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August 25, 1998

Fred Grittner  
Clerk of Appellate Court  
25 Constitution Avenue  
St. Paul, MN 55155

Re: Oaths of Office

Dear Fred:

In doing some more checking regarding the Oath of Office issue, I came upon some interesting correspondence. Enclosed are copies of correspondence from 1980 between Richard Pemberton, Michael J. Hoover, Gerald Magnuson and Justice James C. Otis. As you can see, Justice Otis said the Court "adopted a policy" that we should file the oaths. After talking with the Secretary of State's office today, however, they would like the original Oath of Office. Pursuant to Ed Cleary, we will continue to file these until we are notified from the Court that it is not necessary. The original will be filed with the Secretary of State and copies will be filed with your office.

If you need additional information or if you have questions, please contact me.

Very truly yours,

Office of Lawyers Professional  
Responsibilit

By

\_\_\_\_\_  
Joanne Daubenspeck  
Office Administrator

Jd  
Enclosures  
Cc: Bev Reedy ✓

NOV 13 1979

RUFER, HEFTE, PEMBERTON, SCHULZE, SORLIE & SEFKOW

ATTORNEYS AND COUNSELLORS AT LAW

LAW OFFICE BUILDING

FERGUS FALLS, MINNESOTA 56537

CABLE ADDRESS: JURISLEX

AREA CODE 218-736-5493

OFFICES ALSO:

THURSDAY A.M., PARKERS PRAIRIE, MN

THURSDAY P.M., HENNING, MN

ROGER L. DELL (1920-1953)  
ROBERT O. BLATTI (1953-1970)

GERALD S. RUFER  
RICHARD C. HEFTE  
RICHARD L. PEMBERTON  
JAMES L. SCHULZE  
OSCAR J. SORLIE, JR.  
STEPHEN F. RUFER  
ROBERT J. SEFKOW  
H. MORRISON KERSHNER

Mr. Michael J. Hoover, Administrative Director  
Lawyers Professional Responsibility Board  
300 Mid-Continent Building  
372 St. Peter Street  
St. Paul, MN 55102

November 9, 1979

IN RE: Our File No. 78-4318

This is a matter which may not require any consideration at all. I leave it to your judgment. I pass it on to you only because I thought it might be of interest.

As you may or may not know, my partner, Gerald Rufer, has been a member of the State Board of Law Examiners for close to 20 years. He was the secretary for many years and in recent times he has been the president.

There may be some similarities between that Board and our own.

Mr. Rufer has determined that the members of his Board are obliged to sign an oath of office and file it with the Minnesota Secretary of State. He has required all the members of his Board as well as its administrative director or executive secretary to do so. I am enclosing a copy of the oath of Mr. Rufer himself along with some of the statutes upon which he reached this determination.

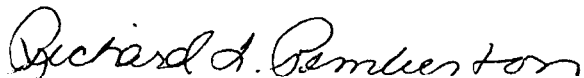
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I must say that I have looked these over and am not sure that I yet understand the necessity of filing this oath. Also, there may be some differences between his Board and ours, but I thought I would pass it on to you, because it would be a simple matter to sign and file these oaths. If there is any doubt about the appropriateness of it and certainly if we were ever to be attacked on having qualified to hold the office to which the Supreme Court has appointed us through failure to file an oath, it would be unfortunate. I think

Mr. Michael J. Hoover  
November 9, 1979  
Page Two

we deal with some lawyers who would attack on any ground,  
no matter how shallow or technical. If you determine this  
to be of no concern, feel free simply to discard this letter  
and its enclosures and no response is necessary.

Kind regards.

A handwritten signature in cursive script that reads "Richard L. Pemberton".

Richard L. Pemberton  
mmo

Enclosures

12/1  
November 14, 1979

Mr. Gerald E. Magnuson  
Attorney at Law  
4200 IDS Center  
Minneapolis, Minnesota 55402

Dear Jerry:

I received the enclosed correspondence from Dick Pemberton. My own reaction is that taking oaths is probably unnecessary, since the Board is a creature of the Court rather than of the State Legislature or the Executive branch. What is your opinion?

