STATE OF MINNESOTA

IN SUPREME COURT

C5-84-2139

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE RULES FOR ADMISSION TO THE BAR AND THE MINNESOTA RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

IT IS HEREBY ORDERED that a hearing be had before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 18, 2004 at 2:30 p.m., to consider the petition filed on March 5, 2004, of the Lawyer Professional Responsibility Board to support the Board of Law Examiners petition to amend the Rules for Admission to the Bar regarding conditional admission and to amend the Minnesota Rules on Lawyers Professional Responsibility. A copy of the petition is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before May 7, 2004, and

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 7, 2004.

Dated: March 12, 2004

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAR 1 2 2004

FILED

Kathleen A. Blatz
Chief Justice

FILE NO. C5-84-2139

STATE OF MINNESOTA

IN SUPREME COURT

----------	**PETITION OF THE LAWYERS PROFESSIONAL RESPONSIBILITY BOARD IN SUPPORT OF THE CONDITIONAL ADMISSION PROPOSAL AND TO AMEND THE MINNESOTA RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY**
In Re Petition to the Minnesota State Board of Law Examiners for Amendment of the Rules for Admission to the Bar	

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

Petitioner, Lawyers Professional Responsibility Board (LPRB) respectfully requests that this Court approve the December 24, 2003, petition of the Minnesota Board of Law Examiners (BLE) to amend the Minnesota Rules for Admission to the Bar to provide for conditional admission of applicants to the Minnesota bar and hereby petitions this Court to amend the Minnesota Rules on Lawyers Professional Responsibility (RLPR) to provide for the corresponding changes necessary to enforce conditional admission violations.

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 MRPC by way of establishing standards of practice for lawyers licensed by the State of Minnesota to practice law and the RLPR to

govern the procedure for enforcing and administering the MRPC. These Rules have been amended from time to time.

4. In 2003, the LPRB appointed a committee to meet with representatives of the BLE to study the conditional admission process. The LPRB and BLE committees met on several occasions and discussed: (1) the need for a conditional admission process; (2) the procedures for implementing conditional admission; and (3) the amendments to the Rules for Admission to the Bar needed to implement conditional admission and the amendments to the RLPR necessary to handle violations of conditional admission agreements.

5. The LPRB committee recommended that the LPRB endorse the BLE proposal for conditional admission and also recommended amendments to the Rules on Lawyers Professional Responsibility to enforce compliance with the conditional admission agreements. At its September 12, 2003, meeting, the LPRB voted to support the BLE proposal for a conditional admission and to recommend to this Court the proposed amendments to the RLPR. The amendments are set forth in Exhibit C of BLE's December 24, 2003, petition to amend the Rules for Admission to the Bar and are annexed to this petition. The LPRB desires that the conditional admission be used to better protect the public while maintaining current admission standards and does not wish to see admission standards lowered through use of the conditional admission process.

The Need for a Conditional Admission Process.

6. Paragraphs of the BLE petition explain the benefits of adopting a conditional admission process from the law admissions perspective. In addition, the LPRB and Office of Lawyers Professional Responsibility (OLPR) believe that conditional admission will better protect the public for the following reasons.

7. The OLPR has experienced an increase in the number of lawyers admitted less than five years who become involved in disciplinary investigations involving

serious misconduct. In some of these cases the investigation has revealed that the conduct is related to the behavior or condition that was the subject of a BLE hearing or investigation. In at least two cases the lawyer misconduct is an extension or continuation of behavior or a condition scrutinized by the BLE during the admission process. The conditional admission proposal would permit OLPR to better detect lawyers whose misconduct is attributable to untreated or improperly addressed problems or conditions that were identified during the admission process.

8. Although the number of cases experienced by the OLPR is small, the harm to clients or others has been significant. Moreover, the lawyers involved in these cases have tended to be solo practitioners who are without the support of partners, as well as law firm infrastructure. The OLPR and LPRB believe that applicants with identifiable issues that may interfere with their ability to practice law would personally benefit from the monitoring program that would be instituted by the BLE as part of the conditional admission proposal.

9. Finally, the public will be better protected by the conditional admission monitoring process. The beginning years of law practice can be stressful for any new lawyer. This is especially true for solo practitioners. A monitoring program designed to ensure that an applicant appropriately addresses issues that may impede or interfere with his or her ability to practice can only serve to better protect the public.

The Conditional Admission Process.

10. As set forth in the BLE petition, the conditional admission process will be administered by the BLE. The BLE will establish the conditions of admission, enter into agreements with the applicant for conditional admission, and be responsible for monitoring compliance with the conditional admission agreement.

11. The LPRB and BLE determined that violations of conditional admission agreements are better addressed through the lawyer discipline process as opposed to creating a new process within the bar admission process. Currently applicants bear the

burden of proof in bar admission proceedings whereas, the Director bears the burden of proof when imposing discipline or revoking admission through the lawyer discipline system.

12. LPRB and OLPR involvement in conditional admission will only occur when the BLE determines there has been non-compliance with a conditional admission agreement or the OLPR receives an ethics complaint against a conditional admittee that implicates the conditions established for conditional admission.

13. The lawyer discipline system already contains the necessary due process procedures for revoking bar admission, including probable cause hearings, evidentiary hearings and Supreme Court hearings. Use of the lawyer discipline process to investigate and prosecute violations of conditional admission agreements will conserve resources and promote uniformity in the license revocation process for lawyers.

