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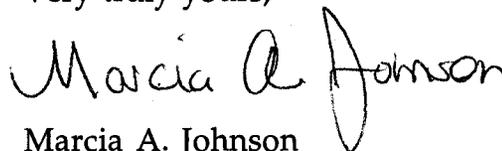
Mr. Frederick K. Grittner
Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155-1500

Re: In Re Petition to Amend the Rules on Lawyers
Professional Responsibility.
Supreme Court File No. C9-84-2140

Dear Mr. Grittner:

Enclosed for filing are the original and twelve copies of the Lawyers Professional Responsibility Board petition to amend the Rules on Lawyers Professional Responsibility. Also enclosed are an original and twelve copies of a statement in support of the Board's petition. This petition is to correct an inconsistency created in the rules from a prior amendment in 1991. The Board believes that this change can be done administratively by the Court as part of any changes to the Rules on Lawyers Professional Responsibility made following the MSBA petition to amend the rules which is currently pending before the Court.

Very truly yours,



Marcia A. Johnson
Director

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Enclosures

cc: Honorable M. Jeanne Coyne (with enclosures)
Michael J. Galvin, Jr. (with enclosures)
Timothy P. Groshens (with enclosures)
Gregory M. Bistram (with enclosures)
Nancy W. McLean (with enclosures)

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FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition to Amend the Rules
on Lawyers Professional Responsibility,

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD**

TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

WHEREAS, Rule 9 of the Rules on Lawyers Professional Responsibility, was amended by the Supreme Court, effective March 1, 1991, and

WHEREAS, in particular, Rule 9(j), was amended to expand a Lawyers Board Panel's disposition options if a hearing is held on charges of unprofessional conduct, and

WHEREAS, in particular, new section Rule 9(j)(2) inadvertently may create the appearance that a Lawyers Board Panel's options on an admonition appeal hearing do not include finding probable cause to believe that public discipline is warranted, and

WHEREAS, such an appearance is inconsistent with Rule 9(i)(1) and with Lawyers Board Panel and Supreme Court practice, and

WHEREAS, the Board believes that this inconsistency was inadvertent on the part of the Board and the Court in amending the rules, and

WHEREAS, the Board believes that amending Rule 9(j)(2) would provide clarification and notice to members of the public and the bar concerning procedures to be followed at a Lawyers Board Panel proceeding,

NOW, THEREFORE, the Lawyers Professional Responsibility Board respectfully petitions the Minnesota Supreme Court to amend Rule 9(j)(2), Rules on Lawyers Professional Responsibility, to read as follows:

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

(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.

The Board believes that this change can be made administratively by the Court without the necessity of public hearings.

Dated: November 10, 1994.

By *Gregory M. Bistram*
GREGORY M. BISTRAM, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
Attorney No. 8503

and

By *Marcia A. Johnson*
MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
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520 Lafayette Road, Suite 100
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FILE NO. CI-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

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In Re Petition to Amend the Rules
on Lawyers Professional Responsibility,

**STATEMENT IN SUPPORT OF
PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD**

In late 1990, the Lawyers Board petitioned the Minnesota Supreme Court to amend the procedural Rules on Lawyers Professional Responsibility (RLPR) in several ways. One of those proposals, which was adopted effective March 1, 1991, was to increase the dispositional options of a Lawyers Board hearing Panel. Rule 9(j)(1)(iii) was added to **expand** the Panel's options by authorizing the Panel, if a hearing is being held on charges of unprofessional conduct, to instead issue an admonition to the respondent attorney.

In drafting the amendment to this rule, however, language, which had been part of a parenthetical phrase within the old rule, was now set out as a separate Rule 9(j)(2), with the unexpected result of appearing to **limit** a Panel's options on admonition appeal hearings. This result was never the Board's or the Court's intention in amending the rule.

Rule 9(i)(1), RLPR, accurately sets out that a Lawyers Board Panel on an admonition appeal has the option of finding probable cause and instructing the Director to file a public petition for discipline in the Court. The apparent inconsistency with Rule 9(j)(2), however, has caused confusion. See *In re Hawkins*, 502 N.W.2d 770, 771 (Minn. 1993). This specific issue was raised by Mr. Hawkins as grounds for dismissal of the petition against him, and was fully briefed to the Court at that time. The Court did not choose to specifically address the matter in its

opinion, but by imposing public discipline on Mr. Hawkins the Court obviously recognized the Panel's authority to find probable cause.

The Board now simply wishes to correct this inconsistency and eliminate any future confusion. The Board believes that this can be done administratively by the Court as part of any changes to the RLPR made following the MSBA petition which is currently pending before the Court.

Dated: November 10, 1994.

By Gregory M. Estram
GREGORY M. ESTRAM, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
Attorney No. 8503

and

By Marcia A. Johnson
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