Very truly yours,

Michael J. Hoover  
Administrative Director

MJH:ajs  
Enclosures

DEC 4 1979

LINDQUIST & VENNUM

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*file*

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RICHARD D. McNEIL  
ALAN C. PAGE  
JAMES P. MCCARTHY

OF COUNSEL  
THOMAS VENNUM  
DENNIS M. MATHISEN

December 3, 1979

Mr. Michael J. Hoover, Administrative Director  
Lawyers Professional Responsibility Board  
300 Mid-Continent Building  
372 St. Peter Street  
St. Paul, Minnesota 55102

Dear Mike:

I'm in the process of trying to wade through mail which accumulated over the almost two weeks I was out of the office. Over the past weekend I did get a chance to go through the materials you sent which you in turn had received from Dick Pemberton regarding the possible necessity of filing an oath of office. My reaction is like yours, that it is probably unnecessary and may indeed again fuzzy-up that long standing question about the independence of the judiciary from the legislature. I am not persuaded that anything further needs to be done. However, to be doubly sure, I would suggest that you take the matter up with Justice Otis the next time you are going to be discussing anything with him to make sure that he also agrees. If he does, I think we could safely drop the matter, with your so advising Dick Pemberton when it is convenient for you to do so.

I'm also enclosing a subscription form for the Disciplinary Law and Procedure Advance Sheets which I have been getting directly. This has been paid for out of your budget and I'd appreciate your renewing it on that basis.

There will probably be some other items in my mail that we will have to talk about after I have a chance to get through everything. In the meantime, I am hoping that I can be at the panel hearing scheduled for Friday morning for a portion of the time.

Sincerely,

*GEM*  
Gerald E. Magnuson

GEM:crg  
Enclosure

December 13, 1979

The Honorable James C. Otis, Jr.  
Associate Justice  
Minnesota Supreme Court  
State Capitol  
St. Paul, Minnesota 55155

Dear Judge Otis:

In our recent telephone conversation I advised you that one of our Board members had raised the question of whether it was necessary for Board members to sign an oath of office and file it with the Minnesota Secretary of State. Apparently the Board of Law Examiners has done this for some time and I enclose a copy of the oath of office executed by one of the members of that Board. The statutory basis for the administration of the oath is apparently M.S.A. Sections 358.05 and 358.11.

Jerry Magnuson and I both believe that taking and filing oaths is unnecessary since the Board is an agency of the Court rather than of the State Legislature or the Executive Branch. We both feel that taking and filing the oaths would reopen unnecessarily the question of separation of powers.

At your request I am forwarding the enclosed materials to you. Unless I hear from you to the contrary, I will assume that you agree with our opinion that this procedure is unnecessary.

Very truly yours,

Michael J. Hoover  
Administrative Director

MJH:jw  
Enclosures

cc: Jerry Magnuson

THE SUPREME COURT OF MINNESOTA  
SAINT PAUL

FEB 1 1980

JAMES C. OTIS  
JUSTICE

January 28, 1980

Mr. Gerald E. Magnuson  
4200 IDS Center  
Minneapolis, Mn. 55402

Dear Jerry:

In response to Mike Hoover's letter of December 13, 1979, requesting the court's guidance in the matter of administering an oath of office to members of the Lawyers Professional Responsibility Board, the court at its meeting on January 24, 1980, adopted the following policy.

For the practical purpose of publicly identifying members of the Board, the court deems it advisable that all of the members of the Lawyers Professional Responsibility Board sign an oath of office as prescribed by Minn. Stat. § 358.05. The original should be filed with the Clerk of the Supreme Court and a copy with the Secretary of State.

Very truly yours,

  
James C. Otis

JCO/br  
cc M. Hoover ✓  
C. J. Sheran

## CHAPTER 358

### SEALS, OATHS, ACKNOWLEDGMENTS

358.01	Private seals abolished.	358.25	Power given for taking acknowledgments for protesting bills of exchange.
358.028	Legislators, official seals.	358.41	Definitions.
358.03	Form of official seals.	358.42	Notarial acts.
358.04	Temporary seal, when used.	358.43	Notarial acts in this state.
358.05	Oath of office.	358.44	Notarial acts in other jurisdictions of the United States.
358.06	Trustees, referees.	358.45	Notarial acts under federal authority.
358.07	Forms of oath in various cases.	358.46	Foreign notarial acts.
358.08	Affirmation in lieu of oath.	358.47	Certificate of notarial acts.
358.09	By whom and how administered.	358.48	Short forms.
358.10	Officials may administer, when.	358.49	Short title.
358.11	Oaths, where filed.	358.50	Effect of acknowledgment.
358.14	Married persons.		
358.15	Ex officio notary public.		

