FILE NO. C8-84-1650 (MRPC)
FILE NO. C1-84-2140 (RLPR)

STATE OF MINNESOTA

IN SUPREME COURT



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In Re Petition to Amend the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility

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**PETITION OF THE LAWYERS PROFESSIONAL RESPONSIBILITY BOARD TO AMEND THE MINNESOTA RULES OF PROFESSIONAL CONDUCT AND THE RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY**

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF MINNESOTA:

Petitioner, Lawyers Professional Responsibility Board (LPRB) respectfully petitions this Court to amend the Minnesota Rules of Professional Conduct (MRPC) and the Rules on Lawyers Professional Responsibility (RLPR) as set forth below.

In support of this petition, the LPRB would show the following:

**Introduction.**

1. Petitioner LPRB is a Board established by this Court to oversee the lawyer discipline system.

2. This Court has the exclusive and inherent power and duty to administer justice and adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession. This power has been expressly recognized by the Legislature. *See* Minn. Stat. § 480.05.

3. This Court has adopted the MRPC by way of establishing standards of practice for lawyers licensed by the State of Minnesota to practice law and the RLPR to govern the procedure for enforcing and administering the MRPC. These Rules have been amended from time to time.

4. At its June 1998 meeting, the LPRB directed its Rules Committee to study the MRPC and the RLPR and recommend to the LPRB any proposed amendments. The Rules Committee made several recommendations. At its September 1998 and January 1999 meetings, the LPRB voted to approve and recommend to this Court these proposed amendments.

## MINNESOTA RULES OF PROFESSIONAL CONDUCT

**Rule 1.8(a), MRPC.**

5. The LPRB recommends that Rule 1.8(a), MRPC, be amended to clarify lawyers' obligations when entering into a business transaction with or acquiring an ownership, possessory, security or other pecuniary interest adverse to a client. The amendments are intended to bring the rule into accord with reported decisions that cite the failure to advise the client to consider obtaining the advice of independent counsel as a violation. *See In re Dillon,* 371 N.W.2d 548 (Minn. 1985), and *In re Pearson,* 352 N.W.2d 415 (Minn. 1984). The amendments also provide that the written consent be contained in a document separate from the transaction documents and specify the disclosures that must be made prior to consent.

6. The LPRB requests that Rule 1.8(a), MRPC, be amended as follows:

**Rule 1.8. Conflict Of Interest: Prohibited Transactions**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) ~~the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;~~ the client is notified in writing by the lawyer that independent counsel should be considered and is given a reasonable opportunity to seek the advice of independent counsel in the transaction;

(2) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and

transmitted in writing to the client in a manner which can be reasonably understood by the client ~~the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction~~; and

(3) the client consents to the transaction ~~in writing thereto~~ in a document separate from the transaction documents that specifies:

(i) whether the lawyer is representing or otherwise looking out for the client's interests in the transaction;

(ii) the nature of the lawyer's conflicting interests, if any; and

(iii) the reasonably foreseeable risks for the client from any conflict.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or

by another in the lawyer's behalf, prior to the employment of that lawyer by that client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation or acceptance of compensation from another is impliedly authorized by the nature of the representation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, unless each client consents after consultation, including disclosure of the existence and nature of all the claims and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(k) A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced. For purposes of this paragraph:

(1) "Sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.

(2) if the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client. In-house attorneys while representing governmental or corporate entities are governed by Rule 1.7(b) rather than by this rule with respect to sexual relations with other employees of the entity they represent.

(3) this paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client.

(4) if a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.

**Rule 1.10, MRPC.**

7. The LPRB recommends that Rule 1.10(a) and (b), MRPC, be amended in order to coordinate the provisions of the rule regarding imputation of conflicts and screening with holdings in state and federal cases. In *Jenson v. Touche Ross & Co.*, 335 N.W.2d 720, 732 (Minn. 1983), this Court upheld the lower court's refusal to disqualify counsel stating that, under certain circumstances, screening "does not offend the appearance of professional proprieties under Canon 9." *See also EZ Paintr Corp. v. Padco, Inc.*, 745 F.2d. 1459, 1464 (Fed. Cir. 1984). The language of the amendments is intended to include the elements contained in *Restatement of the Law - The Law Governing Lawyers* (March 29, 1996, Proposed Final Draft No. 1).

