STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2140

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

ORDER FOR PUBLIC HEARING

WHEREAS, by order dated August 31, 1984, the Supreme Court appointed an Advisory Committee on Lawyer Discipline, "to study the lawyer discipline process, procedures and operations of the Minnesota Lawyers Professional Responsibility Board, to report the results of the study to the Court and the Bar, and, if changes are deemed needed, to recommend such changes for the consideration of the Court," and

WHEREAS, the Advisory Committee filed its report with the Court on April 15, 1985, proposing amendments to the Rules on Lawyers Professional Responsibility and the adoption of certain administrative procedures in the Office of the Director of Lawyers Professional Responsibility, and

WHEREAS, since the time of filing of the original report, the Advisory Committee has received written comments regarding its recommendations from attorneys, the public and members of the Lawyers Professional Responsibility Board, which has resulted in the filing with the Court of a supplemental report on December 2, 1985.

NOW, THEREFORE, it is hereby ordered that a public hearing be held in the Supreme Court chambers at the State Capitol in St. Paul at 9:00 a.m. on March 18, 1986, to consider amendments to the Rules on Lawyers Professional Responsibility and

the implementation of administrative procedures in the Office of the Director of Lawyers Professional Responsibility.

IT IS HEREBY FURTHER ORDERED that any person wishing to obtain a copy of the petition write to the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minnesota, 55155.

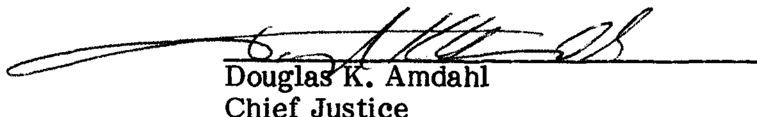
IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of the hearing, but who do not desire to make an oral presentation at the hearing, shall file 10 copies of such statement with the Clerk of the Appellate Courts, 230 State Capitol, St. Paul, Minn., 55155, on or before March 7, 1986, and

2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the material to be so presented with the aforesaid clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before March 7, 1986.

Dated: Dec 16, 1985

BY THE COURT



Douglas K. Amdahl
Chief Justice

OFFICE OF
APPELLATE COURTS
FILED
DEC 16 1985
WAYNE TSCHIMPERLE
CLERK

LPRB

Minnesota State Bar Association

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401 • PHONE 612-333-1183
In-state 1-800-292-4152

OFFICE OF
APPELLATE COURTS
FILED

MAR 7 1986

WAYNE TSCHIMPERLE
CLERK

President
LEONARD J. KEYES
2200 First National Bank Bldg.
St. Paul, MN 55101
(612) 291-1215

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
230 State Capitol Building
Aurora Avenue
St. Paul, Minnesota 55155

C1-84-2140

March 5, 1986

RE: March 18, 1986 Supreme Court Hearing

Pursuant to the Supreme Court Order dated December 16, 1985, published in the February issue of Bench & Bar, the Minnesota State Bar Association requests permission for myself, its President-Elect to appear at the Supreme Court's hearing on the report of the Supreme Court Advisory Committee on March 18, 1986 to ask that the Supreme Court give heed to the recommendations of the committee, to comment briefly and particularly on the need for expanded authority of panels of the Lawyers Professional Responsibility Board (a matter on which the Board of Governors has acted specifically) and also to discuss briefly the issue of advisory opinions and whether the Minnesota State Bar Association is the appropriate repository of that responsibility. The presentation will be less than five minutes and no written materials are involved.

Richard L. Pemberton
President-Elect

ss86064.2/1

Executive Director TIM GROSHENS

President-Elect
RICHARD L. PEMBERTON
110 N. Mill St.
Fergus Falls, MN 56537
(218) 736-5493

Secretary
HELEN I. KELLY
777 Nicollet Mall
Minneapolis, MN 55402
(612) 370-6426

Treasurer
A. PATRICK LEIGHTON
1400 Norwest Center
St. Paul, MN 55101
(612) 227-7683

Vice President-Outstate
RALPH H. PETERSON
402 S. Washington
Albert Lea, MN 56007
(507) 373-3946

Past President
DAVID S. DOTY
4344 IDS Center
Minneapolis, MN 55402
(612) 333-4800

OFFICE OF
APPELLATE COURTS
FILED

MAR 6 1986

WAYNE TSCHIMPERLE
CLERK

3-6-86

STATE OF MINNESOTA

IN SUPREME COURT

In Re Report of the Supreme Court Advisory Committee on Lawyer Discipline	)))	RESPONSE OF HENNEPIN COUNTY PUBLIC DEFENDER'S OFFICE

C1-84-2140

* * *

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

The attached is the response and recommendations of the Hennepin County Public Defender to the Report of the Supreme Court Advisory Committee on Lawyer Discipline.

The undersigned requests permission to appear personally at the hearing on the Recommendation for Lawyer Discipline.

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
William R. Kennedy - Chief Public Defender

By David Knutson
David H. Knutson
First Assistant Public Defender
Attorney License No. 57058
C-2300 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-7530

DATED: this 5th day of March, 1986.

The legal profession is one of the most regulated groups in our society. Unfortunately, it is also one of the most misunderstood. The media give prominent coverage to the misdeeds of attorneys, done either on behalf of or to their clients. One result is that any change in the mechanism of reviewing and disciplining lawyers is bound to be met with public skepticism. The belief that lawyers protect their own is widely held. However, changes are necessary and they must be drastic. This response is submitted on behalf of fifty criminal defense attorneys who represent indigent criminal defendants. As such, it will concentrate on areas that particularly affect our practice. We recommend adoption of the following rules.

I. NEITHER THE DIRECTOR NOR THE LOCAL ETHICS COMMITTEE SHALL INVESTIGATE ANY ALLEGATION OF PROFESSIONAL MISCONDUCT IN A CRIMINAL CASE DURING THE TIME IN WHICH THE CRIMINAL CASE IS PENDING OR FOR WHICH THE COMPLAINANT HAS AN ALTERNATE REMEDY.

In position statements issued by the Director's Office and seminars at which the Director has appeared, the Director has stated that no investigations will be undertaken in pending litigation. We approve of this position but our experience under both the previous Director and the present Director has been such that we cannot rely on these assurances. Rather, a specific prohibition against the investigation of open and pending criminal cases is necessary. That prohibition should also be extended to situations where a complainant has an alternate remedy in the court system, such as direct appeal or post-conviction remedy.

The following examples, which were referred by the Director to the District Ethics Committee, involved Hennepin County Public Defenders

at a time when the complainant's criminal case was still pending.

1. A misdemeanor client entered a plea of not guilty and rejected the prosecutor's settlement offer at the pre-trial conference. Five months before the trial he complained to the Director that his attorney tried to coerce a guilty plea and would be unprepared for trial. This was investigated by the District Ethics Committee.

2. A felony client complained to the Director that his attorney was incompetent and derelict because no indictment had been issued and his attorney "waived a preliminary hearing." This State has not had preliminary hearings since 1975. His case did not require prosecution via an indictment. In spite of this, the case was investigated by the District Ethics Committee.

3. A "victim" in a sexual assault case complained because the defense attorney interviewed prospective witnesses and disclosed the "victim's" name in the course of the investigation. The complainant complained that this violated her right to privacy. The complaint was referred to the District Ethics Committee for investigation.

It is our belief that the above examples and all others can be more appropriately resolved by the trial court. The Judge is in an immediate position to determine the validity of a complaint and propose corrective measures. It also gives the complainant a convenient forum with feedback and an immediate resolution of the problem.

We also believe that in instances where a complainant has an appellate remedy or a post-conviction remedy, the Director's Office should refrain from investigation. Likewise, the Director should not investigate cases that have been determined by the trial or appellate courts adversely to complainant.

It has been the belief of most criminal defense attorneys that the Board views itself as an Ombudsman for disgruntled clients. Unfortunately, clients charged with violation of criminal offenses will always be the most disgruntled group of clients that lawyers represent. Although there is not sufficient time to thoroughly analyze the issue, we would advocate a position that negligence and unethical conduct are not necessarily the same.

II. THE DIRECTOR SHALL SPECIFY THE PROVISIONS OF THE RULES OF PROFESSIONAL CONDUCT THAT ARE RELEVANT IN ANY INVESTIGATION OF A LAWYER'S ACTIVITIES.

The courts have long held that an indispensible aspect of due process of law is adquate and fair notice of the alleged misconduct. In a criminal case, the complaint must list facts and statutory citations so the defendant can prepare to meet the charges; in this country, an individual cannot be jailed or convicted of a crime unless the State informs him of what crime is charged. A person cannot even lose a driver's license unless the Commissioner states the source of his authority and what conduct the driver engaged in. However, an attorney can lose a license to practice law without ever being informed which ethical provision was violated. We believe that attorneys should have the same rights of notice as other groups in our society.

This concern is of major importance. Whenever an attorney must

answer a complaint, the attorney must guess which provisions of the code are in question. If the guess coincides with the Director or the local investigator the attorney may respond correctly. However, when the guesses do not correspond, the attorney could be in trouble. With the adoption of the previous recommendation of not investigating pending cases, the Director should have sufficient time to inform the attorney of the relevant code provisions. We also believe that such an analytical approach will remove the Ombudsman mentality exhibited by the Director in the past and force the Director, the investigators, and the local boards to think in terms of ethical conduct and professional responsibility rather than serving as a clearing house for personal criticism of lawyers.

Finally, we would support recommendation #46, which would insure the inclusion of attorneys practicing criminal law on the state and local ethics boards, and #60 which would provide a training program for all board members. In cases in which attorneys in this office have responded to a complaint, it has been clear the the investigator did not have even a rudimentary understanding of or appreciation for the practice of criminal law. If self-policing is to be effective, the attorneys must have confidence in the investigator. Under present practice, investigators do not have our confidence.

In conclusion, we urge the court to adopt a policy which prohibits investigation into pending cases or cases for which the complainant has a remedy at the trial or appellate level. When a lawyer is forced to defend himself or herself before a district ethics committee, the adversarial nature of that proceeding directly destroys any attorney-client relationship. An attorney cannot defend his or her conduct

before an investigator and at the same time vigorously advocate for the client. Indeed, the attorney quickly develops a "cover your backside" mentality. Consequently, those cases in our office are referred outside the Public Defender's Office to the Conflicts Panel. The costs in recent years have become prohibitive. Additionally, we believe it is most important that the Code Provisions constituting the misconduct be cited. This would save the responding attorney time and would also save time for the investigator. We find it difficult, if not impossible, to defend conduct measured by the standard of the Rule of Professional Conduct when we are not informed of the provision of the Rule we allegedly violated.

Respectfully submitted,

OFFICE OF THE HENNEPIN COUNTY PUBLIC DEFENDER
William R. Kennedy - Chief Public Defender

By David Knutson

David H. Knutson
First Assistant Public Defender
Attorney License No. 57058
C-2300 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-7530

DATED: this 5th day of March, 1986.

