

Minnesota Rules of Professional Conduct

Adopted June 13, 1985

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With amendments received through August 1, 1999

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[For text of Preamble to Terminology, see M.S. 1998, Volume 15]

TEXT OF RULES

Rule 1. Client-Lawyer Relationship

[For text of 1.1 to 1.7, see M.S. 1998, Volume 15]

1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the client is notified in writing by the lawyer that independent counsel should be considered and is given a reasonable opportunity to seek the advice of independent counsel in the transaction;

(2) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; and

(3) the client consents to the transaction in a document separate from the transaction documents that specifies:

(i) whether the lawyer is representing or otherwise looking out for the client's interests in the transaction;

(ii) the nature of the lawyer's conflicting interests, if any; and

(iii) the reasonably foreseeable risks for the client from any conflict.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer may guarantee a loan reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided, that no promise of such financial assistance was made to the client by the lawyer, or by another in the lawyer's behalf, prior to the employment of that lawyer by that client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation or acceptance of compensation from another is impliedly authorized by the nature of the representation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, unless each client consents after consultation, including disclosure of the existence and nature of all the claims and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(k) A lawyer shall not have sexual relations with a current client unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced. For purposes of this paragraph:

(1) "Sexual relations" means sexual intercourse or any other intentional touching of the intimate parts of a person or causing the person to touch the intimate parts of the lawyer.

(2) If the client is an organization, any individual who oversees the representation and gives instructions to the lawyer on behalf of the organization shall be deemed to be the client. In-house attorneys while representing governmental or corporate entities are governed by Rule 1.7(b) rather than by this rule with respect to sexual relations with other employees of the entity they represent.

(3) This paragraph does not prohibit a lawyer from engaging in sexual relations with a client of the lawyer's firm provided that the lawyer has no involvement in the performance of the legal work for the client.

(4) If a party other than the client alleges violation of this paragraph, and the complaint is not summarily dismissed, the Director, in determining whether to investigate the allegation and whether to charge any violation based on the allegations, shall consider the client's statement regarding whether the client would be unduly burdened by the investigation or charge.

(Amended effective July 1, 1994; amended effective for all lawyer conduct occurring on or after August 1, 1999.)

[For text of 1.9, see M.S. 1998, Volume 15]

1.10 Imputed Disqualification: General Rule

(a) Except as provided in this rule, while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) unless there is no reasonably apparent risk that confidential information of the previously represented client will be used with material adverse effect on that client because:

(1) any confidential information communicated to the lawyer is unlikely to be significant in the subsequent matter;

(2) the lawyer is subject to screening measures adequate to prevent disclosure of the confidential information and to prevent involvement by that lawyer in the representation; and

(3) timely and adequate notice of the screening has been provided to all affected clients.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(Amended effective for all lawyer conduct occurring on or after August 1, 1999.)

[For text of 1.11 to 1.14, see M.S. 1998, Volume 15]

1.15 Safekeeping Property

(a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable interest bearing trust accounts as set forth in paragraphs (d) through (g). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein.

(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount and the purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties.

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.

(4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

(d) Each trust account referred to in paragraph (a) shall be an interest bearing account in a bank, savings bank, trust company, savings and loan association, savings association, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.

(e) A lawyer who receives client or third person funds shall maintain a pooled interest bearing trust account for deposit of funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

(f) All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:

(1) separate interest bearing trust account for the particular third person, client or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

(2) pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client.

(g) In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of financial institutions described in paragraph (d) to calculate and pay interest to individual clients.

(h) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

(i) Every lawyer subject to paragraph (h) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Clerk of the Appellate Court may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (h).

(j) Lawyer trust accounts shall be maintained only in financial institutions approved by the Office of Lawyers Professional Responsibility.

(k) A financial institution shall be approved as a depository for lawyer trust accounts if it shall file with the Office of Lawyers Professional Responsibility an agreement, in a form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon three days' notice in writing to the Office.

(l) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the report and records required by this rule.

(o) DEFINITIONS

“Financial Institution” – includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

“Properly payable” – refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

“Notice of dishonor” – refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

(Amended effective January 1, 1990; amended effective for all lawyer conduct occurring on or after August 1, 1999.)

[For text of 1.16 to 4., see M.S. 1998, Volume 15]

Rule 5. Law Firms and Associations

[For text of 5.1 to 5.3, see M.S. 1998, Volume 15]

5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer the proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional firm or association authorized to practice law for a profit, if a nonlawyer:

(1) owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of a lawyer for a reasonable time during administration;

(2) possesses governance authority, unless permitted by the Minnesota Professional Firms Act; or

(3) has the right to direct or control the professional judgment of a lawyer.

(Amended effective January 1, 1996; amended effective for all lawyer conduct occurring on or after August 1, 1999.)

[For text of 5.5 and 5.6, see M.S. 1998, Volume 15]

5.7 Employment of Disbarred, Suspended, or Involuntarily Inactive Lawyers

(a) For purposes of this rule “employ” means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid.

(b) A lawyer shall not employ, associate professionally with, or aid a person the lawyer knows or reasonably should know has been disbarred, suspended, or placed on disability inactive status by order of the court to do any of the following on behalf of the lawyer’s client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer unless the rules of the tribunal involved permit representation by non-lawyers and the client has been informed of the lawyer’s suspension, disbarment, or disability inactive status;

(3) appear as a representative of the client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) receive, disburse or otherwise handle the client’s funds; or

(6) engage in activities that constitute the practice of law.

(c) A lawyer may employ, associate professionally with, or aid a disbarred, suspended, or disability inactive lawyer to perform research, drafting, clerical, or similar activities, including but not limited to:

(1) legal work of a preparatory nature for the lawyer’s review, such as legal research, the gathering of information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, information gathering, confirmation of receipt or sending of correspondence and messages; or

(3) accompanying an active lawyer in attending a deposition or other discovery procedure for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.

(d) Prior to or at the time of employing a person the lawyer knows or reasonably should know is a disbarred, suspended, or disability inactive lawyer, the lawyer shall serve upon the Office of Lawyers Professional Responsibility written notice of the employment, including a full description of such person’s current license status. The notice shall state that the suspended, disbarred, or disability inactive lawyer shall not be employed to perform any of the activities prohibited by paragraph (b).

(e) Upon termination of the employment of the disbarred, suspended, or disability inactive lawyer, the employing lawyer shall promptly serve upon the Office of Lawyers Professional Responsibility written notice of the termination.

(Added effective for all lawyer conduct occurring on or after August 1, 1999.)

[For text of 6. to 8., see M.S. 1998, Volume 15]

Rules on Lawyers Professional Responsibility

Adopted November 1, 1976 Effective January 1, 1977

With amendments received through August 1, 1999

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TEXT OF RULES

[For text of 1. to 6., see M.S. 1998, Volume 15]

Rule 6X. (Repealed August 1, 1999.)

6Y. (Repealed August 1, 1999.)

Rule 6Z. Complaints Involving Judges

(a) Jurisdiction. The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

(1) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

(Added effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)–(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)–(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(c) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. See, e.g., *In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as fact finder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the president of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

Rule 7. District Committee Investigation

(a) **Assignment; assistance.** The District Chair 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 investigator's report and recommendations shall be submitted for review and approval to the District Chair, the Chair's designee or to a committee designated for this purpose by the District Chair, prior to its submission 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 further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) **Time.** The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the 90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association.

(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 Chair of the removal.

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

(Amended July 1, 1986; amended January 1, 1989; amended February 11, 1991, effective March 1, 1991; amended effective for lawyer discipline matters pending or commenced after August 1, 1999.)

[For text of 8., see M.S. 1998, Volume 15]

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 pre-hearing meeting, and notify the lawyer of:

- (1) The charges;
- (2) The name, address, and telephone number of the Panel Chair and Vice-Chair;
- (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 Chair or Vice-Chair.

(b) **Answer to charges.** Not less than seven days before the pre-hearing meeting, the lawyer shall serve on the Director an answer to the charges. The answer may deny or admit any accusations or state any defense or privilege.

(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 Chair or Vice-Chair 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 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 lawyer shall be denominated by number or randomly selected 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 prehearing meeting. If a party objects, the Panel may award expenses of proof as permitted by the Rules of Civil 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 prehearing statement.

(f) Setting Panel hearing. Promptly after the prehearing meeting, the Director shall schedule a hearing by the Panel on the charges and notify the lawyer of:

(1) The time and place of the hearing;

(2) The lawyer's right to be heard at the hearing; and

(3) The lawyer's obligation to appear at the time set unless the hearing is rescheduled by agreement of the parties or by order of the Panel Chair or Vice-Chair.

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, and of the prehearing statement. Each party shall provide to each Panel member in advance of the Panel hearing, copies of all documentary exhibits marked by that party at the prehearing meeting, unless the parties agree otherwise or the Panel Chair or Vice-Chair orders to the contrary.

(g) Referee probable cause hearing. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, because of exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct a probable cause hearing acting as a Panel would under this Rule, or the Court may remand the matter to a Panel under this Rule with instructions, or the Court may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is probable cause as to any charge and a petition for disciplinary action is filed in this Court, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the probable cause hearing, a transcript of that hearing shall be made part of the public record.

(h) 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 Chair or Vice-Chair 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 number or randomly selected initials in any district court proceeding.

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

(1) The Chair shall explain that the hearing's purpose is to determine whether there is probable cause to believe that public discipline is warranted on each charge, and that the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause (or, if an admonition has been issued under Rule 8(d)(2) or 8(e), that the hearing's purpose is to determine whether the Panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court);

(2) The Director shall briefly summarize the matters admitted by the parties, the matters remaining for resolution, and the proof which the Director 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;

(6) The complainant may be present for all parts of the hearing related to the complainant's complaint except when excluded for good cause; and

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

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

(1) if the hearing was held on charges of unprofessional conduct:

(i) determine that there is not probable cause to believe that public discipline is warranted; or

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition; or

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and nonserious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition.

(2) If the hearing was on a lawyer's appeal of an admonition issued under Rule 8(d)(2), the Panel shall affirm or reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, instruct the Director to file a petition for disciplinary action in this Court.

(k) 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. The notification to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (l). If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (m).

(l) Complainant's petition for review. If not satisfied with the Panel's disposition, the Complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The clerk shall notify the respondent and the Board Chair of the petition. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant 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.

