

FILE NO. C5-84-2139

MAR 5 - 2004

STATE OF MINNESOTA

FILED

IN SUPREME COURT

In Re Petition to the Minnesota
State Board of Law Examiners for
Amendment of the Rules for
Admission to the Bar

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD IN SUPPORT OF THE
CONDITIONAL ADMISSION
PROPOSAL AND TO AMEND THE
MINNESOTA 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 requests that this Court approve the December 24, 2003, petition of the Minnesota Board of Law Examiners (BLE) to amend the Minnesota Rules for Admission to the Bar to provide for conditional admission of applicants to the Minnesota bar and hereby petitions this Court to amend the Minnesota Rules on Lawyers Professional Responsibility (RLPR) to provide for the corresponding changes necessary to enforce conditional admission violations.

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. In 2003, the LPRB appointed a committee to meet with representatives of the BLE to study the conditional admission process. The LPRB and BLE committees met on several occasions and discussed: (1) the need for a conditional admission process; (2) the procedures for implementing conditional admission; and (3) the amendments to the Rules for Admission to the Bar needed to implement conditional admission and the amendments to the RLPR necessary to handle violations of conditional admission agreements.

5. The LPRB committee recommended that the LPRB endorse the BLE proposal for conditional admission and also recommended amendments to the Rules on Lawyers Professional Responsibility to enforce compliance with the conditional admission agreements. At its September 12, 2003, meeting, the LPRB voted to support the BLE proposal for a conditional admission and to recommend to this Court the proposed amendments to the RLPR. The amendments are set forth in Exhibit C of BLE's December 24, 2003, petition to amend the Rules for Admission to the Bar and are annexed to this petition. The LPRB desires that the conditional admission be used to better protect the public while maintaining current admission standards and does not wish to see admission standards lowered through use of the conditional admission process.

The Need for a Conditional Admission Process.

6. Paragraphs of the BLE petition explain the benefits of adopting a conditional admission process from the law admissions perspective. In addition, the LPRB and Office of Lawyers Professional Responsibility (OLPR) believe that conditional admission will better protect the public for the following reasons.

7. The OLPR has experienced an increase in the number of lawyers admitted less than five years who become involved in disciplinary investigations involving

serious misconduct. In some of these cases the investigation has revealed that the conduct is related to the behavior or condition that was the subject of a BLE hearing or investigation. In at least two cases the lawyer misconduct is an extension or continuation of behavior or a condition scrutinized by the BLE during the admission process. The conditional admission proposal would permit OLPR to better detect lawyers whose misconduct is attributable to untreated or improperly addressed problems or conditions that were identified during the admission process.

8. Although the number of cases experienced by the OLPR is small, the harm to clients or others has been significant. Moreover, the lawyers involved in these cases have tended to be solo practitioners who are without the support of partners, as well as law firm infrastructure. The OLPR and LPRB believe that applicants with identifiable issues that may interfere with their ability to practice law would personally benefit from the monitoring program that would be instituted by the BLE as part of the conditional admission proposal.

9. Finally, the public will be better protected by the conditional admission monitoring process. The beginning years of law practice can be stressful for any new lawyer. This is especially true for solo practitioners. A monitoring program designed to ensure that an applicant appropriately addresses issues that may impede or interfere with his or her ability to practice can only serve to better protect the public.

The Conditional Admission Process.

10. As set forth in the BLE petition, the conditional admission process will be administered by the BLE. The BLE will establish the conditions of admission, enter into agreements with the applicant for conditional admission, and be responsible for monitoring compliance with the conditional admission agreement.

11. The LPRB and BLE determined that violations of conditional admission agreements are better addressed through the lawyer discipline process as opposed to creating a new process within the bar admission process. Currently applicants bear the

burden of proof in bar admission proceedings whereas, the Director bears the burden of proof when imposing discipline or revoking admission through the lawyer discipline system.

12. LPRB and OLPR involvement in conditional admission will only occur when the BLE determines there has been non-compliance with a conditional admission agreement or the OLPR receives an ethics complaint against a conditional admittee that implicates the conditions established for conditional admission.