DIRECTOR
WILLIAM J. WERNZ
ASSISTANT DIRECTORS
CANDICE M. HOJAN
PHILLIP D. NELSON
KENNETH L. JORGENSEN
MARTIN A. COLE
BETTY M. SHAW

DIRECTOR OF
LAWYERS PROFESSIONAL RESPONSIBILITY
444 LAFAYETTE ROAD
SUITE 401
ST. PAUL, MINNESOTA 55101
612-296-3952

OFFICE OF
APPELLATE COURTS
FILED
MAR 6 1986
WAYNE TSCHIMPERLE
CLERK

March 5, 1986

PERSONAL AND CONFIDENTIAL

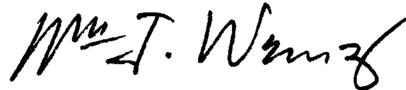
Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

Dear Mr. Tschimperle:

Enclosed for filing in the above matter are 10 copies of the Director's Reply to Statement of the Criminal Law Section.

Very truly yours,



William J. Wernz
Director

WJW/rlb
Enclosures
cc: Honorable Glenn E. Kelley
John D. Levine
David Murrin

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
FILED
MAR 6 1986
WAYNE TSCHIMPERLE
CLERK

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Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

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REPLY TO STATEMENT OF THE CRIMINAL LAW SECTION

The Director of Lawyers Professional Responsibility hereby replies to the Statement of the Criminal Law Section filed with the clerk in the above matter.

The Statement filed by David Murrin indicates that criminal defense lawyers apparently "perceive the entire disciplinary process as a farce in which they are singled out for harassment." The basis for feeling "singled out" is apparently the number of complaints concerning criminal law matters, prosecution and defense. In 1985 the leading subject areas of complaints were: family law (336); personal injury (135); criminal (135) probate (104); and real estate (99). A large number of complaints regarding criminal law matters have been dismissed without any investigation, for example, when post-conviction relief remedies have not been exhausted, when the complaint states only a fee dispute, or when prosecutorial discretion is challenged.

This office has not interpreted Dreher Recommendations 5 and 6 (regarding deference to other forums, particularly fee arbitration and post-conviction relief) as mandating that our office never be involved in such matters. Indeed, the Court has

disciplined lawyers in several fee matters in the last few years, and this office has issued several admonitions in fee matters. Our interpretation of these recommendations, and the policy we have followed, is to defer in the vast majority of cases to other forums, but to investigate a small number of cases in which there may be egregious misconduct alleged or where the ethics issues are not squarely framed in other forums. The Statement's request that the Court "order the Director's office and Board" to give deference seems unnecessary and inappropriate in light of the policy stated above.

The Statement also asks that the "court order the Director's office to refrain from entering pending criminal litigation." Of course this office does not "enter" other forums, but it sometimes investigates matters pending elsewhere. If this office is ordered by the Court not to be involved either in pending criminal litigation or in post-conviction situations, the activities of the criminal bar will have largely been removed from the jurisdiction of the Director. Mr. Murrin was a member of the Dreher Committee, and both his supervisor and one of his associates appeared before it. The Committee made no recommendation for such sweeping exclusion of matters from disciplinary jurisdiction.

No additional reply is needed to the Statement's position regarding Recommendation 53, as the Lawyers Board filing of February 6 addresses this, at page 24.

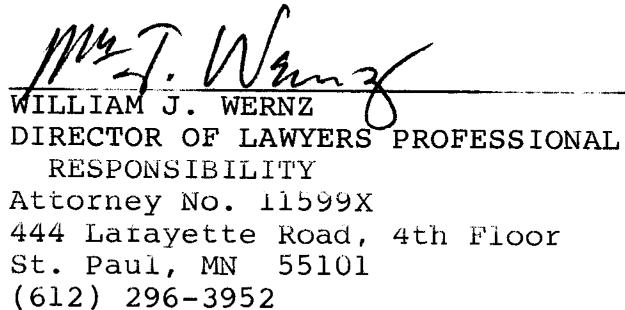
Finally, the Statement expresses dissatisfaction with the level of expertise of this office, the Board, and the district ethics committees generally in criminal law matters. We cannot be fully expert in every area of law. However, the staff of this

office includes an attorney who for 10 years, in a judicial capacity, routinely handled criminal matters, and another attorney who clerked for the Hennepin County Public Defender's office. In the last four years there have also been two attorneys who had extensive City Attorney prosecutorial experience and one former County Attorney. The Board includes a County Attorney and at least one attorney with substantial criminal defense experience. As to the district ethics committees, there are rarely complaints beyond their expertise for evaluation purposes. The Statement is in error in stating (p. 4), "Unfortunately the board opposes this [Rec. 60]." As p. 17 of the Board's 9/6/85 reply indicates, the Board "agrees that training should be done," but raises the question of resources.

For the reasons stated above, the orders of the court solicited by the Statement should not be made.

Dated: March 5, 1986.

Respectfully submitted,



WILLIAM J. WERNZ
DIRECTOR OF LAWYERS PROFESSIONAL RESPONSIBILITY
Attorney No. 11599X
444 Lafayette Road, 4th Floor
St. Paul, MN 55101
(612) 296-3952

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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

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APPELLATE COURTS
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MAR 4 1986

WAYNE TSCHIMPERLE
CLERK

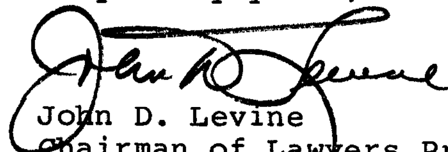
Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Order for Public Hearing, File No. C1-84-2140.

Dear Mr. Tschimperle:

Enclosed for filing are 10 copies of a request to make an oral presentation by John D. Levine at the March 18, 1986, public hearing in the above matter. The materials to be presented are covered in pages 2-29 of the February 6, 1986, "Lawyers Professional Responsibility Board Further Proposals for Rule Changes and Supplemental Report of the Supreme Court Advisory Committee and Reply to the Report," 10 copies of which were previously filed with the court.

Very truly yours,



John D. Levine
Chairman of Lawyers Professional
Responsibility Board

JDL/WJW/rlb
Enclosures

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

- - - - - - - - - - - - - - - - - - - -

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

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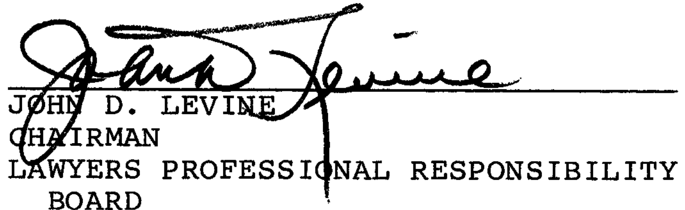
<u>REQUEST TO MAKE ORAL PRESENTATION</u>

The Chairman of the Lawyers Professional Responsibility Board, John D. Levine, hereby requests leave of the Court to make an oral presentation at the March 18, 1986, public hearing in the above matter.

Dated: 3-3, 1986.

Respectfully submitted,



JOHN D. LEVINE
CHAIRMAN
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
Attorney No. 62650
2200 First Bank Place East
Minneapolis, MN 55402
(612) 340-2680

2-3-86

Minnesota State Bar Association

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401 • PHONE 612-333-1183
In-state 1-800-292-4152

President
LEONARD J. KEYES
2200 First National Bank Bldg.
St. Paul, MN 55101
(612) 291-1215

February 27, 1986

OFFICE OF
APPELLATE COURTS
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MAR 3 1986
WAYNE TSCHIMPERLE
CLERK

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

Re: Supreme Court Advisory Committee
on Lawyer Discipline #C1-84-2140

Dear Chief Justice Amdahl:

Pursuant to the Supreme Court order dated December 16, 1985, published in the February issue of Bench & Bar, the Minnesota State Bar Association requests permission for its president-elect, Richard L. Pemberton, to appear at the Supreme Court's hearing on the report of the Supreme Court Advisory Committee on March 18, 1986 to ask that the Supreme Court give heed to the recommendations of the committee, to comment briefly and particularly on the need for restoration of authority of panels of the Lawyers Professional Responsibility Board (a matter on which the Board of Governors acted specifically), and also to discuss briefly the issue of advisory opinions and whether the Minnesota State Bar Association is the appropriate repository of that responsibility. The presentation will be less than five minutes and no written materials are involved.

Sincerely,

Leonard J. Keyes
President

LJK/rs
pc: Richard L. Pemberton
Tim Groshens

Executive Director TIM GROSHENS

President-Elect
RICHARD L. PEMBERTON
110 N. Mill St.
Fergus Falls, MN 56537
(218) 736-5493

Secretary
HELEN I. KELLY
777 Nicollet Mall
Minneapolis, MN 55402
(612) 370-6426

Treasurer
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1400 Norwest Center
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Vice President-Outstate
RALPH H. PETERSON
402 S. Washington
Albert Lea, MN 56007
(507) 373-3946

Past President
DAVID S. DOTY
4344 IDS Center
Minneapolis, MN 55402
(612) 333-4800

DIRECTOR OF
LAWYERS PROFESSIONAL RESPONSIBILITY
444 LAFAYETTE ROAD
SUITE 401
ST. PAUL, MINNESOTA 55101
612-296-3952

DIRECTOR
WILLIAM J. WERNZ
ASSISTANT DIRECTORS
CANDICE M. HOJAN
PHILLIP D. NELSON
KENNETH L. JORGENSEN
MARTIN A. COLE
BETTY M. SHAW

OFFICE OF
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FILED
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WAYNE TSCHIMPERLE
CLERK

February 27, 1986

PERSONAL AND CONFIDENTIAL

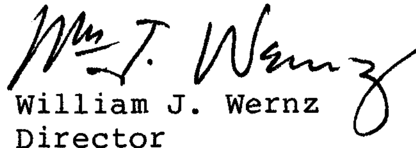
Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Order for Public Hearing, File No. C1-84-2140.

Dear Mr. Tschimperle:

Enclosed for filing are 10 copies of a request to make an oral presentation by William J. Wernz at the March 18, 1986, public hearing in the above matter. The materials to be presented are covered in pages 29-42 of the February 6, 1986, "Lawyers Professional Responsibility Board Further Proposals for Rule Changes and Supplemental Report of the Supreme Court Advisory Committee and Reply to the Report," 10 copies of which were previously filed with the court.

Very truly yours,



William J. Wernz
Director

WJW/rlb
Enclosures

FILE NO. C1-84-2140

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
FILED

FEB 27 1986

WAYNE TSCHIMPERLE
CLERK

- - - - - - - - - - - - - - - - -

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

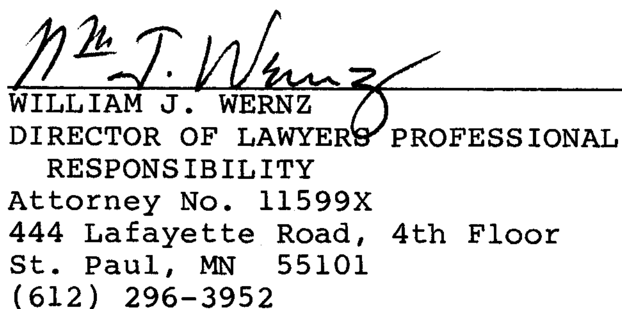
- - - - - - - - - - - - - - - - -

REQUEST TO MAKE ORAL PRESENTATION

The Director of Lawyers Professional Responsibility, William J. Wernz, hereby requests leave of the Court to make an oral presentation at the March 18, 1986, public hearing in the above matter.

