

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

444 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101

612 - 296-3952

MARY H. DAVIES
KELTON GAGE
JEANNE GIVENS
ARTHUR N. GOODMAN
ROBERT F. HENSON
JARED HOW
HERBERT P. LEFLER
GWEN M. LERNER
JOHN D. LEVINE
GREER E. LOCKHART
WILLIAM J. NOVAK
JOHN N. NYS
WILLIAM T. O'CONNOR
RICHARD L. PEMBERTON
CLARENCE W. PETERSON
STEPHEN C. RATHKE
RONALD P. SMITH
THOMAS H. SWAIN
SHERMAN WINTHROP
MARTHA ZACHARY

MICHAEL J. HOOVER
DIRECTOR OF LAWYERS
PROFESSIONAL RESPONSIBILITY

JANET DOLAN
ASSISTANT DIRECTOR

THOMAS AABY
RICHARD HARDEN
SONYA STEVEN
WILLIAM WERNZ
ATTORNEYS

February 12, 1982

PERSONAL AND CONFIDENTIAL

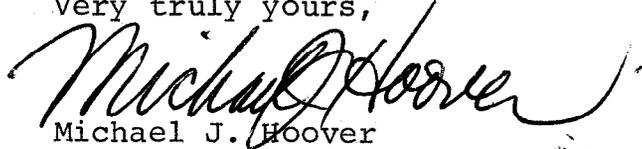
Mr. John C. McCarthy
Clerk of Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

Re: In Re Petition for Amendments to Minnesota
Rules on Lawyers Professional Responsibility

Dear Mr. McCarthy:

Enclosed for filing is the original Petition in the above
matter.

Very truly yours,



Michael J. Hoover
Director

MJH:jd

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

44 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101

MARY H. DAVIES
KELTON GAGE
JEANNE GIVENS
ARTHUR N. GOODMAN
ROBERT F. HENSON
JARED HOW
HERBERT P. LEFLER
GWEN M. LERNER
JOHN D. LEVINE
GREER E. LOCKHART
WILLIAM I. NOVAK
JOHN N. NYS
WILLIAM T. O'CONNOR
RICHARD L. PEMBERTON
CLARENCE W. PETERSON
STEPHEN C. RATHKE
RONALD P. SMITH
THOMAS H. SWAIN
SHERMAN WINTHROP
MARTHA ZACHARY

612 - 296-3952

MICHAEL J. HOOVER
DIRECTOR OF LAWYERS
PROFESSIONAL RESPONSIBILITY

JANET DOLAN
ASSISTANT DIRECTOR

THOMAS AABY
RICHARD HARDEN
SONYA STEVEN
WILLIAM WERNZ
ATTORNEYS

February 12, 1982

PERSONAL AND CONFIDENTIAL

Honorable Douglas K. Amdahl
Chief Justice
Supreme Court of Minnesota
State Capitol
St. Paul, MN 55155

RE: Petition for Amendments to Minnesota Rules on
Lawyers Professional Responsibility

Dear Judge Amdahl:

I am enclosing a copy of a Petition signed by Robert Henson, Chairman of the Lawyers Professional Responsibility Board, proposing various amendments to the Rules on Lawyers Professional Responsibility. The original Petition has today been filed with the Clerk.

The proposals embodied in the Petition are the culmination of a year-long examination of the Board's procedures. The study of Board procedures was prompted both by our burgeoning caseload and by the American Bar Association Evaluation Team visit in May, 1981. Many of the proposals contained in the Petition are responses to the ABA Evaluation Team Final Report issued in June, 1981.

Former Chairman Gerald Magnuson appointed a committee, consisting of Kelly Gage, Herb Lefler and Jared How, to study Board procedures. The proposals contained in the Petition were formulated by that committee. The committee was aided in its drafting by former Board member Ken Kirwin and by members of my staff.

The Board spent three meetings in 1981 considering the committee proposals and refining them. This process culminated in the approval of the proposals contained in the Petition by the Board at its November, 1981, meeting.

