

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
Minnesota Rules on Lawyers Professional Responsibility, as
follows:

1. By adding a new Rule 26, to the Rules on Lawyers
Professional Responsibility, as follows:

RULE 26. DUTIES OF DISCIPLINED OR RESIGNED LAWYER

(a) Notice to clients in non-litigation matters.

Unless this Court orders otherwise, a disbarred, suspended or
resigned lawyer 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. The notification shall urge
the client to seek legal advice of the client's own choice
elsewhere.

(b) Notice to parties and tribunal in litigation.

Unless this Court orders otherwise, a disbarred, suspended or
resigned lawyer shall notify each client, opposing counsel and
the tribunal involved in pending litigation or administrative
proceedings of the disbarred, suspended or resigned lawyer's
inability to represent the client. The notification to the
client shall urge the prompt substitution of other counsel in
place of the disbarred, suspended or resigned lawyer.

(c) Manner of notice. Notices required by this rule shall be sent by certified mail, return receipt requested, within ten days of the disbarment, suspension or resignation order.

(d) Client papers and property. A disbarred, suspended or resigned 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 15 days after the effective date of the disbarment, suspension or resignation order, the disbarred, suspended or resigned 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 lawyer shall be attached to the affidavit.

(f) Maintenance of records. A disbarred, suspended or resigned 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 lawyer, proof of compliance with this rule and with the disbarment, suspension or resignation order will be available.

(g) Condition of reinstatement. Proof of compliance with this rule shall be a condition precedent to any petition for reinstatement made by a disbarred, suspended or resigned lawyer.

2. By adding a new Rule 27, to the Rules on Lawyers Professional Responsibility, as follows:

RULE 27. TRUSTEE PROCEEDING

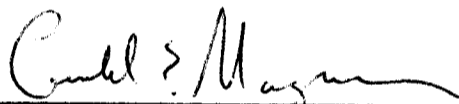
(a) Appointment of trustee. Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred or resigned lawyer has not complied with Rule 26, and that no arrangement has been made for another lawyer to 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.

(b) Protection of records. The trustee shall not disclose any information contained in any inventoried file without the client's consent, except as necessary to execute this Court's order appointing the trustee.

Respectfully submitted,

LAWYERS PROFESSIONAL RESPONSIBILITY
BOARD

By


Gerald E. Magnuson, Chairman

Dated December 27, 1980.

53

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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

COPY

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

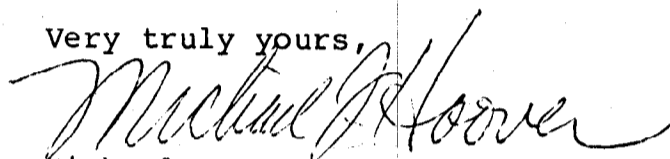
February 18, 1981

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