MINNESOTA RULES ON LAWYERS

PROFESSIONAL RESPONSIBILITY

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RULE 1. DEFINITIONS

As used in these Rules:

(1) "Board" means the Lawyers Professional Responsibility Board.

(2) "Chair" means the Chair of the Board.

(3) "Count" means an alleged course of unprofessional conduct, designated as such in the Director's Charges of Unprofessional Conduct, and alleged to have violated one or more rules of professional conduct.

(4) "Executive Committee" means the committee appointed by the Chair under Rule 4(d).

(5) "Director" means the Director of the Office of Lawyers Professional Responsibility.

(6) "District Bar Association" includes the Range Bar Association.

(7) "District Chair" means the Chair of a District Bar Association's Ethics Committee.

(8) "District Committee" means a District Bar Association's Ethics Committee.

(9) "Notify" means to give notice a) by U.S. Mail or email to the person at the person's last known street address or email address; b) by U.S. Mail or email to the person at the street address or email address maintained in this Court's attorney registration records; or c) by U.S. Mail or email to the person's attorney if the person is represented by counsel.

(10) "Panel" means a panel of the Board as further described in Rule 4(e).

(11) "Panel Chair" means the chair of a Panel assigned to a matter.

(12) "Reasonable Cause" means facts sufficient to allow a person of ordinary care and prudence to believe that the alleged misconduct occurred.

(13) In computing any period of time prescribed or allowed by these rules or order of court, the method of computation specified in Rule 6.01, Minnesota Rules of Civil Procedure, shall be used, except that the last day of a suspension ordered by the Court will not be extended pursuant to Minn. R. Civ. P. 6.01(a)(1)(C) if that day is a Saturday, Sunday, or legal holiday.

RULE 2. PURPOSE

It is of primary importance to the public and to the members of the Bar that cases of lawyers' alleged disability or unprofessional conduct be promptly investigated and disposed of with fairness and justice, having in mind the public, the lawyer complained of and the profession as a whole, and that disability or disciplinary proceedings be commenced in those cases where investigation discloses they are warranted. Such investigations and proceedings shall be conducted in accordance with these Rules.

RULE 3. DISTRICT ETHICS COMMITTEE

(a) Composition. Each District Committee shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Four or more persons whom the District Bar Association (or, upon failure thereof, this Court) may appoint to three-year terms except that shorter terms shall be used where necessary to assure that approximately one-third of all terms expire annually. No person may serve more than two consecutive three-year terms, nor more than a total of four three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as District Chair. At least 20 percent of each District Committee's members shall be nonlawyers. Every effort shall be made to appoint lawyer members from the various areas of practice. The Board shall monitor District Committee compliance with this objective and the District Committee shall include information on compliance in its annual report to the Court.

(b) Duties. The District Committee shall investigate complaints of lawyers' alleged unprofessional conduct and make reports and recommendations thereon as provided in these Rules in a format prescribed by the Executive Committee. It shall meet at least annually and from time to time as required. The District Chair shall prepare and submit an annual report to the Board and this Court in a format specified by the Executive Committee and make such other reports as the Executive Committee may require.

RULE 4. LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

(a) Composition. The Board shall consist of:

(1) A Chair appointed by this Court for such time as it designates and serving at the pleasure of this Court but not more than six years as Chair; and

(2) Thirteen lawyers having their principal office in this state, one of whom the Minnesota State Bar Association may nominate, and nine nonlawyers resident in this State, all appointed by this Court to three-year terms except that shorter terms may be used where necessary to assure that as nearly as may be one-third of all terms expire each February 1. No person may serve more than two three-year terms, in addition to any additional shorter term for which the person was originally appointed and any period served as Chair. To the extent possible, members shall be geographically representative of the state and lawyer members shall reflect a broad cross section of areas of practice.

(b) Compensation. The Chair, other Board members, and other panel members shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

(c) Duties. The Board is responsible for administering these rules, and for establishing the policies that govern the lawyer discipline system and disability system. The Board may, from time to time, issue opinions on questions of professional conduct. The Board shall prepare and submit to this Court an annual report covering the operation of the lawyer discipline and disability system. The Chair may appoint a Vice-Chair and specify the Vice-Chair's duties. Board meetings are open to the public, except the Board may go into closed session not open to the public to discuss matters protected by Rule 20 or for other good cause.

(d) Executive Committee. The Executive Committee, consisting of the Chair, and one lawyer and one nonlawyer designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules. The Executive Committee shall act on behalf of the Board between Board meetings. The Executive Committee shall have the assistance of the State Court Administrator's office in carrying out its responsibilities. Members shall have served at least one year as a member of the Board prior to appointment to the Executive Committee. Members shall not be assigned to Panels during their terms on the Executive Committee.