(m) Respondent's appeal to Supreme Court. The lawyer may appeal a Panel's affirmation of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal and seven 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. The respondent shall be denominated by number or randomly selected initials in the proceeding. 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 decision or make such other disposition as it deems appropriate.

(n) **Manner of recording.** The Director shall arrange for a court reporter to make a record of the proceedings as in civil cases.

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

(Amended July 22, 1982; amended October 22, 1984; amended July 1, 1986; amended April 27, 1987, effective July 1, 1987; amended January 1, 1989; amended February 11, 1991, effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective June 13, 1996; amended effective June 24, 1996; amended effective for lawyer discipline matters pending or commenced after August 1, 1999.)

[For text of 10. to 13., see M.S. 1998, Volume 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 submitted 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) **Subpoenas.** The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

(d) **Record.** The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(e) **Referee's findings, conclusions, and recommendations.** The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and Director of them. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. One ordering a transcript within ten days of the date the transcript is ordered shall file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. One ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. One ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

(f) **Panel as referee.** Upon written agreement of an attorney, the Panel Chair and the Director, at any time, this Court may appoint the Panel which is to conduct or has already conducted the probable cause hearing as its referee to hear and report the evidence submitted for or against the petition for disciplinary action. Upon such appointment, the Panel shall proceed under Rule 14 as the Court's referee, except that if the Panel considers evidence already presented at the Panel hearing, a transcript of the hearing shall be made part of the public record. The District Court of Ramsey County shall continue to have the jurisdiction over discovery and subpoenas in Rule 9(d) and (h).

(g) **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. In all matters in which the Director seeks discipline, the cover of the main brief of the Director shall be blue; the main brief of the respondent, red; and any reply brief shall be gray. In a matter in which reinstatement is sought pursuant to Rule 18 of these Rules, the cover of the respondent's main brief shall be blue; that of the main brief of the Director, red; and that of any reply brief, gray. The matter shall be heard upon the record, briefs, and arguments.

(Amended October 22, 1984; amended July 1, 1986; amended April 27, 1987, effective July 1, 1987; amended January 1, 1989; amended February 11, 1991, effective March 1, 1991; amended effective for lawyer discipline matters pending or commenced after August 1, 1999.)

[For text of 15. to 17., see M.S. 1998, Volume 15]

Rule 18. Reinstatement

(a) Petition for reinstatement. A petition for reinstatement to practice law shall be served upon the Director and the President of the State Bar Association. The original petition, with proof of service, and seven copies, shall then be filed with this Court. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee of \$300.

(b) Investigation; report. The Director shall investigate and report the Director's 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.

(1) 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 the lawyer 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.

(2) No lawyer ordered reinstated to the practice of law after having been suspended or transferred to disability inactive status by this Court, and after petitioning for reinstatement under subdivision (a), shall be effectively reinstated until the lawyer 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.

(3) Unless specifically waived by this Court, any lawyer suspended for a fixed period of 90 days or less, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), must, within one year from the date of the suspension order, successfully complete 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. Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.

(4) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following the lawyer's suspension, disbarment, or transfer to disability inactive status by this Court until the lawyer shall have satisfied (1) the requirements 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; and (2) any subrogation claim against the lawyer by the Client Security Board.

(f) Reinstatement by affidavit. Unless otherwise ordered by this Court, subdivisions (a) through (d) shall not apply to lawyers who have been suspended for a fixed period of 90 days or less. Such a suspended lawyer, and any suspended lawyer for whom the Court waives the requirements of subdivisions (a) through (d), may apply for reinstatement by filing an affidavit with the Clerk of Appellate Courts and the Director, stating that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. After receiving the lawyer's affidavit, the Director shall promptly file a proposed order and an affidavit regarding the lawyer's compliance or lack thereof with the requirements for reinstatement. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

(Amended October 16, 1981; amended February 21, 1984; amended January 1, 1989; amended February 11, 1991, effective March 1, 1991; amended effective for lawyer discipline matters pending or commenced after August 1, 1999.)

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 the lawyer committed the conduct for which the lawyer 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 and investigated where discipline was not warranted. Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation, except as provided in subsection (b)(2).

(2) Conduct previously considered where no investigation was taken and discipline was not warranted. Conduct in previous lawyer disciplinary proceedings of any jurisdiction which was not investigated is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) Previous finding. A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) Previous discipline. The fact that the lawyer received discipline in previous disciplinary proceedings is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

(i) A pattern of related conduct, the cumulative effect of which constitutes a violation;

(ii) The current charge (e.g., the lawyer has continued to practice despite suspension);

(iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before); or

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

(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 admissible in proceedings before the referee or this Court.

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

(Amended January 12, 1981; amended July 22, 1982; amended July 1, 1986; amended January 1, 1989; amended effective for lawyer discipline matters pending or commenced after August 1, 1999.)

Rule 20. Confidentiality; Exemption

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

(1) As between the Committees, Board and Director in furtherance of their duties;
 (2) After probable cause has been determined under Rule 9(j)(ii) or proceedings before a referee or this Court have been commenced under these Rules;

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

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

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

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules;

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

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

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

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

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

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

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

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

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

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

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

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

(d) 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.

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

(1) *Destruction schedule.* All records or other evidence of the existence of a dismissed complaint shall be destroyed three years after the dismissal;

(2) *Retention of records.* Upon application by the Director to a Panel Chair chosen in rotation, 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 three years as the Panel Chair deems appropriate.

(Amended April 26, 1983; amended July 1, 1986; amended April 27, 1987 and May 21, 1987, effective July 1, 1987; amended January 1, 1989; amended February 11, 1991, effective March 1, 1991; amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.

[For text of 21. to 30., see M.S. 1998, Volume 15]

Lawyers Professional Responsibility Board Opinions

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TEXT OF OPINIONS

[For text of 1. to 8., see M.S. 1998, Volume 15]

OPINION NO. 9

Maintenance of Books and Records

Every attorney engaged in the private practice of law must maintain the books and records described in this Opinion to comply with the applicable provisions of the Minnesota Rules of Professional Conduct (MRPC) relating to funds and property received and disbursed on behalf of clients or otherwise held in a fiduciary capacity. Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. Books and records may be prepared manually or by computer.

I. Trust Account Records. The following books and records must be maintained for funds and property received and disbursed in a fiduciary capacity, whether for clients or for others:

1. An identification of all trust accounts maintained, including the name of the bank or other depository, account number, account name, date account opened, and an agreement with bank establishing each account and its interest bearing nature. A record should also be maintained showing clearly the type of each such account whether pooled, with net interest paid to the Lawyers Trust Account Board (IOLTA account), pooled with allocation of interest, or individual, including the client name. *See* Rules 1.15(e), (f)(1), and (f)(2), MRPC.

2. A check register for each trust account that chronologically shows all deposits and checks.

a. Each deposit entry must include the date of the deposit, the amount, the identity of the client(s) for whom the funds were deposited, and the purpose of the deposit.

b. Each check entry must include the date the check was issued, the payee, the amount, the identity of the client for whom the check was issued (if not the payee), and the purpose of the check.

3. Subsidiary ledgers for each client matter for whom the attorney receives trust funds.

a. For every trust account transaction, attorneys must record on the appropriate client subsidiary ledger the date of receipt or disbursement, the amount, the payee and check number (for disbursements), the purpose of the transaction, and the balance of funds remaining in the account on behalf of that client matter. An attorney shall not disburse funds from the trust account that would create a negative balance on behalf of an individual client matter.

b. A separate subsidiary ledger for nominal funds of the attorney held in the trust account pursuant to Rule 1.15(a)(1), MRPC, to accommodate reasonably expected bank fees and charges. This ledger should also record any monthly service charges not offset or waived by the bank in the same month. A separate ledger should be maintained to record interest accrued but not transferred by the bank to the Lawyers Trust Account Board in the same month it is credited.

c. An attorney maintaining non-IOLTA accounts pursuant to Rule 1.15(f), MRPC, shall record on each client subsidiary ledger the monthly accrual of interest, and the date and

amount of each interest disbursement, including disbursements from accrued interest for costs of establishing and administering the account.

4. A monthly trial balance of the subsidiary ledgers identifying each client matter, the balance of funds held on behalf of the client matter at the end of each month, and the total of all the client balances. No balance for a client matter may be negative at any time.

5. A monthly reconciliation of the checkbook balance, the subsidiary ledger trial balance total, and the adjusted bank statement balance. The adjusted bank statement balance is determined from the month-end bank statement balance by adding outstanding deposits and subtracting outstanding checks.

Sample trial balances and reconciliations are available from the Office of Lawyers Professional Responsibility.

6. Bank statements, canceled checks, and duplicate deposit slips. Cash fee payments must be documented by copies of receipts countersigned by the payor. All disbursements must be by check, except when payment by check would be economically imprudent or when exigent circumstances require a transaction by wire transfer. For withdrawal by wire transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The wire transfer must be entered in the check register and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Opinion.

7. Electronic Record Retention. An attorney who maintains trust account records by computer must print and retain, on a monthly basis, the checkbook register, the trial balance of the subsidiary ledgers, and the reconciliation report. The checkbook register must contain all of the information identified in paragraph 2. Electronic records should be regularly backed up by an appropriate storage device. The frequency of the back-up procedure should be directly related to the volume of activity in the trust account.

8. A record showing all property, specifically identified, other than cash, held in trust from time to time for clients or others, provided that routine files, documents and items such as real estate abstracts which are not expected to be held indefinitely need not be so recorded but should be documented in the files of the lawyer as to receipt and delivery.

II. Business Account Records. An attorney or law firm must maintain at least one bank account, other than the trust account, for funds and property received and disbursed outside the attorney's fiduciary capacity. The following books and records should be maintained for such accounts:

1. A record in the form of a fees book or file of copies of billing invoices reflecting all fees charged and other billing to clients.

2. Copies of receipts, countersigned by the payor, for all cash fee payments.

3. Check registers, bank statements, canceled checks, and duplicate deposit slips sufficient to establish the receipt of earned fee payments from clients, costs advanced on behalf of clients, and similar receipts and disbursements.

4. A periodic reconciliation of the checkbook balance and the bank statement balance.

Adopted: September 10, 1976.

Amended: June 22, 1977,

June 23, 1983,

December 4, 1987,

September 15, 1989,

September 18, 1998 and

August 1, 1999.

