

48

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

SUITE 300  
372 ST. PETER STREET  
ST. PAUL, MINNESOTA 55102

GERALD E. MAGNUSON  
CHAIRMAN  
MARY H. DAVIES  
KELTON GAGE  
JEANNE GIVENS  
ARTHUR N. GOODMAN  
JAMES T. HALE  
ROBERT F. HENSON  
JARED HOW  
CHARLES T. HVASS  
KENNETH F. KIRWIN  
HERBERT P. LEFLER  
GREER E. LOCKHART  
WILLIAM I. NOVAK  
WILLIAM T. O'CONNOR  
RICHARD L. PEMBERTO  
CLARENCE W. PETERSO  
STEPHEN C. RATHKE  
ALAN K. RUVELSON  
RONALD P. SMITH  
WILLIAM P. VAN EVERA  
SHERMAN WINTHROP  
MARTHA ZACHARY

MICHAEL J. HOOVER  
ADMINISTRATIVE DIRECTOR  
BRUCE E. MARTIN  
ASSISTANT ADMINISTRATIVE  
DIRECTOR  
RICHARD C. BAKER  
STAFF ATTORNEY  
612-296-3952

June 10, 1980

Mr. John McCarthy  
Clerk of Supreme Court  
State Capitol  
St. Paul, Minnesota 55155

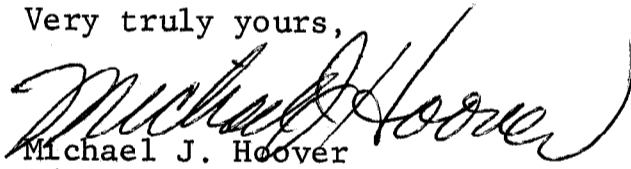
Re: Amendments to Minnesota Rules on  
Lawyers Professional Responsibility  
File No. 46994

Dear Mr. McCarthy:

Enclosed herewith for filing is Petition of the Lawyers  
Professional Responsibility Board, requesting the Court  
to amend Rules 11, 15, and 18 of the Rules on Lawyers  
Professional Responsibility, and adding a new Rule 25  
thereto.

Nine additional copies of the Petition are enclosed for  
distribution to all members of the Court.

Very truly yours,

  
Michael J. Hoover  
Administrative Director

MJH:ajs  
Enclosures

cc: Mr. Gerald E. Magnuson

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. 46994

Amendments to Minnesota Rules on  
Lawyers Professional Responsibility

PETITION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA, AND  
TO ROBERT J. SHERAN, CHIEF JUSTICE:

The Lawyers Professional Responsibility Board hereby  
petitions the Court:

To adopt, effective immediately, amendments to the Minne-  
sota Rules on Lawyers Professional Responsibility, as follows:

1. Amending Rule 11 of said Rules to read as follows:

"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 ~~request~~ 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."

2. Amending Rule 15, Rules on Lawyers Professional Responsibility, by adding the following subsection to said Rule:

"RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(c) Examination on professional responsibility.

Every lawyer placed on a probationary status or reprimanded by this Court, pursuant to the foregoing provisions of Rule 15, shall be in a restricted status, subject to the limitations upon his activities imposed on lawyers in that status under the rules for Continuing Legal Education of members of the bar unless within

six (6) months after his placement on a probationary status or the issuance of a reprimand by this Court, he shall have successfully completed 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."

3. Amending Rule 18, by adding the following subsection (e) to said Rule:

"RULE 18. REINSTATEMENT

(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."

4. By adding a new Rule 25, to the Rules on Lawyers Professional Responsibility, as follows:

"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 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.

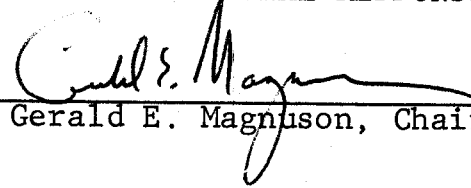
(b) Grounds of discipline.

Violation of this rule is unprofessional conduct and shall constitute a ground for discipline."

Respectfully submitted,

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

By

  
Gerald E. Magnuson, Chairman

Dated: June 3, 1980.

53

COPY

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

SUITE 300  
372 ST. PETER STREET  
ST. PAUL, MINNESOTA 55102

GERALD E. MAGNUSON  
CHAIRMAN  
MARY H. DAVIES  
KELTON GAGE  
JEANNE GIVENS  
ARTHUR N. GOODMAN  
JAMES T. HALE  
ROBERT F. HENSON  
JARED HOW  
CHARLES T. HVASS  
KENNETH F. KIRWIN  
HERBERT P. LEFLER  
GREER E. LOCKHART  
WILLIAM I. NOVAK  
WILLIAM T. O'CONNOR  
RICHARD L. PEMBERTON  
CLARENCE W. PETERSO  
STEPHEN C. RATHKE  
ALAN K. RUVELSON  
RONALD P. SMITH  
WILLIAM P. VAN EVERA  
SHERMAN WINTHROP  
MARTHA ZACHARY

MICHAEL J. HOOVER  
ADMINISTRATIVE DIRECTOR  
BRUCE E. MARTIN  
ASSISTANT ADMINISTRATIVE  
DIRECTOR  
RICHARD C. BAKER  
STAFF ATTORNEY  
612 - 296-3952

February 18, 1981

Honorable Robert J. Sheran  
Chief Justice  
Minnesota Supreme Court  
State Capitol Building  
St. Paul, Minnesota 55155

Re: June 3, 1980 Petition and December 27, 1980  
Petition to Change the Rules on Lawyers  
Professional Responsibility.