14. It is not anticipated that investigation and prosecution of conditional admission cases will require significant LPRB or OLPR resources. The BLE petition outlines the limited number of cases in which it proposes to use conditional admission and consequently the number of cases involving violations will be even smaller.[1]

15. The procedures set forth to investigate and prosecute conditional admission violations are set forth in the amendments to the RLPR (Exhibit C to the BLE petition). These procedures mirror those currently being used to investigate and prosecute violations of the Rules of Professional Conduct by lawyers.

Conclusion.

Based upon the foregoing, petitioner Lawyers Professional Responsibility Board respectfully recommends and requests this Honorable Court to approve the BLE petition to provide for a conditional admission process and to adopt the amendments to

[1] Paragraph 3 of the December 24, 2003, BLE petition states that the BLE anticipates that no more than five applicants will be conditionally admitted each year.

the Minnesota Rules on Lawyers Professional Responsibility that are set forth in Exhibit C of the BLE's December 24, 2003, petition and are annexed to this petition.

Dated: _____, 2004.

Respectfully submitted,

_____

KENT A. GERNANDER, CHAIR
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD
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and

_____

KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463

Proposed Amendments to the Rules on Lawyers Professional Responsibility to Provide for Conditional Admission.

RULE 8. DIRECTOR'S INVESTIGATION

(d) Disposition.

(4) ***Submission to Panel.*** The Director shall submit the matter to a Panel under Rule 9 if:

(i) In any matter, with or without a complaint, the Director concludes that public discipline is warranted;

(ii) The lawyer makes a demand under subdivision (d)(2)(iii); or

(iii) A reviewing Board member so directs upon an appeal under subdivision (e).

(iv) The Director determines that a violation of the terms of a conditional admission agreement warrants revocation of the conditional admission.

(5) ***Extension or Modification of a Conditional Admission Agreement.*** If, in a matter involving a complaint against a conditionally admitted lawyer the Director determines that the conditional admission agreement was violated, the Director may enter into an agreement with the lawyer and the Board of Law Examiners to extend or modify the terms of the agreement for a period not to exceed two years.

RULE 9. PANEL PROCEEDINGS

(i) Procedure at Panel Hearing. Unless the Panel for cause otherwise permits, the Panel hearing shall proceed as follows:

(1) The Chair shall explain that the hearing's purpose is to determine:

(i) whether there is probable cause to believe that public discipline is warranted on each charge, and that the Panel will terminate the hearing on any charge whenever it is satisfied that there is or is not such probable cause; or

(ii) if an admonition has been issued under Rule 8(d)(2) or 8(e), that the hearing's purpose is to determine whether the panel should affirm the admonition on the ground that it is supported by clear and convincing evidence, should reverse the admonition, or, if there is probable cause to believe that public discipline is warranted, should instruct the Director to file a petition for disciplinary action in this Court); or

(iii) whether there is probable cause to believe that a conditional admission agreement has been violated thereby warranting revocation of the conditional admission to practice law, and that the Panel will terminate the hearing whenever it is satisfied there is or is not such probable cause.

(j) Disposition. After the hearing, the Panel shall:

(1) If the hearing was held on charges of unprofessional conduct

(i) determine that there is not probable cause to believe that public discipline is warranted, or that there is not probable cause to believe that revocation of a conditional admission is warranted; or

(ii) if it finds probable cause to believe that public discipline is warranted, instruct the Director to file in this Court a petition for disciplinary action. The Panel shall not make a recommendation as to the matter's ultimate disposition; or

(iii) if it concludes that the attorney engaged in conduct that was unprofessional but of an isolated and non-serious nature, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition.

(iv) if it finds probable cause to revoke a conditional admission agreement, instruct the Director to file in this Court a petition for revocation of conditional admission.

(l) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the complainant may within 14 days file with the Clerk of the Appellate Courts a petition for review. The clerk shall notify the respondent and the Board Chair of the petition. The respondent shall be denominated by number or randomly selected initials in the proceeding. This Court will grant review only if the petition shows that the Panel acted arbitrarily, capriciously, or unreasonably. If the Court grants review, it may order such proceedings as it deems appropriate. Upon conclusion of such proceedings, the Court may dismiss the petition or, if it finds that the Panel acted

arbitrarily, capriciously, or unreasonably, remand the matter to the same or a different Panel, direct the filing of a petition for disciplinary action or a petition for revocation of conditional admission, or take any other action as the interest of justice may require.

RULE 12. PETITION FOR DISCIPLINARY ACTION

(a) Petition. When so directed by a Panel or by this Court or when authorized under Rule 10 or this Rule, the Director shall file with this Court a petition for disciplinary action or a petition to revoke conditional admission. An original and ~~seven~~ nine copies shall be filed. The petition shall set forth the unprofessional conduct charges. When a lawyer is subject to a probation ordered by this Court and the Director concludes that the lawyer has breached the conditions of the probation or committed additional serious misconduct, the Director may file with this Court a petition for revocation of probation and further disciplinary action.

RULE 14. HEARING ON PETITION FOR DISCIPLINARY ACTION

(a) Referee. This Court may appoint a referee with directions to hear and report the evidence submitted for or against the petition for disciplinary action or petition for revocation of conditional admission.