8. The LPRB requests that Rule 1.10, MRPC, be amended as follows:

**Rule 1.10. Imputed Disqualification: General Rule**

(a) Except as provided in this rule, ~~W~~while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of

them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests ~~were~~ are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) ~~that is material to the matter~~ unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;

(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and

(3) timely and adequate notice of the screening has been provided to all affected clients.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

**Rule 1.15, MRPC.**

9. The LPRB recommends that Rule 1.15, MRPC, be amended to clarify its application to funds held by lawyers on behalf of third parties in connection with a representation; to clarify that earned fees and reimbursements for advanced expenses must be withdrawn from trust accounts within a reasonable time; and to delete

reference to credit unions as approved institutions for trust accounts. The clarification as to funds of third parties will bring the rule in accord with ABA Model Rule 1.15. The amendment requiring withdrawal of earned funds is a codification of the Court's past holdings regarding commingling. *See, e.g., In re Selmer,* 529 N.W.2d 684, 686 (Minn. 1995) and *In re Montpetit,* 528 N.W.2d 243, 245 (Minn. 1995). The elimination of credit unions as approved institutions is required as a result of determination by the National Credit Union Administration that the funds held in a credit union account are not insured unless the owners of the funds are credit union members.

10. The LPRB requests that Rule 1.15, MRPC, be amended as follows:

**Rule 1.15. Safekeeping Property**

(a) All funds of clients or third persons ~~paid to~~ held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable interest bearing trust accounts as set forth in paragraphs (~~c~~d) through (~~f~~g). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein.

(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.~~, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.~~

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount and the purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm

to receive funds from the account is disputed after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(~~b~~c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties.

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.

(4) promptly pay or deliver to the client or third person as requested ~~by a client~~ the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

(~~c~~d) Each trust account referred to in paragraph (a) shall be an interest bearing account in a bank, savings bank, trust company, savings and loan association, savings association, ~~credit union,~~ or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.

(~~d~~e) A lawyer who receives client or third person funds shall maintain a pooled interest bearing trust account for deposit of ~~client~~ funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

(~~e~~f) All client or third person funds shall be deposited in the account specified in paragraph (~~d~~e) unless they are deposited in a:

(1) ~~a~~ separate interest bearing trust account for the particular third person, client or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

(2) ~~a~~ pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's or

third person's funds and the payment thereof, net of any transaction costs, to the client.

(fg) In determining whether to use the account specified in paragraph (d) or an account specified in paragraph (ef), a lawyer shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of financial institutions described in paragraph (ed) to calculate and pay interest to individual clients.

(gh) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (ef). The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

(hi) Every lawyer subject to paragraph (gh) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Clerk of the Appellate Court may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (gh).

(ij) Lawyer trust accounts shall be maintained only in financial institutions approved by the Office of Lawyers Professional Responsibility.

(jk) A financial institution shall be approved as a depository for lawyer trust accounts if it shall file with the Office of Lawyers Professional Responsibility an agreement, in a form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account

shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be ~~cancelled~~ canceled except upon (3) days notice in writing to the Office.

(~~k~~l) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within (5) banking days of the date of presentation for payment against insufficient funds.

(~~l~~m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(~~m~~n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(~~n~~o) Definitions

"Financial Institution" – includes banks, savings and loan associations, ~~credit unions,~~ savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

"Properly payable" – refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Notice of dishonor" – refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

**Rule 5.4, MRPC.**

11. The LPRB recommends that Rule 5.4, MRPC, be amended to allow non-lawyers to possess governance authority in law firms organized as Professional Firms. This is intended to coordinate the provisions of the MRPC with the Minnesota Professional Firms Act. *See* Minn. Stat. § 319B.09, subd. 1(c).

12. The LPRB requests that Rule 5.4, MRPC, be amended as follows:

**Rule 5.4. Professional Independence Of A Lawyer**

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer the proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; ~~and~~

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; ~~.~~ and

(4) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional firm ~~corporation~~ or association authorized to practice law for a profit, if a nonlawyer:

(1) ~~a nonlawyer~~ owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of a lawyer for a reasonable time during administration;

(2) ~~a nonlawyer is a corporate director or officer thereof~~ possesses governance authority, unless permitted by the Minnesota Professional Firms Act; or

(3) ~~a nonlawyer~~ has the right to direct or control the professional judgment of a lawyer.