(e) Panels. The Chair shall divide the Board into Panels, each consisting of not less than three Board members and at least one of whom is a nonlawyer, and shall designate a Chair and a Vice-Chair for each Panel. Three Panel members, at least one of whom is a nonlawyer and at least one of whom is a lawyer, shall constitute a quorum. No Board member shall be assigned to a matter in which disqualification would be required of a judge under Rule 2.11 of the Code of Judicial Conduct. The Board's Chair or the Vice-Chair may designate substitute Panel members from current or former Board members or current or former District Committee members for the particular matter, provided, that any panel with other than current Board members must include at least one current lawyer Board member. A Panel may refer any matters before it to the full Board, excluding members of the Executive Committee.

(f) Assignment to Panels. The Chair shall assign matters to Panels randomly. The Executive Committee may, however, redistribute case assignments to balance workloads among the Panels, appoint substitute panel members to utilize Board member or District Committee member expertise, and assign appeals of multiple admonitions issued to the same lawyer to the same Panel for hearing.

(g) Approval of Petitions. Except as provided in these Rules or ordered by this Court, no petition for disciplinary action shall be filed with this Court without the approval of a Panel or the Board.

RULE 5. DIRECTOR

(a) Appointment. The Director is an employee of the Judicial Branch, appointed by and serving at the pleasure of this Court. The State Court Administrator will evaluate the Director's performance annually or at such other times as this Court directs.

(b) Duties. The Director is responsible for the day-to-day operations of the Office of Lawyers Professional Responsibility, shall supervise the employees of that Office, shall prepare and submit to the Court an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the Court that it may require the Director to provide.

(c) Employees. The Director may employ, on behalf of this Court, persons at such compensation as the Court may approve.

(d) Client Security Board Services. Subject to the approval of this court, the Director may provide staff investigative and other services to the Client Security Board. Compensation for such services may be paid by the Client Security Board to the Director's office upon such terms as are approved by the Court and the Client Security Board.

RULE 6. COMPLAINTS

(a) Investigation. All complaints of lawyers' alleged unprofessional conduct or allegations of disability that are investigated shall be investigated pursuant to these Rules. No District Committee investigator shall investigate a matter in which disqualification would be required of a judge under Rule 2.11 of the Code of Judicial Conduct. No employee of the Office of Lawyers Professional Responsibility shall be assigned to a matter if the employee's activities outside the Office are such that a judge with similar activities would be disqualified under Rule 2.11 of the Code of Judicial Conduct.

(b) Notification: Referral. If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair promptly shall notify the Director of its pendency. If a complaint is submitted to the Director, it shall be referred for investigation to the District Committee of the district where the lawyer's principal office is located or in exceptional circumstances to such other District Committee as the Director reasonably selects, unless the Director determines to investigate it without referral or that discipline is not warranted.

(c) Copies of Investigator's Report. Upon the request of the lawyer being investigated, the Director shall provide a copy of the investigator's report, whether that investigation was undertaken by the District Committee or the Director's Office.

(d) Time to Respond. The District Committee or the Director's Office shall afford the respondent an opportunity to respond to the complaint, and the complainant an opportunity to reply to the lawyer's response to the complaint. Any such response or reply must be provided to the District Committee or the Director within 14 days after the date of a written notice that requests a response or reply, unless an extension is granted in writing by the District Committee Investigator or the Director. If the notice and request for a response or reply is sent to the respondent or the complainant by United States Mail, 3 days shall be added to the response period.

RULE 6Z. COMPLAINTS INVOLVING JUDGES

(a) Jurisdiction. The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

(1) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers

Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If reasonable cause has been determined under Rule 9(a) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding. If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

Advisory Committee Comment—1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(C) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. *See, e.g., In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as factfinder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

RULE 7. DISTRICT COMMITTEE INVESTIGATION

(a) Assignment; Assistance. The District Chair may investigate or assign investigation of the complaint to one or more of the Committee's members, and may request the Director's assistance in making the investigation. The investigation may be conducted by means of written and telephonic communication and personal interviews. Any response to a request for information or a reply to a response must be provided within the time established by Rule 6(d) of these Rules.

(b) Report. The investigator's report and recommendations shall be submitted for review and approval to the District Chair, the Chair's designee or to a committee designated for this purpose by the District Chair, prior to its submission to the Director. The report shall include a recommendation that the Director:

(1) Determine that discipline is not warranted;

(2) Issue an admonition;

(3) Refer the matter to a Panel; or

(4) Investigate the matter further.

If the report recommends discipline not warranted or admonition, the investigator shall include in the report a draft letter of disposition in a format prescribed by the Director.

