

LAWYERS PROFESSIONAL RESPONSIBILITY

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Editor's Note:

We invite your attention to Minnesota Supreme Court Order #46994 which appears on this page of INTERIM.

The Rules on Lawyers Professional Responsibility are the Supreme Court promulgated procedural rules applicable to disciplinary proceedings. A standing committee of the Board constantly monitors the operation of the rules. The Board itself has periodically recommended amendments to the rules. In response to Board petitions the Supreme Court on October 16, 1981, approved a number of amendments to the rules which are discussed herein.

Required Cooperation

Lawyers have always had an affirmative obligation to cooperate with disciplinary investigations and proceedings. In 1979 the Court suspended an attorney for six months for non-cooperation. In re Cartwright, 282 N.W.2d 548 (Minn. 1979). In its decision the Court suggested to the Board that a specific procedural rule on cooperation would be desirable.

A new Rule 25 on required cooperation has now been promulgated. Lawyers must furnish written explanations of matters under investigation, furnish designated papers, documents and tangible objects, and appear for conferences and hearings at the times and places designated. Rule 25(b) makes clear that violation of the cooperation rules is a ground for discipline.

Resignation

In the past some attorneys have attempted to escape disciplinary action by resigning before the initiation of disciplinary proceedings. Formerly a resignation could be tendered without the knowledge or consent of the Director. Questions of disciplinary jurisdiction arise where the subject of an investigation or proceeding is a resigned attorney. Since resignation is not a disciplinary sanction, a resigned attorney could apply for admission in another jurisdiction, reporting that he or she terminated membership in the Minnesota Bar in good standing by means of resignation.

In order to preclude an attorney from resigning while a disciplinary investigation is pending, the Court has amended Rule 11 dealing with resignation. Now an attorney will be required to serve a petition for resignation upon the Director. If the Director does not object to the resignation, he shall advise the Court which presumably will grant the petition. If the Director has objection, there will be a Panel hearing. The Panel will then make a recommendation to the Court concerning the resignation petition.

Re-examination

Respondents in disciplinary proceedings have frequently argued to the Board and to the Court that

their misconduct is attributable not to willful defiance of the rules but to ignorance of them. We have met this argument by suggesting that in some cases insensitivity to ethical requirements due to ignorance may be a greater threat to the public than occasional premeditated disregard of the rules. This problem was jointly considered by the Lawyers Professional Responsibility Board and the Board of Law Examiners, and the amendments to Rules 15 and 18 were especially strongly supported by the public members of the Lawyers Professional Responsibility Board.

An attorney publicly reprimanded by the Court or placed on public probation will be required within six months after the Court's order to pass the professional responsibility examination required of Bar applicants for admission to practice. Failure to pass the examination will result in restricted status under the rules for continuing legal education.

No disbarred lawyer may be reinstated unless he or she passes the entire Bar examination. No suspended lawyer may be reinstated until passing the professional responsibility portion of the Bar examination. These requirements may be waived by the Court in its reinstatement or disciplinary orders. Nevertheless, the amended rules do emphasize the relationship between incompetence and disciplinary problems.

Duties of Disciplined or Resigned Lawyers

Disbarred, suspended or resigned attorneys will now be required to notify clients, opposing counsel and tribunals of their status. Arrangements for delivery to clients of files and other property is also required. Proof of compliance with the specific requirements of Rule 26 will be a prerequisite to any reinstatement petition.

Under a new Rule 27 the Court will appoint a trustee in any case where lawyers have not complied with Rule 26, or where, because of disability, disappearance or death, an attorney is not able to properly discharge responsibilities to clients. The trustee may inventory the files and take whatever other action seems indicated to protect the interest of the clients and other affected parties. Rule 27 codifies the Court's decision in In re Peck, 302 N.W.2d 356 (Minn. 1981).

STATE OF MINNESOTA IN SUPREME COURT NO. 46994

AMENDMENTS TO COURT RULES ON PROFESSIONAL RESPONSIBILITY

WHEREAS, the Lawyers Professional Responsibility Board petitioned the Supreme Court in its petitions filed June 11, 1980, and January 29, 1981, for amendment of Court Rules on Professional Responsibility. Rules 11, 15, and 18, and adoption of new Rules 25, 26, and 27, and a hearing was had with respect to said petitions on June 5, 1981,

NOW, THEREFORE, IT IS HEREBY ORDERED that said rules are amended as follows:

Amend Rule 11 of said Rules to read as follows:

"RULE 11, RESIGNATION

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

Amend Rule 15 of said Rules by adding the following subsection:

"RULE 15. DISPOSITION: PROTECTION OF CLIENTS

(c) Examination on professional responsibility.

Every lawyer placed on a probationary status or reprimanded by this Court, pursuant to the foregoing provisions of Rule 15, shall be in a restricted status, subject to the limitations upon his activities imposed on lawyers in that status under the rules for Continuing Legal Education of members of the bar unless within six (6) months after his placement on a probationary status or the issuance of a reprimand by this Court, he shall have successfully completed such written examination as may be required of applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility."

Amend Rule 18 of said Rules by adding the following subsection:

"RULE 18. REINSTATEMENT

(e) General requirements for reinstatement.

Unless such examination is specifically waived by this Court, no lawyer ordered reinstated to the practice of law after having been disbarred by this Court shall be effectively reinstated until he shall have successfully completed such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners, and no lawyer ordered reinstated to the practice of law after having been suspended by this Court shall be effectively reinstated until he shall have successfully completed such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following his suspension or disbarment by this Court until he shall have satisfied the 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."

Add a new Rule 25 to said Rules to read as follows:

"RULE 25. REQUIRED COOPERATION

(a) Lawyer's duty.

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

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

(b) Grounds of discipline.

Violation of this rule is unprofessional conduct and shall constitute a ground for discipline.”

Add a new Rule 26 to said Rules to read as follows:

RULE 26. DUTIES OF DISCIPLINED OR RESIGNED LAWYER

(a) Notice to clients in non-litigation matters.

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

(b) Notice to parties and tribunal in litigation.

Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer shall notify each client, opposing counsel and the tribunal involved in pending litigation or administrative proceedings of the disbarred, suspended or resigned lawyer’s inability to represent the client. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended or resigned lawyer.

(c) Manner of notice.

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

(d) Client papers and property.

A disbarred, suspended or resigned lawyer shall make arrangements to deliver to each client being represented in a pending matter, litigation or administrative proceeding any papers or other property to which the client is entitled.

(e) Proof of compliance.

Within fifteen (15) days after the effective date of the disbarment, suspension or resignation order, the disbarred, suspended or resigned lawyer shall file with the Director an affidavit showing:

1. That the affiant has fully complied with the provisions of the order and with this rule;
2. All other State, Federal and administrative jurisdictions to which the affiant is admitted to practice; and
3. The residence or other address where communications may thereafter be directed to the affiant.

Copies of all notices sent by the disbarred, suspended or resigned lawyer shall be attached to the affidavit.

(f) Maintenance of records.

A disbarred, suspended or resigned lawyer shall keep and maintain records of the actions taken to comply with this rule so that upon any subsequent proceeding being instituted by or against the disbarred, suspended or resigned lawyer, proof of the compliance with this rule and with the disbarment, suspension or resignation order will be available.

(g) Condition of reinstatement.

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

Add a new Rule 27 to said Rules to read as follows:

“RULE 27. TRUSTEE PROCEEDING

(a) Appointment of trustee.

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

(b) Protection of records.

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

DATED: October 16, 1981.