1998 Committee Comments

In the 9 years since the Lawyers Professional Responsibility Board last revised this Opinion, there have been significant changes in the ways attorneys may maintain their trust account books and records, most notably the rise of the personal computer and bookkeeping software as essential office equipment. Moreover, the Director's Office has reviewed hundreds of lawyers' trust accounts since 1990 through the overdraft notification program. This experience has given the Director insight into the most common

record-keeping pitfalls and confirmed the types of records that lawyers must maintain to satisfy their ethical obligations to protect client funds.

The revised Opinion eliminates the requirement of separate cash receipts and disbursements journals, in favor of a more detailed chronological check register that records all trust account transactions, including the identity of the client and the purpose of the transaction. This simplifies manual record-keeping and comports with most software packages that allow input of all relevant information into one computer screen.

Routine monthly printing of hard copies of electronic records is required to allow reconstruction of trust account records in the event of a hardware failure. Attorneys should implement electronic backup procedures depending on the volume of activity in the trust account. For moderate to high volume trust accounts, weekly or even daily backups to floppy disks or mirrored network servers may be appropriate.

Wire transfers may be used for large denomination transactions provided that the lawyer or law firm creates the proper written authorization. The Board does not recommend that attorneys use wire transfers for transactions under \$10,000; checks signed by an attorney remain the primary means of properly disbursing funds from a trust account.

[For text of 10. to 14., see M.S. 1998, Volume 15]

OPINION NO. 15

Advance Fee Payments and Availability or Nonrefundable Retainers **DEFINITIONS**

(1) **Advance Fee Payments**: Funds paid by a client or a prospective client to a lawyer for specific services to be undertaken. All fees paid at the beginning of the representation shall be presumed to be advance fee payments unless a written fee agreement signed by the client states otherwise.

(2) **Availability or Nonrefundable Retainers**: Funds paid by a client or a prospective client to secure a lawyer's general availability to, or representation of, that client over a specified period of time or for a specific legal matter.

(3) **An Accounting**: An itemized statement issued to a client which lists all trust fund withdrawals (e.g., fees, costs or expenses) for that client since the last statement and which states the balance of that client's funds remaining in the trust account after the withdrawals have been made.

OPINION

All advance fee payments must be deposited into an interest bearing trust account in accordance with Rules 1.15(a)(2) and (f), Minnesota Rules of Professional Conduct. A lawyer may withdraw fees from the trust account when earned provided the client is given: (1) written notice of the time, amount and the purpose of the withdrawal; and (2) an accounting of the client's funds in the trust account. See In re Lochow, 469 N.W.2d 91 (Minn. 1991).

Funds paid to a lawyer pursuant to an availability or nonrefundable retainer agreement are not required to be deposited into a trust account or held in trust. All availability or nonrefundable retainer agreements must be in writing and signed by the client. Lochow, 469 N.W.2d at 98. All availability or nonrefundable retainer agreements must include a final paragraph immediately above the client signature line which informs the client that: (1) the funds will not be held in a trust account; and (2) the client may not receive a refund of the fees if the client later chooses not to hire the lawyer or chooses to terminate the lawyer's services. All fees paid pursuant to an availability or nonrefundable retainer agreement shall be reasonable in amount. The factors to be considered in determining the reasonableness of a lawyer's fee include those set forth in Rule 1.5(a), Minnesota Rules of Professional Conduct.

Adopted: September 13, 1991.

Amended: August 1, 1999.

[For text of 16. to 18., see M.S. 1998, Volume 15]

OPINION NO. 19

Using Technology to Communicate Confidential Information to Clients

A lawyer may use technological means such as electronic mail (e-mail) and cordless and cellular telephones to communicate confidential client information without violating Rule 1.6, Minnesota Rules of Professional Conduct (MRPC). Such use is subject to the following conditions:

1. E-mail without encryption may be used to transmit and receive confidential client information;
2. Digital cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information when used within a digital service area;
3. Analog cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information only if the lawyer obtains client consent after consultation with the client about the confidentiality risks associated with inadvertent interception;
4. When the lawyer knows, or reasonably should know, that a client or other person is using an insecure means, such as an analog cordless or cellular telephone, to communicate with the lawyer about confidential client information, the lawyer shall consult with the client about the confidentiality risks associated with inadvertent interception and obtain the client's consent.

Adopted: January 22, 1999.

Comment

A lawyer may not knowingly reveal a confidence or secret of a client. Rule 1.6(a)(1). A lawyer should exercise care to prevent unintended disclosure. See Comment to Rule 1.6. For example, the lawyer should avoid professional discussions in the company of persons to whom the attorney-client privilege does not extend. Id. Similarly, a lawyer should take reasonable steps to prevent interception or unintended disclosure of confidential communications. All communication carries with it some such risk, for example by eavesdropping, wire-tapping, or theft of mail. The precautions to be taken by a lawyer depend on the circumstances, including the sensitivity of the information, the manner of communication, the apparent risks of interception or unintended disclosure, and the client's wishes.

The purpose of this opinion is to address concerns that certain devices or methods may not be used by lawyers to communicate client confidences or secrets because they do not guarantee security. The committee believes absolute security is not required, and that the use of new technology is subject to the same analysis as the use of more traditional methods of communication.

This opinion reflects the prevalent view of other states and technology experts, that communications by facsimile, e-mail, and digital cordless or cellular phones, like those by mail and conventional corded telephone, generally are considered secure; their interception involves intent, expertise, and violation of federal law. Some states have required client consent or encryption for the use of e-mail, but the majority of recent state ethics opinions sanction the use of e-mail without such requirements. The committee finds the reasoning of the latter opinions persuasive. Communications by analog cordless or cellular phones generally are considered insecure; they may be intercepted intentionally or inadvertently with unsophisticated and readily available equipment, such as other similar phones or scanners. This opinion presumes that the digital telephone is being used in a location where digital service is available. Some digital cell telephones are programmed to convert automatically to analog service when brought into a location where digital service is not available. When this is the case, the precautions for analog cellular telephones apply.

The opinion intentionally omits facsimile machines, which typically transmit data over conventional telephone lines. With facsimile machines, the concerns are less with interception than with unintended dissemination of the communication at its destination, where the communication may be received in a common area of the workplace or home and may be read by persons other than the intended recipient. The Director has received client complaints in-

volving such situations and cautions lawyers to take reasonable precautions to prevent unintended dissemination. Similar concerns may be raised by voice-mail and answering machine messages.

Rules for Admission to the Bar

Effective August 18, 1998

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Revisor's Note: Supreme Court Order C5-84-2139, dated August 26, 1998, provides in part:

"The Rules of the Minnesota Supreme Court and State Board of Law Examiners for Admission to the Bar are repealed retroactive to August 18, 1998."

TEXT OF RULES

Rule 1. Purpose

The Board of Law Examiners is established to ensure that those who are admitted to the bar have the necessary competence and character to justify the trust and confidence that clients, the public, the legal system, and the legal profession place in attorneys.

Rule 2. Definitions

As used in these Rules:

A. "Board" means the Minnesota State Board of Law Examiners.

B. "Court" means the Minnesota Supreme Court.

C. "Director" means the staff director for the Board.

D. "Good character and fitness" means traits, including honesty, trustworthiness, diligence and reliability, that are relevant to and have a rational connection with the applicant's present fitness to practice law.

E. Deadlines and due dates specified under these Rules shall be taken to mean no later than 4:30 p.m. on the date stated; if the date falls on Saturday, Sunday, or a legal holiday, the deadline shall be the first working day thereafter. Postmarks dated on the due date will be accepted.

F. "Approved law school" means a law school provisionally or fully approved by the American Bar Association.

G. "Legal services program" means a program existing primarily for the purpose of providing legal assistance to indigent persons in civil or criminal matters.

H. "Notify" or "give notice" means to mail or deliver a document to the last known address of the applicant or the applicant's attorney. Notice is complete upon mailing, but extends the applicant's period to respond by 3 days.

Rule 3. State Board of Law Examiners

A. Composition. The State Board of Law Examiners shall consist of nine members, two of whom shall be public members, each appointed by the Supreme Court for a term of three years or until a successor is appointed and qualifies. With the exception of the President, Board members may serve no more than three successive three-year terms. The terms of office may be staggered by the Court by any method it deems appropriate. The Court shall select a President and the Board shall select a secretary from among its members.

B. Authority. The Board is authorized:

(1) Subject to the approval of the Court, to employ a Director on a full-time or part-time basis, to prescribe duties, and to fix compensation;

(2) To secure examination questions and other testing instruments that the Board finds valid and reliable in measuring the competence of applicants to practice law, and to pay reasonable compensation for them;

(3) To employ examination graders;

(4) To establish a minimum passing score for the examinations;

(5) To conduct investigations of applicant background as may be reasonably related to fitness to practice or eligibility under the Rules, and to require applicants to pay the costs of the investigations;

(6) To administer these Rules and adopt policies and procedures consistent with these Rules;

(7) To delegate to its President and Director authority to make necessary determinations to implement the Board's policies and procedures and these Rules;

(8) To prepare and disseminate information to prospective applicants and the public about procedures and standards for admission to practice law in this state.

C. Board Meetings. Board meetings are open to the public except when the Board is considering the following:

- (1) examination materials;
- (2) any information concerning an applicant or potential applicant;
- (3) personnel matters;
- (4) any information which is confidential or private under Rule 13;
- (5) legal advice from its counsel.

Minutes of the public portions of Board meetings are available upon request from the Board office.

Rule 4. General Requirements for Admission

A. Eligibility for Admission. An applicant is eligible for admission to practice law upon establishing to the satisfaction of the Board:

- (1) Age of at least 18 years;
- (2) Good character and fitness as defined by these Rules;
- (3) Graduation with a J.D. or LL.B. degree from a law school which is provisionally or fully approved by the American Bar Association;
- (4) Passing score on a written examination or qualification under Rule 7(A) or (B);
- (5) A scaled score of 85 or higher on the Multistate Professional Responsibility Examination; and
- (6) Not currently suspended or disbarred from the practice of law in another jurisdiction.

B. Residency. Prior to admission an applicant must be a resident of this state or maintain an office in this state or designate the Clerk of the Appellate Courts as agent for the service of process for all purposes.

C. Application for Admission

(1) Complete Application. An applicant for admission shall file at the office of the Board an application on a form prescribed by the Board. To be accepted for filing, an application must include:

- (a) The proper fee as indicated in Rule 11;
- (b) Notarized affidavits of two persons unrelated to the applicant by blood or marriage and not fellow law students during the applicant's enrollment, who have known the applicant for at least one year, setting forth the duration of time and the circumstances under which they have known the applicant, details respecting the applicant's character and general reputation and other such information which bears on the applicant's fitness to practice law;
- (c) A notarized authorization for release of information on a form prescribed by the Board;
- (d) For applicants seeking admission by examination, a passport-style photo.