(c) Time. The investigation shall be completed and the report made promptly and, in any event within 90 days after the District Committee received the complaint, unless good cause exists. If the report is not made within 90 days, the District Chair or the Chair's designee within that time shall notify the Director of the reasons for the delay. If a District Committee has a pattern of responding substantially beyond the 90-day limitation, the Director shall advise the Board and the Chair shall seek to remedy the matter through the President of the appropriate District Bar Association. The Director shall notify the respondent of the District Committee's recommendation within 14 days of receipt of the Committee's report and recommendation.

(d) Removal. The Director may at any time and for any reason remove a complaint from a District Committee's consideration by notifying the District Chair of the removal.

(e) Notice to Complainant. The Director shall keep the complainant advised of the progress of the proceedings.

RULE 8. DIRECTOR'S INVESTIGATION

(a) Investigation.

(1) At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as the Director deems appropriate as to the conduct of any lawyer or lawyers.

(2) Any response to a request for information or a reply to a response must be provided within the time established by Rule 6(d) of these Rules.

(b) Complaints Against Court-Appointed Counsel. No investigation shall commence on a complaint by or on behalf of a party represented by court-appointed counsel, insofar as the complaint against the court-appointed attorney alleges incompetent representation by the attorney in the pending matter. Any such complaint shall be summarily dismissed without prejudice. The Director's dismissal shall inform the complainant that the complaint may be sent to the chief district judge or trial court judge involved in the pending matter. The judge may, at any time, refer the matter to the Director for investigation. The Director may communicate with the appropriate court regarding the complaint and its disposition.

(c) Investigatory Subpoena. With the Board Chair or Vice-Chair's approval upon the Director's application showing that it is necessary to do this before issuance of charges under Rule 9(a), the Director may subpoena and take the testimony of any person believed to possess information concerning possible unprofessional conduct of a lawyer. The examination shall be recorded by such means as the Director designates. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas and over motions arising from the examination.

(d) Disposition.

(1) Determination Discipline Not Warranted. If, in a matter where there has been a complaint, the Director concludes that discipline is not warranted, the Director shall so notify the lawyer involved, the complainant, and the Chair of the District Committee, if any, that has considered the complaint. The notification shall:

(i) Set forth a brief explanation of the Director's conclusion;

(ii) Set forth the complainant's identity and the complaint's substance; and

(iii) Inform the complainant of the right to appeal under subdivision (e).

(2) Admonition. In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional but of an isolated and non-serious nature, the Director may issue an admonition. The Director shall issue an admonition if so directed by a Board member reviewing a complainant appeal, under the circumstances identified in Rule 8(e). The Director shall notify the lawyer in writing:

(i) Of the admonition;

(ii) That the admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Panel;

(iii) That the lawyer may, by notifying the Director in writing within fourteen days, demand that the Director so present the charges to a Panel which shall consider the matter de novo or instruct the Director to file a Petition for Disciplinary Action in this Court; and

(iv) That unless the lawyer so demands, the Director after that time will notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, that the Director has issued the admonition.

If the lawyer makes no demand under clause (iii), the Director shall notify as provided in clause (iv). The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(3) Stipulated Probation.

(i) In any matter, with or without a complaint, if the Director concludes that a lawyer's conduct was unprofessional and that a private probation is appropriate, and the Board Chair or Vice-Chair approves, the Director and the lawyer may agree that the lawyer will be subject to private probation for a specified period up to two years, provided the lawyer throughout the period complies with specified reasonable conditions. At any time during the period, with the Board Chair or Vice-Chair's approval, the Director and the lawyer may agree to modify the agreement or to one extension of it for a specified period up to two additional years. The Director shall maintain a permanent disciplinary record of all stipulated probations.

(ii) The Director shall notify the complainant, if any, and the Chair of the District Committee, if any, that has considered the complaint, of the agreement and any modification. The notification to the complainant, if any, shall inform the complainant of the right to appeal under subdivision (e).

(iii) If it appears that the lawyer has violated the conditions of the probation, or engaged in further misconduct, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by a Panel Chair, file a petition for disciplinary action under Rule 12. A lawyer may, in the stipulation for probation, waive the right to such consideration by the Panel or Panel Chair.

(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);

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

(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 modify or extend the terms of the agreement for a period not to exceed two years.

(6) If, in a matter, with or without a complainant, the Director determines that diversion under Rule 31 of these Rules is appropriate, the Director shall proceed as provided in that rule.

