

## **A Review Of The Rules Of Professional Conduct - ABA Ethics 2000**

**by**  
**Patrick R. Burns, Senior Assistant Director**  
**Minnesota Office of Lawyers Professional Responsibility**

Reprinted from *Minnesota Lawyer* (December 11, 2000)

It has been 15 years since Minnesota adopted our version of the ABA Model Rules of Professional Conduct. The practice of law has changed since then and lessons have been learned about the operation of the rules in this changing environment. The time is fast approaching for Minnesota to undertake a wholesale review of the Rules of Professional Conduct. This review will follow on the heels of the (presumed) adoption by the ABA of various amendments to the Model Rules proposed the ABA Ethics 2000 Commission.

The Ethics 2000 Commission, established in 1997, has conducted a comprehensive review of the Model Rules of Professional Conduct and suggested many revisions. The review process has been open and thorough. The Commission had 39 days of meetings and conducted eight public hearings. Input was received from many sources, including a 250-member Advisory Council. The Minnesota State Bar Association (MSBA), through its Rules of Professional Conduct Committee, has followed the discussions and provided input to the Commission with many of their suggestions being incorporated into the final draft.

The Commission has now presented its Report on the Evaluation of the Model Rules of Professional Conduct to the ABA House of Delegates. That report may be found at [www.abanet.org/cpr/ethics2k.html](http://www.abanet.org/cpr/ethics2k.html). Presumably the House of Delegates will review the report, do the inevitable last-minute tinkering, and, eventually adopt revised Model Rules of Professional Conduct. Thereafter, it is quite likely that the Minnesota Supreme Court will be asked to adopt some or all of the revisions.

The proposed changes run the gamut from housekeeping and clarification type changes to substantive revisions of the current rules. There is a proposal to expand the terminology section intended to clarify concepts that apply throughout the rules such as the concept of informed consent. There is proposed new language in the preamble and a new rule addressing the conduct of lawyers serving as third-party neutrals. Rule 1.4 governing communication with clients is significantly expanded to outline more specifically the nature of that obligation. There will be changes to Rule 1.5 regarding fees that include, amongst other things, a requirement of a written fee agreement with every client. There will be significant changes to Model Rule 1.6 regarding confidentiality. While Minnesota's Rule 1.6 has always differed from the Model Rule, some of the proposed changes may be ripe for adoption here as well. The conflict of interest rules are being reformulated with an eye towards easier applicability in the wide range of the various tasks lawyers perform both in and out of the litigation setting.

There is proposed a new rule, Rule 1.18, dealing with obligations to prospective clients. There will be clarifications of the lawyer's obligations to the tribunal where false evidence has either been submitted or where a client or witness proposes to submit false evidence. The rule prohibiting the unauthorized practice of law will be expanded and clarified.

This is only a thumbnail sketch of the proposed changes. These rules, in some form or another, will be the rules that regulate your practice in the future. The bar and the public will be well served by a thorough consideration of these changes. Please take the time to look at the proposed changes and make appropriate comment.