

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8043

FILED

May 20, 2016

**OFFICE OF
APPELLATE COURTS**

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING
COMMENTS ON PROPOSED AMENDMENTS
TO THE MINNESOTA RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY**

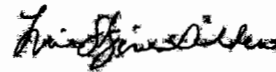
The Lawyers Professional Responsibility Board filed a petition with this court on April 18, 2016, proposing amendments to the Minnesota Rules on Lawyers Professional Responsibility.

The Court will consider the Board's petition without a hearing after soliciting and reviewing comments on the proposed amendments;

IT IS HEREBY ORDERED that any individual wishing to provide comments in support of or opposition to the proposed amendments shall file a written statement with AnnMarie S. O'Neill, Clerk of the Appellate Courts in ADM10-8043. Written comments shall be electronically submitted for filing no later than July 19, 2016. A copy of the petition with the proposed amendments is attached to this order.

Dated: May 20, 2016

BY THE COURT



Gildea, Lorie
May 20 2016 1:26 PM
Lorie S. Gildea
Chief Justice

FILED

April 18, 2016

**OFFICE OF
APPELLATE COURTS**

FILE NO. ADM10-8005
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition to Amend Rule 18 of
the Rules on Lawyers Professional
Responsibility.

**PETITION OF THE LAWYERS
PROFESSIONAL RESPONSIBILITY
BOARD TO AMEND RULE 18 OF
THE 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 that this Court amend Rule 18(c) and (d) of the Rules on Lawyers Professional
Responsibility (RLPR) as set forth below.

In support of this petition, the LPRB would show 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. This Court has adopted the RLPR to govern the procedures for enforcing and administering the Minnesota Rules of Professional Conduct (MRPC). These rules have been amended from time to time.
4. At the April 1, 2016, meeting, the LPRB voted to approve and recommend to this Court the proposed amendments to Rule 18(c) and (d), RLPR, as set forth below.

The Need to Adopt Post-Panel Procedures in Reinstatements.

5. In a disciplinary proceeding, Rule 14(e), RLPR, provides detailed guidance to the parties about how to proceed once a referee makes findings of fact, conclusions of law and a recommendation to this Court. Rule 14(e) requires that a party who intends to contest a referee's findings or conclusions must order a transcript of the hearing within ten days of the hearing date. Rule 14(e) helps to ensure the prompt progression of the disciplinary matter to the briefing and argument stage before the Court. Failure to order a transcript results in the referee's findings and conclusions being deemed conclusive. If a party timely orders a transcript, the referee's findings and conclusions are not conclusive and will be reviewed by the Court under the clearly erroneous standard.

6. In contrast, Rule 18, RLPR, which is the procedural rule governing reinstatement proceedings, currently contains no guidance for parties about how to proceed once a Panel has made a recommendation as to a petitioner's fitness for reinstatement. Ordinarily, after the Panel has made its findings, conclusions and recommendation, if either party wishes to challenge any part of the Panel's report, the matter is presented to this Court through briefing and argument pursuant to Rule 18(d), RLPR.

7. Incorporation of post-Panel procedures similar to Rule 14(e) into Rule 18(c) would mirror this Court's position as to how and when Panel findings and conclusions are considered conclusory for this Court's review. This Court has stated:

We uphold a panel's factual findings in reinstatement proceedings 'if they have evidentiary support in the record and are not clearly erroneous.' *In re Holker*, 765 N.W.2d 633, 637 (Minn. 2009). In *Holker*, we cited Rule 14(e), RLPR, regarding the ordering of a transcript, in our recitation of the standard of review. *Id.* That rule is part of the established procedures for disciplinary hearings. But we did not explain the applicability of that rule in the reinstatement context. *See id.*

Under Rule 14(e), if no transcript of the disciplinary hearing is available, we accept the factual findings of the referee because we cannot review the evidence supporting those findings. When a transcript of the entire proceeding is available, the findings of the referee are not conclusive. Although there is no precise counterpart for Rule 14(e) in the context of a reinstatement hearing, we employ the same common-sense principles here.

In re Dedefo, 781 N.W.2d 1, 7 (Minn. 2010).

8. In addition, the lack of a deadline for a contesting party to order a transcript of the Panel hearing can delay the reinstatement being brought before this Court for briefing and oral argument if a contesting party unduly delays ordering a transcript.

9. The LPRB requests that Rule 18(c) and (d), RLPR, be amended as follows:

RULE 18, RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

* * *

(c) Recommendation. The Panel may conduct a hearing and shall make its findings of fact, conclusions, and recommendations. The recommendation shall be served upon the petitioner and filed with this Court. Unless the petitioner or Director, within ten days of the date of service, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the petitioner and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions and recommendations that are disputed.

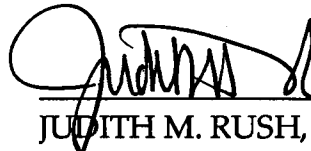
(d) Hearing Before Court. There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. Should this Court determine

further consideration on the petition is necessary, This Court may appoint a referee. ~~If a referee is appointed,~~ and the same procedure shall be followed as under Rule 14, except subdivision (f) will not apply.

Conclusion.

Based upon the foregoing, petitioner Lawyers Professional Responsibility Board respectfully recommends and requests this Honorable Court to amend Rule 18(c) and (d) of the Rules on Lawyers Professional Responsibility as set forth above.

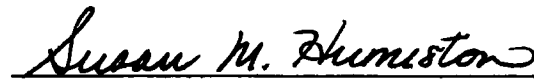
Dated: April 11, 2016. Respectfully submitted,



JUDITH M. RUSH, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

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and



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