(e) Review by Lawyers Board. If the complainant is not satisfied with the Director's disposition under Rule 8(d)(1), (2) or (3), the complainant may appeal the matter by notifying the Director in writing within 14 days. The Director shall notify the Chair of the appeal and the Chair shall assign the matter by rotation to a member of the Board, other than an Executive Committee member. The reviewing Board member may:

(1) approve the Director's disposition; or

(2) direct that further investigation be undertaken; or

(3) in any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

The reviewing Board member shall set forth an explanation of the Board member's action. A summary dismissal by the Director under Rule 8(b) shall be final and may not be appealed to a Board member for review under this section.

RULE 9. PANEL PROCEEDINGS

Public Discipline. If a matter is submitted to a Panel under Rule 8(d)(4)(i) or (iii) of these rules, it shall proceed as follows:

(1) The Director shall prepare Charges of Unprofessional Conduct, request a Panel assignment from the Board Chair, and notify the lawyer of the Charges and this Rule. Within 14 days after being notified of the Charges, the lawyer shall submit to the Panel and the Director an Answer that admits, denies, or otherwise responds to each allegation in the Charges. Within 10 days after the lawyer submits an Answer, the Director and the lawyer may submit to the Panel and the opposing party memoranda with affidavits or other documents that support or refute the Director's allegations. Submissions shall be made pursuant to the Director's instructions.

(2) Within 40 days after the lawyer is notified of the Charges, the Panel shall determine if reasonable cause as defined in Rule 1(12) exists based on the Charges, Answer, and other documents submitted. Absent exceptional circumstances, the Panel shall make its determination without oral argument or an evidentiary hearing. A request for an evidentiary hearing or oral argument must be made in the Answer and include evidence or information supporting the assertion of exceptional circumstances. If the Panel

grants a request for oral argument or an evidentiary hearing under this paragraph, the Panel shall issue an order setting the date of the argument or hearing and the procedures governing the proceeding.

(3) The Panel shall issue a written decision setting forth a reasonable cause determination or no reasonable cause determination as to each count in the Charges. A determination of reasonable cause or no reasonable cause is not a decision on the merits and does not involve the weighing of contrary evidence. The Panel shall instruct the Director to file in this Court a petition for disciplinary action for each count on which it finds reasonable cause.

(4) If the Panel (i) finds by clear and convincing evidence that misconduct occurred, and (ii) determines that all such misconduct is isolated and non-serious, the Panel shall state the facts and conclusions constituting unprofessional conduct and issue an admonition. If the Panel finds reasonable cause that any count in the Charges alleges serious or non-isolated misconduct, it shall not issue an admonition as to any other count in the Charges.

(b) Revocation of Conditional Admission. If the Director determines under Rule 8(d)(4)(iv) of these rules that a matter will be submitted to a Panel, the matter will proceed as set forth in subdivision (a)(1)-(3) of this rule, except if the Panel finds reasonable cause, the Panel shall instruct the Director to file a Petition for Revocation of Conditional Admission.

(c) Admonition Appeal. When the Director issues an admonition under Rule 8(d)(2) of these rules, and the lawyer makes a demand under Rule 8(d)(2)(iii), the matter shall proceed as follows:

(1) The Director shall prepare Charges of Unprofessional Conduct, request a Panel assignment from the Board Chair, and notify the lawyer of the Charges and this Rule. Within 14 days after being notified of the Charges, the lawyer shall submit to the Panel and the Director an Answer that admits, denies, or otherwise responds to each allegation in the Charges, and explains the reasons the admonition is unwarranted.

(2) Within 14 days after the lawyer's Answer is submitted, the parties must confer to identify mutually agreeable dates, which are not later than 120 days after the lawyer's Answer is submitted, when the parties, their counsel, and any witnesses authorized under subdivision (c)(4) of this Rule will be available for a hearing before the Panel, and when the parties will exchange exhibits and make written submissions to the Panel. The written submission must be made at least 10 days before the hearing. At the same conference, the parties must confer regarding the need for and proposed use of any discovery. The Director shall then promptly notify the Panel Chair of the mutually agreeable hearing dates, the schedule for the exchange of exhibits and written submissions, and any discovery agreements. Once the Panel has selected a hearing date, the Panel Chair shall issue a Scheduling Order reflecting the date exhibits will be exchanged and written submissions are due, the hearing date, and any discovery agreements.

(3) If the parties cannot agree on a matter concerning discovery, they shall submit their disagreement in writing to the Panel Chair, who will resolve the matter without oral argument. Absent exceptional circumstances, no interrogatories, requests for admissions, or expert depositions will be allowed. Except as modified herein, the Minnesota Rules of Civil Procedure applicable to discovery shall govern, except that the time for answers or objections is 10 days and the Panel Chair or Panel Vice-Chair shall rule upon any objections or requests for extensions of time. The District Court of Ramsey County shall have jurisdiction to issue subpoenas for depositions and testimony at Panel hearings, and to rule on motions arising from depositions. The lawyer shall be denominated by randomly selected initials in any District Court proceedings.