Honorable Douglas K. Amdahl

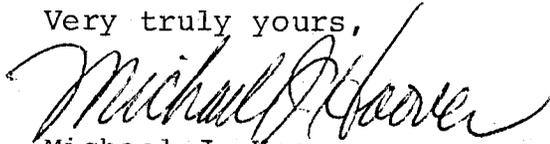
February 12, 1982

Page Two

The proposed changes are extensive and I will not summarize them at this time. It is the consensus of the Board that these changes should be adopted promptly to enable the Board and the Director to cope with ever-larger numbers of disciplinary matters.

Accordingly, I respectfully request an Order of the Court setting a hearing date to consider the proposed amendments to the Rules and inviting comment from interested parties.

Very truly yours,



Michael J. Hoover
Director

MJH:jd

cc: Associate Justices of the Supreme Court

✓ John McCarthy, Clerk of Supreme Court

LRPB Executive Committee members

Enclosure (1)

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Amendments
to Minnesota Rules on Lawyers
Professional Responsibility

A-8
(Old File 46994)

PETITION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

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. Amending Rule 2 of said Rules to read as follows:

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that ~~complaints~~ cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of and that disability or disciplinary proceedings be ~~brought~~ commenced in those cases where investigation discloses ~~it is~~ they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

2. Amending subsections (a), (d), and (f) of Rule 4 of said Rules to read as follows:

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) **Composition.** The Board shall consist of:

(1) A Chairman appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chairman; and

(2) ~~Effective not later than February 17, 1981,~~ Twelve lawyers having their principal office in this state, six of whom

the Minnesota State Bar Association may nominate, and eight nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which he was originally appointed and any period served as Chairman.

(3) Unless any lawyer members nominated by the Minnesota State Bar Association shall leave the Board for any reason or decline reappointment to the Board, the number of lawyer members nominated by the Minnesota State Bar Association shall be as follows within the periods indicated:

Period	Total Number	Association Nominees
From the date hereof through		
January 31, 1979	15	9
February 1, 1979 through		
January 31, 1981	14	8

(d) **Panels.** The Chairman shall divide the Board into ~~four~~ Panels, each consisting of not less than three lawyer Board members and ~~two nonlawyer members~~, at least one of whom is a nonlawyer, and shall designate a Chairman and a Vice-Chairman for each Panel. The Board's Chairman or the Vice-Chairman, ~~if any,~~ is a Panel member at any Panel proceeding he attends. ~~Four~~ Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. If a quorum cannot be obtained the Board's Chairman or, ~~if he is unavailable,~~ the

Vice-Chairman may assign other Board members for the particular matter. A Panel may refer any matters before it to the full Board.

(f) **Approval of petitions.** Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

3. Amending subsection (b) of Rule 5 of said Rules to read as follows:

RULE 5. DIRECTOR

(b) **Duties.** The Director shall be responsible and accountable to this Court and, unless this Court otherwise directs, to the Board, for the proper administration of these Rules. The Director shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system and shall make such other reports to this Court as it may order.

4. Amending subsection (a) of Rule 6 of said Rules to read as follows:

RULE 6. COMPLAINTS

(a) **Investigation.** All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules.

5. Amending Rule 7 of said Rules by modifying subsections (a) and (b) to read as follows and by transferring what is now Rule 8(a) to Rule 7, designating it as subsection (e) and modifying it to read as follows:

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) **Assignment; assistance.** The District Chairman may investigate or assign investigation of the complaint to any one or

more of the Committee's members, and may request the Director's assistance in making the investigation. ~~The District Chairman may request some or all Committee members to consider the matter.~~ The investigation may be conducted by means of written and telephonic communication and personal interviews.

(b) **Report.** The District Chairman or his designee shall report the results of the investigation to the Director. The report shall may include a recommendation that the Director:

- (1) Determine that discipline is not warranted;
- (2) Issue a private warning, an admonition;
- (3) Refer the matter to a Panel, ~~either with or without a recommendation as to the matter's ultimate disposition~~; or
- (4) Investigate the matter further.

