

DRAFT

FILE NO. ADM10-8005

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition to Amend the
Minnesota Rules of Professional Conduct
and the Rules on Lawyers Professional
Responsibility.

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD TO AMEND RULE 1.15,
MINNESOTA RULES OF
PROFESSIONAL CONDUCT, AND
RULE 20, RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY**

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE
STATE OF MINNESOTA:

Petitioner, Lawyers Professional Responsibility Board (LPRB), respectfully requests this Court to amend Rule 1.15(o), Minnesota Rules of Professional Conduct (MRPC), and Rule 20, Rules on Lawyers Professional Responsibility (RLPR), as set forth in Attachment A.

In support of this petition, the LPRB states the following:

Introduction.

1. Petitioner LPRB is a Board established by this Court to oversee the lawyer discipline system.
2. This Court has the exclusive and inherent power and duty to administer justice and adopt rules of practice and procedure before the courts of this state and to establish standards for regulating the legal profession. This power has been expressly recognized by the Legislature. *See* Minn. Stat. § 480.05.

3. The Court has adopted the MRPC to establish standards of conduct for lawyers licensed to practice law in the State of Minnesota. This Court has adopted the RLPR to govern the procedures for enforcing and administering the MRPC. This Court has amended the MRPC and the RLPR from time-to-time for good cause shown.

4. At its April 26, 2019, meeting, the LPRB voted to approve and recommend to this Court the proposed amendments to Rule 1.15(o), MRPC, and Rule 20, RLPR, as described below.

Summary of Proposed Amendments.

A. Rule 1.15(o), MRPC.

This proposal comes from the Legal Services Advisory Committee (LSAC). Currently, the definition of "IOLTA account" in this rule provides the bank must remit interest in an IOLTA account monthly. According to the legal services grant manager of LSAC, LSAC allows banks to remit annually if they have a very small number of accounts and remit small amounts of interest (less than \$25) on the annual remittance. LSAC works with the bank to find a schedule that makes sense based on the bank's situation. For example, LSAC would prefer in a given year to receive only one \$0.20 check instead of four \$0.05 checks. LSAC requests a rule change that would allow the program to approve an alternate remittance schedule.

B. Rule 20, RLPR.

There are five proposed changes to this rule. The focus of Rule 20 is confidentiality of Office of Lawyers Professional Responsibility and LPRB records.

1. Add a new Rule 20(a)(12), RLPR. This will permit the disclosure of letters received pursuant to Rule 5.8, MRPC, from employers of suspended or disbarred lawyers. The basis of this change is that on occasion the Director's Office receives letters from lawyers pursuant to Rule 5.8, MRPC, which these lawyers are required to provide when they hire a suspended or disbarred lawyer

(or when such employment terminates). On occasion, the Director's Office will receive a request from a third party about this information. There does not appear to be a need to keep such information confidential.

2. Add a new Rule 20(b)(8), RLPR. This will clarify the ability of the Office of Lawyers Professional Responsibility (Director's Office) to communicate with the Court-approved lawyer assistance program, which currently is Lawyers Concerned for Lawyers (LCL). The reason for this change is that, on occasion, the Director's Office believes it is important to communicate with LCL regarding a lawyer who may need assistance. Presently, the RLPR do not allow such communication in connection with private matters pending before the Director's Office. The proposed change is to clarify that the Director's Office may have these one-way communications with LCL. LCL has greater confidentiality requirements than the Director's Office, which reduces the likelihood of any adverse consequences caused by disclosure by the Director's Office to LCL.

3. Add a new Rule 20(b)(13), RLPR. This will codify the ability of the Director's Office during an investigation or LPRB Panel proceeding to provide information as necessary to persons who can assist in an investigation. For example, it may be necessary to provide information or documents about a matter to a fact witness as part of gathering information or documents about the matter from the witness. Similarly, it may be appropriate to provide information or documents about a matter to a consulting or testifying expert to further the Director's understanding of a matter. Presently, the Director's Office does make such disclosures as appropriate.