(4) The Panel shall receive evidence only in the form of affidavits, depositions or other documents except for live testimony by: (i) the lawyer; (ii) a complainant or client of the lawyer if different; and (iii) a witness whose testimony the Panel Chair or Vice-Chair has authorized for good case.

If live testimony is authorized, it shall be subject to cross-examination and the Minnesota Rules of Evidence. A party may compel attendance of a witness or production of documentary or tangible evidence as provided in the Minnesota Rules of Civil Procedure. The District Court of Ramsey County shall have jurisdiction over issuance of subpoenas, motions respecting subpoenas, motions to compel witnesses to testify or give evidence, and determinations of claims of privilege. The lawyer shall be denominated by randomly selected initials in any District Court proceedings.

(5) The Panel shall affirm the admonition if it (i) finds by clear and convincing evidence that the lawyer engaged in the alleged unprofessional conduct and (ii) determines that the conduct is isolated and non-serious. If the Panel does not find by clear and convincing evidence that the lawyer engaged in unprofessional conduct, then the Panel shall reverse the admonition. If the Panel finds reasonable cause to believe that public discipline is warranted, the Panel shall reverse the admonition and instruct the Director to file a petition for disciplinary action in this Court.

(d) Extensions. The Panel Chair may extend the time periods provided in this Rule for good cause.

(e) Referee Appointment. Upon the certification of the Panel Chair and the Board Chair to the Court that extraordinary circumstances indicate that a matter is not suitable for submission to a Panel under this Rule, due to exceptional complexity or other reasons, the Court may appoint a referee with directions to conduct the proceedings authorized by this Rule acting as a Panel would under this Rule. The Court may also remand the matter to a Panel under this Rule with instructions, or may direct the Director to file with this Court a petition for disciplinary action under Rule 12(a). If a referee is appointed to substitute for a Panel, the referee shall have the powers of a district court judge and Ramsey County District Court shall not exercise such powers in such case. If the referee so appointed determines there is reasonable cause, the Court may appoint the same referee to conduct a hearing on the petition for disciplinary action under Rule 14. If a referee appointed under Rule 14 considers all of the evidence presented at the cause proceeding, the referee's determination from that proceeding shall be made part of the public record.

(f) Notice of Disposition. The Director shall notify the lawyer, the complainant, if any, and the District Committee, if any, of the Panel's disposition under this Rule. A notice to the complainant, if any, shall inform the complainant of the right to petition for review under subdivision (g) of this Rule. If the Panel affirmed the Director's admonition, the notification to the lawyer shall inform the lawyer of the right to appeal to the Supreme Court under subdivision (h) of this Rule.

(g) Complainant's Petition for Review. If not satisfied with the Panel's disposition, the complainant may within 30 days after the date of the Director's notice under subdivision (f) of this Rule file with the Clerk of the Appellate Courts a petition for review. The complainant shall, prior to or at the time of filing, serve a copy of the petition for review upon the lawyer and the Director and shall file an affidavit of service with the Clerk of the Appellate Courts. The lawyer shall be denominated by randomly selected initials in the proceeding, which shall be captioned "In re Panel Proceeding Number []" and reference the Director's file number for the matter. 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.

(h) Lawyer's Appeal to Supreme Court. The lawyer may appeal a Panel's affirmance of the Director's admonition or an admonition issued by a Panel by filing a notice of appeal, with proof of service, with the Clerk of the Appellate Courts and by serving a copy on the Director within 30 days after the date of the Director's notice under subdivision (f) of this Rule. The lawyer shall be denominated by randomly selected initials in the proceeding, which shall be captioned "In re Panel Proceeding Number []" and reference the Director's file number for the matter. The Director shall notify the complainant, if any, of the lawyer's appeal. This Court may review the matter on the existing record or order such further proceedings as it deems appropriate. Upon conclusion of such proceedings, this Court may either affirm the decision or make such other disposition as it deems appropriate.

(i) Manner of Recording. When a hearing is held under this Rule, an official court record by a court reporter shall be made as in civil cases.

2024 Advisory Committee Comment

The amendments adopted on [date] require a Panel acting under subdivision (a) of this rule to make a cause determination based on "reasonable cause", which is now defined in Rule 1(12), RLPR. Previously, Rule 9 used "probable cause" as the standard for the panel's determination, and "probable cause" was undefined in the rules. The two standards have been interpreted similarly, with reasonable cause used more often in the civil context. *See Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 406 (Minn. 1998) (noting in the context of a civil action under the Vulnerable Adults Act that "reasonable cause" means "probable cause" in a criminal case, and the terms have been used synonymously); *State v. Childs*, 269 N.W.2d 25, 27 (Minn. 1978) ("Reasonable

cause is, of course, synonymous with probable cause."); *In re Schultz*, 375 N.W.2d 509, 513 (Minn. App. 1985) (applying a probable cause standard in a dental discipline matter).