* * *

(e) Referee's Findings, Conclusions, and Recommendations. The referee shall make findings of fact, conclusions, and recommendations, file them with this Court, and notify the respondent and the Director of them. In revocation of conditional admission matters, the referee shall also notify the Director of the Board of Law Examiners. Unless the respondent or Director, within ten days, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the respondent 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. One ordering a transcript within ten days of the date the transcript is ordered shall 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. One ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one copy for the respondent and one for the Director. One ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

RULE 15. DISPOSITION; PROTECTION OF CLIENTS

(a) Disposition. Upon conclusion of the proceedings, this Court may:

(1) Disbar the lawyer;

(2) Suspend the lawyer indefinitely or for a stated period of time;

(3) Order the lawyer to pay costs:

(4) Place the lawyer on a probationary status for a stated period, or until further order of this Court, with such conditions as this Court may specify and to be supervised by the Director;

(5) Reprimand the lawyer;

(6) Order the lawyer to successfully complete within a specified period 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;

(7) Make such other disposition as this Court deems appropriate;

(8) Require the lawyer to pay costs and disbursements; in addition, in those contested cases where the lawyer has acted in the proceedings in bad faith, vexatiously, or for oppressive reasons, order the lawyer to pay reasonable attorney fees; ~~or~~

(9) Dismiss the petition for disciplinary action or petition for revocation of conditional admission~~.~~; or

(10) Revoke, modify or extend a conditional admission agreement.

RULE 18. REINSTATEMENT

(a) Petition for Reinstatement. A petition for reinstatement to practice law shall be served upon the Director and the President of the State Bar Association. The original petition, with proof of service, and seven copies, shall then be filed with this Court. Together with the petition served upon the Director's Office, a petitioner seeking reinstatement shall pay to the Director a fee of $300. Applications for admission to the bar following a revoked conditional admission shall be filed with the Board of Law Examiners pursuant to Rule 16, Rules for Admission to the Bar.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(b) Disciplinary Proceedings.

(1) *Conduct previously considered and investigated where discipline was not warranted.* Conduct considered in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings, is inadmissible if it was determined in the proceedings that discipline was not warranted, except to show a pattern of related conduct the cumulative effect of which constitutes an ethical violation, except as provided in subsection (b)(2).

(2) *Conduct previously considered where no investigation was taken and discipline was not warranted.* Conduct in previous lawyer disciplinary proceedings of any jurisdiction, including revocation of conditional admission proceedings which was not investigated is admissible, even if it was determined in the proceedings without investigation that discipline was not warranted.

(3) *Previous finding.* A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline or revocation, modification or extension of conditional admission is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct.

(4) *Previous discipline.* The fact that the lawyer received discipline in previous disciplinary proceedings, including revocation, modification or extension of conditional admission, is admissible to determine the nature of the discipline to be imposed, but is not admissible to prove that a violation occurred and is not admissible to prove the character of the lawyer in order to show that the lawyer acted in conformity therewith; provided, however, that evidence of such prior discipline may be used to prove:

(i) A pattern of related conduct, the cumulative effect of which constitutes a violation;

(ii) The current charge (e.g., the lawyer has continued to practice despite suspension);

(iii) For purposes of impeachment (e.g., the lawyer denies having been disciplined before); or

(iv) Motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

* * *

(e) Admission. Subject to the Rules of Evidence, a lawyer's admission of unprofessional conduct or of violating a conditional admission agreement is admissible in proceedings under these Rules.

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:

(1) As between the Committees, Board and Director in furtherance of their duties;

(2) After probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules;

(3) As between the Director and a lawyer admission or disciplinary authority of another jurisdiction in which the lawyer affected is admitted to practice or seeks to practice;

(4) Upon request of the lawyer affected, the file maintained by the Director shall be produced including any district committee report; however, the Director's work product shall not be required to be produced, nor shall the Director or Director's staff be subject to deposition or compelled testimony, except upon a showing to the court issuing the subpoena of extraordinary circumstance and compelling need. In any event, the mental impressions, conclusions, opinions and legal theories of the Director and Director's staff shall remain protected.

(5) If the complainant is, or at the time of the actions complained of was, the lawyer's client, the lawyer shall furnish to the complainant copies of the lawyer's written responses to investigation requests by the Director and District Ethics Committee, except that insofar as a response does not relate to the client's complaint or involves information as to which another client has a privilege that portions may be deleted;

(6) Where permitted by this Court; or

(7) Where required or permitted by these Rules.

(8) Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Committee or Board members made in furtherance of their duties.

(9) As between the Director and the Client Security Board in furtherance of their duties to investigate and consider claims of client loss allegedly caused by the intentional dishonesty of a lawyer.

(10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

(11) As between the Director and the Board of Law Examiners in furtherance of their duties under these rules.

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

(1) The fact that a matter is or is not being investigated or considered by the Committee, Director, or Panel;

(2) With the affected lawyers consent, the fact that the Director has determined that discipline is not warranted;

(3) The fact that the Director has issued an admonition;

(4) The Panel's disposition under these Rules;

(5) The fact that stipulated probation has been approved under Rule 8(d)(3) or 8(e)~~.~~;

(6) The fact that the terms of a conditional admission agreement have been modified or extended under Rule 8(d)(5);

(~~6~~7) Information to other members of the lawyer's firm necessary for protection of the firm's clients or appropriate for exercise of responsibilities under Rules 5.1 and 5.2, Rules of Professional Conduct.

