

STATE OF MINNESOTA

IN SUPREME COURT

~~C9~~-81-1206

C8-84-1650

C4-91-1728

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES RELATING TO
REGISTRATION OF ATTORNEYS AND RULE OF PROFESSIONAL CONDUCT**

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on December 15, 1999 at 10:00 a.m., to consider the joint petition of the Minnesota State Bar Association and Lawyers Concerned for Lawyers to amend the Rules Relating to Registration of Attorneys and the Rules of Professional Conduct. A copy of the joint petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before December 8, 1999 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before December 8, 1999.


Dated: September 24, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS

SEP 24 1999

FILED



Kathleen A. Blatz
Chief Justice

OLIVER F. ARRETT
WALTER J. STEINKRAUS
SCOTT Q. VIDAS
RICHARD A. ARRETT
WILLIAM E. ANDERSON II
JONATHAN GRAD
JAMES M. URZEDOWSKI
LISA L. RYAN
EDWIN E. VOIGT II
ROBERT O. VIDAS, OF COUNSEL
JANE H. ARRETT, OF COUNSEL

VIDAS, ARRETT & STEINKRAUS

A PROFESSIONAL ASSOCIATION
SUITE 2000
6109 BLUE CIRCLE DRIVE
MINNETONKA, MINNESOTA 55343-9131
(612) 563-3000

PATENTS, TRADEMARKS, COPYRIGHTS,
TRADE SECRETS AND RELATED
LITIGATION

Facsimile: (612) 563-3001
Email: mail@vaslaw.com
Website: www.vaslaw.com

November 18, 1999

Writer's Direct Dial: 563-3004
wsteinkraus@vaslaw.com

Frederich Gritten
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

NOV 24 1999

FILED

RE: C8-84-1650
C9-81-1206

Dear Sir:

Pursuant to the order of the Minnesota Supreme Court dated September 24, 1999, enclosed are twelve (12) copies of a written statement in opposition to the Joint Petition of the Minnesota State Bar Association and Lawyers Concerned For Lawyers.

Very truly yours,



Walter J. Steinkraus

WJS/blj
Enclosure: 12 copies
F:\WPWORK\WJS\9999-ltr.b18

No. C8-84-1650 &
No. C9-81-1206

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA
IN SUPREME COURT

NOV 24 1999

FILED

In Re:

Creation of and Funding for a Minnesota
Lawyers Assistance Program

OPPOSITION TO JOINT PETITION OF
MINNESOTA STATE BAR ASSOCIATION
AND LAWYERS CONCERNED FOR LAWYERS

HONORABLE JUSTICES:

The Minnesota State Bar Association (MSBA) and Lawyers Concerned for Lawyers (LCL) have petitioned the Minnesota Supreme Court to order an increase in attorney's registration fees to fund a Lawyer's Assistance Program (LAP), encompassing the present voluntarily funded services of LCL and expanded services for lawyers suffering depression or other mental illness.

As attorneys registered to practice in Minnesota we are members of the group of persons directly impacted by the proposed fee increase, and potential members of the group of beneficiaries of the services of the LAP. We object.

Neither the proposal to impose the fee, nor the proposal to create the program, are reasonably within the Court's authority to regulate the practice of law. The LAP proposal also creates a biased social service agency. Furthermore, the case for the need for governmentally funded services is not persuasive.

1.) Authority

Assuming for the moment that a governmentally funded mental health service to lawyers is justified, the Legislature, not the Supreme Court is the proper authority to whom the Joint Petition should be addressed. The Court has no Constitutional or statutory authority to impose the fee and fund the service.

The Joint Petition, Paragraph 2, cites the Court's authority "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 and to establish mandatory ethical standards." Nowhere in the petition, however, is there an attempt made to connect the proposed services to any of these activities. It is submitted that there is no such connection. The proposed services have nothing to do with administration of justice. The services have nothing to do with rules of practice before the courts of this state. The services are not a standard of practice for the profession, and they do not involve an ethical standard for the practice of law. They are social services, pure and simple.

At the present time we understand that the majority of our attorney registration fees are devoted to a client recovery fund to cover losses incurred from attorney malfeasance not covered by malpractice insurance. The taxation scheme for financing this fund, and the administration of the claims process, raise serious separation of powers issues, but the provision of this service *to our client base* does have a plausible relation to regulation of the practice of law. It is another thing entirely, however, for the Court to mandate collection and use of registration fees to provide social services *to a group of lawyers*. The practice of law does not involve everything that lawyers do. The authority of the Supreme Court to regulate the practice of law is not a general authority to fund any social service which the Court deems to be of benefit

to, or needed by, lawyers. Likewise, in applying for admission to the bar, attorneys admitted to practice in Minnesota have not voluntarily acquiesced in the Court's regulation of every aspect of their lives. If the Supreme Court undertakes to do this, what is to stop it from providing lawyers with other services traditionally funded by the Legislature? Should we be looking forward to mandatory registration fees to fund special police protection; a lawyers-only road system; special schools for our children? How about a professional sports stadium where lawyers can rejuvenate their spirits and entertain their clients, regardless of what the general citizenry of Minnesota chose to do?