**New Rule 5.7, MRPC.**

13. The LPRB recommends the adoption of new Rule 5.7, MRPC. This rule will establish standards for and provide guidance to lawyers who employ suspended, disbarred, or disability inactive lawyers in their practice by specifying what activities such a lawyer may and may not perform.

14. The LPRB requests that this Court adopt Rule 5.7, MRPC, as follows:

**Rule 5.7. Employment Of Disbarred, Suspended, Or Involuntarily Inactive Lawyers**

(a) For purposes of this rule "employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.

(b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know has been disbarred, suspended, or placed on disability inactive status by order of the court to do any of the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer unless the rules of the tribunal involved permit representation by non-lawyers and the client has

been informed of the lawyer's suspension, disbarment, or disability inactive status;

(3) appear as a representative of the client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) receive, disburse or otherwise handle the client's funds; or

(6) engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, or disability inactive lawyer to perform research, drafting, clerical, or similar activities, including but not limited to:

(1) legal work of a preparatory nature for the lawyer's review, such as legal research, the gathering of information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, information gathering, confirmation of receipt or sending of correspondence and messages; or

(3) accompanying an active lawyer in attending a deposition or other discovery procedure for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.

(d) Prior to or at the time of employing a person the lawyer knows or reasonably should know is a disbarred, suspended, or disability inactive lawyer, the lawyer shall serve upon the Office of Lawyers Professional Responsibility written notice of the employment, including a full description of such person's current license status. The notice shall state that the suspended, disbarred, or disability inactive lawyer shall not be employed to perform any of the activities prohibited by paragraph (b).

(e) Upon termination of the employment of the disbarred, suspended, or disability inactive lawyer, the employing lawyer shall promptly serve upon the Office of Lawyers Professional Responsibility written notice of the termination.

## RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

**Rules 6X and 6Y, RLPR. Pilot Mediation and Fee Arbitration Programs.**

15. The LPRB recommends that Rules 6X and 6Y, RLPR, be deleted. The pilot fee arbitration and pilot mediation programs have expired. The LPRB does not believe either program should be instituted permanently.

16. The LPRB requests this Court to amend Rules 6X and 6Y, RLPR, as follows:

~~**RULE 6X. PILOT MEDIATION PROGRAM FOR COMPLAINTS AGAINST LAWYERS IN THE THIRD, FOURTH, AND TWELFTH BAR ASSOCIATION DISTRICTS**~~

~~**(a) Scope of the Program.** This rule, rather than Rule 6(b), shall apply from July 1, 1995, through July 1, 1998, to any complaint against a lawyer whose principal office is located in Chippewa, Hennepin, Houston, Kandiyohi, Lac Qui Parle, Meeker, Olmsted, Renville, Swift, Wabasha, Winona or Yellow Medicine county.~~

~~**(b) Submission; Referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair shall promptly forward it to the Director. If a complaint is submitted or forwarded to the Director, the Director shall:~~

~~(1) Refer it to the District Committee of the district where the lawyer's principal office is located or, in exceptional circumstances, to another District Committee that the Director reasonably selects, with a direction that the complaint be investigated;~~

~~(2) Investigate it without referral;~~

~~(3) Refer the complaint for mediation to the District Mediation Project Coordinator or directly to a mediator chosen by the Director. When a complaint is mediated pursuant to this rule, the mediator shall, in all cases, be a trained volunteer mediator who shall be on the Neutral Roster maintained by the State Court Administrator's Office;~~

~~(4) Refer the complaint to the District Committee with a direction that the complaint be mediated, if found to be appropriate after investigation; or~~

(5) Determine that neither discipline nor mediation is warranted.

**(c) District Committee Investigation.** If the Director refers the complaint for investigation, the complaint shall be investigated as provided in Rule 7. If, in the course of the investigation, the investigator concludes that the complaint can be more appropriately dealt with through mediation, the investigator shall promptly consult the Director. If the Director concurs, the Director may withdraw the complaint from investigation and refer it for mediation.