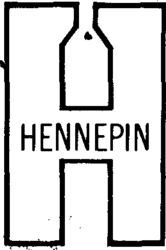
Dated: February 27, 1986.

Respectfully submitted,



WILLIAM J. WERNZ
DIRECTOR OF LAWYERS PROFESSIONAL RESPONSIBILITY
Attorney No. 11599X
444 Lafayette Road, 4th Floor
St. Paul, MN 55101
(612) 296-3952

2/20/86



OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487-0520
(612) 348-7530

William R. Kennedy, Chief Public Defender

OFFICE OF
APPELLATE COURTS
FILED

FEB 20 1986

WAYNE TSCHIMPERLE
CLERK

February 18, 1986

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

Re: Hearing on Professional Responsibility

Dear Sir:

Please find enclosed a petition plus written material to be presented at the March 18, 1986 hearing.

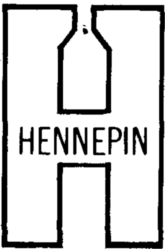
I would appreciate the opportunity to present oral argument.

Very truly yours,

David P. Murrin
Assistant Public Defender

dpm:vm

enc.



OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487-0520
(612) 348-7530

William R. Kennedy, Chief Public Defender

OFFICE OF
APPELLATE COURTS
FILED

FEB 20 1986

WAYNE TSCHIMPERLE
CLERK

February 10, 1986

TO: Clerk of Minnesota Appellate Courts

FROM: David P. Murrin

SUBJECT: Petition of the Supreme Court Advisory Committee Regarding Professional Discipline

David P. Murrin, on behalf of the MSBA Criminal Law Section, petitions the Court to present both oral and the attached written statements at the hearing on March 18, 1986.

DAVID P. MURRIN

OFFICE OF
APPELLATE COURTS
FILED

FEB 20 1986

WAYNE TSCHIMPERLE
CLERK

STATEMENT OF THE CRIMINAL LAW SECTION

In the next year approximately 1,300 complaints against attorneys will be filed with the Director's Office. Of these, over 800 will receive full investigations by either the director's office or a district ethics committee. At the end of the investigation, all but 200 of the charges will be dismissed as "discipline not warranted." Of the remaining 200, the majority will receive non-public discipline such as an admonition. Of these ethics complaints, approximately 10% will be against lawyers engaged in the practice of criminal law. In more graphic terms, this means simply that one in every ten lawyers practicing in the state of Minnesota will receive an ethics complaint in the next year. The current membership of the MSBA Criminal Law Section is less than 300 or at the current rate, almost half of the criminal bar receives a complaint each year. Naturally, those criminal lawyers on the defense side receive more than prosecutors, and people engaged in criminal law in urban areas receive more complaints than those in rural areas. In short, criminal lawyers, especially those in large cities, are highly vulnerable to ethics complaints.

Investigated lawyers are frustrated, angry, and saddened at having their expertise called into question. The problem is exacerbated by the fact that the investigators are often ignorant of their areas of practice, especially criminal law, and may not treat them with common sense or courtesy. Moreover, when one area of law is singled out for an inordinate number of complaints, those lawyers develop "circle the wagons" mentality. The unfortunate result of this is that those lawyers, especially criminal lawyers, perceive the entire disciplinary process as a farce in which they are singled out for harassment. There is no disagreement with self-regulation but there is concern with current practice.

A few examples highlight the issues.

Example #1. A private attorney was retained to represent a person accused of attempted murder for severely beating a baby. After a full-blown jury trial wherein the defendant's confessions were introduced into evidence, the jury convicted of a lesser offense of aggravated assault. The family of the defendant filed a complaint with the director's office because they felt the attorney should have gotten a "not guilty" or a complete exoneration. (After a full investigation by the local ethics committee the attorney was exonerated.)

Example #2. A private attorney was retained to represent a person charged with Possession with Intent to Distribute Marijuana. The defendant filed an ethics complaint maintaining the attorney was not representing him properly after receiving a fee because he had not moved to declare the marijuana laws unconstitutional. After a full investigation the charges were dismissed.

Example #3. Recently a public defender received an ethics complaint for failing to act in the best interests of his client. The client, who had already fired private counsel, complained the public defender had not demanded a preliminary hearing or had an information filed. The investigation was ordered one week before trial. The public defender referred the case out to a conflicts lawyer, hired at public expense, and is now explaining to a district ethics investigator that informations and preliminary hearings were abolished by the Rules of Criminal Procedure on July 1, 1975.

Example #4. An attorney represented a defendant on a first degree burglary. After a jury trial which found him guilty of the lesser-included offense, he was given probation. Subsequently he was charged with a simple assault. The attorney advised him to plead guilty to a certified petty misdemeanor of disorderly conduct for a $25.00 fine. Subsequently, the trial judge revoked the person's probation for engaging in assaultive conduct, after a full Morrissey hearing, wherein the victims were subpoenaed to testify. The defendant and his mother both sent letters to the Ethics Board, maintaining he was revoked for a petty misdemeanor certification without mentioning the Morrissey Hearing. The attorney was given the letter from the client but not from the mother and told to respond to the charges. The attorney verbally answered the charges but would not supply documentation until he had a chance to examine the mother's letter. The district ethics committee refused to turn over the mother's letter, even though they had it in their possession and maintained his demand to examine it before responding was a violation of Rule 25.

Example #5. An attorney had an appointment with a client. Upon leaving his office the client was immediately arrested by police who said the defendant had stolen four $2.00 bills and one $1.00 bill out of a person's purse while on the way to the appointment. The attorney conferred with the police and the client, and the police agreed to give the defendant a citation to appear in court. Upon returning to his office, the attorney found four $2.00 bills and one $1.00 bill hidden by the client. He called the director's office for an advisory opinion and was told to return the money to the client.

Example #6. A prosecutor charged a man with a serious crime. Evidence was secured by searching his room in his house. After he was arrested and charged, the defendant's parents complained that the property was not returned as fast as they liked. The director's office again ordered a full investigation which resulted in exoneration of the prosecutor. No inquiry was made by the director's office to determine if the case was still pending; if the goods were being held as evidence; or held pending appeal.

From the foregoing examples it is fairly obvious the board and director's office have far exceeded their authority. They are no longer investigating actions by attorneys who are doing something wrong, rather, they act as the ombudsman for the public and a quality control board. Over and above that, they seem to lack the skill and expertise to either judge trial lawyers, or understand the complexities of criminal law. In short, they rush in where angels fear to tread.

In light of the foregoing, the Supreme Court Committee recommended several solutions for the problems. I would like to briefly address each of those solutions.

Recommendation #5. The Supreme Court committee recommends that the director's office no longer enter into complaints where alternative forms such as post-conviction relief is available for the complainant. In point of fact, Minnesota's Post-Conviction Act is a model as one of the most complete in the nation. The trial judge is in a much better position to determine the quality of representation than an untrained, unspecialized member of the director's office or local ethics committee. Where alternative forms are available to complainants, the director's office should not investigate. This rule would have eliminated example number one.

Recommendation #6 suggests that the director's office avoid fee-arbitration disputes. In point of fact, most complaints against private criminal lawyers lay in this area. Minnesota has established an extensive fee arbitration system and there is no reason why the director's office should interfere in this area. Over and above this, every district ethics chair who testified to the Supreme Court Committee voiced the same view. Unfortunately, in criminal law this has not remained true. It is suggested that the Director stay out of fee-arbitration in the criminal law area. This would eliminate example number two.

Recommendation #53 suggests that the director's office enumerate the disciplinary rule allegedly violated by the lawyer. This is not the case under the present system and the current director's office feels this would be an encumbrance upon their efforts. It is amazing that police officers who are not trained in the law accord suspects far greater rights than the director's office. Unfortunately, simple due process demands notice and it is time the director's office recognizes the United States guarantees of the XIV Amendment. This would probably eliminate examples four and six.

Additionally it is recommended that the court urge the director's office not to enter fields where litigation is already pending. This is a policy which the director's office said they follow in the civil area and it is a policy which should be applied in the criminal justice system. Entering pending litigation is an insult to the entire trial bench of the state of Minnesota who is in a far better position to judge the qualifications and quality of a defense attorney rather than an untrained member of the director's office or a local ethics committee. Over and above this, it places the defense attorney in a Hobbesian choice of attacking his client in order to protect his license while at the same time trying to represent his client in front of a judge and/or jury. This herculean task simply cannot be done by a person who is a human being. It is unfortunate that the director's office is insensitive to this conflict because I know of no criminal lawyer who does not regard this as serious conflict. At the present time, approximately ten criminal cases are referred out each year by the Hennepin County Public Defenders Office to conflicts lawyers because the director's office has chosen to process an ethics complaint involving a pending criminal case. Avoiding pending litigation would cancel out example number three.

The foregoing represent areas which should be avoided by both the director's office and local ethics committees. However, there are suggestions that would improve criminal practice. Recommendation #45 deals with advisory opinions. It basically asks those people skilled in areas of practice issue both the oral and written ethics opinions. Simply stated, experience is the best teacher and it is time that that experience be drawn upon in the area of criminal law. In point of fact, Section 1.4 of the Defense Standards of Conduct promulgated by the American Bar Association recommends this. This would eliminate misguided advice and at the same time encourage attorneys to seek advice since they will be receiving it from people whose background gives them a strong basis for trust. It could correct the problem in example five.

Recommendation #46 suggests that both the state board and local ethics boards represent cross-sections of all areas of practice, expecially those areas most investigated. Up until now this has not been the practice in criminal law and it is unfortunate. Criminal lawyers are among the most investigated for ethic violations, and the ones most often exonerated. It should be assumed their expertise would be welcomed by both the state and local ethics committees.

Nor should the board stop at changing the composition of itself and its committees, it should also engage in an extensive training program of those who investigate ethics complaints. This is exactly what is contained in recommendation #60, and unfortunately, the board opposes this. Very little confidence is instilled in a lawyer under investigation when he has to educate the investigator. The exact problem caused by example number four. Simple training can obviate most of these problems. It is unfortunate that this is not done under the present system, and is even a sadder commentary that the board does not want to do it.

CONCLUSION

It is respectfully recommended that the Supreme Court order the director's office and the board to give deference in the criminal law area where post-conviction relief and fee arbitration is available. Over and above this, it is asked that the Court order the director's office to refrain from entering pending criminal litigation. Finally, the Court order the director's office to at least identify for the complained-of lawyer, the disciplinary regulation they have allegedly violated. If they cannot identify it, I do not believe they can expect a lawyer to answer it. Lastly, it is asked the Court re-examine the entire composition of both the state and local boards, their training procedures and the current method of rendering advisory opinions. Until the foregoing is done it appears that the words of G.K. Chesterton best apply to those engaged in the current system:

> "We wish that they were wise enough,
> to wish that they were wiser."