(2) Certificate of Graduation. An applicant for admission by examination must also file or cause to be filed at least 30 days prior to the examination a certificate from an approved law school stating that the applicant has graduated, or stating that the applicant has fulfilled all requirements for graduation and will be graduated within 120 days following the examination for which the applicant has filed.

(3) Additional Filing When Admitted Elsewhere. An applicant who has been admitted to practice in another jurisdiction shall also file or cause to be filed at the time of the application:

- (a) A certified copy of the application for admission to the Bar in each jurisdiction in which the applicant has previously been admitted to the practice of law;
- (b) A certification showing the date of admission to the bar in each other jurisdiction;

(c) A certification from the proper authority in each jurisdiction stating that the applicant is in good standing, and indicating whether the applicant is the subject of a pending complaint or charge of misconduct.

(4) Professional Responsibility Test Scores. An applicant may file an application without having taken the Multistate Professional Responsibility Examination; however, within 12 months after filing the application, the applicant shall submit a score report showing a scaled score of 85 or higher on the Multistate Professional Responsibility Examination.

(5) Repeat Examinee. An applicant who has been unsuccessful on a prior Minnesota Bar Examination may reapply by submitting:

- (a) A new application for admission pursuant to Rule 4(C)(1);
- (b) The proper fee under Rule 11;
- (c) A notarized authorization for release of information on a form prescribed by the Board;
- (d) A passport-style photo;
- (e) If the original application is more than two years old, new affidavits as described in Rule 4(C)(1)(b) of these Rules.

(6) Incomplete Application. An application determined to be incomplete shall be returned to the applicant.

(7) Withdrawal of Application. An applicant may withdraw the application at any time prior to the issuance of an adverse determination.

(8) Strict Enforcement of Time Requirements. The time requirements set forth in these Rules shall be strictly enforced.

D. Required Cooperation.

(1) An applicant has the duty to cooperate with the Board and the Director by timely complying with requests, including requests to:

- (a) Provide complete information, documents and signed authorizations for release of information;
- (b) Obtain reports or other information necessary for the Board to properly evaluate the applicant's fitness to practice;
- (c) Appear for interviews to determine eligibility for admission or facilitate the background investigation.

(2) An applicant shall not discourage a person from providing information to the Board or retaliate against a person for providing information to the Board;

(3) An applicant who violates this rule may be denied an opportunity to test or may be denied admission.

Rule 5. Standards for Admission

A. Essential Eligibility Requirements. Applicants must meet the following essential eligibility requirements for the practice of law:

- (1) The ability to reason, recall complex factual information and integrate that information with complex legal theories;
- (2) The ability to communicate with clients, attorneys, courts, and others with a high degree of organization and clarity;
- (3) The ability to use good judgment on behalf of clients and in conducting one's professional business;
- (4) The ability to conduct oneself with respect for and in accordance with the law;
- (5) The ability to avoid acts which exhibit disregard for the rights or welfare of others;
- (6) The ability to comply with the requirements of the Rules of Professional Conduct, applicable state, local, and federal laws, regulations, statutes and any applicable order of a Court or tribunal;
- (7) The ability to act diligently and reliably in fulfilling one's obligations to clients, attorneys, courts, and others;

(8) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others; and

(9) The ability to comply with deadlines and time constraints.

B. Character and Fitness Standards and Investigation.

(1) **Purpose.** The purpose of character and fitness investigation before admission to the Bar is to assure the protection of the public and to safeguard the justice system.

(2) **Burden of Proof.** The applicant bears the burden of proving good character in support of the application.

(3) **Relevant Conduct.** The revelation or discovery of any of the following shall be treated as cause for further inquiry before the Board determines whether the applicant possesses the character and fitness to practice law:

- (a) unlawful conduct;
- (b) academic misconduct;
- (c) misconduct in employment;
- (d) acts involving dishonesty, fraud, deceit or misrepresentation;
- (e) acts which demonstrate disregard for the rights or welfare of others;
- (f) abuse of legal process, including the filing of vexatious or frivolous law-suits;
- (g) neglect of financial responsibilities;
- (h) neglect of professional obligations;
- (i) violation of an order of a court, including child support orders;
- (j) conduct that evidences current mental or emotional instability that may impair the ability to practice law;
- (k) conduct that evidences current drug or alcohol dependence or abuse that may impair the ability to practice law;
- (l) denial of admission to the Bar in another jurisdiction on character and fitness grounds;
- (m) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction;
- (n) making of false statements, including omissions, on bar applications in this state or any other jurisdiction.

(4) **Considerations.** The Board shall determine whether the present character and fitness of an applicant qualifies the applicant for admission. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

- (a) the applicant's age at the time of the conduct;
- (b) the recency of the conduct;
- (c) the reliability of the information concerning the conduct;
- (d) the seriousness of the conduct;
- (e) the factors underlying the conduct;
- (f) the cumulative effect of the conduct or information;
- (g) the evidence of rehabilitation;
- (h) the applicant's positive social contributions since the conduct;
- (i) the applicant's candor in the admissions process;
- (j) the materiality of any omissions or misrepresentations.

(5) **Continuing Obligation.** The applicant has a continuing obligation to update the application with respect to all matters inquired of on the application. This obligation continues during the pendency of the application, including the period when the matter is on appeal to the Board or the Court.

(6) **Determination.** A character and fitness determination shall be made with respect to each applicant who is a successful examinee or who is qualified by practice for admission under these Rules. An adverse determination on character and fitness grounds may be appealed under Rule 14.

(7) Advisory Opinions.

(a) A law student may request a written advisory opinion from the Board with respect to his or her character and fitness for admission by filing the following:

- (1) A completed application for admission;
- (2) A fee in the amount required under Rule 11;
- (3) Two notarized affidavits as required by Rule 4(C)(1)(b);
- (4) An authorization for release of information as required by Rule 4(C)(1)(c).

(b) Advisory opinions will not be binding on the Board.

Rule 6. Admission by Examination

A. Dates of Examinations. Examinations shall be held the last Tuesday and Wednesday of the months of February and July each year, at a place to be determined by the Board.

B. Timely Filing Deadlines. An application for admission by examination shall be filed in the office of the Board by October 15 for the February examination, or by March 15 for the July examination.

C. Late Filing Deadlines. Late applications will be accepted on or before December 1 for the February examination, or on or before May 1 for the July examination but must be accompanied by the late filing fee pursuant to Rule 10. No applications shall be accepted after the late filing deadline.

D. Denial of Opportunity to Test. An applicant may be denied permission to take an examination:

- (1) If the applicant has failed to comply with the requirements of Rule 4(C);
- (2) If the Board has determined the applicant has not satisfied the good character and fitness requirement of Rule 4(A)(2).

E. Scope of Examination. The Minnesota Bar Examination shall consist of the following:

(1) **Essay and Multiple Choice.** Essay questions and multiple choice questions on any combination of the following subjects:

Administrative Law
Civil Procedure
Constitutional Law
Contracts
Criminal Law and Procedure
Ethics and Professional Responsibility
Evidence
Family Law
Federal Individual Income Taxation
Partnership, Proprietorship, and Corporations
Real Property
Torts
Uniform Commercial Code, Art. 1, 2
Wills, Estates and Trusts; and

(2) **Performance Test.** Commencing with the February 2001 examination, one or more questions to test the applicant's ability to perform a lawyering task using legal and factual materials provided.

F. Testing Accommodations. An applicant whose disability requires testing accommodations shall submit with the application a written request pursuant to the Board's testing accommodations policy and shall describe:

- (1) The type of accommodation requested;
- (2) The reasons for the requested accommodation, including medical documentation in a format set forth in the policy referenced above.

The Board shall notify the applicant of its decision. A denial or modification of a request for testing accommodations constitutes an adverse determination of the Board and may be appealed pursuant to Rule 14.

G. Examination Results. The results of the examination shall be released to examinees by regular mail to the address listed in the files of the Board, and successful examination numbers will be posted at the Court and at each Minnesota law school. The date of the release shall be announced at the examination.

H. Failing Examination Scores. A failing score on the bar examination represents a final decision of the Board and does not afford the applicant the appeal and hearing rights set forth in Rule 14.

I. Stale Examination Scores. A passing score on the Minnesota bar examination is valid for 24 months from the date of the examination. Applicants must be admitted within 24 months of the examination.

Rule 7. Admission Without Examination

A. Eligibility by Practice. An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4, has been licensed to practice in the highest court of another jurisdiction, and as principal occupation has been actively and lawfully engaged in the practice of law in that jurisdiction or pursuant to that license for at least five of the seven years immediately preceding the application. Practice of law may include:

(1) Legal service as a sole practitioner or as a member of a law firm, professional corporation or association;

(2) Judicial service in a court of record or other legal service with any local or state government or with the federal government including services as a member of the Judge Advocate General's Department of one of the military branches of the United States;

(3) Legal service as inside counsel for a corporation, agency, association or trust department;

(4) Teaching full-time in any approved law school.

B. Eligibility by Test Score. An applicant may be eligible for admission without examination under Rule 4(A)(4) if the applicant has received a scaled score of 145 or above on the Multistate Bar Examination taken as a part of and at the same time as the essay or other part of a written bar examination given by another jurisdiction, was successful on that bar examination and subsequently admitted in that jurisdiction. Evidence of the score and a completed application must be received at the office of the Board within 24 months of the date of the examination that is being used as the basis for the admission.

C. No Waiver of Time Requirements. The minimum time requirements and the timely filing requirements of this Rule shall be strictly enforced.

D. Eligibility After Unsuccessful Examination. An applicant may be eligible for admission without examination under this Rule notwithstanding a prior failure on the Minnesota Bar Examination.

E. Ineligibility for Admission Without Examination. Any person who holds himself or herself out as a licensed Minnesota attorney or attempts to engage in the practice of law in Minnesota without first obtaining a license under these Rules is ineligible for admission without examination.

Rule 8. Temporary License for Legal Services Programs

A. Eligibility. An attorney licensed in another state, or the District of Columbia, may apply for and obtain a temporary license to practice law in Minnesota when the applicant has accepted employment in Minnesota as an attorney for a legal services program.