**(d) Mediation.** The mediator shall arrange the mediation sessions and shall report at the conclusion of the mediation. The mediator shall conduct the mediation in accordance with generally accepted principles of mediation and in accordance with policies established from time to time by the Director.

(1) If the mediator decides that the best interests of the parties or of the public would not be well-served by the mediation, the mediator may terminate the mediation at any time.

(2) If a resolution is reached, the mediator shall prepare a written agreement of resolution. The mediator shall report to the District Mediation Project Coordinator or the Director that an agreement has been reached. If either party fails to appear for the mediation session or if no agreement is reached, the mediator shall so report; in that case, the Director shall determine whether to investigate further.

(3) The mediation shall be completed within 45 days of the assignment of the mediator. The Director may, upon request of the mediator, extend the time for good cause.

(4) A lawyer shall participate in good faith in a mediation held pursuant to these rules; failure to do so is separate grounds for discipline.

(5) The mediator may not be called to testify in any proceeding about anything that happened or was said in the mediation. Lawyers who serve as mediators under these rules are not bound by the mandatory reporting rules of Minnesota Rules of Professional Conduct 8.3 to report information learned during the course of the mediation. The mediator may not reveal nor can the mediator be compelled to disclose the mediator's notes or other

material that the mediator has prepared, or any document or other material presented or shown to the mediator by one party in the absence of the other party during the course of the mediation. A communication or document otherwise not privileged does not, however, become privileged because of this rule.

Nothing in this rule prevents the parties from revealing or testifying about communications made during the mediation.

(6) The parties may not agree, as part of a resolution through mediation, that the complaining party will waive or settle any claim for legal malpractice.

(7) If the complaint is resolved through mediation, the Director shall determine that discipline is not warranted and, after the applicable time period, expunge the records of the matter under Rule 20(e). If additional allegations of the lawyer's misconduct come to the Director's attention before the expunction, the Director may reopen the file and investigate the complaint.

**(e) Report on the Pilot Program.** No later than July 1, 1997, the Director shall report to the Court on the operation of the pilot program and shall make recommendations.

## RULE 6Y. PILOT MANDATORY ARBITRATION PROGRAM FOR ATTORNEY-CLIENT FEE DISPUTES INVOLVING LAWYERS IN THE SECOND, SIXTH AND FOURTEENTH BAR ASSOCIATION DISTRICTS

**(a) Scope of the Program.** This rule shall apply from July 1, 1995, through July 1, 1997, to any fee dispute between a client and a lawyer whose principal office is located in Blue Earth, Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Ramsey, Red Lake, Roseau or Watanwan county.

**(b) District Fee Arbitration.** If a complaint involves a fee dispute subject to this rule, the Director shall advise the complainant and the respondent of the availability of fee arbitration and may refer the fee dispute to a participating district fee arbitration committee in the district where the lawyer maintains an office. Upon receipt of a referral from the Director or upon the request of a client or a lawyer located in that district the district fee arbitration committee shall contact the client and determine if the client consents to arbitration of the dispute. If the client consents to arbitration of a fee dispute involving a lawyer who maintains an office in

~~the district, the dispute shall be heard by the participating district fee arbitration committee and its results shall be binding. If the amount of the fee claims by the lawyer is greater than the jurisdictional limit of the conciliation courts under Minnesota Statutes Chapter 491A, then the lawyer may decline to arbitrate by notifying the committee in writing. Each district fee arbitration committee shall adopt rules of procedure to implement this rule.~~

~~**(c) Report on the Pilot Program.** No later than October 1, 1996, the Director shall report to the Court on the operation of the pilot program and shall make recommendations.~~

**Rule 7(c), RLPR. Duration of Investigation.**

17. The LPRB recommends that Rule 7(c), RLPR, be amended to change the presumptive duration of an investigation from 45 to 90 days. At its June 1996 meeting, the LPRB passed a motion to petition this Court to amend Rule 7(c) when other rules are also presented for amendment. This recommendation is based on the fact that the average length of investigations conducted by district ethics committees is, and for several years has been, approximately 90 days.