~~{Rule-8}(a)~~ [Rule 7](e) **Notice to complainant.** The Director shall keep the complainant advised of the progress of the proceedings, and shall ~~appropriately notify him of each stage of the proceedings, including:~~

- ~~(1) Receipt of the complaint by a District Committee or the Director;~~
- ~~(2) Notification of reasons for delay under Rule 7(e);~~
- ~~(3) Removal of a complaint under Rule 7(d); and~~
- ~~(4) Receipt of a report under Rule 7(b).~~

6. Amending Rule 8 of said Rules to read as follows:

RULE 8. NOTICE TO COMPLAINANT,
INVESTIGATION, DISPOSITION

DIRECTOR'S INVESTIGATION

(b) (a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, the Director may make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers.

(b) Investigatory subpoena. With the Board Chairman or Vice-Chairman's approval upon the Director's application showing that it is necessary to do this before issuance of charges under Rule 9(a), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(c) Disposition

(1) Determination discipline not warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted he shall so notify the lawyer involved, the complainant, and the Chairman of the District Committee, if any, that has considered the complaint. The notification:

(i) May set forth an explanation of the Director's conclusion;

(ii) The notification to the lawyer Shall set forth the complainant's identity and the complaint's substance; and

(iii) Shall inform the complainant of his right to appeal under subdivision (d).

(2) Warning Admonition. If In any matter, with or without a complaint, if the Director concludes that

a lawyer's conduct was unprofessional but of an isolated and non-serious nature, he may issue an admonition. does not warrant discipline but warrants a warning,--he
The Director shall notify the lawyer of the warning and that in writing:

(i) Of the admonition;

(ii) That the admonition warning is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;

~~(iii)~~ (iii) That the lawyer may within a specified reasonable time, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which may affirm or reverse the admonition or instruct the Director to file a Petition for Disciplinary Action in this Court; and

~~(iii)~~(iv) That unless the lawyer so demands the Director after that time will notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, that the Director has issued the warning admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform him of his right to appeal under subdivision (d).

(3) Stipulated probation. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and the Board Chairman or Vice-Chairman approves, the Director and the lawyer may agree that the proceedings will be held in abeyance for a specified period up to two years and thereafter terminated, provided the lawyer

throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chairman or Vice-Chairman's approval, the parties may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall notify the complainant, if any, and the Chairman of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform him of his right to appeal under subdivision (d). The Director may reinstitute the underlying proceedings if the lawyer consents or a Panel determines that the lawyer has violated the conditions.

~~(3)~~ (4) Submission to Panel. The Director shall submit the matter to a Panel under Rule 9 if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted; or if

(ii) The lawyer makes a demand under Rule 8~~(e)~~~~(2)~~~~(iii)~~, subdivision (c)(2)(iii);

(iii) The lawyer consents or a Panel determines that the lawyer has violated conditions under subdivision (c)(3); or

(iv) A Panel chairman so directs upon an appeal under subdivision (d).

~~the Director shall submit the matter to a Panel under~~

Rule 9.

(d) Complainant's appeal. If the complainant is not satisfied with the Director's disposition under Rule 8(c)(1), (2) or (3), he may appeal the matter by notifying the Director in writing within fourteen days. The Director shall notify the lawyer of the appeal and assign the matter to a Panel chairman by rotation. The Panel chairman may approve the Director's disposition or direct that the matter be submitted to a Panel other than his own.

7. Amending Rule 9 of said Rules to read 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, ~~set a time and place for hearing by a Panel on the charges~~ assign them to a Panel by rotation, schedule a pre-hearing meeting, and notify the lawyer of:

(1) The charges; and hearing and of the lawyers right to be heard at the hearing

(2) The name, address, and telephone number of the Panel chairman and vice-chairman;

(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 chairman or vice-chairman.

The Director shall also notify the complainant, if any, of the hearing's time and place.