B. Filing. In order to qualify for the license, the attorney must comply with the requirements of Rule 4(A)(1), (2), (3) and (6) and must file with the Board, the following:

(1) A completed application for temporary license to practice law in Minnesota for a legal services program;

(2) A certificate of the highest court of the state of licensure certifying that the attorney is in good standing and that no charges of professional misconduct are pending;

(3) An affidavit from the applicant's employer attesting to his/her knowledge of the applicant's competence and good character, and the fact that the applicant has accepted employment as an attorney for a legal services program in Minnesota and will be supervised by a licensed Minnesota attorney;

(4) Two additional affidavits of character as prescribed by Rule 4(C)(1), and a fee consistent with Rule 11(F) of these Rules.

C. Certification of Applicant's Good Character and Fitness. The office of the Board shall conduct an expedited character and fitness investigation and certify the applicant's good character and fitness prior to issuance of a license under this Rule.

D. Limitation. A license granted pursuant to this Rule shall authorize the attorney to practice solely on behalf of the indigent clients of the designated legal services program.

E. Duration and Revocation. This temporary license shall be valid for a period of no more than 15 months from the date of issuance. Upon notice to the Clerk of the Appellate Courts, the Board shall have authority to revoke a temporary license issued pursuant to this Rule upon the occurrence of any of the following:

(1) The holder's admission to practice law in Minnesota pursuant to Rule 6 (Admission by Examination), Rule 7(A) (Eligibility by Practice) or 7(B) (Eligibility by Test Score);

(2) Termination of the holder's employment with the employer referred to in Rule 7(B)(3);

(3) The lapse of 15 months from the date of issuance;

(4) The holder's failing the Minnesota Bar Examination; or

(5) Issuance by the Board of an adverse determination relative to the applicant's character and fitness.

F. Credit for Admission Without Examination. Time in the practice of law in the State of Minnesota under this temporary license may be counted toward the applicant's eligibility for admission without examination under Rule 7(A).

Rule 9. Temporary License for In-House Counsel

A. Eligibility. An attorney licensed in another state or the District of Columbia may apply for and obtain a temporary license to practice law in Minnesota when the applicant is employed in Minnesota as an attorney solely for a single corporation (or its subsidiaries), association, business or governmental entity whose lawful business consists of activities other than the practice of law or the provision of legal services.

B. Requirements. In order to qualify for the license, the attorney must file with the Board of Law Examiners the following:

(1) A completed application for license to practice law in Minnesota;

(2) A certificate of the highest court of the state of licensure certifying that the attorney is in good standing and that no charges of professional misconduct are pending;

(3) An affidavit from an officer, director or general counsel of applicant's employer or parent company employer attesting to the fact that applicant is employed as an attorney solely for said employer, that applicant is an individual of good character, and that the nature of the employment meets the requirements of section A of this Rule;

(4) An affidavit of applicant attesting to applicant's full-time practice of law for at least five of the previous seven years;

(5) A fee consistent with Rule 11(E).

C. Certification of the Applicant's Good Character and Fitness. An expedited character and fitness investigation will be conducted and the Director's initial certification of the applicant's good character and fitness made before issuance of a license pursuant to this Rule.

D. Limitation. A license granted pursuant to this Rule shall authorize the attorney to practice solely for the designated employer.

E. Duration and Revocation. This Temporary License shall be valid for a period of no more than twelve months from the date of issuance. Upon notice to the Clerk of Appellate Courts, the Board shall have authority to revoke a temporary license issued pursuant to this Rule upon the occurrence of any of the following:

- (1) The holder's admission to practice law in Minnesota pursuant to Rule 6 (Admission by Examination), Rule 7(A) (Eligibility by Practice) or Rule 7(B) (Eligibility by Examination Score);
- (2) Termination of holder's employment with the employer referenced in Rule 9(B)(3);
- (3) Issuance of an adverse determination pursuant to Rule 14(A).

Rule 10. License for Foreign Legal Consultants

A. Eligibility. A person who is admitted to practice in a foreign country as an attorney or counselor at law may apply for, and at the discretion of the Board of Law Examiners, may obtain a license to render services as a foreign legal consultant in the State of Minnesota, without examination, subject to the limitations set forth in this Rule.

B. Requirements. In order to qualify for the license the applicant must:

- (1) have been admitted to practice in a foreign country as an attorney or counselor at law or the equivalent; and
- (2) as principal occupation, have been engaged in the practice of law of that country in that country for at least five of the seven years immediately preceding the application; and
- (3) be in current good standing as an attorney or counselor at law or the equivalent in that country, and have remained in good standing throughout the period of his/her practice; and
- (4) possess the good character and fitness required for admission to practice in this state; and
- (5) be at least 24 years of age; and
- (6) maintain an office in the state of Minnesota for the rendering of services as a foreign legal consultant.

C. Applications. In order to qualify for the foreign legal consultant license, an applicant must file with the Minnesota Board of Law Examiners the following documents, together with duly authenticated English translations, if they are not in English:

- (1) a sworn and notarized typewritten Application for Foreign Legal Consultant License;
- (2) a duly authenticated certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted to practice, which shall be accompanied by the official seal, if any, of such authority, and which shall certify:
 - (a) the authority's jurisdiction in such matters;
 - (b) the applicant's admission to practice in such foreign country, the date of admission, and the applicant's good standing as an attorney or counselor at law or the equivalent in that jurisdiction;
- (3) a duly authenticated document from any foreign country or jurisdiction in which said consultant has been licensed as an attorney or as a foreign legal consultant indicating whether any charge or complaint has ever been filed against the applicant with such authority, if so, the substance of each such charge or complaint, and the adjudication or resolution of each such charge or complaint;
- (4) a letter or recommendation signed by, and accompanied with the official seal, if any, of one of the members of the executive body of such authority or from one of the judges of the highest court of law of such foreign country, certifying to the applicant's professional qualifications;
- (5) a summary of the law or rule, if any, of such foreign country which permits members of the bar of Minnesota to establish offices for the giving of legal advice to clients in such foreign country;

(6) letters of recommendation from at least three attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, setting forth the length of time, and under what circumstances they have known the applicant and stating their appraisal of the applicant's good character and fitness for admission;

(7) notarized letters of recommendation from at least two members in good standing of the Minnesota Bar, setting forth the length of time, and under what circumstances they have known the applicant and their appraisal of the applicant's good character and fitness for admission;

(8) such other evidence as to the applicant's educational and professional qualifications, good character and fitness and compliance with the requirements of this rule as the Minnesota Board of Law Examiners may require; and

(9) a fee in the amount of \$1,000, in the form of a certified check or money order.

D. Investigation. The Minnesota Board of Law Examiners shall conduct such investigation into the applicant's background and verification of supporting documents as the Board may deem appropriate or necessary in the circumstances.

E. Scope of Practice. A person licensed as a foreign legal consultant under this rule may render legal services in the State of Minnesota regarding the laws of the country in which such person is admitted to practice as an attorney, counselor at law or equivalent. The foreign legal consultant shall not, however, conduct any activity or render any services constituting the practice of the law of the United States, the State of Minnesota, or that of any other state, commonwealth or territory of the United States or the District of Columbia including, but not limited to, the restrictions that such person shall not:

(1) appear for another person as attorney in any court or before any magistrate or other judicial officer or before any federal, state, county or municipal governmental agency, quasi-judicial or quasi-governmental authority in the State of Minnesota, or prepare pleadings or any other papers in any action or proceedings brought in any such court or before any such judicial officer, except as authorized in any rule or procedure relating to admission pro hac vice, or pursuant to administrative rule;

(2) provide legal advice in connection with the preparation of any deed, mortgage, assignment, discharge, lease, agreement of sale or any other instrument affecting title to:

(a) real property located in the United States of America;

(b) personal property located in the United States of America, except where the instrument affecting title to such personal property is governed by the law of a jurisdiction in which the foreign legal consultant is admitted to practice as an attorney or counselor at law or the equivalent;

(3) prepare:

(a) any will or trust instrument affecting the disposition of any property located in the United States of America and owned by a resident thereof;

(b) any instrument relating to the administration of a decedent's estate in the United States of America;

(4) prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of such a resident;

(5) render professional legal advice on the law of the State of Minnesota or the United States of America or any other state, subdivision, commonwealth or territory of the United States of America or the District of Columbia (whether rendered incident to the preparation of a legal instrument or otherwise);

(6) in any way represent that such person is admitted to the Bar of the State of Minnesota or is licensed as an attorney or foreign legal consultant in another state, territory or the District of Columbia, or as an attorney or counselor at law or the equivalent in a foreign country, unless so licensed;

(7) use any title other than "Foreign Legal Consultant, Not Admitted to Practice Law in Minnesota", provided that such person's authorized title and firm name in the foreign country in which such person is admitted to practice as attorney or counselor at law or the

equivalent may be used if the title, firm name, and the name of such foreign country are stated together with the above-mentioned designation;

(8) render any legal services for a client without utilizing a written retainer agreement which shall specify in bold type that the foreign legal consultant is not admitted to practice law in the State of Minnesota, nor licensed to advise on the laws of the United States or the District of Columbia, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where such person is admitted to practice as an attorney or counselor at law or the equivalent; or

(9) hold any client funds or valuables without entering into a written retainer agreement which shall specify in bold type the name of a Minnesota licensed attorney in good standing who is also representing the particular client in the particular matter at hand.

F. Disciplinary Provisions.

(1) A foreign legal consultant is expressly subject to the Minnesota Rules of Professional Conduct and to continuing review of qualifications to retain any license granted hereunder, and shall be subject to the disciplinary jurisdiction of the Minnesota Office of Lawyers Professional Responsibility and the Minnesota Supreme Court.

(2) Section 1 above shall not be construed to limit in any way concurrent disciplinary procedures to which the foreign legal consultant may be subject in the country of admission.

(3) A foreign legal consultant shall execute and file with the Board of Law Examiners, in such form and manner as the court prescribes:

(a) a statement that the foreign legal consultant has read, understood, and made a commitment to observe the Minnesota Rules of Professional Conduct; and

(b) either:

(1) an undertaking or appropriate evidence of professional liability insurance, in such amount as the Minnesota Supreme Court may prescribe, to assure such foreign legal consultant's proper professional conduct and responsibility; or

(2) an appropriate undertaking in the amount of \$50,000 in the form of a bond, letter of credit or other financial guaranty instrument issued by a reputable financial institution based in, and authorized to do business in, the United States of America or any state therein for the purpose of assuring the foreign legal consultant's proper professional conduct and responsibility; and

(c) a duly acknowledged instrument in writing setting forth such foreign legal consultant's address within the State of Minnesota and designating the Clerk of the Appellate Courts as agent for the service of process for all purposes; and

(d) a commitment to notify the Minnesota Board of Law Examiners of any resignation or revocation of such foreign legal consultant's admission to practice in the foreign country of admission, or in any other state or jurisdiction in which the foreign legal consultant has been licensed as an attorney or counselor at law or equivalent or as a foreign legal consultant, or of any censure, suspension, or expulsion in respect of such admission.