Notwithstanding any other provision of this Rule the records of matters in which it has been determined that discipline is not warranted shall not be disclosed to any person, office or agency except to the lawyer and as between Committees, Board, Director, Referee or this Court in furtherance of their duties under these Rules.

(c) Records after Determination of Probable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after probable cause has been determined under Rule 9(j)(1)(ii) or (iv) or proceedings before a referee or this Court have been commenced under these Rules, the files, records, and proceedings of the District Committee, the Board, and the Director relating to the matter are not confidential.

RULE 24. COSTS AND DISBURSEMENTS

(a) Costs. Unless this Court orders otherwise or specifies a higher amount, the prevailing party in any disciplinary proceeding or revocation of conditional admission proceeding decided by this Court shall recover costs in the amount of $900.

(b) Disbursements. Unless otherwise ordered by this Court, the prevailing party in any disciplinary proceedings or revocation of conditional admission proceedings decided by this Court shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action under Rule 12. Recoverable disbursements in proceedings before a referee or this Court shall include those normally assessed in appellate proceedings in this Court together with those which are normally recoverable by the prevailing party in civil actions in the district court.

(c) Time and Manner for Taxation of Costs and Disbursements. The procedures and times governing the taxation of costs and disbursements and for making objection to same and for appealing from the clerk's taxation shall be as set forth in the Rules of Civil Appellate Procedure.

(d) Judgment for Costs and Disbursements. Costs and disbursements taxed under this Rule shall be inserted in the judgment of this Court in any disciplinary proceeding wherein suspension, ~~or~~ disbarment, or revocation of conditional admission is ordered. No suspended attorney shall be permitted to resume practice and no disbarred attorney may file a petition for reinstatement if the amount of the costs and disbursements taxed under this Rule has not been fully paid. A lawyer whose conditional admission has been revoked may not file an application for admission to the bar until the amount of the costs and disbursements taxed under this Rule has been fully paid.

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 the Director's 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~~.~~;

(4) Execute authorizations and releases necessary to investigate alleged violations of a conditional admission agreement.

Such requests shall not be disproportionate to the gravity and complexity of the alleged ethical violations. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 25 requests. The lawyer shall be denominated by number or randomly selected initials in any District Court proceeding. Copies of documents shall be permitted in lieu of the original in all proceedings under these Rules. The Director shall promptly return the originals to the respondent after they have been copied.

(b) Grounds of Discipline. Violation of this Rule is unprofessional conduct and shall constitute a ground for discipline; provided, however, that a lawyer's challenge to the Director's requests shall not constitute lack of cooperation if the challenge is promptly made, is in good faith and is asserted for a substantial purpose other than delay.

RULE 26. DUTIES OF DISCIPLINED, DISABLED, CONDITIONALLY ADMITTED, OR RESIGNED LAWYER

(a) Notice to Clients in Non-Litigation Matters. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client being represented in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation or disability. The notification shall urge the client to seek legal advice of the client's own choice elsewhere, and shall include a copy of the Court's order.

(b) Notice to Parties and Tribunal in Litigation. Unless this Court orders otherwise, a disbarred, suspended or resigned lawyer, a lawyer whose conditional admission has been revoked, or a lawyer transferred to disability inactive status, shall notify each client, opposing counsel (or opposing party acting *pro se*) and the tribunal involved in pending litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, or disability. The notification to the client shall urge the prompt substitution of other counsel in place of the disbarred, suspended, or resigned, disabled lawyer, and shall include a copy of the Court's order.

(c) Manner of Notice. Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court's order.

(d) Client Papers and Property. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, 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 Court's order, the disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, 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, resigned or disabled lawyer, or lawyer whose conditional admission has been revoked, shall be attached to the affidavit, along with proof of mailing by certified mail.

(f) Maintenance of Records. A disbarred, suspended, resigned or disabled lawyer, or a lawyer whose conditional admission has been revoked, 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, resigned or disabled~~ lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, ~~or~~ disability, or revoked conditional admission order will be available.

(g) Condition of Reinstatement. Proof of compliance with this Rule shall be a condition precedent to any petition or affidavit for reinstatement made by a disbarred, suspended, resigned or disabled lawyer~~.~~, or to an application for admission submitted to the Board of Law Examiners after revocation of a lawyer's conditional admission.

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, or disabled lawyer, or a lawyer whose conditional admission has been revoked, 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, or a revoked conditional admission 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.

RULE 28. DISABILITY STATUS

(a) Transfer to Disability Inactive Status. A lawyer whose physical condition, mental illness, mental deficiency, senility, or habitual and excessive use of intoxicating liquors, narcotics, or other drugs prevents the lawyer from competently representing clients shall be transferred to disability inactive status.

(b) Immediate Transfer. This Court may immediately transfer a lawyer to disability inactive status upon proof that the lawyer has been found in a judicial proceeding to be a mentally ill, mentally deficient, incapacitated, or inebriate person.