Respectfully submitted,

DAVID P. MURRIN
Assistant Public Defender

MICHAEL J. HOOVER
ATTORNEY AT LAW
4640 WEST 77TH STREET, SUITE 104
EDINA, MINNESOTA 55435
PHONE (612) 893-9003

OFFICE OF
APPELLATE COURTS
FILED
MAR 6 1986
WAYNE TSCHIMPERLE
CLERK

March 6, 1986

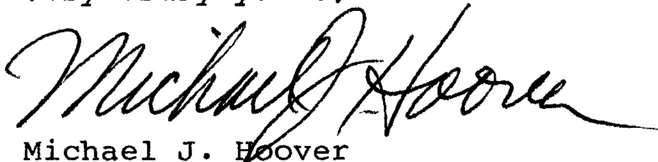
Mr. Wayne O. Tschimperle
Clerk of Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

Re: Lawyers Board Rules Hearing-- File C1-84-2140

Dear Sir:

Enclosed for filing pursuant to the court's order please find ten copies of Request to Make an Oral Presentation and Statement of Michael J. Hoover in the above matter.

Very truly yours,



Michael J. Hoover

Encl:

OFFICE OF
APPELLATE COURTS
FILED

MAR 6 1986

WAYNE TSCHIMPERLE
CLERK

STATE OF MINNESOTA
IN SUPREME COURT
C1-84-2140

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.	Request to Make an Oral Presentation and Statement of Michael J. Hoover

REQUEST TO MAKE AN ORAL PRESENTATION

Pursuant to this court's December 16, 1985 order, the undersigned respectfully requests the opportunity to make an oral presentation on March 18, 1986.

STATEMENT OF MICHAEL J. HOOVER

INTRODUCTION

In my July 1, 1985 report to this court as I left office, I described the Advisory Committee (committee) report as "unfair, inaccurate, incomplete, and misquided." Since then the committee report has been further studied by the board and by the committee itself. It is ironic that the report itself has been the subject of longer study and debate (one year) than was the entire operation of the disciplinary system by the committee (only four and one-half months).

The result of all of this formal and informal reaction is that the original report has not well stood the test of even this relatively brief time. Some highlights:

(1) The committee originally would have installed the Executive Committee as the "day-to-day" supervisor of the director's office. I called that proposal unrealistic and unworkable and advocated instead that the Executive Committee perform general oversight of the director. I also criticized the committee proposal as severely attenuating the role of the remaining board members. The board itself echoed those concerns. The result is that the committee supplemental report has now conceded that general rather than day-to-day oversight is appropriate.

(2) The committee recommended that the Minnesota State Bar Association (MSBA) have extensive involvement in the issuance of advisory ethics opinions. I warned against the impracticality of the proposal as well as its possible illegality under anti-trust and constitutional principles. Although the committee has never withdrawn its proposal, the MSBA has concluded that it does not desire involvement in this area.

(3) The committee did not, despite full updated data consider the then emerging improvements in backlog and delay. Throughout my tenure my requests for the staff I said were needed to handle the workload were trimmed by higher authority in the discipline system. Only in July 1984 did the director's office obtain the staff levels I recommended. During 1984-85 when the system was under study

by the committee, there was a substantial reduction in total case load and the inventory of old cases. The committee reported stale statistics which distorted the state of affairs as of its report. Its prescription for backlog and delay included increasing Executive Committee duties, and numerous changes in administration of the director's office. The former recommendation has caused the board to express its concern "that the Advisory Committee recommendations for Executive Committee duties, in their totality, could involve unrealistic expectations for a volunteer group." LPRB Reply (January 31, 1986) at 9. The board also commented:

> The report recommendations for changes in administration of the director's office, taken as a whole, involve a vast increase in accumulation and monitoring of information.The board is also concerned that the recommendations taken as a whole will cause the director's office to spend too much of its limited time on record-keeping, report generating and the like. Id. at 11.

The committee has failed to grasp that backlog and delay had been substantially reduced by its report and further reduced by the time I left office without the introduction of the time-consuming bureaucratic measures it recommended. Perhaps the committee's new observation in its supplemental report that there should be "considerable leeway" in working out the administrative structure of the director's office is a surrender to reality.

The committee report and its analysis are seriously

deficient. I have read carefully the board's January 31, 1986 reply and subscribe almost completely to it. The remainder of this statement will deal with several key issues.

BACKLOG AND DELAY

INTRODUCTION

At its height the LPRB open case load reached 848 in February 1982. When the committee began its work in December 1984 there were 724 open files. By the end of 1984 there were 686 pending files. This number further declined to 419 as of June 30, 1985, the end of my last full month in office. Director Wernz has been able to maintain an open case load of approximately 400.

In February, 1982 there were 314 cases over one year old. In December, 1984 there were 244 such cases. By the time I left office that number had declined to 101. Since then Director Wernz has been able to reduce to backlog of old cases to about 66 as of January 31, 1986.

In his 1985 State of Judiciary Address the Chief Justice described these reductions as "remarkable." At least prior to my resignation they were accomplished without the introduction of the burdensome administrative procedures recommended by the committee.

DIRECTOR'S OFFICE

Factors within the director's office which reduced

backlog and delay were staff increases and director-initiated administrative measures.

1984 staff increases substantially contributed to the reduction of backlog and delay. Insufficient staff was recognized as the principal cause of delay when the system was evaluated by the ABA in 1981. Again when it sought increased funding in 1984, the board with MSBA support recognized that staff levels were insufficient to cope with increasing workloads. In its January 31, 1986 reply the board again acknowledged that inadequate staffing in the director's office had been a principal cause of delay.

Administrative procedures used to handle the paperwork can clearly affect delay. Yet the committee report itself described the director's handling of paperwork as extremely efficient. There is nothing within the committee report to demonstrate that the administrative procedures it recommended are necessary for the reduction of backlog and delay. In fact the reductions which have already occurred without these time-consuming administrative procedures demonstrate their unnecessity.

In my July 1, 1985 report I described the director-initiated administrative measures which also contributed to the elimination of backlog and delay:

(1) Summary dismissal was used vigorously, increasing

from only a handfull of cases in 1981 to approximately 37 percent of all cases during the first half of 1985.

(2) In 1981 I established a district ethics committee liaison system which resulted in a reduction in the average age of district ethics committee cases from over five months in 1981 to about two months in 1985.

(3) I changed the policy of maintaining open files when collateral proceedings were pending instead disposing of the ethics complaint and inviting the complainant to refile later if the pending collateral proceedings established potential misconduct.

(4) As director I increasingly stipulated to dispositions with respondents until 1984 when over half of the final dispositions in public disciplinary proceedings were by stipulation. During the first half of 1985 that percentage was if anything higher than 5Ø percent.

Increased staff levels and the administrative procedures akin to those mentioned above are the realities of what it takes to decrease delay and backlog in the discipline system. Delay and backlog cannot be further decreased by diverting scarce director resources to time-consuming administrative reports and procedures. The perceived need for the administrative procedures which the committee speculated would result in reduction of backlog

and delay should be blown out of the water by the actual results obtained without them.

SYSTEMIC ISSUES

Over the years there have been factors beyond the reasonable control of any director which have contributed enormously to the backlog and delay. Principal among these is the system itself. The structure has provided for duplication in hearings, far more due process than is recommended by the ABA and model standards for lawyer discipline proceedings. The system has also tolerated if not rewarded the litigious respondent.

In the year preceeding the 1982 RLPR amendments there were 66 panel hearings which resulted in only 14 disciplinary petitions. The majority of cases in which private discipline was sought and all cases in which public discipline was sought required a panel hearing. The 1981 ABA Report recommended substantial changes in the discipline structure.

The 1982 RLPR contributed substantially to the reduction of delay and backlog by streamlining procedures and by eliminating duplication of hearings in many cases. Among the most ill-conceived and counterproductive recommendations contained in the committee report are two which would strike a fatal blow to the progress achieved by

the 1982 amendments and actually worsen the problem of delay and backlog.

First, the committee would require a probable cause determination as to each and every charge brought by the director. Second, it would expand panel dispositional options to in effect return from the current probable cause system to the pre-1982 system in which panels had a wide range of options.

I concur completely in the board's comments at pages 25-29 of its January 31, 1986 reply. The effect of adopting the committee recommendations upon the problem of backlog and delay would be devastating.

The committee claims that the perception of fairness would be increased if its recommendations were adopted. Yet it has documented no case in which a respondent has been unfairly charged by the director with misconduct not presented to a panel. It also concluded in its own report that there was no pattern of abuse in the director's conduct of disciplinary proceedings. Finally, its contention that these recommendations would afford the lawyer only what the ABA standards for lawyer discipline proceedings provide is clearly erroneous. Under the ABA standards there is no hearing on probable cause. There is merely an ex parte conference between the director and a panel chairman to determine whether formal public charges will be filed.

The expansion of panel options is supported by the committee to deal with the underutilization of board member skills. The board's solutions for this perceived problem are far superior to the committee's.

The second reason cited to support the expansion of panel options is the perception that some lawyers guilty of misconduct escape discipline altogether because the panel does not find probable cause for public discipline. The number of such cases thus far averages two per year (seven in three and one-half years). Elaborate disciplinary procedures and mechanisms are not justified by these small numbers.

These proposals reflect a misunderstanding of disciplinary law. The committee chair told me that disciplinary respondents should have all the rights of criminal defendants in criminal cases. In most other professions disciplinary actions are conducted with administrative due process with judicial review. ABA standards embody this concept. The death penalty due process embodied in the committee report is contrary to well-established disciplinary law.

In some cases the system has demonstrated virtually unlimited patience for litigious respondents whose substantial monetary and legal resources enable them to hold the system at bay for years. If there is any fundamentally

unfair aspect of the disciplinary system it is that well-heeled lawyers can engage in endless procedural fencing to delay the day of final reckoning. This is unfair to the public and the system. It is also unfair to the many repsondents who face prompt and sometimes severe justice because they lack the means or the will to engage in endless war.

In late February this court received a disciplinary petition in a case in which there was substantial prepetition litigation. Before the petition was filed the respondent sued me in Hennepin District Court to stop the investigation. I had to obtain a writ of prohibition from this court to stop the district court suit. For over one and one-half years prior to issuing charges there were repeated motions brought in federal courts concerning director requests for documents necessary to conclude the investigation. Charges were finally issued in May, 1984. The respondent then sought several extraordinary writs. These motions stopped any hearing on the charges for over one year. After the court ruled that the director could proceed the respondent then sought depositions from me which led to further repeated litigation in Ramsey District Court.

This is only a partial history of the litigiousness engaged in by this respondent. It is a serious indictment of the system's operation that this can occur. The

committee report did nothing to address this serious problem. Instead it would worsen it by giving lawyers even more things to argue and litigate about in discipline cases. This is not justice. It is instead a disgrace.

I heartily endorse recommendations A-D of the board reply at pages 32-38 as embodying a thoughtful and potentially effective way of further reducing the systemic causes of backlog and delay without undermining whatsoever the standards of fairness sought to be advanced by the committee.

EX PARTE CONTACTS

The system of self-regulation is already viewed with great suspicion by outsiders. The system must be beyond reproach. This means special favors cannot be offered to those who are personally known to discipline system personnel. The appearance as well as the actuality of fairness can be seriously undermined by ex parte contacts with those who have adjudicative roles within the system.

I expressed concern about the ex parte contacts in the discipline system. I and members of my former staff provided specific information to the board about these contacts last summer.

There is no need for any new rules in this area. Both the Rules of Professional Conduct and The Canons of Judicial

Conduct already forbid ex parte contact between litigants or their representatives on one side and judicial officers on the other. These rules clearly apply to disciplinary proceedings.