G. Annual Certification and Renewal Fees.

(1) A foreign legal consultant shall submit on a biennial basis to the Minnesota Board of Law Examiners:

(a) a sworn statement attesting to his/her continued good standing as an attorney or counselor at law or equivalent in the foreign country in which he/she is admitted to practice;

(b) a fee in the amount of \$200.

(2) The foreign legal consultant shall submit on an annual basis to the Minnesota Attorney Registration office an attorney registration fee equivalent to the renewal fees paid by Minnesota licensed attorneys pursuant to the Rules of the Supreme Court for Registration of Attorneys.

Rule 11. Fees

A. General. All application fees required under these rules shall be paid by certified check, money order or bank draft payable to the Board. All other fees and charges may be

paid by personal check or money order. The applicable fee is determined as of the date of filing of a complete application under Rule 4.

B. Fee for Examination, Not Previously Admitted. An applicant taking the examination for the first time and filing on or before October 15 for the February examination, or on or before March 15 for the July examination, shall submit a fee of \$300. An application for the examination submitted after the timely filing date but on or before December 1 for the February examination, or on or before May 1 for the July examination, shall include a fee of \$450.

C. Fee for Examination, Prior Admission. An applicant licensed to practice in another jurisdiction more than six months prior to the date of the Minnesota examination and timely filing shall submit a fee of \$625. An application for examination submitted after the timely filing date but on or before December 1 for the February examination, or on or before May 1 for the July examination, shall include a fee of \$775. An applicant licensed to practice in another jurisdiction less than six months prior to the date of the Minnesota examination, shall comply with paragraph B of this Rule.

D. Repeat Examinations. An applicant who has previously been unsuccessful on the examination and filing on or before December 1 for the February examination, or on or before May 1 for the July examination, shall include a fee of \$300 and comply with Rule 4(C)(5).

E. Fee for Admission Without Examination. An applicant for admission without examination shall submit a fee of \$625. An applicant for admission pursuant to Rule 9 shall submit a fee of \$825.

F. Fee for Temporary License for Legal Services Program Practice. A fee in the amount of \$50 must accompany an application for Temporary License pursuant to Rule 8. Payment of an additional fee, as required by Rule 11(B), will qualify applicants under Rule 6. Payment of an additional fee, as required by Rule 11(C), will qualify applicants under Rule 7(A) or 7(B).

G. Transfer of Rule 8 Application to Rule 6 or Rule 7 Application. Documents submitted in support of a Rule 8 (Temporary License for Legal Services Programs) application for license may, upon the written request of applicant, constitute application pursuant to Rule 6 (Admission by Examination) or Rule 7 (Admission Without Examination) of these Rules, provided additional fees required by Rule 11 are submitted.

H. Refunds of Fees. An applicant may request a refund in the amount of \$100 in the following circumstances:

(1) If the applicant who advises the Board in writing at least four days prior to an examination of the applicant's desire to withdraw the application;

(2) If the applicant was denied permission to take an examination for failure to provide a certificate of graduation required by Rule 4(C)(2)(a).

No other requests for refund will be granted.

I. Carry-over of Fees.

(1) **Ineligible Rule 7 Applicants.** The fee of an applicant declared ineligible under Rule 7 (Admission Without Examination) shall be applied to an examination held within the succeeding 15 months at the written request of the applicant received within 30 days of notice of the denial. No other transfers of fees, other than those provided for in the following paragraph, shall be granted.

(2) **Medical Emergencies.** An applicant who is unable to sit for the examination due to a medical emergency and who notifies the Board prior to the examination, may request carry-over of the application fee to the next examination. Such requests must be made in writing and be accompanied by written documentation of the medical emergency.

J. Transfer of Examination Scores. A request for transfer of scores pursuant to Rule 6(H) shall include a fee of \$25. A score report may be obtained by submitting payment of \$25 to the National Conference of Bar Examiners.

K. Copies of Examination Answers. An unsuccessful applicant may request copies of the applicant's essay answers upon written request to the Board within 60 days of the release of the examination results and submission of a fee of \$15.

L. Other Fees. The Board may require an applicant to bear the expense of obtaining reports or other information necessary for the Board's investigation. The Board may charge reasonable fees for collection and publication of any information permitted to be released. For matters not covered in these Rules, the Director may set reasonable fees which reflect the administrative costs associated with the service.

M. Fees for Advisory Opinions. An application filed for the purpose of receiving an advisory opinion from the Board must be accompanied by a fee in the amount of \$100.

Rule 12. Immunity.

A. Immunity of the Board. The Board and its members, employees, and agents are immune from civil liability for conduct and communications relating to their duties under these Rules or the Board's policies and procedures.

B. Immunity of Persons or Entities Providing Information to the Board. Any person or entity providing to the Board or its members, employees or agents, any information, statements of opinion, or documents regarding an applicant or potential applicant is immune from civil liability for such communications.

Rule 13. Information Disclosure

A. Application File. An applicant may review the contents of his or her application file with the exception of the work product of the Board and its staff. Such review must take place within two years after the filing of the last application for admission in Minnesota, at such times and under such conditions as the Board may provide.

B. Work Product. The Board's work product shall not be produced or otherwise discoverable, nor shall any member of the Board or its staff be subject to deposition or compelled testimony except upon a showing of extraordinary circumstance and compelling need and upon order of the Court. In any event, the mental impressions, conclusions, and opinions of the Board or its staff shall be protected and not subject to compelled disclosure.

C. Examination Data.

(1) Statistics. Statistical information relating to examinations and admissions may be released at the discretion of the Board.

(2) Transferability of Examination Scores. The Director may advise an examinee whether an examination score is sufficient under the rules of a jurisdiction, upon written request of the examinee, identifying by month and year the Minnesota examination taken, the exact name on the examination, and a copy of the rules of the jurisdiction in which the examinee is interested.

(3) Disclosure of Examination Scores. The scores of an examinee may be disclosed:

(a) Upon written request of the examinee and payment of the fee under Rule 11(J), to the bar admission authority of a jurisdiction;

(b) At the discretion of the Board, to the law school from which the examinee graduated;

(c) To an unsuccessful examinee, the scores assigned to each of the various portions of the examination, and copies of answers to the essays pursuant to Rule 11(K).

D. Release of Information to Other Agencies. Information may be released to any authorized lawyer disciplinary agency, bar admissions authority or to persons or other entities in furtherance of the character and fitness investigation.

E. Referrals. Information relating to the misconduct of an applicant may be referred to the appropriate authority.

F. Confidentiality. Subject to the exceptions contained in Rule 3(C) and this rule, all other information contained in the files of the office of the Board is confidential and shall not be released to anyone other than the Court except upon order of the Court.

Rule 14. Adverse Determinations and Hearings

A. Adverse Determination. When an adverse determination relating to an applicant's character, fitness or eligibility is made by the Board, the Director shall notify the applicant of

the determination, the reasons for the determination, the right to request a hearing, the right to be represented by counsel, and the right to present witnesses and evidence.

B. Request for Hearing. Within 20 days of notice of an adverse determination, the applicant may make a written request for a hearing. If the applicant does not timely request a hearing, the adverse determination becomes the final decision of the Board.

C. Scheduling of Hearing. The Board shall schedule a hearing upon receipt of the applicant's request for a hearing. At least 30 days prior to the hearing, the Board shall notify the applicant of the time and place.

D. Proceedings. In the discretion of the Board President, the hearing may be held before the full Board, before a sub-committee of the Board appointed by the President, or before a hearing examiner appointed by the President. The Board may employ special counsel. The hearing shall be recorded and a transcript shall be provided to the applicant on request at a reasonable cost.

E. Pre-Hearing Conference. The Board President or designee shall conduct a pre-hearing conference to address procedural issues. Unless the President or designee orders otherwise, Board counsel and the applicant shall exchange exhibit lists and the names and addresses of witnesses at least ten days before the hearing.

F. Subpoenas. Upon written authorization of the Board President or designee, the applicant and Board counsel may subpoena evidence and witnesses for the hearing. The District Court of Ramsey County shall issue subpoenas.

G. Continuances. A written request for a continuance of a scheduled hearing shall be heard by the Board President or designee, who shall grant such request only upon a showing of good cause.

H. Final Decision. Following the hearing, the Board shall notify the applicant of its findings of fact, conclusions of law and final decision.

Rule 15. Appeal to the Supreme Court

A. Petition for Review. Any applicant who is adversely affected by a final decision of the Board may appeal to the Court by filing a petition for review with the Clerk of Appellate Courts within 20 days of receipt by the applicant of a final decision of the Board together with proof of service of the petition on the Director of the Board. The petition shall briefly state the facts that form the basis for the complaint, and the applicant's reasons for believing the Court should review the decision.

B. Board Response. Within 20 days of service of the petition, the Board shall serve and file a response to the petition and a copy of the final decision of the Board. Thereupon the Court shall give such directions, hold such hearings and make such order as it may in its discretion deem appropriate.

Rule 16. Reapplication After Denial

After expiration of the time for appeal allowed in Rule 14(B) or Rule 15(A), or after denial of petition by the Court, an applicant determined not to have satisfied the character and fitness requirement is prohibited from reapplying for admission to practice in Minnesota for three years from the date of the Board's adverse determination.

Rule 17. Bar Admissions Advisory Council

A. Creation. There shall be an Advisory Council consisting of representatives of the State Bar Association and of each of the Minnesota law schools to consult with the Board on matters of general policy concerning admissions to the Bar, amendments to the Rules and other matters related to the work of the Board.

B. Meetings. The Secretary of the Board shall call a joint meeting of the Advisory Council and the Board at least once each year. The Council shall meet at such other time as it may determine or when called by the Court or the Board.

C. Expenses. The members of the Advisory Council shall receive no compensation or reimbursement of expenses and shall serve for terms of three years.