(c) Asserting Disability in Disciplinary Proceeding. A lawyer's asserting disability in defense or mitigation in a disciplinary proceeding or a proceeding to revoke conditional admission shall be deemed a waiver of the doctor-patient privilege. The referee may order an examination or evaluation by such person or institution as the referee designates. If a lawyer alleges disability during a disciplinary investigation or proceeding, or a proceeding to revoke conditional admission, and therefore is unable to assist in the defense, the Director shall inform the Court of the allegation and of the Director's position regarding the allegation. The Court may:

(1) Transfer the lawyer to disability inactive status;

(2) Order the lawyer to submit to a medical examination by a designated professional;

(3) Appoint counsel if the lawyer has not retained counsel;

(4) Stay disciplinary proceedings or proceedings to revoke conditional admission until it appears the lawyer can assist in the defense;

(5) Direct the Director to file a petition under Rule 12;

(6) Appoint a referee with directions to make findings and recommendations to the Court regarding the disability allegation or to proceed under Rule 14;

(7) Make such or further orders as the Court deems appropriate.

(d) Reinstatement. This Court may reinstate a lawyer to active status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed as provided in Rule 18. The lawyer's petition for reinstatement:

(1) Shall be deemed a waiver of the doctor-patient privilege regarding the incapacity; and

(2) Shall set forth the name and address of each physician, psychologist, psychiatrist, hospital or other institution that examined or treated the lawyer since the transfer to disability inactive status.

(e) Transfer Following Hearing. In cases other than immediate transfer to disability inactive status, and other than cases in which the lawyer asserts personal disability, this Court may transfer a lawyer to or from disability inactive status following a proceeding initiated by the Director and conducted in the same manner as a disciplinary proceeding under these Rules. In such proceeding:

(1) If the lawyer does not retain counsel, counsel may be appointed to represent the lawyer; and

(2) Upon petition of the Director and for good cause shown, the referee may order the lawyer to submit to a medical examination by an expert appointed by the referee.

My name is Ian Kees and I graduated from law school in May of 1998. After passing the Wisconsin Bar in July of 1998, I began practicing at a Big-Five accounting firm in Wisconsin. I practiced there almost two years before beginning practice at a Milwaukee law firm. I practiced there for almost a year. After deciding to relocate to Minnesota, I accepted a position with a large national accounting firm in Minneapolis and began practicing in their M & A group in October of 2001. From August 2001 until January of 2002, I taught third-year law students corporate taxation at Marquette University School of Law in Milwaukee (after starting at the Minneapolis accounting firm, I flew back to Milwaukee twice a week to fulfill my teaching commitments).

In December of 2002, I was hired by a large Minnesota corporation in their corporate development department and for the past 16 months have participated in all aspects of the corporate development function. Recently, I was hired as corporate counsel at a mid-sized Minneapolis based company.

As you can see, during the past 5.5 years, I have held several different positions in both Wisconsin and Minnesota. At the Milwaukee office of the accounting firm, my practice was substantially similar to the tax practice I had at the Milwaukee law firm in that I researched State and Federal statutory and case law and prepared memoranda with my research results regarding a wide-variety of research issues and also performed a considerable amount of "accountant type" work in that approximately 25% of my time was devoted to tax compliance preparation and review. I performed similar work at the Minnesota based accounting firm, although with a significantly greater M & A flavor and considerably less focus on compliance work.

At the Minneapolis corporation, my colleagues and I (both attorneys and non-attorneys) performed all aspects of corporate development from valuation to document drafting, negotiation and review, in addition to a significant amount of outside counsel management.

When I was offered the position at the Minnesota corporation in the Fall of 2002, I was granted three weeks in which to accept. During this time, I spoke with numerous potential employers to ascertain what other employment opportunities may be available. Many times I was referred to the general counsel at these Minnesota based companies because of my background. Several of these individuals volunteered that they regularly hired attorneys from other states into their in-house departments and that it was not a requirement in MN that the in-house attorney was licensed in MN, as long as they were licensed and in good standing in another jurisdiction. However, because it was clear that the offer I had received was a very good one after talking to many other employers, I did not pursue the issue of what restrictions, if any, were placed on a non-Minnesota licensed attorney practicing in an in-house capacity at that time.

I have been fortunate enough to have been involved in a substantial number of corporate development (acquisition and disposition) transactions and have also been exposed to a substantial amount of contract drafting, review and negotiation. Thus, when I decided recently to search for new employment, I determined to look for an employer seeking someone to be substantially involved in the contract and M & A function of their business.

I have found that in my new position. They have hired me to be intimately involved in all aspects of their contracting and M & A function, position types that many attorneys and non-attorneys hold. However, since my goal is to someday assume a general counsel position at a company, preferably based in Minnesota, I determined to get more color regarding if and when I might need to take the MN bar and whether Minnesota had any reciprocity or "opt-in" provisions that have been subject to significant discussion as of late.

As a result, before looking for a new position, in February I spoke to Jim Newis at the MN Board of Bar Examiners and Professional Responsibility. I explained my practice experience to Jim and my desire to obtain a position with a Minnesota company focusing on contracts and M & A. Although Jim said that he did not think such activities would violate any rules in Minnesota for several reasons including that such responsibilities are handled within Minnesota companies by non-attorneys and attorneys that were both Minnesota and non-Minnesota licensed, he said a Grey area could arise if my duties expanded. Although I determined to simply take the July Minnesota bar because it is possible that I will someday seek or be

asked to have a practice focus at a Minnesota company that is beyond contracts and M & A, and I am not interested in being involved in the "Grey area" if such situation arose, I was happy when Jim brought to my attention your consideration of some new rules that might permit someone in my situation to gain membership into the Minnesota Bar whether through full membership or by way of employer sponsorship.