18. The LPRB requests this Court to amend Rule 7(c), RLPR, as follows:

**RULE 7. DISTRICT COMMITTEE INVESTIGATION**

**(a) Assignment; assistance.** The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the 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 Chair, the Chair's designee or to a committee designated for this purpose by the District 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~~ 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within ~~45~~ 90 days, the District Chair or the 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~~ 90 day limitation, the Director shall advise the Board and the 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 Chair of the removal.

**(e) Notice to complainant.** The Director shall keep the complainant advised of the progress of the proceedings.

**Rule 9(b) and (n), RLPR. Answer to Charges of Unprofessional Conduct and Recording of Panel Hearing.**

19. The LPRB recommends that Rule 9(b), RLPR, be amended to require the respondent to serve a written answer to the charges before the pre-hearing meeting. Currently, a written answer is not required. A written answer served before that meeting will allow the Director to know specifically what matters are, or are not, in dispute before the Director prepares and identifies affidavits and exhibits for exchange at the pre-hearing meeting. This will eliminate unnecessary work in preparing for issues that ultimately are not in dispute. This change should also expedite the pre-hearing meeting itself. The language of this rule is analogous to that in Rule 13(b), RLPR, which governs answers to petitions for disciplinary action.

20. Rule 9(n), RLPR, would be amended to codify the current practice of using a court reporter, and not tape recording, to record Panel hearings. The language is analogous to that in Rule 14(d), RLPR, which governs hearings on petitions for disciplinary action.

21. The LPRB requests this Court to amend Rule 9(b) and (n), RLPR, as follows:

**RULE 9. PANEL PROCEEDINGS**

**(a) Charges; setting pre-hearing meeting.** If the matter is to be submitted to a Panel, the Director shall prepare charges of unprofessional conduct, assign them to a Panel by rotation, schedule a pre-hearing meeting, and notify the lawyer of:

(1) The charges;

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

(3) The time and place of the pre-hearing meeting; and

(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 or Vice-Chair.

**(b) ~~Admission of~~ Answer to Charges.** ~~The lawyer may admit some or all charges.~~ Not less than seven days before the pre-hearing meeting, the lawyer shall serve on the Director an answer to the charges. The answer may deny or admit any accusations or state any defense or privilege.

~~If a lawyer makes such an admission or tender, the Director may proceed under Rule 10(b).~~

**(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 Chair or Vice-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.

**(d) Deposition.** Either party may take a deposition as provided by the Rules of Civil Procedure for the District Courts. A deposition under this Rule may be taken before the pre-hearing meeting or within ten days thereafter. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the

deposition. The lawyer shall be denominated by number or randomly selected initials in any District Court proceedings.

**(e) Pre-hearing meeting.** The Director and the lawyer shall attend a pre-hearing meeting. At the meeting:

(1) The parties shall endeavor to formulate stipulations of fact and to narrow and simplify the issues in order to expedite the Panel hearing;

(2) Each party shall mark and provide the other party a copy of each affidavit or other exhibit to be introduced at the Panel hearing. The genuineness of each exhibit is admitted unless objection is served within ten days after the pre-hearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Civil Procedure for the District Courts. No additional exhibit shall be received at the Panel hearing without the opposing party's consent or the Panel's permission; and

(3) The parties shall prepare a pre-hearing statement.

**(f) Setting Panel hearing.** Promptly after the pre-hearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:

(1) The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(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 Chair or Vice-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 prehearing 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 Chair or Vice-Chair orders to the contrary.

**(g) Referee probable cause hearing.** Upon the certification of the Panel Chair and the Board 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.** The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for testimony by:

(1) The lawyer;

(2) A complainant who affirmatively desires to attend; and

(3) A witness whose testimony the Panel Chair or Vice-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.** Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The 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);

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director proposes to offer thereon;

(3) The lawyer may respond to the Director's remarks;

(4) The parties shall introduce their evidence in conformity with the Rules of Evidence except that affidavits and depositions are admissible in lieu of testimony;

(5) The parties may present oral arguments;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

(7) The Panel shall either recess to deliberate or take the matter under advisement.

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

(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, or, if there is probable cause to believe that public discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.

**(k) Notification.** The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has the complaint, of the Panel's disposition. The notification to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (l). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (m).

**(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 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 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.