Rules of the Supreme Court for Registration of Attorneys

Adopted August 4, 1970
With amendments received through August 1, 1999

TABLE OF HEADNOTES

Rule

2. Registration Fee

TEXT OF RULES

[For text of 1., see M.S. 1998, Volume 15]

Rule 2. Registration Fee

A. In order to defray the expenses of examinations and investigations for admission to the bar and disciplinary proceedings, over and above the amount paid by applicants for such admission, with exception hereinafter enumerated, each attorney admitted to practice law in this state and those members of the judiciary who are required to be admitted to practice as a prerequisite to holding office shall hereinafter annually pay to the clerk of the appellate courts a registration fee in the sum of Two Hundred and Seven Dollars (\$207) or in such lesser sum as the court may annually hereafter determine.

Such fee, or portion thereof, shall be paid on or before the first day of January, April, July, or October of each year as requested by the clerk of the appellate courts.

All sums so received shall be allocated as follows:

- \$20 to the State Board of Law Examiners
- \$14 to the State Board of Continuing Legal Education
- \$110 to the Lawyers Professional Responsibility Board
- \$13 to the Minnesota Client Security Fund
- \$50 to the Legal Services Advisory Committee.

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000) per year, shall pay a registration fee in the sum of One Hundred Eighty-two Dollars (\$182). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-five Dollars (\$25).

B. The following attorneys and judges shall pay an annual registration fee of One Hundred and One Dollars (\$101):

(a) Any attorney or judge whose permanent residence is outside the State of Minnesota and who does not practice law within the state;

(b) Any attorney while on duty in the armed forces of the United States.

The One Hundred and One Dollars (\$101) so received shall be allocated as follows:

- \$20 to the State Board of Law Examiners
- \$7 to the State Board of Continuing Legal Education
- \$24 to the Lawyers Professional Responsibility Board
- \$50 to the Legal Services Advisory Committee.

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000) per year, shall pay a registration fee in the sum of Seventy-six Dollars (\$76). The allocation to the Legal Services Advisory Committee shall be reduced by Twenty-five Dollars (\$25).

C. Any attorney who has not been admitted to practice for more than three years shall pay an annual registration fee of Ninety-six Dollars (\$96).

The Ninety-six Dollars (\$96) so received shall be allocated as follows:

- \$20 to the State Board of Law Examiners
- \$14 to the State Board of Continuing Legal Education
- \$24 to the Lawyers Professional Responsibility Board
- \$13 to the Client Security Fund
- \$25 to the Legal Services Advisory Committee.

An attorney who certifies that his or her gross income from all sources, excluding the income of a spouse, is less than Twenty-five Thousand Dollars (\$25,000) per year, shall pay a registration fee in the sum of Eighty-three Dollars and fifty cents (\$83.50). The allocation to the Legal Services Advisory Committee shall be reduced by Twelve Dollars and fifty cents (\$12.50).

D. Any attorney who is retired from any gainful employment or permanently disabled, or who files annually with the clerk of the appellate courts an affidavit that he or she is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. An attorney claiming retired or permanently disabled status who subsequently resumes active practice of law shall promptly file notice of such change of status with the clerk of the appellate courts and pay the annual registration fee.

E. Any judge who is retired from any gainful employment or permanently disabled, who no longer serves on the bench or practices law, and who files annually with the clerk of the appellate courts that he or she is so retired or disabled and not engaged in the practice of law, shall be placed in a fee-exempt category and shall remain in good standing. A judge claiming retired or permanently disabled status who subsequently resumes service on the bench or the active practice of law shall promptly file notice of such change of status with the clerk of the appellate courts and pay the annual registration fee.

(Amended August 12, 1980; amended May 18, 1982, effective for payments due after July 1, 1982; amended February 10, 1983; amended January 13, 1984; amended July 25, 1984, effective for payments due after October 1, 1984; amended April 7, 1987, effective for payments due after July 1, 1988; amended November 14, 1990, effective for payments due on or after July 1, 1991; amended April 15, 1992, effective for payments due between July 1, 1992 and June 30, 1993; effective for payments due on and after July 1, 1993; amended effective December 3, 1993; amended June 13, 1996, effective for licenses due for renewal on October 1, 1996, and for new licenses issued on or after October 1, 1996; amended February 5, 1997, effective for licenses due for renewal on July 1, 1997, and for new licenses issued on or after July 1, 1997; amended effective August 6, 1997, for licenses being renewed on or after August 6, 1997, and for new licenses issued on or after August 6, 1997, the allocation of fees set by Supreme Court Order C9-81-1206 shall continue in effect until June 30, 1998; allocation continued until further order of the Court by Supreme Court order dated May 20, 1999.)

[For text of 3. to 9., see M.S. 1998, Volume 15]

Rules of Board on Judicial Standards

Adopted Effective July 1, 1986

Revised Effective January 1, 1990

With amendments received through August 1, 1999

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TEXT OF RULES

[For text of Definitions, see M.S. 1998, Volume 15]

RULE 1. ORGANIZATION OF BOARD

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of Court of Appeals, three judges of district court, two lawyers who have practiced law in the state for at least ten years and four resident citizens of Minnesota who are not judges, retired judges or lawyers. The executive secretary, who shall be an attorney licensed to practice law in Minnesota, with a minimum of fifteen years' experience in the practice of law, including any service as a judge, shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate except that senate confirmation shall not be required for judicial members. Minnesota Statutes, section 490.15.

(b) Term of Office.

(1) The term of each member shall be four years.

(2) No member shall serve more than two full four-year terms or their equivalent, not to exceed eight years.

(c) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge who is a member of the board ceases to hold the judicial office held at the time of selection; or

(iii) When a lawyer ceases to be in good standing to practice law in the courts of this state or is appointed or elected to a judicial office; or

(iv) When a lay member becomes a lawyer; or

(v) When a member is no longer a resident citizen.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of the predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of the predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor.

(d) Duties and Responsibilities of Executive Secretary. The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

(1) Receive complaints and allegations as to misconduct or disability;

(2) Make preliminary evaluations;

(3) Conduct investigations of complaints as directed by the board;

(4) Recommend dispositions;

(5) Maintain the board's records;

(6) Maintain statistics concerning the operation of the board and make them available to the board and to the Supreme Court;

(7) Prepare the board's budget for approval by the board and administer its funds;

(8) Employ and supervise other members of the board's staff;

(9) Prepare an annual report of the board's activities for presentation to the board, to the Supreme Court and to the public;

(10) Employ, with the approval of the board, special counsel, private investigators or other experts as necessary to investigate and process matters before the board and before the Supreme Court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose shall not be allowed. The use of the director and staff of the Office of Lawyers Professional Responsibility for this purpose shall be allowed if the matter involves conduct of a judge, other than a Supreme Court Justice, that occurred prior to the judge assuming judicial office. Individuals employed or providing assistance under this section shall be deemed to be counsel to the Board on Judicial Standards for the purposes of these rules.

(e) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be six members of the board.

(2) The board shall elect from its members a chairperson and vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson.

(f) Meetings of the Board. Meetings of the board shall be held at the call of the chairperson, the vice-chairperson, the executive secretary or the written request of three members of the board.

(g) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the Supreme Court.

(h) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget. (Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 1(d)(10) has been modified to allow the use of the director and staff of the Office of Lawyers Professional Responsibility to provide investigative and support services in situations involving conduct that occurred prior to a judge assuming judicial office. Related changes grant the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline. R.Bd.Jud.Std. 2; R.L.Prof.Resp. 6Z(a). It is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility [R.Bd.Jud.Std. 6Z(b); R.L.Prof.Resp. 6Z(b)(2)], and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards. Related changes also authorize the use of the hearing record, findings, and recommendations of the lawyer disciplinary process in the judicial disciplinary process. R.Bd.Jud.Std. 6Z(d); R.L.Prof.Resp. 6Z(b)(4).

Rule 1(d)(10) prohibits the use of the staff of the Office of Lawyers Professional Responsibility when the pre-bench conduct at issue involves a Supreme Court Justice because the office's director and staff are appointed and compensated by the Court. If such a case were to arise, it is contemplated that the Office of Lawyers Professional Responsibility would follow existing conflict procedures, which include assigning a former attorney or former board member to review and follow up on patently frivolous complaints and hiring outside counsel and investigators to handle other complaints. The prohibition against the use of office staff does not prohibit communication of confidential information between the two boards regarding matters involving the conduct of a justice occurring prior to assumption of judicial office.

Modifications to Rule 1(d)(10) also clarify that individuals employed or providing assistance to the executive secretary and the board are considered counsel to the board for purposes of these rules. This ensures, for example, that the immunity and privilege provisions under Rule 3 and the confidentiality and work product provisions under Rule 5 apply to these individuals when they are assisting the executive secretary and the board.

RULE 2. JURISDICTION AND POWERS OF BOARD

(a) Powers in General. The board shall have the power to receive complaints, investigate, conduct hearings, make certain summary dispositions, and make recommendations to the Supreme Court concerning:

- (1) Allegations of judicial misconduct;
- (2) Allegations of physical or mental disability of judges;
- (3) Matters of voluntary retirement for disability; and
- (4) Review of a judge's compliance with Minnesota Statutes, section 546.27.

(b) Jurisdiction Over Full-Time and Part-Time Judges. The board shall have jurisdiction over the conduct of all judges, including full-time judges, retired judges subject to assignment, and part-time judges such as conciliation court referees. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. The board shall have exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board shall have jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, such as a referee of conciliation court, not occurring in a judicial capacity.

(c) Jurisdiction Over Former Judge. The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the Supreme Court.

(d) Subpoena and Depositions.

(1) Depositions Limited. Depositions shall not be allowed, provided that, for good cause shown, a deposition may be taken of a witness living outside the state or physically unable to attend the hearing.

(2) Subpoenas for Investigation. During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(d), and subject to the limitations of Rule 2(d)(1):

(i) Upon resolution of the board, the executive secretary may make application for the issuance of a subpoena compelling any person, including a judge, to attend and give testimony, and to produce documents, books, accounts and other records. Such subpoena shall issue upon a showing that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) Failure or refusal of a judge who is the subject of information to cooperate or the intentional misrepresentation of a material fact by the judge shall constitute conduct prejudicial to the administration of justice and may be sufficient cause for the board to proceed under Rule 2(d)(3).

(3) Subpoenas for Hearing. At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(d), and subject to the limitations of Rule 2(d)(1), both the board and the judge being investigated shall be entitled to compel, by subpoena, attendance and testimony of witnesses, including the judge as a witness, and the inspection of documents, books, accounts and other records.