#### 358.01 PRIVATE SEALS ABOLISHED.

Private seals are abolished, and all written instruments formerly required by law to be sealed shall be equally effective for all purposes without a seal; but nothing herein shall apply to the use of corporate seals.

*History: (6933) RL s 2652*

#### 358.02 [Repealed, 1983 c 119 s 4]

#### 358.028 LEGISLATORS, OFFICIAL SEALS.

Every member of the legislature, while in office and residing in the district from which elected, may have an official seal, in the form provided in section 358.03, with which to authenticate official acts provided for in section 358.15.

*History: 1955 c 72 s 1; 1986 c 444*

#### 358.03 FORM OF OFFICIAL SEALS.

Upon every seal of a court or officer authorized or required to have a seal there shall be engraved the same device that is engraved on the seal of the state, and the name of the court or office in which it is to be used.

*History: (6935) RL s 2654; 1947 c 199 s 1*

#### 358.04 TEMPORARY SEAL, WHEN USED.

When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal, or of any device by way of seal, until one is provided.

*History: (6936) RL s 2655*

#### 358.05 OATH OF OFFICE.

The oath of office to be taken by members and officers of either branch of the legislature shall be that prescribed by the Constitution of the state of Minnesota, article IV, section 8. Every person elected or appointed to any other public office, including every official commissioner, or member of any public board or body, before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in the Constitution of the state of Minnesota, article V, section 6.

*History: (6963) RL s 2677; 1976 c 2 s 172*

#### 358.06 TRUSTEES, REFEREES.

Unless otherwise provided by law, every executor, administrator, guardian, trustee, referee, arbitrator, viewer, assessor, appraiser, and other person appointed by or made responsible to the court in any action or proceeding, before entering upon duties as such, shall take and subscribe the following oath:

"I, A.B., do trust which I now help me God."

*History: (6*

#### 358.07 FORMS

An oath subscribers and persons

(1) To grant

"You each do public offenses of the state and of your malice or ill-reward, but will you So help you God.

(2) To petition

"You each do give, according to fellows you will do any one to speak to So help you God.

(3) To petition

"You each do and truly try, and according to law

(4) To officiate

"You do swear the state, and not

(5) To same

"You do swear long as they shall them while deliberate the court alone, or case until they are

(6) Same, in

"You do swear in the meantime you ing the cause on trial

(7) To witness

now under consideration God."

(8) To interpret

"You do swear to be administered cause now under consideration

(9) To attorney

"You do swear state of Minnesota right and courteous well to the court a person's cause for

(10) To affirm

"You do swear you God."

*History: (69*



"I, A.B., do swear that I will faithfully and justly perform all the duties of the office and trust which I now assume as (insert brief description of office), to the best of my ability. So help me God."

**History:** (6964) *RL s 2678; 1986 c 444*

### 358.07 FORMS OF OATH IN VARIOUS CASES.

An oath substantially in the following forms shall be administered to the respective officers and persons hereinafter named:

(1) To grand jurors:

"You each do swear that you will diligently inquire, and true presentment make, of all public offenses committed within this county of which you have legal proof; the counsel of the state and of yourself and fellows you will keep secret; you will present no person through malice or ill-will, nor leave any unpresented through fear or favor, or the receipt or hope of reward, but will present things truly to the best of your understanding and according to law. So help you God."

(2) To petit jurors in civil actions:

"You each do swear that you will impartially try the issues in this case, and a true verdict give, according to law and the evidence given you in court; your own counsel and that of your fellows you will duly keep; you will say nothing to any person concerning the case, nor suffer any one to speak to you about it, and will keep your verdict secret until you deliver it in court. So help you God."

(3) To petit juries in criminal cases:

"You each do swear that, without respect of persons or favor of any person, you will well and truly try, and true deliverance make, between the state of Minnesota and the defendant, according to law and the evidence given you in court. So help you God."

(4) To officers attending grand juries:

"You do swear that, as officer of the grand jury, you will keep their counsel and that of the state, and not disclose anything relative to their proceedings. So help you God."

