past, such as misappropriation of funds, repeated non-filing of personal income tax returns, flagrant non-cooperation including failure to attend a pre-hearing meeting, fraud and the like, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by the Panel cChair, file the petition under Rule 12.

(e) Additional Charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel cChair, or if the matter was not heard by a Panel, to the Board cChair, or vVice-cChair, for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action. An original and seven copies shall be filed. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action.

(d) Reciprocal Discipline. Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action this Court. A lawyer subject

to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION.

(f) **Panel as Referee.** Upon written agreement of an attorney, the Panel Chairman Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).

RULE 15. DISPOSITION; PROTECTION OF CLIENTS

(c) Petition For Rehearing. A petition for rehearing may be filed regarding an order of the Court under this rule, by following the procedures of Rule 140, Rules of Civil Appellate Procedure. The filing of a petition for rehearing shall not stay this Court's order.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS.

(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 ~~full~~ final determination of disciplinary proceedings.

RULE 18. REINSTATEMENT.

(a) **Petition for Reinstatement.** ~~A suspended, disbarred, or resigned lawyer's~~ A 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 seven copies, shall then be filed with this Court.

* * *

(e) **General Requirements for Reinstatement.**

(1) 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 the lawyer 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~~.

(2) No lawyer ordered reinstated to the practice of law after having been Suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer 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.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of ninety (90) days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete 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. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's suspension, ~~or disbarment, or transfer to disability inactive status~~ by this Court until the lawyer shall have satisfied (1) 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; and (2) any subrogation claim against the lawyer by the Client Security Board.

(f) Reinstatement by Affidavit. Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of ninety (90) days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director

shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

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 the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall the Director or Director's staff be subject to deposition or compelled testimony, except upon a showing to the court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and Director's staff shall remain protected.

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that insofar as a response does not relate to the client's complaint or involves information

as to which another client has a privilege that portions may be deleted.

~~(5)~~(6) Where permitted by this Court; or

~~(6)~~(7) Where required or permitted by these Rules.

~~(7)~~(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

~~(8)~~(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

RULE 21. PRIVILEGE: IMMUNITY

(b) **Immunity.** Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations, shall be immune from suit for any conduct in the course of their official duties.

RULE 26. DUTIES OF DISCIPLINED, DISABLED OR RESIGNED LAWYER

(a) **Notice to Clients in Non-Litigation Matters.** Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, or a lawyer transferred to disability inactive status, 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.~~ lawyer's disbarment, suspension, resignation, or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) **Notice to Parties and Tribunal in Litigation.** Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, or a lawyer transferred to disability inactive

status, shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation or administrative proceedings of the ~~disbarred, suspended or resigned lawyer's inability to represent the client:~~ lawyer's disbarment, suspension, resignation, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, ~~or disabled~~ lawyer, and shall include a copy of the Court's order.

(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-~~ Court's order.

(d) **Client Papers and Property.** A disbarred, suspended, ~~or resigned~~ or disabled 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~~ Court's order, the disbarred, suspended, ~~or resigned~~ or disabled 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~~ or disabled lawyer shall be attached to the affidavit, along with proof of mailing by certified mail.

(f) **Maintenance of Records.** A disbarred, suspended, ~~or resigned~~ or disabled 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 or disabled lawyer, proof of compliance with this Rule and with the disbarment, suspension, ~~or~~ resignation or disability order will be available.

(g) **Condition of Reinstatement.** Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, ~~or~~ resigned or disabled 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 or disabled 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.