

PROPOSED PROCEDURAL CHANGES

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The Lawyers Board has petitioned the Minnesota Supreme Court to amend the procedural Rules on Lawyers Professional Responsibility in several ways. Copies of the petition are available from the Office of Lawyers Professional Responsibility. The most important of the proposed rule changes are as follows.

Complainant Access to Attorney's Response. Under Rule 20, investigations in discipline files are confidential, with several exceptions. The complainant is informed of the progress of the proceedings and receives a copy of the final disposition. Other file documents may be shared with the complainant if an investigative purpose is served. The amendment would provide the respondent-attorney's response to the complaint to the complainant, if the complainant is or was a client. The current practice is to share the response with the client-complainant on most occasions because it often serves an investigative purpose.

Complainant Appeals. In 1986, on recommendation of the Dreher Committee, the Supreme Court increased the options available to Lawyers Board members on complainant appeals from dispositions by the Director. An additional option is now proposed, namely that if a district committee recommends discipline, but the Director instead dismisses, the board member may instruct the Director to issue an admonition.

Panel Options. The Dreher Committee also recommended additional authority for Lawyers Board hearing panels. The board now believes that it would be appropriate for a hearing panel to have authority to issue an admonition, if it concluded after hearing that an attorney engaged in misconduct, but that the conduct was not serious enough to warrant the public discipline sought by the Director.

Conflicts and Disqualification of the Director's Office. On recommendation of the Dreher Committee a rule was adopted disqualifying a district committee investigator or the equivalent in the Director's Office in the same circumstances which would require judicial disqualification. Because the Director's Office is in some ways not analogous to a court, the disqualification standard should be tailored better to the circumstances, to require disqualification only when the office employee's activities *outside the office* would be such as to require judicial disqualification. Thus, an assistant director who previously investigated the same attorney would not thereby be disqualified from a second investigation.

Probations. Since approximately 1984, private, stipulated probations have routinely included certain "boilerplate" provisions, including waiver of panel hearing rights if the stipulated conditions are not met. Several rules changes are proposed to make a matter of rule what has become a common matter of agreement. In the case of Supreme Court probations, breaches also have been followed by filing of a public petition without panel hearing, on a theory of continuing court jurisdiction. The practice would also be formally authorized by rule change.

Reciprocal Discipline. The rise in number of attorneys licensed in more than one jurisdiction has led to a number of ancillary discipline proceedings in Minnesota for attorneys whose primary practices are elsewhere. A reciprocal discipline rule, in language condensed from the ABA Model version, is proposed for Minnesota to regularize this process.

Reinstatement by Affidavit. Suspensions in the range of one to six months have become fairly common in Minnesota in recent years. With short suspensions, the general requirement for a reinstatement hearing is usually waived. However, the suspended attorney must meet certain requirements before reinstatement is possible. Procedures that have come into use informally should be adopted in the form of a rule.

Disbursements. Under the current rule the prevailing party in a Supreme Court disciplinary proceeding recovers costs and disbursements incurred *after* the petition is filed. Often the Director's largest disbursements are for investigative expenses, including sworn statements and auditing costs, incurred *before* the facts are clear enough to bring formal charges. A "user fee" concept of revenue-raising would suggest that such costs be borne by the publicly disciplined lawyer rather than by the other licensed fee-paying lawyers of the state.

Disciplined Lawyer's Notice to Clients. A publicly disciplined lawyer is currently required to notify clients and others of an "inability to represent the client." The proposed rule change would require the lawyer to furnish copies of the disciplinary decision. The rationale for the amendment is that a client who is deciding whether to wait for further services should know the reason for the lawyer's inability to provide representation.

District Committee Service. The large increase in complaints in 1989-90 has strained the resources of district committees. A rule change is proposed to lengthen the maximum period of service of committee investigators, from two three-year terms to two consecutive three-year terms and four three-year terms altogether.

The Rules on Lawyers Professional Responsibility were last amended January 1, 1989. The Court's normal procedure, unless it regards rule changes as merely administrative, is to give notice of a comment and public hearing on the proposed amendments.