The committee recommendations have the appearance of after-the-fact justification for prior ex parte communications by carving out special and unnecessary reasons for such contacts in disciplinary cases. If anything the rules against ex parte contacts ought to be abided by more scrupulously in disciplinary cases where we demand that the public accept the propriety of self regulation.

I strongly support the board's position that there is no need for any new rules. What is needed is a recommitment to abide by existing rules.

LIMITING DISCOVERY OF DIRECTOR WORK PRODUCT

Since leaving office I have twice been deposed at the prepetition stage of lawyer discipline proceedings in cases pending prior to my resignation as director. These depositions have thus far taken about a week of my time. I concur in and strongly support the board's proposals to deal with this abusive treatment by respondents and their lawyers.

CONCLUSION

As is apparent I have taken strong issue with some of

the committee recommendations and disagree strongly with the scope and tone of its investigation and report. Since I am no longer the director I have no personal stake in the outcome of the committee recommendations. As a citizen and lawyer I have much to gain or lose by the pending decisions about the future of the lawyer discipline process.

The lawyers board in its January 31, 1986 reply stated at page 8:

> There has been some discussion outside the committee and board which seems to assume that the interests of the public in a strong disciplinary system and the interest of the bar are in opposition. The board believes, for the most part, this is a false dichotomy. The bar supported a registration fee increase for funding a strong disciplinary system, notwithstanding the many pending criticisms and perceived deficiencies. The bench and bar, as much as the public, have an interest in the prompt discipline of attorneys who have committed serious misconduct. The purposes of the discipline system are to protect the public and to protect the integrity of the bench and bar.

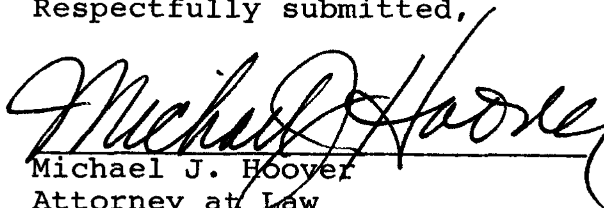
I concur with the board's statements and have repeatedly emphasized during my involvement in lawyer discipline that the interests of the public and the bar in this area are identical. On page 33 of my final report on July 1, 1985, I stated:

> Throughout my tenure I have attempted to serve the public by promoting high standards within the profession and by zealously investigating alleged unethical conduct. I have hoped that the public interest has been that of the profession as well since public confidence in the lawyer discipline system can only enhance public respect for the legal profession.

I sincerely wish I did not find myself so much at odds with the committee. But it is my sincere belief that if the bulk of the committee recommendations are adopted, especially those upon which I have commented herein, neither the public nor the profession will be well served.

Fortunately, in many cases there are alternatives proposed by the board. Where there are such choices I support the board's alternatives, not as the lesser of two evils, but instead as genuine improvements of the lawyer discipline system and its administration.

Respectfully submitted,



Michael J. Hoover
Attorney at Law
4640 West 77th Street
Suite 104
Edina, Minnesota 55435
612-893-9003
Attorney No 47503

LAW OFFICES

LEONARD, STREET AND DEINARD

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 1500

100 SOUTH FIFTH STREET

MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 337-1500

TELECOPIER (612) 337-1657

SIDNEY LORBER*
SIDNEY BARROWS*
HAROLD D. FIELD, JR.*
ALLEN I. SAEKS*
THOMAS D. FEINBERG*
MORRIS M. SHERMAN*
GEORGE REILLY*
DAVID N. COX*
STEPHEN R. PFLAUM*
CHARLES A. MAYS*
NANCY C. DREHER*
LOWELL J. NOTEBOOM*
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ANGELA M. BOHMANN
ROBERT D. ARKIN*
*PROFESSIONAL CORPORATIONS

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J. BRADFORD GOSS
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JOHN W. GETSINGER
JOHN T. CROSS
LEWIS SHENDER
THOMAS P. SANDERS

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)
AMOS S. DEINARD (1898-1985)

IRENE SCOTT
D. RANDALL BOYER
OF COUNSEL

January 28, 1986

WRITER'S DIRECT DIAL NUMBER

337-1544

OFFICE OF
APPELLATE COURTS
FILED
JAN 30 1986
WAYNE TSCHIMPERLE
CLERK

Clerk of Minnesota
Supreme Court
230 State Capitol
St. Paul, MN 55155

C1-84-2140

Re: Petition of Supreme Court Advisory Committee On Lawyer Discipline to Amend the Rules of Lawyers' Professional Responsibility and to Implement Certain Administrative Procedures In the Office of the Director of the Lawyers' Professional Responsibility Board

Dear Sirs:

Pursuant to the Court's Order, please be advised that I wish to make an oral presentation at the hearing in the above-entitled matter, which I understand is set to commence at 9:00 a.m. on March 18, 1986.

As Chairman of the Supreme Court Advisory Committee on this subject, I will make a brief oral presentation with respect to the Report of the Supreme Court Advisory Committee dated April 15, 1985, and the Supplemental Report dated December 2, 1985. I will, of course, be available to answer any questions by the Court on the subject.

Very truly yours,

Nancy C. Dreher

NCD:jal

1/13/86

2200 FIRST NATIONAL BANK BUILDING
SAINT PAUL, MINNESOTA 55101

OFFICE OF
APPELLATE COURTS
FILED
JAN 13 1986
WAYNE TSCHIMPERLE
CLERK

January 10, 1986

Mr. Wayne O. Tschimperle
Clerk, Appellate Courts
230 State Capitol
St. Paul, Minnesota 55155

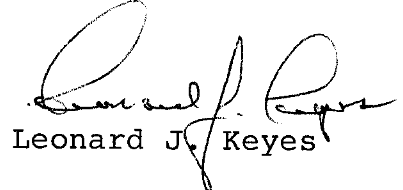
Re: Supreme Court Hearing on Rules of Professional Conduct

C1-84-2140

Dear Sir:

Enclosed and filed with you are 10 copies of my letter to the Court in support of the Committee's Recommendation 41. As the enclosures indicate, I do not intend to appear at the hearing in regard to the referenced matter.

Very truly yours,



Leonard J. Keyes

LJK:mb
enc. 10

2200 FIRST NATIONAL BANK BUILDING
SAINT PAUL, MINNESOTA 55101

January 10, 1986

The Honorable Justices of the
Minnesota Supreme Court

Re: Recommendation 41 of the Supplemental Report of the Supreme Court Advisory Committee on Lawyer Discipline (affecting Rule 9, Rules on Lawyers Professional Responsibility)

C1-84-2140

Honorable Sirs and Madams:

The following represents my views as a practicing attorney concerning the referenced Recommendation which would restore Panel authority to determine probable cause or lack thereof.

My support of Recommendation 41 was formally expressed at a Commission hearing last year. I continue to support the restoration of Panel authority despite the changes in the Rules which were made about four years ago. Among my reasons for support of Recommendation 41 are:

1. Restoration of Panel authority to determine probable cause or its absence would discourage overcharging by the Director. Under the present rule, the Director can bring any number of charges and, by obtaining a finding of probable cause as to any, can file a multicharge Petition in this Court and with the press.

2. Restoration of authority would make Panel hearings meaningful. Under the existing rule, Panel hearings are often avoided because they represent a waste of time for all participants.

3. Restoration of Panel authority would require the Director to have and present some proof as to each charge which he wishes to have considered by this Court. This procedure will not require two full evidentiary hearings on each charge. At the Panel level, it will require only that he produce sufficient evidence to establish probable cause as to each charge.

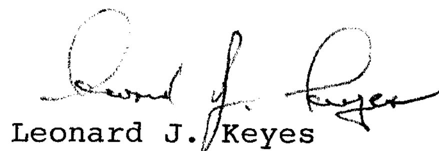
4. Restoration of Panel authority would ensure that adverse publicity in the press and elsewhere would be confined only to those charges to which probable cause was found.

5. Restoration of Panel authority might result in delay and prosecutorial burden. However, so does every other aspect of procedural due process, such as grand jury proceedings, preliminary and omnibus hearings, and other checks on the prosecutorial function.

The disciplinary system is and should be adversary. Vigorous and prompt prosecution is essential to protect the public. The Committee's proposed Recommendation 41 in restoring Panel checks will go far in dispelling the aura of directorial paternalism. It will restore meaningfulness to a once vital function.

I do not intend to make an appearance before the Court at the hearing in regard to Recommendation 41.

Respectfully submitted,



Leonard J. Keyes

LJK:mb

BRUCE H. HANLEY, P. A.
ATTORNEY AT LAW
SUITE 1400
701 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415

BRUCE H. HANLEY
JAY P. YUNEK*

*ALSO ADMITTED IN WISCONSIN

TELEPHONE
(612) 338-6990

January 3, 1985

The Honorable Chief Justice Douglas Amdahl
Minnesota Supreme Court
State Capital Building
St. Paul, Minnesota

Re: Dreher Committee Report Hearings C1-84-2140

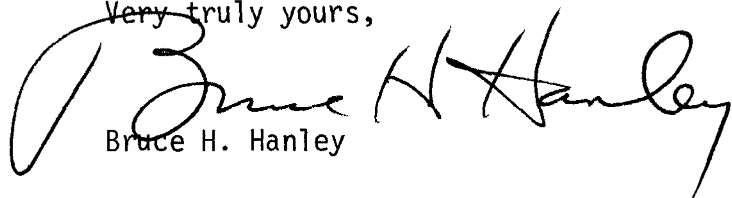
Dear Justice Amdahl:

I understand that there will be hearings on the above-entitled matter scheduled for March 18, 1986, before the Minnesota Supreme Court. I would like to request an opportunity for representatives of the Criminal Law section of the Minnesota State Bar Association and Minnesota Trial Lawyers Association to be heard relative to the Report. I shall be happy to set aside some time to testify on that day, if the Court will allow, and I have requested that Joseph Friedberg be available to accompany me to also testify.

I shall attempt to obtain the formal authorization from the two sections to represent them at the hearings. This letter is written to ensure that the request has been made that representatives of the two organizations have an opportunity to be heard.

Thank you very much for your attention and interest in this matter.

Very truly yours,



Bruce H. Hanley

BHH:ajs

cc: Mr. Patrick O'Neill
Mr. Monte Miller

OFFICE OF
APPELLATE COURTS
FILED

JAN 10 1986

WAYNE TSCHIMPERLE
CLERK

LAW OFFICES

DEPARCQ, PERL, HUNEGS, RUDQUIST & KOENIG, P. A.

WILLIAM H. DEPARCQ
NORMAN PERL
RICHARD G. HUNEGS
DONALD L. RUDQUIST
RALPH E. KOENIG
DOUGLAS DALE REID, JR.
PATRICK J. FOLEY
PETER W. RILEY
ROBERT T. DOLAN
MICHAEL L. WEINER
BARBARA J. RUDQUIST
FRANCES S. P. LI

SUITE 565
608 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

TELEPHONE (612) 339-4511
TOLL FREE (800) 328-4340

December 26,1985

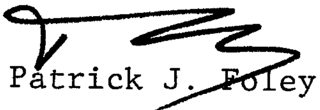
Clerk of Appellate Court
230 State Capitol
St. Paul, MN 55101

DEC [illegible] 1985

Re: C1-84-2140

Enclosed please find the original and ten copies of Request for Oral Presentation in the above-entitled matter.