The attorney registration fee is a tax imposed without representation. The Supreme Court of Minnesota, as a non-representative governmental body undertaking to impose this tax, has an obligation to confine itself to charging no more than is necessary to effectively accomplish the task of regulating the practice of law. It cannot, and should not, usurp the functions of the Legislature to fund anything which the legal community considers necessary and/or valuable.

2.) Bias

The proposal for the LAP creates a governmentally funded service agency which *introduces* bias into the practice of law. Under the proposal of the petitioners, the LAP services would become available to lawyers suffering from mental illnesses such as depression. However, similarly depressed non-lawyers would receive no such services. The Supreme Court, by providing a service agency just for the lawyer class, would be perceived, justifiably, by the non-lawyer public as taking better care of the lawyer class than the public as a whole. At a time when we are actively trying to eliminate bias in our practice, in order to more fairly administer

justice, this proposal is ill conceived.

3.) Need

The petitioner's have not made out persuasive a case of a need for an exclusive governmentally funded service for the lawyer class. A report, submitted to the MSBA when requesting MSBA's support for the instant Petition, points out that up until now lawyers suffering from depression or other mental illness "have been forced to find their own resources." What is wrong with that? Isn't the general public in the same situation?

Paragraph 7 of the Joint Petition asserts a general recognition that lawyers have mental health impairment in significant numbers. No authority is cited. Paragraph 11 mentions seminar materials of the Conference of Bar Association Presidents as support for an assertion that "lawyers have the highest rate of depression of any field of work." Paragraph 11 also states that the Depression Task Force considered other matters, but nothing from those other matters is cited to the Court in support of the need allegedly found by the Task Force. This is not substantial evidence. The Joint Petition presents nothing more than a naked assertion that lawyers have a greater magnitude of mental health problems than others.

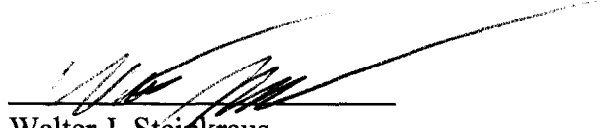
Moreover, even if it is true that lawyers suffer from mental illness in greater numbers than others, this does not imply that a special governmentally funded service is necessary to address the problem. At the present time most lawyers directly or indirectly pay for many or all of the following:

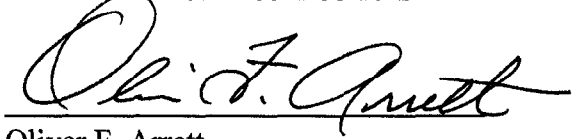
- medical insurance;
- disability insurance;
- professional association dues;
- unemployment compensation taxes; and
- worker's compensation taxes,

all of which address to some extent address problems which may be related to attorney mental illness or chemical dependency. Further, intervention service needs are traditionally addressed by family, friends and voluntary associations such as churches, unions, professional organizations and like-interest organizations such as LCL. Professional fee-based mental health services of all types is also available. Nothing in the Joint Petition even attempts to prove that these sources of assistance are uniquely incapable of handling the problems of mentally ill lawyers. Nor has a case been made that lawyers, as a class, are uniquely incapable of accessing these existing resources.

Conclusion

To carry the LAP program forward, the Court is asked to usurp Legislative power to determine public policy and to impose taxes and to usurp Executive power in administering the program. This, without even trying to try to present a *prima facie* case of need. If existing resources really are inadequate to satisfy the needs of lawyers, petitioners are free to present their case to the Legislature, which does have the authority to establish the program. If that route is unsuccessful or undesirable, the petitioners are free to form another like-interest organization to provide mental health services on a voluntary basis. Those routes are available to all citizens. A bypass of those routes through this Court is not available. The Joint Petition should be denied.


Walter J. Steinkraus
MN attorney license # 0104978


Oliver F. Arrett
MN attorney license #3244

BIAS-LTR.628

Mr. Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

NOV 29 1999

FILED

In re: Amendment to the Minnesota Rules
Of Professional Conduct and Creation of
And Funding for a Minnesota Lawyers
Assistance Program

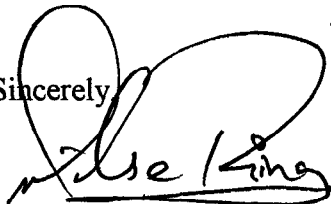
Dear Sir:

I am writing to express my disapproval of the proposed Amendment to the Rules of Professional Conduct requiring all licensed attorneys to pay an additional \$8.00 per year to fund the operating costs of Lawyers Concerned for Lawyers. At some point, regardless of the *de minimis* nature of a fee increase, one must say "Stop". That point has been reached with this proposal.

Attorney registration fees, and my right to practice law, should not be viewed as the funding source for feel-good programs: programs that currently are available from a variety of other sources. I see no connection between attorney license registration fees and this program. The lack of private donations (MSBA Petition, para. 21) should indicate the lack of perceived need for this program among current members of the Bar. Without trying to be callous, perhaps these issues should be dealt with under the category of fitness to practice law.

Please do not open the door for funding non- license related matters by imposing mandatory charges on our attorney registration fees.

Sincerely



Michael R. Ring
Attorney Registration 91820
1430 17th St. W.
Hastings, MN 55033