RULE 10. DISPENSING WITH PANEL PROCEEDINGS

(a) Agreement of Parties. The parties by written agreement may dispense with some or all procedures under Rule 9 before the Director files a petition under Rule 12.

(b) Admission. If the lawyer admits some or all charges, the Director may dispense with some or all procedures under Rule 9 and file a petition for disciplinary action together with the lawyer's admission. This Court may act thereon with or without any of the procedures under Rules 12, 13, or 14.

(c) Criminal Conviction or Guilty Plea. If a lawyer pleads guilty to or is convicted of a felony under Minnesota statute, a crime punishable by incarceration for more than one year under the laws of any other jurisdiction, or any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit such a crime, the Director may either submit the matter to a Panel or, with the approval of the Chair of the Board, file a petition under Rule 12.

(d) Other Serious Matters. In matters in which there are an attorney's admissions, civil findings, or apparently clear and convincing documentary evidence of an offense of a type for which the Court has suspended or disbarred lawyers in the past, such as misappropriation of funds, repeated non-filing of personal income tax returns, flagrant non-cooperation including failure to submit an answer or failure to attend a pre-hearing meeting as required by Rule 9, fraud and the like, the Director may either submit the matter to a Panel or upon a motion made with notice to the attorney and approved by the Panel Chair, file the petition under Rule 12.

(e) Additional Charges. If a petition under Rule 12 is pending before this Court, the Director must present the matter to the Panel Chair, or if the matter was not heard by a Panel or the Panel Chair is unavailable, to the Board Chair or Vice-Chair, for approval before amending the petition to include additional charges based upon conduct committed before or after the petition was filed.

(f) Discontinuing Panel Proceedings. The Director may discontinue Panel proceedings for the matter to be disposed of under Rule 8(d)(1), (2) or (3).

RULE 11. RESIGNATION

A lawyer who is not subject to a disciplinary suspension or disbarred in any jurisdiction may resign from the Minnesota bar by serving a copy of a petition to resign, substantially in the form provided by the Director, upon the Director and filing the petition, along with proof of the service, with the Court.

The Director shall notify the Court, in writing, of any objections to the petition within 14 days after service of the petition. The Court will consider the Director's objections, if any, to the

petition and may at any time, with any conditions it may deem appropriate, grant or deny the lawyer's petition to resign from the bar. The Court may also submit the matter to a Panel, which shall conduct a hearing and make a recommendation to the Court. The recommendation shall be served upon the petitioner and filed with the Court.

Unless otherwise ordered by the Court, no petition to resign from the Minnesota bar shall be granted while a lawyer is under investigation for misconduct, when one or more charges of misconduct are pending that, if true, would warrant public discipline.

Advisory Committee Comment

The 2024 amendment to Rule 11 clarifies the existing practice that resignation while under investigation is typically not allowed, and encompasses the standard expressed in other cases. *See In re Mose*, 993 N.W.2d 251, 264 n.12 (Minn. 2023) (stating that a lawyer is not allowed to resign when allegations of serious misconduct are pending or when they lawyer is not in good standing); *In re Jones*, 383 N.W.2d 303, 307 (Minn. 1986) (stating that a lawyer is not allowed to resign when allegations of misconduct that would warrant public discipline are pending).

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 for revocation of conditional admission, with proof of service. 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 with proof of service.

(b) Service. The Director shall cause the petition to be served upon the respondent in the same manner as a summons in a civil action. If the respondent has a duly appointed resident guardian or conservator service shall be made thereupon in like manner.

(c) Respondent not found.

(1) Suspension. If the respondent cannot be found in the state, the Director shall mail a copy of the petition to the respondent's last known address and file an affidavit of mailing with this Court. Thereafter the Director may apply to this Court for an order suspending the respondent from the practice of law. A copy of the order, when made and filed, shall be mailed to each district court judge of this state. Within one year after the order is filed, the respondent may move this Court for a vacation of the order of suspension and for leave to answer the petition for disciplinary action.

(2) Order to Show Cause. If the respondent does not so move, the Director shall petition this Court for an order directing the respondent to show cause to this Court why appropriate disciplinary action should not be taken. The order to show cause shall be returnable not sooner than 20 days after service. The order may be served on the respondent by publishing it once each week for three weeks in the regular issue of a

qualified newspaper published in the county in this state in which the respondent was last known to practice or reside. The service shall be deemed complete 21 days after the first publication. Personal service of the order without the state, proved by the affidavit of the person making the service, sworn to before a person authorized to administer an oath, shall have the same effect as service by publication. Proof of service shall be filed with this Court. If the respondent fails to respond to the order to show cause, this Court may proceed under Rule 15.

