

## REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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On July 22, 1982, the Minnesota Supreme Court extensively amended the Rules on Lawyers Professional Responsibility (RLPR) which govern attorney disciplinary investigations and proceedings. The court substantially adopted changes sought by a Lawyers Professional Responsibility Board (LPRB) petition. The Code of Professional Responsibility, containing the substantive rules of professional conduct, was not affected by these amendments. (Indeed, at its annual convention the ABA postponed action on the proposed new Code, the Model Rules of Professional Conduct). This article will summarize the most important RLPR amendments.

*Genesis of the Amendments.* The last previous major revision of the RLPR was effective January 1, 1977. The current rules can be read by combining the text in West's 1982 desk copy of Minnesota Rules of Court and the July 22, 1982 amendments.

The LPRB petition was spurred by several developments. An ABA evaluation team reviewed the Minnesota disciplinary system in May, 1981, and recommended numerous changes. An LPRB committee also reviewed panel hearing procedures and presented proposed rule changes to the full Board. An increasing volume of disciplinary cases made changes necessary. In addition to facilitating case consideration, the amendments are intended to improve the quality of the process.

*Overview of the Amendments.* The most important changes to the RLPR are:

1. Disability procedures are created to deal with lawyers whose real problem is incapacity rather than intentional misconduct. RLPR 28.
2. LPRB panel hearing and pre-hearing procedures are extensively changed. These changes result primarily from a determination that the chief function of panels will be to determine whether probable cause exists to believe that public discipline is warranted. RLPR 9(h)(1). Panel proceedings are accordingly simplified. Pre-hearing discovery is expanded.
3. Procedures for dispensing with panel proceedings are made available in more situations, *e.g.* by parties' agreement and in cases involving convictions.

4. Dissatisfied complainants are given appeal rights.

*Panel Composition.* Hearings before LPRB panels are held in attorney discipline cases not disposed of by agreement or through other RLPR procedures. Three panel members now constitute a quorum. RLPR 4(d). Panels now may be drawn from current or former LPRB or district ethics committee members. *Id.* The LPRB and panel chair and vice-chair have expanded duties, including pre-hearing dispute resolution.

*Investigation.* The amendments provide investigatory subpoena power for the Director, subject to approval in each case by the LPRB chair or vice-chair. RLPR 8(b). Ramsey County District Court will have jurisdiction over investigatory and deposition subpoena issues. RLPR 8(b), (d). After investigation, the Director may determine discipline is not warranted. RLPR 8(c)(1), subject to the complainant's right of appeal. The Director's investigation may also be concluded with a private admonition (replacing the "warning") in cases of isolated and non-serious misconduct. RLPR 8(c)(2). In such cases the complainant has the right to appeal and the respondent also has the right to a panel hearing to consider the admonition. Finally, if the LPRB chair concurs, the Director and respondent may stipulate to private probation, subject again to the complainant's right of appeal. RLPR 8(c)(3).

*Pre-Hearing and Hearing Procedures.* Pre-panel hearing discovery procedures are expanded by the amendments. Before or within ten days after the pre-hearing meeting, requests for admission may be served and depositions taken. RLPR 9(c), (d). The pre-hearing meeting is formalized, with a view to identifying disputed matters and relevant evidence before hearing. RLPR 9(e). Exhibits not provided at pre-hearing meeting will not be received at hearing without the parties' agreement or panel permission. RLPR 9(e)(2). The panel hearing itself is viewed as a probable cause hearing. Accordingly, evidence is limited to affidavits, depositions, documents and testimony of the lawyer, the complainant and such other witnesses as the panel chair or vice-chair allow for good cause. RLPR 9(g); (h). Panel hearings and pre-hearing depositions may now be recorded electronically rather than stenographically. RLPR 9(1).

*Panel Dispositions.* The RLPR amendments limit the functions of panels to hearing attorney appeals of Director admonitions, and to determination of whether probable cause exists to believe that serious misconduct has occurred warranting a petition for disciplinary action. RLPR 9(h)(1). LPRB panels will no longer issue private reprimands. RLPR 9(i). The panel may terminate the hearing as soon as it is satisfied there is or is not probable cause. RLPR 9(h)(1).

*Complainant Appeals.* Under the amendments, a complainant may appeal to a panel chair the Director's determination that the complaint be dismissed or disposed of by an admonition or stipulated probation. RLPR 8(d). A complainant may now petition the supreme court for review of panel dispositions. RLPR 9(k). A complainant's previously available right to appeal to the attorney general had been eliminated by statute and a July 1, 1981, RLPR conforming amendment.

*Dispensing with Panel Proceedings.* The amended rules provide for eliminating panel proceedings where other circumstances indicate that there is probable cause to believe that public discipline is

warranted. A petition for disciplinary action may be filed in the supreme court without panel approval by agreement of the parties or upon certain criminal convictions, with LPRB chair approval. RLPR 10. When a petition for disciplinary action has been filed, panel approval is no longer needed for the Director also to file a petition for immediate temporary suspension of the lawyer. RLPR 16. Current practice of freely supplementing and amending petitions without panel approval is codified. RLPR 10(e).

*Disability Status.* New RLPR 28 provides a most desirable option of treating cases of lawyer disability as such, rather than as cases of misconduct warranting discipline. RLPR 28 establishes the grounds for transfer to disability status, provisions for immediate transfer, for hearing and for reinstatement. A lawyer's assertion of disability can itself cause respondent's transfer to disability status, waiver of medical privilege and a medical examination. RLPR 28(b)(2), (e).