**(n) Manner of recording.** ~~Proceedings at a Panel hearing or deposition may be recorded by sound recording or audio-video recording if the notification so specifies. A party may nevertheless arrange for stenographic recording at the party's own expense.~~ The Director shall arrange for a court reporter to make a record of the proceedings as in civil cases.

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

**Rule 14(e) and (g), RLPR. Referee Findings, Conclusions and Recommendations, and Supreme Court Briefs.**

22. The LPRB recommends that Rule 14(e), RLPR, be amended to make express that if either party orders a transcript of a referee hearing, then both parties may challenge the referee's findings of fact and/or conclusions of law.

23. This amendment arises out of two recent cases in which the respondent ordered and paid for the transcript. Respondent then filed an initial brief setting forth challenges to the findings and conclusions. The Director then filed his brief, also challenging one or more findings or conclusions. In the reply brief and at oral argument, respondent claimed that because the Director had not ordered and paid for the transcript, he could not contest the findings or conclusions. The Court did not expressly rule on this issue in either case.

24. The amendment reflects the fairer practice. Attorney disciplinary matters differ from civil proceedings in that the Supreme Court is the court of original jurisdiction. The ordering of a transcript pursuant to Rule 14(e), RLPR, does not "freeze" the issues presented to the Court but rather simply prevents the referee's findings and conclusions from being deemed conclusive. The "non-conclusive" findings and conclusions ought, in fairness, be non-conclusive for all parties to the proceedings. Unlike the Rules of Civil Appellate Procedure, the Rules on Lawyers Professional Responsibility do not provide for cross or conditional appeals or require any party to file a statement of the case identifying issues to be raised. One challenging findings need not identify challenged findings or conclusions until that party files its brief. *See also* Rule 103.04, Minnesota Rules of Civil Appellate Procedure, which permits appellate court review of any matter as the interests of judgment may require.

25. Rule 14(e), RLPR, would also be amended to clarify the responsibility for payment of the transcript. This amendment arises out of a recent case in which the respondent ordered a transcript but claimed that he need only pay for (1) the original and (2) at one-fourth the charge, on the ground that with "depo squish" four transcript pages could be put on to one sheet of paper, and he should be only charged per sheet of paper. This Court rejected that claim. This amendment will codify the Court's order.

26. Rule 14(g), RLPR, would be changed to clarify for this Court, the Director and all persons who appear as respondents or their counsel, the practice this Court currently prefers in the covering of the briefs. The language is analogous to that in Rule of Civil Appellate Procedure 132.01, subd. 2.

27. The LPRB requests this Court to amend Rule 14(e) and (g), RLPR.

**RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION**

**(a) Referee.** This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action.

**(b) Conduct of hearing before referee.** Unless this Court otherwise directs, the hearing shall be conducted in accordance with the Rules of Civil Procedure applicable to district courts and the referee shall have all the powers of a district court judge.

**(c) Subpoenas.** The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

**(d) Record.** The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

**(e) Referee's findings, conclusions, and recommendations.** The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and the Director of them. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and

either party may challenge any findings of fact or conclusions. One ordering a transcript within ten days of the date the transcript is ordered shall file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. One ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. One ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

**(f) Panel as referee.** Upon written agreement of an attorney, the Panel 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).

**(g) Hearing before Court.** This Court within ten days of the referee's findings, conclusions and recommendations, shall set a time for hearing before this Court. The order shall specify times for briefs and oral arguments. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray. The matter shall be heard upon the record, briefs, and arguments.

**Rule 18(a), RLPR. Fee for a Petition for Reinstatement.**

28. The LPRB recommends that Rule 18(a), RLPR, be amended to require persons who file a petition for reinstatement to pay a $300 fee. This is the fee required to be paid by persons who repeat the bar examination because they did not pass their previous examination. Rule 105D, Rules of the State Board of Law Examiners for Admission to the Bar. This situation and fee appear to be most analogous to the

situation of a person applying for reinstatement to the practice of law after suspension or disbarment.

29. The LPRB requests this Court to amend Rule 18(a), RLPR, as follows:

**RULE 18. REINSTATEMENT**

**(a) Petition for reinstatement.** 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. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee of $300.

