

AMENDMENTS TO THE RULES

By
William J. Wernz, Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (August 1986)

Effective July 1, 1986, the Rules on Lawyers Professional Responsibility have been extensively amended by order of the Minnesota Supreme Court. These amendments affect the procedural rules governing lawyer discipline investigations and proceedings. The amendments do not affect the substantive Rules of Professional Conduct which establish the ethical standards governing the profession. Attorneys subject to disciplinary investigation or charges, and those who represent them, should closely review the amendments.

The procedural Rules on Lawyers Professional Responsibility were last comprehensively amended in 1982. The present amendments, while significant in many respects, do not alter most of the fundamentals of the discipline and ethics system.

The amendments to the rules are largely a product of the Report of the Supreme Court Advisory Committee on Lawyer Discipline, chaired by Nancy Dreher. The committee and the Lawyers Board consulted closely, and the Court applauded both for their efforts. The report, originally filed in April 1985 and supplemented in December 1985 was the subject of public hearing before the Court in March 1986. The committee heard from many interested individuals and groups before issuing its report. The Court adopted the report as well as most of the rule changes it recommended. In addition to proposed rule changes, the report contained numerous administrative and other recommendations, many of which have been implemented informally.

The significant changes in the rules amendments may be summarized in three categories:

1. Changes and classifications in the structure of the discipline system.
2. Changes in litigation procedures.
3. Changes in rules for dismissed complaints.

Structure, Accountability, and Decentralization

The advisory committee was concerned to clarify the roles of the several individuals and groups in the professional responsibility system and to enhance the roles of the district ethics committees and the Lawyers Board executive committee in particular. It is now clear that the director is accountable directly to the Lawyers Board (R. 5(b)) and that an executive committee of the Lawyers Board is responsible for the "general supervision" of the director's office (R. 4(d)). The supervisory functions of the executive committee preclude its members from performing any adjudicative functions on Lawyers Board panels (R. 1(3)). The director's authority to initiate investigations without a complaint is retained, but now requires the executive committee's prior approval (R. 8(a)). The board reviews the director's performance biennially, and makes a recommendation to the Court regarding continuing service (R. 5(a)).

The district committees, Lawyers Board, and Lawyers Board panels are all encouraged to develop

and utilize the expertise of their members in particular areas of law (R. 3(a), R. 4(a), R. 4(f)).

The volunteer district ethics committees of the bar association are to draft the dismissals or admonitions they recommend to the director (R. 7(b)). The district investigator's report is available from the director, after committee consideration, on request of the lawyer affected (R. 6(c), 7(b)). The reports of the district committee investigators are to be reviewed within the committee before submission to the director (R. 7(b)).

Litigation Procedures

The advisory committee report generally recommended more procedural protections for lawyers accused of unprofessional conduct. Most of these recommendations were adopted in some form.

Lawyers Board panels conduct preliminary screening hearings to determine whether there is probable cause to believe a public petition for discipline should be filed. The amendments provide that the probable cause standard should be applied to "each" and every charge (R. 9(h)(l)). Before this amendment the rules provided that the hearing would be terminated when probable cause was found on *any* charge. Supplemental charges in public petitions for disciplinary action, filed after panel hearing, must be approved in advance now by a panel chair (R. 10(d)). The executive committee adjusts random panel assignments to balance workloads or utilize expertise (R. 4(f)). The Court did not adopt the proposal that panels' dispositional options be expanded beyond the probable cause determination.

Rule 19, regulating evidentiary use of prior disciplinary proceedings, has been thoroughly restated. Previous dismissals are admissible only to show a pattern of misconduct. Previous disciplines are admissible regarding the degree of discipline to be imposed, but their admissibility is otherwise restricted roughly in accord with Rule of Evidence 404.

Rule 25, requiring a lawyer to cooperate in disciplinary investigations and proceedings, has been amended to codify certain practices. Challenges to a Rule 25 request must be made promptly and in good faith before the Ramsey County District Court. Rule 25 requests shall not be disproportionate to the matter being considered, just as Rule of Civil Procedure 26.07 limits discovery burdens. Copies of documents are now permitted.

Several miscellaneous changes in litigation procedure should be noted by practitioners. Seven, rather than nine copies of the petition for disciplinary action and answer are now required (R. 12(a), R. 13(a)). In various court proceedings when the underlying matter is still confidential, the lawyer is to be identified by a number or random initials (R. 9(d), (g), (k), and (l); R. 25(a)). The director's office will assign to each panel matter a number to facilitate this process. The prohibition against *ex parte* contacts, found in the Rules of Professional Conduct and Code of Judicial Conduct, is restated in Rule 29, and a limited emergency exception is established. The disqualification criteria for judges will now be applied to Lawyers Board and district committee members (R. 4(e), R. 6(a)).

Dismissed Complaints, Disclosure, Expunction and Complainant Appeals

Files of dismissed complaints against attorneys will now be destroyed after three years, rather than five years (R. 20(b)(4)). All records will then be destroyed, including docket information. For purposes of disclosure (*e.g.*, bar admissions to other states, judicial candidates), dismissed complaints will now not be disclosed by the director's office, even with authorizations to disclose (R 20(a)). The purpose of this

amendment is to ensure that no lawyer is adversely affected by information regarding a dismissed complaint.

Complainants' appeals of dismissed complaints (and of privately imposed discipline) will now be considered by an expanded group of Lawyers Board members (R. 8(d)). The reviewing board member will now have the authority to require further investigation.

The rules amendments were proposed to enhance fairness, accountability, and broader sharing of responsibility in lawyer discipline matters. The amendments are without doubt the product of an enormous amount of diligent effort, constructive debate and consideration by all those affected by the professional responsibility system in Minnesota.

(The revised Rules on Lawyers Professional Responsibility are reproduced below at page 29. Ed.)