Very truly yours,



Patrick J. Foley

PJF:ch
Enclosures

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2140

OFFICE OF
APPELLATE COURTS
FILED

DEC 27 1985

WAYNE TSCHIMPERLE
CLERK

Petition of the Supreme Court Advisory Committee on Lawyer Discipline to Amend the Rules on Lawyers Professional Responsibility and to Implement Certain Administrative Procedures in the Office of the Director of Lawyers Professional Responsibility.

REQUEST FOR ORAL PRESENTATION

Patrick J. Foley, an attorney admitted to practice before the Bar of this Court, hereby requests permission to supplement his written statements by oral argument before the Court on March 18, 1986.

Respectfully submitted,

DePARCQ, PERL, HUNEGS, RUDQUIST & KOENIG, P.A.

By: ______________________

Patrick J. Foley
608-2nd Avenue South, ~~Suite~~ 565
Minneapolis, MN 55402
(612) 339-4511

OFFICE OF
APPELLATE COURTS
FILED

MAR 7 1986

WAYNE O. TSCHIMPERLE
CLERK

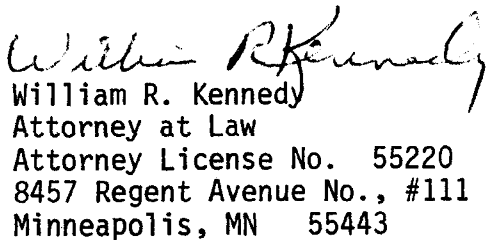
March 7, 1986

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

Dear Chief Justice Amdahl: C1-84-2140

Here are my suggestions for reform of the Rules on Lawyers Professional Responsibility. If the Court wishes any additional information or oral presentation on March 18, 1986, please let me know.

Sincerely,



William R. Kennedy
Attorney at Law
Attorney License No. 55220
8457 Regent Avenue No., #111
Minneapolis, MN 55443

WRK/kt

Enclosed

TO: SUPREME COURT OF MINNESOTA March 7, 1986 MEMORANDUM
FROM: William R. Kennedy
Attorney License
Number: 55220

A NOVEL CONCEPT: DUE PROCESS FOR LAWYERS --- IS IT TOO LITTLE TOO LATE

The administration of Lawyers Professional Responsibility appears to be running amok, with little regard for our Civil Rights, Liberties, Privileges or Immunities. Given the Rules making their conduct privileged and they themselves immune from civil liability, it appears that no one can be held accountable for negligence or lack of due care, or diligence in the administration of Rules. Not much has changed since the famous Bush Affair. (Please see Director's letter attached to this memorandum). One Director later, and lawyers are still being investigated for matters that are not grounds for discipline or are outside the purview of the Rules or the jurisdiction of the Director. Four of five complaints (82%) are dismissed for lack of probable cause. If a local prosecutor had that batting average, s/he wouldn't be in office very long. Imagine the damage awards under the Civil Rights Acts. Despite statements to the contrary, the Director's Office continues to interfere with pending criminal cases, treating allegations of ineffective assistance of counsel as matters requiring its immediate attention. In at least one recent case the Director's Office interfered with defense counsel's investigation. When the government was confronted with a motion to dismiss based on misconduct by the Director's Office, the complaint was quickly dismissed with a brief Memorandum Opinion "extolling the defense lawyers zealous advocacy". In another recent action, the Director's Office created the conflict of interest by interfering with a pending criminal case of ours, requiring referral of the matter to a conflicts panel of private attorneys, at an estimated cost of $10,000. The actual bill when presented will be forwarded to the Board and Director for payment. With one major exception, my proposals for reform should be read as additions to the excellent work product and proposals of the Dreher Committee. In particular my suggestions on Privilege and Immunity accurately reflect, I think, existing law. The litmus test in that regard is to evaluate the conduct of those involved in the administration of lawyers Professional Responsibility in light of the Federal Civil Rights Acts concerning liability for abridging a citizen's Civil Rights.. Most lawyers and judges would agree that it is time that those in charge of Lawyers Professional Responsibility respect the rights of others and obey the law. As for the major exception previously referred to -- the proposal for mandatory random drug testing of all lawyers and judges, I can think of no other measure which so clearly focuses on the question of where my professional life as a lawyer ends and my private life begins, and whether my rights as a citizen can be abridged because I am a lawyer.

DIRECTOR OF
LAWYERS PROFESSIONAL RESPONSIBILITY
444 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101
612-296-3952

MICHAEL J. HOOVER
DIRECTOR
JANET DOLAN
ASSISTANT DIRECTOR
RICHARD J. HARDEN
NANCY W. McLEAN
WILLIAM J. WERNZ
ATTORNEYS

June 4, 1984

PERSONAL AND CONFIDENTIAL

Phillip D. Bush, Esq.
C-2200 Hennepin County Government Center
Minneapolis,MN 55487

Re: Honeywell Demonstration

Dear Mr. Bush:

Pursuant to Rule 8(a), Rules on Lawyers Professional Responsibility (RLPR), the Director is investigating your conduct which resulted in your arrest at the February 27, 1984, Honeywell demonstration.

Pursuant to Rule 25, RLPR, please provide a written response to the following questions by June 18, 1984:

1. Please provide a copy of the police report(s) in this matter.

2. Are you an attorney for the Honeywell Project? If so, please state the date you were retained and by whom. Describe the nature of your legal representation of the Honeywell Project, if any.

3. Have you ever advised the Honeywell Project or members thereof to knowingly engage in illegal conduct? If so, state the precise nature of your advice and the nature of the illegal conduct involved.

4. The May 1, 1984, issue of the Minneapolis Star & Tribune states that you were watching the demonstration as a "legal observer." Please explain what is meant by the term "legal observer." Did you purposely attend the demonstration in order to testify at anticipated criminal trials for those who were arrested?

5. Please state why you were at the scene of the Honeywell protest on April 27, 1984.

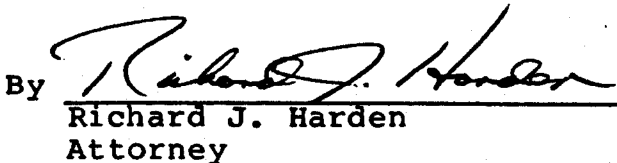
6. Have you been at the scene of any other Honeywell protests? If so, state the date and nature of the protest, as well as your reason for being present at the protest.

7. Please inform me how the criminal charges against you arising out of the April 27, 1984, protest are or have been resolved.

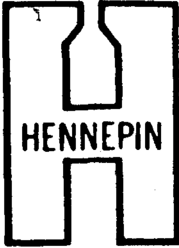
8. Please provide any additional information you deem relevant to this matter.

If you have any questions, please contact me.

Michael J. Hoover
Director

By 
Richard J. Harden
Attorney

RJH:bp



OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

June 7, 1984

COPY

Mr. Michael J. Hoover
Director, Lawyer's Professional Responsibility
444 Lafayette Road - 4th Floor
St. Paul, Minnesota 55101

Re: The Honeywell Demonstration; Philip D. Bush;
Director's Rule 8(a) Investigation

Dear Mr. Hoover:

Your discretion as Director under Rule 8(a) is plenary; your authority is not. You do not have universal discretion to inquire about matters fundamentally privileged to all citizens; these privileges are not abrogated by taking on the mantle of a lawyer.

The inquisitorial mode within which you pose questions far beyond your authority is not only discourteous, but obnoxious to the very prinicples lawyers take particular oath to defend. The fact that you ask questions of this ilk leads one to inquire whether you have ever read the very canons you cite; and if you have, surely you do not understand them.

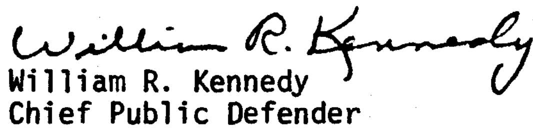
Nevertheless I will take pains here to remind you of certain fundamentals best stated in Article I of The Bill of Rights to the Constitution of the United States, ratified December 15, 1791, which allows of no law (or conduct!) "...abridging the...right of the People to freely assemble..." Apparently you find a clear and present danger in the exercise of this right. You also fail to understand the distinction made plain by Justice Brandeis when, concerned with free speech, he noted the wide difference between advocacy and incitement, between preparation and attempt, between assembly and conspiracy.

You cannot use Rule 25 to arrogate to yourself the power of spiritual and temporal law-giver, to make lawyers conduct conform out of fear, fear of facing vague and irregular penalties. There should be confidence in the protective discipline of conscience and the law. President Harry S. Truman in a message to the House of Representatives withholding approval of the Internal Security Act of 1950, reminded Congress of that, as it should remind you, that your letter is the clear and present danger and not any purported act of Philip Bush.

Quite clearly, sir, you have overstepped your bounds as Director. You have initiated a McCarthyesque political inquiry under the guise of a Rule 8(a) investigation. To permit you to continue these activities would open a Pandora's Box of opportunities for "official" condemnation of individuals and suppression of perfectly honest opinion. The implication of your Rule 8(a) investigation of the Honeywell demonstration and my assistant Philip Bush are frightening and sinister.

I am left with some troublesome, nagging questions. Is there no one who can put a stop to your unjustified activities? And who investigates the investigators?

Sincerely,



William R. Kennedy
Chief Public Defender

WRK/sar

PROPOSED REVISIONS TO RULES ON

LAWYERS PROFESSIONAL RESPONSIBILITY

SUMBITTED BY WILLIAM R. KENNEDY

LAWYERS PROFESSIONAL RESPONSIBILITY

RULE 1. DEFINITIONS

As used in these Rules:

(1) "Board" means the Lawyers Professional Responsibility Board.

(2) "Chairman" means the Chairman of the Board.

(3) "Director" means the Director of Lawyers Professional Responsibilty.

(4) "District Bar Association" includes the Range Bar Association.

(5) "District Chairman" means the Chairman of a District Bar Association's Ethics Committee.

(6) "District Committee" means a District Bar Association's Ethis Committee.

(7) "Notify" means to give personal notice or to mail to the person at his last known address or the address maintained on this Court's attorney registration records.

(8) "Panel" means a panel of the Board.

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that cases of lawyers' alleged disability

or unprofessional conduct be promptly investigated and disposed of and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with federal and state law and these Rules.

RULE 3. DISTRICT ETHICS COMMITTEE

(a) Composition. Each District Committee 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~~ two years as Chairman; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to ~~three~~ two-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two ~~three~~ two-year terms.~~,-in-addition-to-any additional-shorter-term-for-which-he-was-originally appointed-and-any-period-served-as-District-Chairman.~~

~~At-lest-20-percent-of-each-District-Committee's-members shall-be-nonlawyers.~~ There shall be at least one nonlawyer appointed to the District Ethics Committee.

(b) Duties. The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in

these Rules. It shall meet at least annually and from time to time as required. The District Chairman shall prepare and submit an annual report and such other reports as the Director may require.

(c) No law firm or other association of lawyers shall have more than one lawyer serving on the District Ethics Committee at any given time.

(d) No District Ethics Committee shall have more than thirteen members, including the chairperson.