Obviously I would prefer to not have to take the Minnesota Bar, especially since Jim informed me that anyone can be granted Minnesota Bar membership within two years of obtaining licensure in another jurisdiction (although I am sure there are some parameters surrounding this option) and also because my MBE score of 166 is well above the minimum threshold that Minnesota test takers are required to have to obtain licensure here (although I would certainly understand if I was required to pass the ethics exam in Minnesota before obtaining Minnesota Bar membership because that was not a requirement in Wisconsin).

Thus, with my practice experience as background, I would like to make the following comments that I respectfully request this Court to consider before adopting new rules.

First, it appears that under the revised rules currently submitted to your group for review, I would seek admission under Rule 9 and/or Rule 10.

With respect to admission under either my primary concern is with what is stated in Section 33 of the petition for Rule Amendment. In Section 33, the Board admits that even though most other states that have adopted this revision have not imposed a length of practice requirement, the Board has requested that a minimum length of practice requirement be imposed. It is my understanding that the majority of states have not imposed a length of practice requirement because they have determined that a company is in a better position financially and structurally to understand their legal and business needs and to determine whether the lawyers background will enable them to properly fulfill their responsibilities to the company. In addition, the company generally has greater access to outside service providers to provide another mechanism to research and review significant legal issues that arise that the in-house attorney may not have had much if any exposure to. Please see Section 27 which also references the Board's persuading the MSBA to abandon attempts to adopt ABA Model Rule 5.5(d)(i) (presumably much more consideration was given to the ABA rules and the ABA determined that a length of practice requirement was unnecessary).

Minnesota corporations should be just as capable as those corporations located in other states whose Board of Bar Governors have addressed the issue and determined that no length of practice is required. As a result, unless there is compelling evidence that Minnesota corporations are not as capable or do not need access to capable attorneys possessing less than three recent years of pure legal practice experience, I respectfully request this Court to adopt Rule 9 and 10 without imposing a minimum length of practice requirement.

In addition, my experience may be representative of others seeking licensure under Rule 9 or 10 and who may be penalized for failing to strictly meet the proposed revised amendments. For example, I could argue through submission of briefs and memos I produced while employed by the accounting firms and through references submitted by colleagues both lawyers and non-lawyers, that my practice at these firms was substantially similar to that which I was exposed to at the law firm (because related to federal and state tax code and regulations was not in contradiction to any other professional or legal rules and regulations).

Much of this similarity was the result of the unique nature of tax consulting at a large accounting firm and the substantially similar partner/associate model involved. In fact, the structure of a large accounting firm generally enhances a new lawyers access to review, collaboration and mentoring by attorneys and seasoned tax accountants and permits them to develop professional and personal skills that add substantial value to future business employers or clients. Similarly, my corporate development practice at the Minneapolis corporation had a very significant "legal" emphasis in that I was constantly working with and reviewing work product prepared by both internal and external counsel and was regularly drafting and reviewing complex contracts. However, based upon the narrow practice of law definition found in Rule 7A, none of my experience at these positions would be credited, even though it appears that a change in my title would have changed the result.

For example, should I have asked to be titled corporate counsel associate practicing M&A at the Minneapolis corporation as opposed to a corporate development associate? Although I think I could make a compelling argument that irrespective of my title, my work product was more consistent with what is typically considered house counsel and that the Board should not limit its review under Rule 7A to title alone, administration of these types of arguments could be burdensome. Instead, I think the better answer, with respect to this limited area of corporate practice, is for this Court to adopt a rule that is more inclusive as to the potential attorneys it may benefit rather than less inclusive.

It must be remembered that the applicant under Rule 9 and 10 already has to have found an employer to hire them. I believe that the competitive free market system that involves a Minnesota corporation interviewing numerous candidates and reviewing references and transcripts is a better mechanism to be used to determine what weight should be given to someone's practice experience that is substantially similar to that described in Rule 7A.

I think that action consistent with this request would substantially support one of the stated goals of the Board to encourage those attorneys practicing in an in-house capacity, although licensed and in good standing in another jurisdiction, to become involved in the Minnesota Bar after substantiating their good standing and sufficient test results. Even if the Court were to choose to retain a practice length requirement under Rules 9 and 10, I respectfully request the Court to consider extending the time period under which a test score over 145 on the Multistate exam would be transferable. The time commitment involved in obtaining a high score on the Multistate exam can be considerable. Such an extension would permit those persons who have previously demonstrated ability to begin putting their expertise and knowledge to beneficial use at a Minnesota corporation without the added onerous of redemonstrating this ability.

Thank you very much for considering my comments.

Ian Kees

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May 6, 2004

The Honorable Justices of the Minnesota Supreme Court
c/o Mr. Frederick Grittner,
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

RE: Petition of the Minnesota State Board of Law Examiners for the Amendment of the Rules for Admission to the Bar.

Dear Justices of the Minnesota Supreme Court:

Please accept the following comments of the Association of Corporate Counsel[1] (ACC) and its Minnesota chapter. We write to express our concern over two of the Committee's proposed amendments to the Rules for Admission to the Bar.

