

**STATE OF MINNESOTA  
IN SUPREME COURT  
NO. C9-81-1206**

In re:

Amendment to Minnesota Rules  
for Registration of Attorneys

**PETITION OF MINNESOTA STATE BAR ASSOCIATION**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association (“MSBA”) respectfully asks this Court to adopt a new Rule 10 as part of its Rules of the Supreme Court for the Registration of Attorneys (“Registration Rules”). In support of this Petition, the MSBA would show the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power and duty to administer justice and to adopt rules of practice and procedure before the courts of this state and to establish the standards for regulating the legal profession and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Minnesota Legislature. *See* MINN. STAT. § 480.05 (2004).
3. This Court adopted its Rules of the Supreme Court for the Registration of Attorneys on August 4, 1970, and has thereafter amended those rules from time to time.

4. In August 2004, the American Bar Association (“ABA”) adopted a Model Court Rule on Insurance Disclosure. The model rule was sponsored by the ABA Standing Committee on Client Protection. The ABA Committee’s report on the ABA model rule is attached hereto as Exhibit A. This report is also available at: [http://www.abanet.org/cpr/clientpro/malprac\\_disc\\_report.pdf](http://www.abanet.org/cpr/clientpro/malprac_disc_report.pdf). The Court may also find informative a chart prepared by the ABA showing the status of adoption of the ABA model rule in the various states; that chart may be found at: [http://www.abanet.org/cpr/clientpro/malprac\\_disc\\_chart.pdf](http://www.abanet.org/cpr/clientpro/malprac_disc_chart.pdf).

5. A joint subcommittee comprising five members of the Minnesota Lawyers Professional Responsibility Board Rules Committee and four members of the MSBA Rules of Professional Conduct Committee met several times to discuss the ABA model rule and reported its conclusion that the MSBA Rules of Professional Conduct Committee should propose to the MSBA Assembly that Minnesota should adopt a similar rule. A copy of the MSBA’s report is attached to this petition as Exhibit B.

6. At its meeting on June 17, 2005, the MSBA Assembly, after first amending the report by adding the word “substantial” before the last word of proposed Rule 10(A), adopted the MSBA Committee’s report, and approved a formal petition to this Court to adopt a rule to address disclosure of professional liability insurance.

7. The MSBA believes that Minnesota should adopt a rule requiring lawyers who represent private clients to report annually whether they carry professional liability insurance. The rule provides that this information shall be made available to the public by the Supreme Court, preferably on its web site. This information will be useful to

consumers of legal services in selecting an attorney. The MSBA recognizes that there are limitations to the usefulness of the information and believes that the public should also be informed of these limitations.

8. The MSBA believes that the required disclosure should be part of the attorney registration renewal form and that it is desirable to have the reporting form track the language of the rule and to keep the form as simple as possible. The form will also ask each attorney to identify his or her primary professional liability carrier in order to assist any verification of the form's information that may become necessary.

9. The MSBA also recommends that the Supreme Court should make the professional liability insurance information available to the public on its website together with an explanation that will make the information meaningful to potential clients. The website would indicate the limitations of professional liability insurance, explain the reasons why an attorney might not carry such insurance, and encourage potential clients to ask an attorney about malpractice insurance before engaging the attorney. The MSBA also believes that Supreme Court may wish to include links to other sites useful to a potential client seeking representation, such as sites for attorney referral services, pro bono legal service programs, the Office of Lawyers Professional Responsibility, and the Attorney General's Office.

10. Accordingly, the MSBA requests that this Court adopt a new Rule 10 as set forth below (because the rule is entirely new, no redlining is included):

1 **RULE 10. REPORTING PROFESSIONAL**  
2 **LIABILITY INSURANCE COVERAGE**  
3

4 A. Each lawyer admitted to the active practice of law shall certify to  
5 the Minnesota Supreme Court on the annual attorney registration form (1)  
6 whether the lawyer represents private clients; (2) if the lawyer represents  
7 private clients, whether the lawyer is currently covered by professional  
8 liability insurance; and (3) whether the lawyer intends to maintain  
9 insurance during the next twelve months. Each lawyer admitted to the  
10 active practice of law in this jurisdiction who reports being covered by  
11 professional liability insurance shall identify the primary carrier and shall  
12 notify the Minnesota Supreme Court Attorney Registration clerk in writing  
13 within 30 days if the insurance policy providing coverage lapses, is no  
14 longer in effect, or terminates for any reason, unless the policy is renewed  
15 or replaced without substantial interruption.