**(b) Investigation; report.** The Director shall investigate and report the Director's conclusions to a Panel.

**(c) Recommendation.** The Panel may conduct a hearing and shall make its recommendation. The recommendation shall be served upon the petitioner and filed with this Court.

**(d) Hearing before Court.** There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. This Court may appoint a referee. If a referee is appointed, the same procedure shall be followed as under Rule 14.

**(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 maybe required of applicants for admission to the practice of law by the State Board of Law Examiners.

(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, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (l) 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 shall not resume the practice of law unless and until this Court issues a reinstatement order.

**Rule 19(b), RLPR. Collateral Estoppel Effect of Prior Disciplinary Proceedings.**

30. The LPRB recommends adoption of a new Rule 19(b)(2), RLPR, to permit the collateral estoppel effect of prior disciplinary proceedings where the prior matter was dismissed to apply only to matters which were investigated. This amendment arises out of a recent lawyer discipline case. While that case was pending, another

complaint against the respondent was filed with the Director's Office. That complaint alleged the respondent had suggested the client fabricate a claim. Included in that complaint was a tape recording of a conversation between the respondent and the complainant in which the suggestion was made. Some years previously the complainant had filed a complaint against the respondent concerning other issues. Included with that complaint was the tape recording with the improper suggestion. That prior complaint had been dismissed by the Director without investigation. At the referee hearing in the recent public disciplinary proceeding, the referee found that the Director was precluded from bringing a claim alleging that the improper suggestion of fabrication violated the Rules of Professional Conduct because the Director had knowledge of the allegation some years previously but did not pursue it at that time. The referee did consider the matter, however, as aggravation of the other proven allegations of fraud in that case. The Court adopted the referee's treatment of the prior complaint.

31. The LPRB requests this Court to amend Rule 19(b), RLPR, as follows:

**RULE 19. EFFECT OF PREVIOUS PROCEEDINGS**

**(a) Criminal conviction.** A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

**(b) Disciplinary proceedings.**

(1) *Conduct previously considered and investigated where discipline was not warranted.* Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation~~.~~, except as provided in subsection (b)(2).

(2) *Conduct previously considered where no investigation was taken and discipline was not warranted.* Conduct in previous lawyer disciplinary proceedings of any jurisdiction which was not investigated is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

~~(2)~~(3) *Previous finding.* A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

~~(3)~~(4) *Previous discipline.* The fact that the lawyer received discipline in previous disciplinary proceedings is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

(i) A pattern of related conduct, the cumulative effect of which constitutes a violation;

(ii) The current charge (e.g., the lawyer has continued to practice despite suspension);

(iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before);

(iv) Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

**(c) Stipulation.** Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

**(d) Panel proceedings.** Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

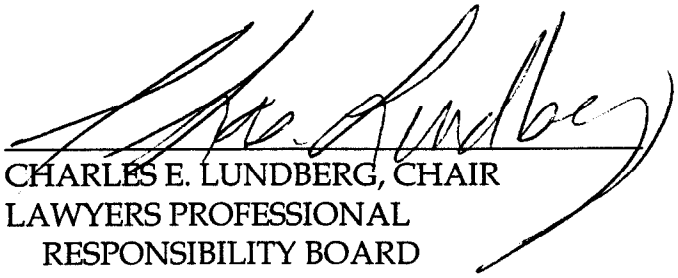
**(e) Admission.** Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct is admissible in proceedings under these Rules.

**Conclusion.**

Based upon the foregoing, petitioner Lawyers Professional Responsibility Board respectfully recommends and requests this Honorable Court to amend the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility as set forth above.

Dated: February 12, 1999.

Respectfully submitted,



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February 18, 1999

Office of Appellate Courts
25 Constitution Avenue
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St. Paul, MN 55155

Re: In Re Petition of the Lawyers Professional Responsibility Board to Amend the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility.
Supreme Court File Nos. C8-84-1650 (MRPC) and C1-84-2140 (RLPR).

Dear Clerk:

Please find enclosed the original and eight copies of the petition of the Lawyers Professional Responsibility Board to amend the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility.

Very truly yours,

Office of Lawyers Professional Responsibility

By _____
Patrick R. Burns
Senior Assistant Director

jmc
Enclosures