13. The lawyer discipline system already contains the necessary due process procedures for revoking bar admission, including probable cause hearings, evidentiary hearings and Supreme Court hearings. Use of the lawyer discipline process to investigate and prosecute violations of conditional admission agreements will conserve resources and promote uniformity in the license revocation process for lawyers.

14. It is not anticipated that investigation and prosecution of conditional admission cases will require significant LPRB or OLPR resources. The BLE petition outlines the limited number of cases in which it proposes to use conditional admission and consequently the number of cases involving violations will be even smaller.¹

15. The procedures set forth to investigate and prosecute conditional admission violations are set forth in the amendments to the RLPR (Exhibit C to the BLE petition). These procedures mirror those currently being used to investigate and prosecute violations of the Rules of Professional Conduct by lawyers.

Conclusion.

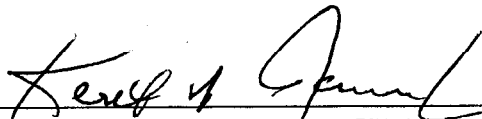
Based upon the foregoing, petitioner Lawyers Professional Responsibility Board respectfully recommends and requests this Honorable Court to approve the BLE petition to provide for a conditional admission process and to adopt the amendments to

¹ Paragraph 3 of the December 24, 2003, BLE petition states that the BLE anticipates that no more than five applicants will be conditionally admitted each year.

the Minnesota Rules on Lawyers Professional Responsibility that are set forth in Exhibit C of the BLE's December 24, 2003, petition and are annexed to this petition.

Dated: March 3, 2004.

Respectfully submitted,



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***Proposed Amendments to the
Rules on Lawyers Professional Responsibility
to Provide for Conditional Admission.***

RULE 8. DIRECTOR'S INVESTIGATION

(d) Disposition.

(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;

(ii) The lawyer makes a demand under subdivision (d)(2)(iii); or

(iii) A reviewing Board member so directs upon an appeal under subdivision (e).

(iv) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) *Extension or Modification of a Conditional Admission Agreement.*
If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to extend or modify the terms of the agreement for a period not to exceed two years.

RULE 9. PANEL 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:

(i) 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

(ii) 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); or

(iii) whether there is probable cause to believe that a conditional admission agreement has been violated thereby warranting revocation of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(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 that there is not probable cause to believe that revocation of a conditional admission 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.

(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.

(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 a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action or a petition to revoke conditional admission. An original and ~~seven~~ nine copies shall be filed. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action.

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 or petition for revocation of conditional admission.

* * *

(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. In revocation of conditional admission matters, the referee shall also notify the Director of the Board of Law Examiners. 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.

RULE 15. DISPOSITION; PROTECTION OF CLIENTS

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

- (1) Disbar the lawyer;
- (2) Suspend the lawyer indefinitely or for a stated period of time;
- (3) Order the lawyer to pay costs;
- (4) Place the lawyer on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;
- (5) Reprimand the lawyer;
- (6) Order the lawyer to successfully complete within a specified period such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility;
- (7) Make such other disposition as this Court deems appropriate;
- (8) Require the lawyer to pay costs and disbursements; in addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees; ~~or~~
- (9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission; or
- (10) Revoke, modify or extend a conditional admission agreement.

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. Applications for admission to the bar following a revoked conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(b) Disciplinary Proceedings.

(1) *Conduct previously considered and investigated where discipline was not warranted.* Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings, 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, including revocation of conditional admission proceedings which was not investigated is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) *Previous finding.* A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) *Previous discipline.* The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, 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); or

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

* * *

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

RULE 20. CONFIDENTIALITY; EXPUNCTION

(a) **General Rule.** The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

(1) As between the Committees, Board and Director in furtherance of their duties;

(2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall the Director or Director's staff be subject to deposition or compelled testimony, except upon a showing to the court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and Director's staff shall remain protected.

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege that portions may be deleted;

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules.