The proposals of the Minnesota State Board of Law Examiners are cognizant of the need to be "responsive to the increasingly multijurisdictional practice of in-house counsel." We initially reviewed the Board's proposals with the intention of suggesting only slight modifications to ensure that our membership in Minnesota, and in-house counsel nationwide, would be able to better serve their clients in the delivery of multijurisdictional practice services. While we appreciate the efforts of the Board to address the concerns of in-house counsel within their "Petition to Amend the Rules for Admission to the Bar" (including amendment to Rule 9 and the proposed adoption of a new Rule 10), we cannot support what has been proposed and request the Court to

[1] The Association of Corporate Counsel (or ACC, formerly known as the American Corporate Counsel Association, or ACCA) is the in-house bar association, with over 15,500 individual members who represent over 7,000 private sector organizations. ACC has over 40 local chapters in the US and a growing number in other countries. Founded in 1982, ACC provides members with networking, practical resources, and advocacy on issues of importance to those whose practice is defined by their in-house relationship to their client.

set aside the Board's proposals and to reconsider full adoption of the ABA's Model Rule 5.5 as originally proposed and supported by the Minnesota State Bar Association.

1. Proposed Rule 9 and new Rule 10 are confusing, impractical, and will be unnecessarily costly to administer.

Initially the Minnesota State Bar Association (the "MSBA") considered recommending to this Court the American Bar Association's Model Rule 5.5, including provision (d)(1),[2] which authorizes the practices of in-house counsel who work full time in Minnesota, but – while admitted and in good standing in other states —are not admitted in Minnesota. The MSBA agreed to not to recommend ABA Model Rule 5.5(d)(1) because they understood that the Law Examiner's offices were interested in streamlining the state's existing in-house counsel registration system and that corporate counsel practice by lawyers without a Minnesota license on a permanent basis in the state would be handled under that system.

The Board of Law Examiner's resulting proposed changes to Rule 9 and their proposed adoption of Rule 10 purport to offer permanent practice authorizations for in-house counsel who are serving clients in Minnesota, but who are not locally licensed. Rule 9 would offer an initial 12-month license to an in-house counsel who is not admitted in Minnesota, but whose employer-client wishes for the lawyer to work in offices in the state. Rule 10 is offered for those who would be in the state longer than 12 months, and additionally requires the lawyer to have a specified MPRE score on record.

Our concern is that the Board of Law Examiner's proposals replace a simple, one sentence authorization from the ABA Model Rule 5.5 proposal (which is otherwise fully endorsed in the MSBA's proposals) and replace it with two dysfunctional and administratively burdensome in-house counsel licensing provisions.

The Board's resulting proposal unnecessarily complicates what should be a relatively straightforward provision that authorizes in-house counsel, creating a system that is confusing, expensive to administer, and out of sync with the intentions of the rest of the rule and the spirit of the MJP reforms they embody. Since we are concerned about the way the rules operate as a whole, our request for your consideration is not to make minor adjustments, but to request that you reject the current proposals in favor of reinserting the original language contemplated by the MSBA [From ABA Model 5.5(d)(1)], and instruct the Board of Law Examiners to reformulate their in-house counsel registration rule proposal along more constructive lines, outlined below.

2. Don't diminish the in-house counsel's authority to practice and the responsibilities that go with it by removing reference to their authority to practice under the Court's supervision from the rules of professional conduct that regulate all other lawyers practicing in the state.

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[2]ABA Model Rule 5.5(d)(1) states:
(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

There is no reason to relegate in-house counsel to a "back door" entry to authorized practice in the state. There is no benefit to the bar, the public, or the client communities by removing authorization for their practices from the rules that otherwise regulate other lawyers' practices in the state. Perhaps more importantly, doing so has negative impact: it moves corporate counsel practice authorizations to an exception to the law examiners' requirements, arguably engendering a perception that such lawyers are not fully subject to the rules of conduct or the disciplinary and regulatory mechanisms by which the state controls other lawyers whose practices are regulated through the rules of conduct. Further, lawyers who look for guidance on MJP issues and rightly consult the new rules will find that 5.5(d)(1) is missing from Minnesota's rules. Now that so many other states are following the model rules including 5.5(d)(1), this may lead to a presumption that Minnesota does not authorize "permanent" practices by in-house lawyers who are not admitted in the state, especially given that Minnesota is otherwise adopting the rest of the ABA Model Rule in its entirety.

This issue raises a related concern, namely the concern with which we suggest the Court should consider the issue of comity in these rules. While every state needs to adopt rules of professional responsibility in a manner that reflects the state's own concerns, there is a reason to hope that states will be increasingly cognizant of the necessity for consistency between state rules in their practices. The momentum behind the push for multijurisdictional practice reforms is the recognition that all kinds of lawyers and all kinds of clients are engaged in work that takes them beyond the confines of any one state's borders and beyond the reach of any one state's rules. If we are to create rules that will meaningfully guide and regulate lawyers in the proper conduct of their practices, there must be some consistency between the rules of the states over which their practices are spread. When each state agrees that the vast majority of the model rules are acceptable, but then proceeds to tinker with the corners to rearrange them, we stand to confuse and confound the lawyers who brought this problem to our attention and asked us to help them connect their 21st century practices to rules that marry their current needs to a continued grounding in traditional principles of lawyer regulation.