(5) To same in charge of petit juries:

"You do swear that you will keep this jury together, and, so far as may be, secluded, so long as they shall remain in your charge; will suffer no one to communicate with or overhear them while deliberating upon their verdict; and will not by word or sign disclose, except to the court alone, anything that may come to your knowledge concerning their action in this case until they are duly discharged."

(6) Same, in charge during recess:

"You do swear that you will keep together this jury until they return into court, and that in the meantime you will suffer no one to speak to them, nor speak to them yourself, concerning the cause on trial, or any matter relating thereto."

(7) To witnesses: "You do swear that the evidence you shall give relative to the cause now under consideration shall be the whole truth, and nothing but the truth. So help you God."

(8) To interpreters:

"You do swear that you will truly and impartially interpret to this witness the oath about to be administered to the witness, and the testimony the witness shall give relative to the cause now under consideration. So help you God."

(9) To attorneys:

"You do swear that you will support the constitution of the United States and that of the state of Minnesota, and will conduct yourself as an attorney and counselor at law in an upright and courteous manner, to the best of your learning and ability, with all good fidelity as well to the court as to the client, and that you will use no falsehood or deceit, nor delay any person's cause for lucre or malice. So help you God."

(10) To affiants:

"You do swear that the statements of this affidavit, by you subscribed, are true. So help you God."

**History:** (6965) *RL s 2679; 1986 c 444*

**358.08 AFFIRMATION IN LIEU OF OATH.**

If any person of whom an oath is required shall claim religious scruples against taking the same, the word "swear" and the words "so help you God" may be omitted from the foregoing forms, and the word "affirm" and the words "and this you do under the penalties of perjury" shall be substituted therefor, respectively, and such person shall be considered, for all purposes, as having been duly sworn.

**History:** (6966) *RL s 2680; 1986 c 444*

**358.09 BY WHOM AND HOW ADMINISTERED.**

Any officer authorized by this chapter to take and certify acknowledgments may administer an oath, and, if the same be in writing, may certify the same under the officer's signature, and the seal of office, if there be one, in the following form: "Subscribed and sworn to before me this ..... day of ....., 19..... ." The mode of administering an oath commonly practiced in the place where it is taken shall be followed, including, in this state, the ceremony of uplifting the hand.

**History:** (6967) *RL s 2681; 1986 c 444*

**358.10 OFFICIALS MAY ADMINISTER, WHEN.**

All persons holding office under any law of this state, or under the charter or ordinances of any municipal corporation thereof, including judges and clerks of election, and all committee members, commissioners, trustees, referees, appraisers, assessors, and all others authorized or required by law to act or report upon any matter of fact, shall have power to administer such oaths as they may deem necessary to the proper discharge of their respective duties.

**History:** (6968) *RL s 2682; 1986 c 444*

**358.11 OATHS, WHERE FILED.**

Except as otherwise provided by law, the oath required to be taken and subscribed by any person shall be filed as follows:

- (1) If that of an officer of the state, whether elective or appointive, with the secretary of state;
- (2) If of a county officer, or an officer chosen within or for any county, with the county auditor;
- (3) If of a city officer, with the clerk or recorder of the municipality;
- (4) If of a town officer, with the town clerk;
- (5) If of a school district officer, with the clerk of the district;
- (6) If of a person appointed by, or made responsible to, a court in any action or proceeding therein, with the court administrator of such court;
- (7) If that of a person appointed by any state, county, or other officer for a special service in connection with official duties, with such officer.

If the person taking such oath be also required to give bond, the oath shall be attached to or endorsed upon such bond and filed therewith, in lieu of other filing.

**History:** (6969) *RL s 2683; 1973 c 123 art 5 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

**358.12** [Repealed, 1973 c 116 s 10]

**358.13** [Repealed, 1973 c 116 s 10]

**358.14 MARRIED PERSONS.**

No separate examination of each spouse shall be required, but if husband and wife join in and acknowledge the execution of any instrument, they shall be described in the certificate of acknowledgment as husband and wife; and, if they acknowledge it before different officers, or before the same officer at different times, each shall be described in the certificate as the spouse of the other.

**History:** (6972) *RL s 2686; 1987 c 49 s 10*

**358.15**

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