(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

(10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

(11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

(b) Special Matters. The following may be disclosed by the Director:

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) With the affected lawyers consent, the fact that the Director has determined that discipline is not warranted;

(3) The fact that the Director has issued an admonition;

(4) The Panel's disposition under these Rules;

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e);

(6) The fact that the terms of a conditional admission agreement have been modified or extended under Rule 8(d)(5);

~~(6)~~ Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this Rule the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after Determination of Probable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

RULE 24. COSTS AND DISBURSEMENTS

(a) Costs. Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of \$900.

(b) Disbursements. Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) Time and Manner for Taxation of Costs and Disbursements. The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) Judgment for Costs and Disbursements. Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, ~~or~~ disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

RULE 25. REQUIRED COOPERATION

(a) Lawyer's Duty. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director, or the Director's staff, the Board, or a Panel, by complying with reasonable requests, including requests to:

- (1) Furnish designated papers, documents or tangible objects;
- (2) Furnish in writing a full and complete explanation covering the matter under consideration;
- (3) Appear for conferences and hearings at the times and places designated;

(4) Execute authorizations and releases necessary to investigate alleged violations of a conditional admission agreement.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of Discipline. Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

**RULE 26. DUTIES OF DISCIPLINED, DISABLED,
CONDITIONALLY ADMITTED, OR RESIGNED LAWYER**

(a) Notice to Clients in Non-Litigation Matters. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client being represented in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) Notice to Parties and Tribunal in Litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client, opposing counsel (or opposing party acting *pro se*) and the tribunal involved in pending litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, disabled lawyer, and shall include a copy of the Court's order.

(c) Manner of Notice. Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court's order.

(d) Client Papers and Property. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall make arrangements to deliver to each client being represented in a pending matter, litigation

or administrative proceeding any papers or other property to which the client is entitled.

(e) Proof of Compliance. Within fifteen (15) days after the effective date of the Court's order, the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall file with the Director an affidavit showing:

(1) That the affiant has fully complied with the provisions of the order and with this Rule;

(2) All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and

(3) The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall be attached to the affidavit, along with proof of mailing by certified mail.

(f) Maintenance of Records. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, shall keep and maintain records of the actions taken to comply with this Rule so that upon any subsequent proceeding being instituted by or against the ~~disbarred, suspended, resigned or disabled~~ lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, ~~or~~ disability, or revoked conditional admission order will be available.

(g) Condition of Reinstatement. Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, resigned or disabled lawyer, or to an application for admission submitted to the Board of Law Examiners after revocation of a lawyer's conditional admission.

RULE 27. TRUSTEE PROCEEDING

(a) Appointment of Trustee. Upon a showing that a lawyer is unable to properly discharge responsibilities to clients due to disability, disappearance or death, or that a suspended, disbarred, ~~or~~ resigned, or disabled lawyer, or a lawyer whose conditional admission has been revoked, has not complied with Rule 26, and that no arrangement has been made for another lawyer to discharge such responsibilities, this Court may appoint a lawyer to serve as the trustee to inventory the files of the disabled, disappeared, deceased, suspended, disbarred or resigned lawyer, or a revoked conditional admission lawyer and to take whatever other action seems indicated to protect the interests of the clients and other affected parties.

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

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 the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate Transfer. This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.

(c) Asserting Disability in Disciplinary Proceeding. A lawyer's asserting disability in defense or mitigation in a disciplinary proceeding or a proceeding to revoke conditional admission 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. If a lawyer alleges disability during a disciplinary investigation or proceeding, or a proceeding to revoke conditional admission, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

- (1) Transfer the lawyer to disability inactive status;
- (2) Order the lawyer to submit to a medical examination by a designated professional;
- (3) Appoint counsel if the lawyer has not retained counsel;
- (4) Stay disciplinary proceedings or proceedings to revoke conditional admission until it appears the lawyer can assist in the defense;
- (5) Direct the Director to file a petition under Rule 12;
- (6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;
- (7) Make such or further orders as the Court deems appropriate.

(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 the transfer to disability inactive status.

(e) Transfer Following Hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, 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 may be appointed to represent the lawyer; 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.