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~~ two years as Chairman; and

(2)(a) ~~Twelve~~ nine lawyers having their principal office in this state, ~~six~~ five of whom the Minnesota State Bar Association may nominate, and ~~nine~~ three nonlawyers resident in this State, all appointed by this Court to ~~three~~two-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~~two-year terms.~~,-in-addition-to-any additional-shorter-term-for-which-he-was-originally appointed-and-any-period-served-as-Chairman.~~

(b) Compensation. The Chairman, other Board members, and other panel members shall serve without compensation,

but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) Duties. The Board shall have general supervisory authority over the administration of the Director and the Office of Lawyers Professional Responsibility and the administration of these Rules.~~,-shall-advise-and-assist-the Director-in-the-performance-of-his-duties,-and-may,~~ The Board shall, from time to time, issue opinions on questions of professional conduct. The Board may elect a Vice-Chairman and specify his duties, and may elect an Executive Committee and authorize it to perform specified duties of the Board between Board meetings.

(d) Panels. The Chairman shall divide the Board into Panels, each consisting of ~~not-less-than~~ three Board members.~~-and-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 is a Panel member at any Panel proceeding he attends. Three Panel members~~,-at least-one-of-whom-is-a-nonlawyer-and-at-least-one-of-whom-is a-lawyer,~~ shall constitute a quorum. The Board's Chairman or the Vice-Chairman may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board.

(e) Assignment to Panels. The Director shall assign matters to Panels in rotation.

(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.

RULE 5. DIRECTOR

(a) Appointment. The Director shall be appointed by and serve at the pleasure of this Court for a term of two years, and shall be paid such salary as this Court shall fix. The Director may be reappointed for one sucessive term only.

(b) Duties. The Director shall be responsible and accountable directly to the Board and to this Court for the proper administration of these Rules in accordance with the law. The Director shall prepare and submit to ~~this-Court~~ the Board an annual report covering the operation of the lawyer discipline and disability system and shall make such other reports to ~~this-Court~~ the Board as it may order.

(c) Employees. The Director when authorized by ~~this Court~~ the Board and on this Court's behalf may employ persons at such compensation as the Board shall recommend and this Court may approve.

(d) Compliance Audit. Every two years a full compliance audit shall be made of the Board, Director, Staff and District Ethics Committees. The Compliance Audit Report shall contain recommendations for compliance where

noncompliance has been found and shall be filed with the Supreme Court.

RULE 6. COMPLAINTS

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability shall be investigated pursuant to these Rules, and in accordance with the law.

(b) Notification; referral. If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chairman promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, he shall refer it for investigation to the District Committee of the district where the lawyer has his principal office unless he determines to investigate it without referral or that discipline is not warranted.

(c) No complaint of lawyers alleged unprofessional conduct or disability shall be issued or investigated except upon probable cause to believe that unprofessional conduct has occurred or that a lawyer or judge is disabled within the meaning of these Rules.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) Assignment; assistance. The District Chairman 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 District Chairman or his designee shall report the results of the investigation 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 futher.

(c) Time. The investigation shall be completed and the report made promptly and, in any event, within 45 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 45 days, the District Chairman or his designee within that time shall notify the Director of the reason for the delay.

(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 Chairman of the removal.

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

(f) Disqualification. Investigators, District Ethics Committee Memebers, Board members, the Director, or staff shall be disqualified from partipating in any matter in which they may have a conflict of interest or the appearance thereof, or have an actual or apparent bias toward or

against the complainant, respondent or any person affected by any charge, complaint or statement pending before the Board, or staff or District Ethics Committee.

RULE 8. DIRECTOR'S INVESTIGATION

(a) Initiating investigation. At any time, with or without a complaint or a District Committee's report, the Director may, on probable cause showing that professional misconduct has occurred, make such investigation as he deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that no investigation may be commenced without the express prior approval of a majority of the Board.

(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) 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) Admonition. 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. The Director shall notify the lawyer in writing:

(i) Of the admonition;

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

(iii) That the lawyer may, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and

(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 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.

(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 (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).

(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.

Amended July 22, 1982.

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 prehearing meeting, and notify the lawyer of:

(1) The charges;

(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.

(b) Admission of 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 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 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) 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 lawyers 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 of 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.

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

(1) Determine that 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) 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.

(j) 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. If the Panel did not determine that there was probable cause to believe that public discipline is warranted, the notification to the complainant, if any, shall inform him of his right to petition for review under subdivision (k). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform him of his right to appeal to the Supreme Court under subdivision (l).

(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) Respondent's appeal to Supreme Court. The lawyer may appeal the Panel's affirmance of the Director's admonition by filing a notice of appeal and nine 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. 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 admonition or make such other disposition as it deems appropriate.

(m) 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.

(n) 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.

RULE 10. 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 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 file a petition for disciplinary action together with the lawyer's admission 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 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 necesary element of which involves interference with the administration of

justice, false swearing, misrepresentation, fraud, willful 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, with the approval of the chairman of the Board, 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).

RULE 11. RESIGNATION

This Court may at any time, with or without a hearing and with any conditions it may deem appropriate, grant or deny a lawyer's petition to resign from the bar. A lawyer's petition to resign from the bar shall be served upon the Director. The original petition with proof of service and one copy shall be filed with this Court. If the Director does not object to the petition, he shall promptly advise the Court. If he objects, he shall also advise the Court, but then submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petition and filed with the Court.

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. An original and nine copies shall be filed. The petition shall set forth the unprofessional conduct charged.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) Suspension. If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) Order to show cause. If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken.

The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

RULE 13. ANSWER TO PETITION FOR DISCIPLINARY ACTION

(a) Filing. Within 20 days after service of the petition, the respondent shall file an original and nine copies of an answer in this Corut. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) Conditional admission. The answer may tender an admission of some or all accusations conditioned upon a stated disposition.

(c) Failure to file. If the respondent fails to file an answer within the time provided or any extension of time this court may grant, the petition's allegations shall be deemed admitted and this Court may proceed under Rule 15.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence sumitted 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) Record. The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(d) 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 Director of them. Unless the respondent or Director within five days orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. One ordering a transcript shall make satisfactory arrangements with the reporter for his payment and shall specify in his initial brief to the Court the referee's findings of fact, conclusions and recommendations he disputes, if any. The reporter shall complete the transcript within 30 days.

(e) 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. The

matter shall be heard upon the record, briefs, and arguments.

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;

(3) Order the lawyer to pay a fine, costs, or both.

(4) Place him 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 him;

(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; or

(8) Dismiss the petition for disciplinary action.

(b) Protection of clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS.

(a) Petition for temporary suspension. 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 may file with this Court an original and nine copies of 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 a Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an original and nine copies of an answer to the petition for temporary suspension. If he fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law may result in risk of injury to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

RULE 17. FELONY CONVICTION

(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.

(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.

RULE 18. REINSTATEMENT

(a) Petition for reinstatement. A suspended, disbarred, or resigned lawyer's 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 nine copies, shall then be filed with this Court.

(b) Investigation; report. The Director shall investigate and report his 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. 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 he shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners, and no lawyer ordered reinstated to the practice of law after having been suspended by this Court shall be effectively reinstated until he 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. Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following his suspension or disbarment by this Court until he shall have satisfied the requierments 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.

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.

(1) Conduct previously considered. Proceedings under these Rules may be based upon conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, even if it was determined in the previous proceedings that discipline was not warranted or that the proceedings should be discontinued after the lawyer's compliance with conditions.

(2) Previous finding. A finding in 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 reprimand, probation, suspension, disbarment, or equivalent

in the previous disciplinary proceedings is admissible in evidence in proceedings under these Rules.

(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 admisible 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.

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) In proceedings before a referee or this Court 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;

(5) Where permitted by this Court; or

(6) Where required or permitted by these Rules. Nothing contained in these Rules shall authorize the Board, Director, Staff, District Ethics Committee, or Investigators to disclose to any federal or state agency the files, records, or proceedings that may relate to any charge or complaint.

(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) The fact that the Director has either determined that discipline is not warranted, or issued an admonition;

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

(4) The fact that stipulated probation has been approved under Rule 8(c)(3).

(c) Referee or Court proceedings. Except as ordered by the referee or this Court, the files, records, and

proceedings before a referee or this Court under these Rules are not confidential.

(d) Expunction of records. The Director shall expunge records relating to dismissed complaints as follows:

(1) All records or other evidence of the existence of a dismissed complaint shall be destroyed ~~five~~ two years after the dismissal, except that the Director shall keep a docket showing the names of each respondent and complainant, the final disposition, and the date all records relating to the matter were expunged.

(2) Effect of expunction. After a file has been expunged, any Director response to an inquiry requiring a reference to the matter shall state that it was dismissed and that any other record the Director may have had of such matter has been expunged. The respondent may answer any inquiry requiring a reference to an expunged matter by stating that the complaint was dismissed and thereafter expunged.

(3) Retention of records. Upon application to a Panel by the Director, for good cause shown and with notice to the respondent and opportunity to be heard, records which should otherwise be expunged under this rule may be retained for such additional time not exceeding five years as the Panel deems appropriate. The Director may, for good cause shown and with notice to the respondent and opportunity to be heard, seek a further extension of the period for which retention of the records is authorized whenever a previous

application has been granted for the maximum period (~~five~~ two years) permitted hereunder.

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, 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; provided, however, that no such privilege attaches if the charge, complaint or statement is false or made without regard to the truth, or abridges the Civil Rights, Liberties, Privileges or Immunities of any person adversely affected by said charge, complaint or statement.

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and his staff, shall be immune from suit for any conduct in the course of their official duties; provided, however, that no such immunity shall attach to any conduct by the Board members, District Ethics Committee members, the Director and staff, which abridges the Rights, Liberties, Privileges or Immunities of any person adversely affected by any charge,

complaint or statement made in connection with any investigation or proceeding pursuant to these Rules.

RULE 22. PAYMENT OF EXPENSES

(a) Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by him under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

(b) No expenses or compensation shall be paid in any case in which it has been determined that the Rights, Liberties, Privileges or Immunities of any lawyer or judge or affected person has been abridged by the conduct of any Board member, the Director, the staff or any District Ethics Committee member or investigator.

RULE 23. SUPPLEMENTAL RULES

The Board and each District Committee may adopt rules and regulations~~, not in~~consistent with federal and state law and these Rules, governing the conduct of business and performance of their duties.

RULE 24. COSTS AND DISBURSEMENTS

(a) Costs. Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any

disciplinary proceeding decided by this Court shall recover costs in the amount of $500.

(b) Disbursements. Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceeding 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 courts.

(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) Judgement 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 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.

(e) Notwithstanding any other Rule to the contrary, any attorney or judge against whom a complaint has been dismissed shall recover, from the Board on Lawyers Professional Responsibility, all expenses and fees necessarily incurred in defending against said complaint. Judgement for these costs and fees shall be entered by the Ramsey County District Court upon certification of expenses and fees.

(f) Notwithstanding any other Rule to the contrary, any person who has had his or her Rights, Liberties, Privileges or Immunities abridged by the conduct of Board members, District Committee members, the Director or staff during the course of their duties shall be entitled to recover damages in a civil suit.

(g) Notwithstanding any other Rule to the contrary, where the conduct of Board members, District Committee members, the Director or staff creates a conflict of interest between attorney and client, all expenses and fees incurred to resolve that conflict shall be paid by the Board.