4. Add a new Rule 20(f)(3), RLPR. This will further define which other portions of the Office's files are or are not public (for example, affidavits and attachments received pursuant to Rule 26, RLPR, and letters or other

communications sent or received in connection with collection efforts). Rule 20 is premised on the notion that all Director's Office files arise out of a disciplinary investigation and/or litigation. Before probable cause is established, those files are confidential; after probable cause is established, those files are not confidential. The Director's Office, however, maintains files on many other types of matters. Some of these (advisory opinions, overdraft notification program and probation files) are already addressed in Rule 20(f), RLPR. The Director's Office maintains additional types of files as well. The issue arises as to whether such files should or should not be confidential. There appears to be no need to hold Rule 26, RLPR, and collection correspondence confidential.

5. Add a new Rule 20(g) and (h), RLPR. This will exempt certain portions of the Director's Office's public files from disclosure. These portions include medical records and other documents containing sensitive personal information such as social security numbers, birthdates, bank account numbers, and medical diagnoses or other similar information. Currently, Rule 20(a)(2), RLPR, provides that once probable cause is found, the Director's entire file, except for the Director's own work product, is non-confidential. The file, however, may contain information which public policy considerations dictate should remain confidential. This proposed change will also allow the Director's Office to more easily electronically file confidential documents as such without the need to obtain a protective order or file a separate motion to seal. Finally, a proposed new Rule 20(h), RLPR, has been added to confirm the confidentiality of all other files not specifically referenced.

CONCLUSION

Based upon the foregoing, petitioner Lawyers Professional Responsibility Board respectfully recommends and requests this Honorable Court to amend Rule 1.15(o), MRPC, and Rule 20, RLPR, as set forth in Attachment A.

Dated: _____, 2019. Respectfully submitted,

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

By _____

ROBIN M. WOLPERT
Board Chair
Attorney No. 0310219
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952
rwolpert@comcast.net

SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0254289
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952
Susan.Humiston@courts.state.mn.us

ATTACHMENT A

RULE 1.15: SAFEKEEPING PROPERTY

(o) Definitions.

"IOLTA account" is a pooled trust account in an eligible financial institution that has agreed to:

(1) remit the earnings accruing on this account, net of any allowable reasonable fees, monthly to the IOLTA program as established-approved by the Minnesota Supreme Court IOLTA program unless an alternative schedule is approved by the IOLTA program;

RULE 20. CONFIDENTIALITY; EXPUNCTION

(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:

* * *

(12) Correspondence received by the Director pursuant to Rule 5.8, Minnesota Rules of Professional Conduct.

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

* * *

(8) Information related to concerns about a lawyer's mental, emotional, or physical well-being to the Supreme Court approved lawyer assistance program in a situation in which such notification appears to the Director to be necessary or appropriate.

* * *

(13) As between the Director and/or District Committee and witnesses, the Director or District Committee may reveal such information as is necessary to advance the Director's or District Committee's handling of the matter to a person who may have knowledge relevant to the matter or to a consulting or testifying expert regarding the matter.

(f) Advisory Opinions, Overdraft Notification Program Files, and Probation Files and Other Files of the Director. The files, notes, and records maintained by the Director relating to advisory opinions, trust account overdraft notification, and monitoring of lawyers on probation shall be deemed confidential and shall not be disclosed except:

* * *

(3) Rule 26 affidavits, attachments thereto, and letters and other communications regarding Rule 26 and/or efforts by the Director to collect costs and disbursements awarded pursuant to Rule 24 of these Rules.

(g) Notwithstanding any of the foregoing provisions of this Rule, including but not limited to Rule 20(a)(2), medical records and other documents containing sensitive personal information, including but not limited to social security numbers, birthdates, bank account numbers and medical information shall remain confidential in the files of the Director. The Director shall have the sole discretion to disclose such information in the course of a lawyer discipline investigation or proceeding under these Rules or as the Director otherwise deems appropriate.

(h) All other files, notes and records not specifically mentioned and maintained by the Director shall not be disclosed.