46994

Dear Judge Sheran:

This letter will discuss the changes sought in the Rules on  
Lawyers Professional Responsibility by the Petitions of the  
Lawyers Professional Responsibility Board dated June 3, 1980  
and December 27, 1980.

June 3, 1980 Petition

The June 3, 1980 Petition seeks changes in existing Rules 11,  
15 and 18 and the addition of a new Rule 25.

The proposed amendment to Rule 11 would require notice to the  
Director of a lawyer's petition to resign. If the Director  
does not object to the petition, he would promptly advise the  
Court. If he objects, the matter would be submitted to a Panel  
which would conduct a hearing and make a recommendation to the  
Court. The purpose of the proposed amendment is to prevent  
lawyers under investigation from attempting to deprive us of  
disciplinary jurisdiction by requesting to resign and obtaining  
the Court's permission without notice to us, a practice which  
would apparently be permitted under the current Rule 11.

The proposed amendment to Rule 15 would add a new subsection  
(c) which would require every lawyer placed on probation or  
reprimanded by the Court to pass the written examination in  
professional responsibility within six months after the  
disciplinary order. Failure to complete the professional  
responsibility examination would result in the lawyer's

placement on restricted status. The Board felt very strongly that an attorney whose conduct has resulted in public discipline should, as a minimum, pass the professional responsibility section of the bar examination to demonstrate that he or she has a working knowledge of ethics which will presumably guide him or her in the future.

Rule 13 would be amended by adding a new subsection (e) to provide that prior to reinstatement a disbarred lawyer must successfully complete the entire bar examination and a suspended lawyer must successfully complete the written professional responsibility examination prior to reinstatement. Suspended and disbarred lawyers would also be required to satisfy CLE rules imposed on lawyers who seek to change from a restricted to an active status. All of these requirements could be waived in individual cases by the Court. The Board felt very strongly that if examinations are required prior to admission it is also in the public interest to ensure that reinstated lawyers who may have been away from the practice of law for months or years also demonstrate their minimum technical competence by successfully completing the bar examination and by complying with appropriate CLE requirements.

Rule 25 would be a new rule delineating the lawyer's duty to cooperate with ethics investigations. The proposed rule is in response to the Court's invitation in In re Cartwright, 282 N.W. 2d 548 (Minn. 1979) to submit such a rule. The proposed rule is similar to the rule cited with apparent approval by the Court in In re Cartwright.

#### December 27, 1980 Petition

Proposed Rule 26 would impose specific duties upon disciplined or resigned attorneys, including notifying clients, parties and tribunals of the discipline or resignation, and delivering client papers and property. The resigned or disciplined lawyer would be required to maintain records of his compliance with Rule 26 and would be required to file with the Director proof of compliance within fifteen days after the discipline or resignation. Proof of compliance with the rule would be a condition precedent to any petition for reinstatement made by the disbarred, suspended or resigned attorney. The proposed rule is an attempt by the Board to deal with the growing problem of client's rights being prejudiced because a disbarred, suspended or resigned attorney has left practice

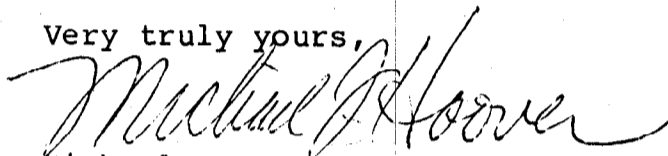
February 18, 1981

without proper notice to them and without delivery of their papers and property. The proposed rule is based on ABA Standard 6.11 of the Standards for Lawyer Discipline and Disability Proceedings.

Proposed Rule 27 would specifically provide for trustee proceedings. Such proceedings would be appropriate in cases of death, disability or disappearance or in failure by a suspended, disbarred or resigned lawyer to comply with Rule 26. The Court has already recognized its inherent power to appoint a trustee in the recent case of In re Peck. The proposed rule follows ABA Standards 13.1 and 13.2.

~~I request that the Court adopt all of the proposed amendments and that the Court schedule whatever hearings it deems appropriate to consider them. If you have any questions concerning these proposals, I am of course available at the Court's convenience.~~

Very truly yours,



Michael J. Hoover  
Administrative Director

MJH:rk

cc: Associate Justices:  
Douglas K. Amdahl  
James C. Otis  
C. Donald Peterson  
John E. Simonett  
George M. Scott  
John J. Todd  
Rosalie E. Wahl  
Lawrence R. Yetka

cc: John C. McCarthy