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 his staff, the Board, or a Panel, by complying with reasonable and lawful 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.

(b) Grounds of discipline. Violation of this rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that no demand or request by the Director, or his or her designee, of a lawyer or judge under investigation shall abridge, violate or otherwise deny said lawyer or judge any of his or her Rights, Liberties, Privileges or Immunitites. A lawyer or judge of whom an invalid demand or request is made, shall be entitled to treble damages in any civil action arising under this provision.

RULE 26. DUTIES OF DISCIPLINED OR RESIGNED LAWYER

(a) Notice to clients in non-litigation matters. Unless this court orders otherwise, a disbarred, suspended or resigned lawyer shall notify each client being represented in a pending matter other than litigation or administrative proceedings of the disbarred, suspended or resigned lawyer's inability to represent the client. The notification shall urge the client to seek legal advice of the client's own choice elsewhere.

(b) Notice to parties and tribunal in litigation. Unless this Court orders otherwise, a disbarred, suspended

or resigned lawyer shall notify each client, or posing counsel and the tribunal involved in pending litigation or administrative proceedings of the disbarred, suspended or resigned lawyer's inability to represent the client. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended or resigned lawyer.

(c) Manner of notice. Notice required by this rule shall be sent by certified mail, return receipt requested, within ten (10) days of the disbarment, suspension or resignation order.

(d) Client papers and property. A disbarred, suspended or resigned lawyer 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 disbarment, suspension or resignation order, the disbarred, suspended or resigned lawyer 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 or resigned lawyer shall be attached to the affidavit.

(f) Maintenance of records. A disbarred, suspended or resigned lawyer 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 or resigned lawyer, proof of compliance with this rule and with the disbarment, suspension or resignation order will be available.

(g) Conditions of reinstatement. Proof of compliance with this rule shall be a condition precedent to any petition for reinstatement made by a disbarred, suspended or resigned lawyer.

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, disapperance or death, or that a suspended, disbarred or resigned lawyer 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 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 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.

(f) Every lawyer and judge admitted to practice in Minnesota shall undergo annual mandatory random drug tests administered by persons competent to administer such tests. These drug tests shall be administered at any time, day or night, at any place here or in any foreign jurisdiction,

except that no drug test may be administered to a lawyer or judge while court is in session.

(1) Costs. Each lawyer or judge shall bear the cost of his or her annual drug test, with the amount being added to the annual Supreme Court registration fee.

(2) When the test is positive for illegal drug use, that lawyer or judge shall be required to undergo an examination by polygraph and psychological stress evaluation; if those examinations confirm illegal drug use, that lawyer or judge shall be immediately suspended from practice.

(3) Reinstatement. Any lawyer or judge suspended from practice for illegal drug use may petition for reinstatement pursuant to Rule 28(d); except that anyone who has three times failed the drug tests required by this Rule is not entitled to reinstatement.

(4) Refusal to take test. Penalty. Any lawyer or judge who refuses to take any drug test required by this Rule shall lose his or her license for one year.

(5) Aggrieved Party. Petition. Any lawyer or judge who has reasonable grounds for refusal to

take the drug tests required by this Rule may petition the Supreme Court for reinstatment, setting forth said reasonable grounds. The Supreme Court may grant or deny said petition with or without a hearing. If granted the record of suspension shall be expunged and the lawyer or judge involved shall be immediately reinstated to practice law.

Charles S. Bellows
John R. Carroll
James D. Olson
Archibald Spencer
Robert M. Skare
Robert L. Crosby
Leonard M. Addington
Robert R. Barth
N. Walter Graff
Allen D. Barnard
Richard A. Peterson
Frank J. Walz
Thomas D. Carlson
Frank Vogl
Marinus W. Van Putten, Jr.
James C. Diracles
Robert L. Meller, Jr.
Scott D. Eller
Charles C. Berquist
Frederick W. Morris
George O. Ludcke III
E. Joseph LaFave III
Gregory D. Soule
Cathy E. Gorlin
Patrick B. Hennessy

Best & Flanagan
Attorneys at Law
3500 IDS Center
Minneapolis, Minnesota 55402-2113
(612) 339-7121

Christine K. Solso
Erik W. Ibele
Tammy L. Pust
Kay E. Pashos
Mary Rumsey
David J. Zubke
Norman J. Baer

Of Counsel
George Maloney
Leonard W. Simonet
Ward B. Lewis

James I. Best
(1902-1966)

Robert J. Flanagan
(1898-1974)

January 28, 1986

OFFICE OF
APPELLATE COURTS
FILED

JAN 31 1986

WAYNE TSCHIMPERLE
CLERK

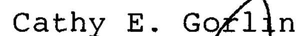
Supreme Court
State Capitol
St. Paul, MN 55155

C1-84-2140

Dear Justices:

Enclosed from report of Ad Hoc Committee to formulate ethical opinion procedures. Please keep us notified of any public hearings. Thank you.

Very truly yours,



Cathy E. Gorlin

CEG/sfl

Enc.

TO: Board of Governors

FROM: Ad Hoc Committee to Formulate Ethical Opinion Procedures

RE: Report of Committee

DATE: November 5, 1985

The Committee has decided that the Minnesota State Bar Association should not take on the responsibility of generating Advisory Ethics opinions.

The Committee discussed the matter with Nancy Dreher (author of the report of the Supreme Court's Lawyer Committee on Lawyer Discipline), William Wernz (Director of the Lawyers Professional Responsibility Board), and John Levine (Lawyers Professional Responsibility Board Member).

Some of the reasons leading the Committee to its decision are the following:

1. The Board and Directors Office of Professional Responsibility do not want to help the Bar Association generate opinions if the Bar Association takes part in it. (Wisconsin system is a combined effort between Bar Association and Directors Office.)

2. The time, effort and dollars expended by the Bar members to accomplish this task would be huge. (See attached Statistical Report of Directors Office.)

3. Willing attorneys with substantial experience will get harder to find as time passes.

4. Willing attorneys with substantial experience will be difficult to locate on short notice to answer telephone inquiries.

5. The complexity of accomplishing the transfer and the problems created in this transfer of responsibility.

6. That if there is a problem with the experience of the person giving the advisory opinion, it can be remedied by the Board itself.

7. That the transfer of responsibility wont necessarily remedy a problem, if any, with the lack of experience of the opinion giver.

8. That the Professional Responsibility Board takes precaution in insuring that their advisory opinion given not be part of prosecution, if any.

Respectfully Submitted,

Cathy E. Gorlin, Chairperson
Maylon C. Schneider
Steven A. Brand
Bruce C. Stone
James M. Neilson
D. James Nielsen

ADVISORY OPINION
STATISTICAL REPORT
September 1985

FORM AO9: (telephone inquiries to AO attorney)

Identity	September	Year-To-Date	Last Year-To-Date
Attorneys	58	513	354
Judges	--	4	3
Other	9	73	71
Total	67	590	428

WRITTEN AO RESPONSES TO TELEPHONE INQUIRIES:

Identity	September	Year-To-Date	Last Year-To-Date
Attorneys	1	17	--
Judges	--	1	--
Other	--	1	--
Total	1	19	--

Leading Subjects of Inquiry

	September	Year-To-Date	Last Year-To-Date
Interest on Fees	1	3	--

TELEPHONE RESPONSES:

Identity	September	Year-To-Date	Last Year-To-Date
Attorneys	51	395	--
Judges	--	4	--
Other	8	50	--
Total	59	449	--

Leading Subjects of Inquiry

	September	Year-To-Date	Last Year-To-Date
Conflicts of Interest	8	37	--
Fees	4	60	--
Client Confidence	3	10	--

REASON TELEPHONE AO DECLINED:

	September	Year-To-Date	Last Year-To-Date
Complex question, caller asked to send written request (AO7).	--	12	-
Subject of complaint.	--	7	-
Third-party conduct.	4	31	-
Question of law.	2	28	-
Advertising and solicitation.	1	34	-
Past conduct.	--	--	-
Non-lawyer conduct.	--	--	-
Suspended non-payment fees.	--	--	-
Not a Minnesota lawyer or judge.	1	5	-
Caller would not identify self.	--	--	-
Other.	--	8	-
Total	8	125	-

TELEPHONE RESPONSES TO WRITTEN REQUESTS:

Identity	September	Year To-Date	Last Year-To-Date
Attorneys	4	22	-
Judges	--	--	-
Other	--	--	-
Total Responses	4	22	-

Leading Subjects of Inquiry	September	Year To-Date	Last Year-To-Date
Conflict of Interest	1	7	-
Fees	1	2	-

Request Evidenced Atty. Research:

	September	Year-To-Date	Last Year-To-Date
Yes	3	10	-
No	1	12	-

WRITTEN RESPONSES TO WRITTEN REQUESTS:
(Includes Bench and Bar articles, ABA and Board Opinions)

Identity	September	Year-To-Date	Last Year To-Date
Attorneys	2	24	55
Judges	--	--	2
Other	--	2	-
Total	2	26	57

Leading Subjects of Inquiry	September	Year-To-Date	Last Year To-Date
Fees	1	1	-

AO TIME REPORT:

Dir. & Sr. Ass't Dir.	September	Year-To-Date	Last Year To-Date
Initial Review	--	4	16.50
Prior to Issuance	--	5	15.25
Total	--	9	31.75

AO Assistant Dir. (KLJ & MAC)

	September	Year-To-Date	Last Year To-Date
Telephone Time	29.50	301.50	-----
Initial Review	1.00	9.25	14.50
Research & Draft	1.50	40.50	15.25
Edit	--	19.00	50.75
Discuss w/Sr. Ass't	2.00	6.50	21.00
Discuss w/LC	.50	14.25	11.25
Admin. Duties	.50	4.50	24.75
Total	35.00	395.50	137.50

AO Law Clerk(s)

	September	Year-To-Date	Last Yr-To-Date
Research AO	.50	62.50	137.00
Draft/Edit AO	-	63.00	141.25
AO Statistics	6.75	79.50	42.00
AO Admin.	3.00	47.00	293.00
Tele. Inquiries	-	-	60.00
CLE Resch./Draft	13.50	144.50	94.00
B&B Art./Draft	-	-	15.15
TOTAL	23.75	396.50	782.40
TOTAL HOURS	58.75	801.00	951.65
Case Work	75.50	598.25	------

PUBLIC HEARING TO AMEND THE RULES ON

LAWYERS PROFESSIONAL RESPONSIBILITY

Supreme Court No: C1-84-2140

Date of Hearing: March 18, 1986
9:00 a.m.
Supreme Court Chambers

Name	Date Written Summary filed	Request Oral Presentation Yes	Request Oral Presentation No
Patrick J. Foley	3-4-86	X	
Bruce H. Hanley & Joseph Friedberg		X	
Leonard J. Keyes	1-13-86		X
Nancy C. Dreher	1-30-86	X	
Cathy E. Gorlin	1-31-86		X
Betty M. Shaw	2-11-86		X
David P. Murrin, Asst. Henn County Public Defender	2-20-86	X	
William J. Wernz	3-6-86	X	
John D. Levine	3-4-86	x	
Michael J. Hoover	3-6-86	X	
David H. Knutson	3-6-86	X	
Richard L. Pemberton	3-7-86	X	
William R. Kennedy	3-7-86	X	