(d) Reciprocal Discipline. Upon learning from any source that a lawyer licensed to practice in Minnesota has been publicly disciplined or is subject to public disciplinary charges in another jurisdiction, the Director may commence an investigation and, without further proceedings, may file a petition for disciplinary action in this Court. A lawyer subject to such charges or discipline shall notify the Director. If the lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota. If this Court determines that imposition of the identical discipline is not appropriate, it may order such other discipline or such other proceedings as it deems appropriate. Unless the Court determines otherwise, a final adjudication in another jurisdiction that a lawyer had committed certain misconduct shall establish conclusively the misconduct for purposes of disciplinary proceedings in Minnesota.

RULE 13. ANSWER TO PETITION FOR DISCIPLINARY ACTION

(a) Filing. Within 20 days after service of the petition, the respondent shall file an answer with in this Court, with proof of service. The answer may deny or admit any accusations or state any defense, privilege, or matter in mitigation.

(b) Failure to File. If the respondent fails to file an answer within the time provided or any extension of time this Court may grant, the allegations shall be deemed admitted and this Court may proceed under Rule 15.

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.

(b) Conduct of Hearing Before Referee. Unless this Court otherwise directs, the hearing shall be conducted in accordance with the rules of civil procedure applicable to district courts and the referee shall have all the powers of a district court judge.

(c) Subpoenas. The District Court of Ramsey County shall issue subpoenas. The referee shall have jurisdiction to determine all motions arising from the issuance and enforcement of subpoenas.

(d) Record. The referee shall appoint a court reporter to make a record of the proceedings as in civil cases.

(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. 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 respondent and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the referee's findings of fact, conclusions and recommendations that are disputed.

(f) Motions before the Supreme Court. In any proceeding filed with the Court under these rules, Rule 127 of the Minnesota Rules of Civil Appellate Procedure governs motions filed with the Court, unless the Court orders otherwise.

(g) Proceedings Before the Supreme Court. Unless the Court orders otherwise, within 30 days after the referee's findings, conclusions and recommendations are filed, the Director must notify the Court, by a written request filed with the Clerk of Appellate Courts, whether a transcript has been ordered under paragraph (e) of this Rule and if so, whether appropriate financial arrangements for the transcript have been made. The Director must also make a recommendation about which party should be ordered to file the first brief and provide an explanation for that recommendation. The Court shall issue an order establishing a briefing schedule. To the extent applicable, the Minnesota Rules of Civil Appellate Procedure govern the length and formatting of briefs. The Court shall notify the parties whether oral argument will be held. The matter shall be considered and decided upon the record, briefs, and if ordered, oral arguments.

RULE 15. DISPOSITION

(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) Reprimand the lawyer;

(4) Place the lawyer on probation, either supervised or unsupervised, for a stated period or until further order of this Court. Among other terms, probation terms may

include requirements for law office management assistance, continuing legal education courses, trust account education, ethics education, successful completion within a specified time of the written examination required for applicants for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility, participation in a lawyer assistance program, assessment of and treatment for medical or behavioral health issues including mental health and substance use issues, verified attendance at abstinence recovery meetings, self-assessments, and mentorship;

(5) Issue a private admonition or dismiss the petition for disciplinary action, in which case the Court's order may denominate the lawyer by number or randomly selected initials and may direct that the remainder of the record be sealed;

(6) Order the lawyer to pay restitution;

(7) Order the lawyer to pay costs and disbursements pursuant to Rule 24 of these rules. 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;

(8) Revoke, modify or extend a conditional admission agreement, or dismiss a petition for revocation of conditional admission; or

(9) Make such other disposition as this Court deems appropriate.

(b) Protection of Clients. When a lawyer is disciplined or permitted to resign, this Court may issue orders as may be appropriate for the protection of clients or other persons.

(c) Petition for Rehearing. A petition for rehearing may be filed regarding an order of the Court under this rule, by following the procedures of Rule 140, Rules of Civil Appellate Procedure. The filing of a petition for rehearing shall not stay this Court's order.

RULE 16. TEMPORARY SUSPENSION PENDING DISCIPLINARY PROCEEDINGS

(a) Petition for Temporary Suspension. In any case where the Director files or has filed a petition under Rule 12, if it appears that a continuation of the lawyer's authority to practice law pending final determination of the disciplinary proceeding poses a substantial threat of serious harm to the public, the Director may file with this Court a petition for suspension of the lawyer pending final determination of the disciplinary proceeding, with proof of service. The petition shall set forth facts as may constitute grounds for the suspension and may be supported by a transcript of evidence taken by a Panel, court records, documents or affidavits.