16 B. The Minnesota Supreme Court shall prescribe the form of  
17 certification. Notwithstanding anything to the contrary in Rule 9 of these  
18 rules, the information submitted pursuant to this rule will be made  
19 available to the public by such means as may be designated by the  
20 Minnesota Supreme Court.

21 C. Any lawyer admitted to the active practice of law who fails to  
22 comply with this rule by the date that the lawyer's registration fee is due  
23 may be suspended from the practice of law until such time as the lawyer  
24 complies. Supplying false information in response to this rule shall subject  
25 the lawyer to appropriate disciplinary action.

11. The MSBA further requests that the court confirm compliance with the rule by  
requiring registering lawyers to provide information in the following form:

26 **Do you represent private clients?\*** \_\_\_yes; \_\_\_no.

27 If so, are you covered by professional liability insurance? \_\_\_yes  
28 (Carrier\_\_\_\_\_); \_\_\_no.

29 If so, do you intend to maintain professional liability insurance during the  
30 next twelve months? \_\_\_yes; \_\_\_no.

31 \* For the purpose of this question, the clients of government lawyers and in-house  
32 counsel are not private clients.

12. Petitioner MSBA recommends that Supreme Court make available, as a part of its information about licensed attorneys, the information reported on the reporting form, together with explanatory language such as the following or other appropriate language:

33           **Does Your Lawyer Have Insurance?**

34           Many lawyers have malpractice insurance. It covers claims that a client  
35           was harmed by the lawyer’s mistake. Lawyers are not required to have this  
36           insurance. Each year, lawyers in private practice must tell the Supreme  
37           Court if they have this insurance. Even if a lawyer buys this insurance,  
38           some claims are not covered. You should know these facts about lawyers’  
39           insurance:

40                     1. Most malpractice policies cover only claims made during the  
41                     policy term. You probably have car insurance. It covers you for accidents  
42                     when the policy is in effect, even if the claim is made years later.  
43                     Malpractice policies are different. If a client makes a claim after the policy  
44                     ends, the claim is not covered. This is true even if the policy was in force  
45                     when the claim arose or the loss happened.

46                     2. Malpractice policies have limits and exclusions that may be  
47                     important to you. Malpractice policies limit the amount paid on a single  
48                     claim and on all claims made during the policy term. They may not cover  
49                     some kinds of legal work. A lawyer who has insurance covering tax law  
50                     may not be covered handling a divorce case.

51                     3. Malpractice policies do not cover criminal acts. These policies  
52                     cover only negligence. Negligence means failure to use ordinary care.  
53                     This kind of insurance will not cover theft of money or property. Losses  
54                     caused by dishonest lawyers may be covered by the Minnesota Client  
55                     Security Board. Find out more at  
56                     <http://www.courts.state.mn.us/csb/csb.html>.

57                     4. The Court does not check on insurance policies. Lawyers report  
58                     on their own policies. The Court does not check these reports. But a  
59                     lawyer who makes a false report can be disciplined.

60                     5. A lawyer may have a good reason for not having this insurance.  
61                     If you have questions about a lawyer’s insurance, ask the lawyer directly.  
62                     The lawyer may be able to tell you why he or she does not carry insurance.

63 If the lawyer has insurance, ask if it covers the kind of work the lawyer will  
64 be doing for you.

For the foregoing reasons, Petitioner respectfully requests that the Court amend the Minnesota Rules of Professional Conduct by adopting proposed Rule 10.

Dated: July \_\_\_\_, 2005.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

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