(b) Subpoenas. At the instance of the Director or the lawyer, attendance of witnesses and production of documentary or tangible evidence shall be compelled as provided in

Rule 45, Rules of Civil Procedure. The District Court of the District where the hearing will be held 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.

(e) (b) Admission of charges. The Director shall, if possible, contact the lawyer to determine whether he desires to admit any charges. The lawyer may, if he so desires:

(1) Admit some or all charges; or

(2) Tender an admission of some or all charges conditioned upon a stated disposition.

If the 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 chairman or vice-chairman 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 the District Courts.

(d) Conditional stay. The Panel may, if the Director and the lawyer agree, consent to hold the proceedings in abeyance for a specified period and thereafter discontinue them, provided the lawyer throughout the period complies with specified reasonable conditions.

(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 initials in any District Court proceeding.

(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 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 chairman or vice-chairman.

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, of

the pre-hearing statement, and, unless the parties agree or the Panel chairman or vice-chairman orders to the contrary, of all documentary exhibits marked at the pre-hearing meeting.

(g) 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 chairman or vice-chairman 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 initials in any district court proceeding.

(h) Procedure at Panel hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The Chairman shall explain that the hearing's purpose is to determine whether there is probable cause to believe that public discipline is warranted on any charge, and that the Panel will terminate the hearing whenever it is satisfied that there is or is not such probable cause (or, if the Director has issued an admonition under Rule 8(c)(2),

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 he 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; and

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

~~(e)~~ (i) Disposition. After the hearing, the Panel shall either:

(1) Determine that discipline is not warranted there is not probable cause to believe that public discipline is warranted (or, if the Director has issued an admonition under Rule 8(c)(2), affirm or reverse the admonition); or

~~(2) Instruct the Director to give a warning;~~

~~(3) Make a finding of unprofessional conduct and issue a reprimand; or~~

~~(4) (2) 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, either with or without The Panel shall not make a recommendation as to the matter's ultimate disposition.

~~(f)~~ (j) **Notification.** The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, that has considered the complaint, of the Panel's ~~action under subdivision (d) or (e)~~ disposition. If the Panel did not determine that there was probable cause to believe that discipline is warranted, the notification to the complainant, if any, shall inform him of his right to petition for review under subdivision (k).

(k) Complainant's petition for review. If the complainant is not satisfied with the Panel's disposition, he may within 14 days file with the clerk of the Supreme Court a petition for review. The clerk shall notify the respondent and the Board Chairman of the petition. The respondent shall be denominated by initials in the proceeding. This Court will grant the 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.

(l) Manner of recording. Proceedings at a Panel hearing or deposition may be recorded by sound recording or audio-video recording if the notification thereof so specifies. A party may nevertheless arrange for stenographic recording at his own expense.

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

8. Amending Rule 10 of said Rules to read as follows:

RULE 10. PROCEDURE UPON ADMISSION OF CHARGES

DISPENSING WITH PANEL PROCEEDINGS

(a) Agreement of parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission or tender of conditional admission. If the Panel so instructs lawyer admits some or all charges, or tenders an admission of some or all charges conditioned upon a stated disposition, the Director may dispense with some or all procedures under Rule 9 and shall file a petition for disciplinary action together with the lawyer's admission of charges or tender of conditional admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14. If this Court rejects a tender of conditional admission, the matter may be remanded to the same or a different Panel for proceedings under Rule 9.

(c) Criminal conviction. If a lawyer is convicted of a felony under Minnesota statute, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, wilfull extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may

either submit the matter to a Panel or directly file a petition under Rule 12.

(d) Additional charges. If a petition under Rule 12 is pending before this Court, the Director need not present the matter to a Panel before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(e) Discontinuing Panel proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(c)(1), (2) or (3).

9. Amending subsection (a) of Rule 12 of said Rules to read as follows:

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10, the Director shall file with this Court a petition for disciplinary action. The petition shall set forth the unprofessional conduct charged.