If the Court and the bar are prepared to recognize that out-of-state in-house counsel practices requested by Minnesota-based employer clients are acceptable, then why not simply authorize them with the other multijurisdictional practices enunciated under the general rule and save the registration system for any administrative details that remain (as contemplated by Comment 17 of ABA Model Rule 5.5)?

3. What the registration system should contain.

A number of states have corporate counsel registration systems that pre-exist their new MJP rules and a number of states that have never authorized these practices before have adopted registration systems as a part of their MJP reform packages. While not all states passing 5.5(d)(1) have felt a need to create a registration system[3], many more

[3] Georgia, for instance, is poised to adopt their committee's recommended proposal to codify ABA Model Rule 5.5, including section (d)(1), and does not plan to institute any registration system for corporate counsel working under that rule. The bar's general counsel cites the expense of doing so as being completely disproportionate to any perceived risk involved in not adopting a system. Indeed, bar counsel in the state

have. The registration system seems to be important to examiners in the states in that they otherwise don't have a firm handle on the number and location and particulars of lawyers engaged in in-house practice in the state. Many have required those who wish to register to basically fill out the same forms required of first time admission exam candidates. While this is common practice, we'd suggest it's not a very meaningful exercise, and is quite burdensome to administer and police (and if it's not actually policed, then why bother?). Other states have already engaged in this background check, exam process, and character assessment. Further, this group of lawyers is very low risk, both in terms of statistical history of concerns, and in terms of demographic profile. Those who go in-house tend to be carefully vetted by nature of the extremely tough competition for in-house jobs that's part of the employment market. In-house counsel are rarely hired "green"; on average, they are at least 7-11 years into their practices, and have a substantial track record and very visible and laudable practice histories.

Based on this, we'd suggest that the registration forms may wish to ask counsel to provide proof of good standing in all other jurisdictions in which the lawyer is licensed or has practiced, but we'd suggest that it is an unnecessary waste of Examiner and counsel time to have them go through the process as if they'd never been admitted to or practiced in a bar setting before.

Other items that might be included in the registration are:

- Basic biographic information about the lawyer, including how they may be contacted or solicited to take part in bar activities;
- A small processing fee to cover registration expenses;
- A statement from the employer that the lawyer is indeed their in-house counsel;
- Terms by which the license expires (upon leaving the client's employment (but with a transition period offered if a new in-house position is found) or upon discipline by the bar, etc;
- An amnesty provision that encourages counsel currently in the state, but operating "under radar" to come forward to participate in the registration process without fear of discipline for past actions;
- A statement that pro bono work is encouraged in the state, and that pro bono services provided in conjunction with a local member of the bar supervising or with a licensed legal services organization (or similar project for the bar, etc.) can be performed as an exception to the rule; and
- A statement from the lawyer submitting to the court's jurisdiction and affirming that the lawyer will not engage in unauthorized practice to outside parties.

We do not approach the Court to ask it to overrule the Board of Bar Examiner's proposals and reinstate the MSBA's original proposals lightly: indeed, we know that

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have had no issues with corporate counsel who have been engaged in full-time practice in the state without licensure for years. So the result has been a decision to simply codify and authorize what is the existing practice by adopting 5.5(d)(1), knowing that lawyers engaged in such practices are now fully under the authority of the bar should their practices go awry, which is a vast improvement over the previous system.

our request will present the court with difficult decisions and we appreciate that. We make our request against the odds because we believe that what is proposed here is not of the greatest service to the Court, the bar, the clients of Minnesota, or the public.

We need a system by which in-house counsel can continue their practices for their Minnesota clients, and the simplest, most effective model for accomplishing that purpose is ABA Model Rule 5.5(d)(1): the only provision of the model rule omitted from the proposals before you today, and then only on the grounds that a more succinct and effective alternative would be offered by the Board of Bar Examiners. Since we do not believe that the proposals of the Board of Bar Examiners meet their intended purpose, we request that the rules be revised to include again the omitted 5.5(d)(1) language, and that the Court instruct the Board of Bar Examiners to focus on the creation of a simple registration system, if they find that one is still needed. This system should be limited to collecting enough information about those practicing under the rule's authority to safeguard clients and the standards of the bar in the state, but should not be as complicated and expensive to administer as an original admission process since such an application is repetitive of what other states have already done in admitting and regulating the practice of the lawyer for some number of years until the present.

If we can be of assistance to the Court, in either expanding upon or clarifying our comments, or in offering other information we might have on the MJP rule and registration process as it impacts corporate counsel in other states, please feel free to call upon us. We appreciate your time and consideration of our request, and your leadership and vision in moving forward on this important issue.

Sincerely,

Susan Hackett

Susan Hackett
Senior Vice President and General Counsel
Association of Corporate Counsel

THE SUPREME COURT OF MINNESOTA

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May 7, 2004

Frederick K. Grittner
Clerk of Appellate Courts
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St. Paul, MN 55155

Re: Petition of the Board of Law Examiners to Amend the Minnesota Rules for Admission to the Bar File No. C5-84-2139

Dear Mr. Grittner:

Barbara J. Runchey, President of the Board, and I would like to request the opportunity to make an oral presentation to the court on the Board of Law Examiners' Petition for Amendment to the Rules for Admission to the Bar at the May 18, 2004, hearing before the Supreme Court. We request 5 minutes and 10 minutes, respectively.

Thank you for your consideration.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

Margaret Fuller Corneille
Director

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