(4) Issuing Subpoenas. The District Court of Ramsey County shall issue subpoenas.

(5) Motions. Prior to the appointment of a factfinding panel pursuant to Rule 10(a), the District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(d) requests. Following the appointment of a factfinding panel, the presider of the factfinding panel before whom the matter is pending shall have jurisdiction over motions arising from Rule 2(d) requests and shall have all the powers of a district court judge. Any resulting decision or order of the presider of the factfinding panel or the District Court of Ramsey County may not be appealed before entry of the final order in the disciplinary proceeding. The judge shall be denominated by number or randomly selected initials in any District Court proceedings.

(e) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Article 8.

(Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 2(a) has been amended to recognize that the board may make certain summary dispositions. These dispositions include proposed public reprimands under Rule 6(d)(1)(ii), which are subject to a judge's right to demand a formal hearing before the reprimand is made public, and nonpublic warnings, conditions, counseling, treatment, and assistance directed by the board under Rule 6(f).

Rule 2(b) has been modified to permit the Lawyers Professional Responsibility Board to also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office. As set forth in the definition section of these rules, the term "judge" includes any judge, judicial officer, referee, or other hearing officer employed in the judicial branch, and any judge of the Minnesota Tax Court or Worker's Compensation Court of Appeals. See Minnesota Statutes, sections 490.15–.18; 175A.01; subdivision 4; 271.01 (1998). The procedure to be followed in situations involving pre-bench conduct is set forth in Rule 6Z of these rules.

[For text of 3. and 4., see M.S. 1998, Volume 15]

RULE 5. CONFIDENTIALITY

(a) Before Formal Complaint and Response. Except as otherwise provided in this rule, all proceedings shall be confidential until the Formal Complaint and response, if any, have been filed with the Supreme Court pursuant to Rule 8. The board shall establish procedures for enforcing the confidentiality provided by this rule.

(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be promptly notified and given a brief explanation of the board's action. The complainant shall also be promptly notified of any disposition pursuant to Rule 6(f).

(2) If at any time the board takes action as may be authorized pursuant to Rule 6(d)(1)(ii), such action shall be a matter of public record.

(3) Any action taken by the board pursuant to Rule 6(f) may be disclosed to the chief justice, chief judge and/or district administrator of the judicial district in which the judge sits. Such disclosure is at the discretion of the board and shall be for the purpose of monitoring future conduct of the judge and for assistance to the judge in modifying the judge's conduct. To the extent that any information is disclosed by the board pursuant to this provision, the chief justice, chief judge and/or district administrator shall maintain the confidentiality of the information in accordance with Rule 5.

(4) Information may be disclosed between the Board on Judicial Standards or executive secretary and the Lawyers Professional Responsibility Board or the director in furtherance of their duties to investigate and consider conduct that occurred prior to a judge assuming judicial office.

(b) After Formal Complaint and Response. Upon the filing of the Formal Complaint and written response, if any, with the Supreme Court, the files of the board, other than the Formal Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(c) Work Product. The work product of the executive secretary and board counsel, and the records of the board's deliberations, shall not be disclosed.

(d) Public Statements by Board.

(1) In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(2) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed may be released by the board.

(3) The board may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(e) Disclosure for Judicial Selection, Appointment, Election or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only (1) if the judge in question agrees to such dissemination and (2) if the file reflects some action of the board pursuant to Rule 6(d), Rule 6(f) or Rule 7. If the board action was taken on or after January 1, 1996, such information may also be released if a judge is involved in a contested election, subject to the same restrictions.

(f) Waiver of Confidentiality. A respondent judge may waive confidentiality at any time during the proceedings.

(Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 5(a) has been modified by the addition of clause (4) to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R.L.Prof Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp.6Z.

RULE 6. PROCEDURE PRIOR TO SUFFICIENT CAUSE DETERMINATION

(a) Initiation of Inquiry. An inquiry may be initiated as follows:

(1) An inquiry relating to conduct of a judge may be initiated upon a complaint.

(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.

(3) Upon request of the Chief Justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.

(b) Preliminary Evaluation. Upon receipt of a complaint as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation. The results of all evaluations shall be routinely submitted to the board.

(c) Investigation; Discretionary Notice.

(1) Upon review of the preliminary evaluation, or on its own motion, the board may, by resolution, authorize an investigation.

(2) Notice that an investigation has been authorized may be given to the judge whose conduct or physical or mental condition is being investigated.

(d) Sufficient Cause Determination.

(1) The board shall promptly consider the results of the investigation. If the board determines that there is sufficient cause to proceed, it shall either:

(i) comply with Rule 7, or where authorized under Rule 6Z(c), proceed directly to Rule 8; or

(ii) if the judge's conduct was unacceptable under one of the grounds for judicial discipline that does not merit formal proceedings or further discipline by the Supreme Court, issue a public reprimand. Prior to the issuance of a public reprimand pursuant to this Rule 6(d)(1)(ii), the judge shall be served with a copy of the proposed reprimand and a notice setting forth the time within which these rules require the judge to either submit comments and criticisms or to demand a formal hearing as provided in Rule 8. Within 20 days of service of the proposed reprimand, the board shall be served with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If a timely demand for a formal hearing is made, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the reprimand as originally prepared.

(2) A finding of sufficient cause shall require the concurrence of a majority of the full board.

(e) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the board shall promptly comply with Rule 5(a)(1). If informed of the proceeding, the judge shall also be promptly notified of its termination and the file shall be closed.

(2) A closed file may not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 6(d) or (f) or Rule 7.

(f) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed pursuant to Rule 7, it may make any of the following dispositions, unless the underlying conduct is part of a pattern involving the same or similar conduct:

(1) The board may warn the judge that the conduct may be cause for discipline.

(2) The board may impose reasonable conditions on a judge's conduct.

(3) The board may direct professional counseling, treatment or assistance for the judge.

(g) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(f) may demand a full hearing before a factfinder as provided in Rule 8.

(h) Representation by Counsel. A judge may be represented by counsel, at the judge's expense, at any stage of the proceedings under these rules.

(Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

The change in Rule 6(d)(1)(i) recognizes that the Board on Judicial Standards may proceed directly to issuance of a formal complaint under Rule 8 when there has been a related public proceeding before the Lawyers Professional Responsibility Board involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under Rule 7 may only serve to delay the disciplinary process.

Modifications to Rule 6(d)(1)(ii) allow the board to submit a proposed public reprimand to the judge for conduct that is unacceptable but not so serious as to warrant further discipline, e.g., a censure, by the Supreme Court. Disciplinary bodies in other jurisdictions have similar authority. See, e.g., Rule 6(g)(1), Rules of Procedure for the Arizona Commission on Judicial Conduct; Rules of the Georgia Judicial Qualifications Commission, Definition (c). The change is intended to provide the board with guidance regarding when it is appropriate to proceed directly to a proposed reprimand (which is subject to a judge's right to demand a formal hearing before the reprimand is made public) in lieu of formal charges under Rules 7 and 8.

RULE 6Z. PROCEDURE FOR CONDUCT OCCURRING PRIOR TO ASSUMPTION OF JUDICIAL OFFICE

(a) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility initiates an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(b) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(c) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(d) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding.

If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the board may be permitted to introduce additional evidence, relevant to alleged violations of the Code of Judicial Conduct, at the hearing under Rule 10.

(Added effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Related changes grant the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2; R.L.Prof.Resp. 6Z(a).

The provisions of Rule 6Z(a)–(d) are repeated in R.L.Prof.Resp. 6Z(b)(1)–(4). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(a) requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(a) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(a) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b) it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(c) authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under Rule 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under Rule 7 may only serve to delay the disciplinary process.

Rule 6Z(c) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow Rule 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(d) authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(d) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the Rule 10

judicial disciplinary hearing. Counsel for the board and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. See, e.g., In re Gillard, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); In re Gillard, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as fact finder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the rules do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

RULE 7. PROCEDURE WHERE SUFFICIENT CAUSE FOUND

(a) Statement of Charges.

(1) If no reprimand is issued under Rule 6(d)(1)(ii) after a finding of sufficient cause to proceed, the executive secretary shall prepare a Statement of Charges against the judge setting forth the factual allegations and the time within which these rules require the judge to serve a written response. Where more than one act of misconduct is alleged, each shall be clearly set forth...

(2) The judge shall be served promptly with a copy of the Statement of Charges. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The judge shall serve a written response on the board within 20 days of service of the Statement of Charges. A personal appearance before the board shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, a verbatim record of the proceedings shall be made.

(b) Termination after Response. The board may terminate the proceeding and dismiss the Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event comply with Rule 5(a)(1) and give notice to the judge that it has found insufficient cause to proceed.

(c) Quorum. If the board elects to proceed as authorized in Rule 8, such action must be by concurrence of a majority of the full board.

(Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comments – 1999 Amendments

The cross reference to Rule 6(d)(1)(ii) recognizes that in certain situations the board may proceed directly to a proposed reprimand (which is subject to a judge's right to demand a formal hearing before the reprimand is made public) in lieu of formal charges under Rules 7 and 8.

[For text of 8. to 10., see M.S. 1998, Volume 15]

RULE 11. PROCEDURE FOLLOWING FORMAL HEARING

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation.

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations.

(c) Review by the Board. The findings and recommendations and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder.

(d) Recommended Discipline. Based on clear and convincing evidence in the hearing record, the board shall make a recommendation to the Supreme Court of any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposing discipline as an attorney;
- (4) Imposing limitations or conditions on the performance of judicial duties;
- (5) Censure;
- (6) Imposing a civil penalty;
- (7) Suspension with or without pay; or
- (8) Any combination of the above sanctions.

(e) Quorum; Dissent; Dismissal.

(1) A recommendation for discipline shall be reported to the Supreme Court only if concurred in by a majority of the full board.

(2) If a majority of the full board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the Supreme Court with the majority decision.

(Amended effective January 1, 1996; amended effective March 30, 1999.)

Advisory Committee Comment – 1999 Amendment

Rule 11(d)(5) has been modified by deleting reprimand from the list of sanctions that may be issued after a formal hearing. Under Rule 6(d)(1)(ii), a reprimand may be issued by the board without resort to formal proceedings in situations involving conduct that is unacceptable under one of the grounds for judicial discipline but not so serious as to warrant further discipline, such as a censure, by the Supreme Court.

[For text of 12. to 18., see M.S. 1998, Volume 15]