10. Amending subsection (a) of Rule 15 of said Rules to read as follows:

RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend him ~~indefinitely or~~ for a stated period of time up to three years;

[Clauses (3)-(6) unchanged]

11. Amending subsection (a) of Rule 16 of said Rules to read as follows:

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS

(a) Petition for temporary suspension. Whenever In any case

where the Director files or has filed a petition under Rule 12, if
it appears that a continuation of the lawyer's authority to
practice law pending final determination of the disciplinary
proceeding may result in risk of injury to the public, the
Director ~~on direction of a Panel,~~ shall may file with this Court a
petition for suspension of the lawyer pending final determination
of the disciplinary proceeding. The petition shall set forth
facts as may constitute grounds for the suspension and may be
supported by a transcript of evidence taken by ~~the~~ a Panel, court
records, documents or affidavits.

12. Amending Rule 17 of said Rules to read as follows:

RULE 17. FELONY CONVICTION

~~(a) Non-final conviction.~~ Whenever a lawyer is convicted,
other than upon his plea of guilty or nolo contendere, of a
felony under Minnesota statute or of a crime under the laws
of the United States, any state or territory thereof, or any
foreign country, punishable by incarceration for more than one
year, the Director shall investigate and determine whether a
continuation of the lawyer's authority to practice law pending
final determination of disciplinary proceedings may result in
risk of injury to the public. If he determines in the
affirmative, he shall proceed under Rule 16. If he determines
in the negative, he shall so notify the Board.

~~(b) Final conviction.~~ Whenever a lawyer is convicted,
upon his plea of guilty or nolo contendere or upon a judgment
not subject to direct appellate review, of an offense specified
in Rule 17(a), the Director shall investigate and submit the
matter to a Panel under Rule 9. If appropriate, he shall also
proceed under Rule 16.

(a) Clerk of court duty. Whenever a lawyer is convicted of a felony, the clerk of district court shall send the Director a certified copy of the judgment of conviction.

~~(e)~~ (b) Other cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

13. Amending subsections (a), (b), (d) and (e) of Rule 19 of said Rules to read 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 he committed the conduct for which he 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.**

[Clause (1) unchanged]

(2) **Previous finding.** A finding by a Panel or equivalent or by a Court in the previous disciplinary proceedings that a lawyer committed conduct warranting reprimand, probation, suspension, disbarment, or equivalent is, in proceedings under these Rules, prima facie evidence that he committed the conduct.

(3) **Previous discipline.** Subject to Rule 404(b), Rules of Evidence, the fact that the lawyer received a warning

directed by a Panel or equivalent reprimand, probation, suspension, disbarment, or equivalent in the previous disciplinary proceedings is admissible in evidence in proceedings under these Rules.

(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 evidence in proceedings under these Rules.

14. Amending subsection (a) of Rule 21 of said Rules to read as follows:

RULE 21. PRIVILEGE; IMMUNITY

(a) **Privilege.** A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, ~~including proceedings under Rule 6(e),~~ or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

15. By adding a new Rule 28 to said Rules as follows:

RULE 28. DISABILITY STATUS

(a) Transfer to disability inactive status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents him from competently

representing clients shall be transferred to disability inactive status.

(b) Immediate transfer. This Court shall immediately transfer a lawyer to disability inactive status upon proof that:

(1) The lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, or inebriate person; or

(2) The lawyer has alleged during a disciplinary proceeding that he is incapable of assisting in his defense due to mental incapacity.

(c) Transfer following hearing. In cases other than immediate transfer to disability inactive status, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel shall be appointed to represent him; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other

institution that examined or treated the lawyer since his transfer to disability inactive status.

(e) Asserting disability in disciplinary proceeding. A lawyer's asserting disability in defense or mitigation in a disciplinary proceeding shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates.

Dated: February 9, 1982

LAWYERS PROFESSIONAL RESPONSIBILITY
BOARD

By Robert F. Henson
Robert F. Henson, Chairman