(b) Service. The Director shall cause the petition to be served upon the lawyer in the same manner as a petition for disciplinary action.

(c) Answer. Within 20 days after service of the petition or such shorter time as this Court may order, the lawyer shall file in this Court an answer to the petition for temporary suspension, with proof of service. If the lawyer fails to do so within that time or any extension of time this Court may grant, the petition's allegations shall be deemed admitted and this Court may

enter an order suspending the lawyer pending final determination of disciplinary proceedings. The answer may be supported by a transcript of any evidence taken by the Panel, court records, documents, or affidavits.

(d) Hearing; Disposition. If this Court after hearing finds a continuation of the lawyer's authority to practice law poses a substantial threat of serious harm to the public, it may enter an order suspending the lawyer pending final determination of disciplinary proceedings.

(e) Interim Suspension. Upon a referee disbarment recommendation, the lawyer's authority to practice law shall be suspended pending final determination of the disciplinary proceeding, unless the referee directs otherwise or the Court orders otherwise.

RULE 17. FELONY CONVICTION

(a) Duty of the Court Administrator. Whenever a lawyer is convicted of a felony, the court administrator shall send the Director a certified copy of the judgment of conviction.

(b) Other Cases. Nothing in these Rules precludes disciplinary proceedings, where appropriate, in case of conviction of an offense not punishable by incarceration for more than one year or in case of unprofessional conduct for which there has been no criminal conviction or for which a criminal conviction is subject to appellate review.

RULE 18. REINSTATEMENT

(a) Reinstatement By Affidavit. Unless the Court orders otherwise when imposing discipline, a lawyer who has been ordered to be suspended for 180 days or less and who has not previously been subject to a disciplinary suspension may seek reinstatement by filing an affidavit with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(1) of this Rule have been satisfied, and serving a copy of the affidavit for reinstatement on the Director. Serving the affidavit by U.S. Mail or email is sufficient. Proof of service of the affidavit shall be filed with this Court.

(b) Reinstatement By Petition.

(1) Unless the Court orders otherwise when imposing discipline, a lawyer who has been disbarred, who has been ordered to be suspended for longer than 180 days, or who has been subject to a previous disciplinary suspension, may seek reinstatement by filing a petition with the Clerk of the Appellate Courts, attesting that the requirements for reinstatement in paragraph (e)(2) of this Rule have been satisfied, and serving a copy of that petition on the Director. Serving the petition by U.S. Mail or email is sufficient. Proof of service of the petition shall be filed with this Court.

(2) Together with the petition, the lawyer must pay to the Director a fee in the same amount as that required by Rule 12(B), Rules for Admission to the Bar, for timely filings.

(3) The petition just include a statement confirming that the lawyer has obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Discipline Matters.

(c) Reinstatement Following Resignation from the Bar or Transfer to Disability Inactive Status. Application for reinstatement following resignation from the bar or transfer to disability inactive status under Rule 28 of these rules shall be made by petition filed with the Clerk of the Appellate Courts and serving a copy of the petition on the Director. Serving the petition by U.S. Mail is sufficient. Proof of service of the petition shall be filed with this Court. Together with the petition, the lawyer must pay to the Director a fee in the same amount as is required by Rule 12(B), Rules for Admission to the Bar, for timely filings. The petition must include a statement confirming that the lawyer has obtained, completed, and submitted to the Director the Director's Reinstatement Questionnaire for Resignation Matters, or the Director's Reinstatement Questionnaire for Resignation Matters, or the Director's Reinstatement Questionnaire for Transfer from Disability Inactive Status.

(d) Application for Admission Following Revocation of Conditional Admission. Application for admission to the bar following a revocation of conditional admission shall be filed with the Board of Law Examiners pursuant to the Rules for Admission to the Bar.

(e) General Requirements for Reinstatement.

(1) Reinstatement by affidavit. An affidavit for reinstatement filed under paragraph (a) of this rule must demonstrate that the suspended lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with all other conditions for reinstatement imposed by the Court. The affidavit for reinstatement may be filed no sooner than 14 days before the suspension period ends. Within 7 days after service of an affidavit that complies with the requirements of this paragraph, the Director shall file, and serve on the lawyer, a statement that addresses the lawyer's requested reinstatement including the compliance or lack thereof with the requirements for reinstatement, along with a proposed order. The lawyer may not resume the practice of law unless and until this Court issues a reinstatement order.

(2) Reinstatement by petition. A suspended lawyer who files a petition for reinstatement under paragraph (b) of this rule may file the petition no sooner than 60 days before the end of the suspension period. Any petition for reinstatement filed under paragraph (b) of this rule by either a disbarred or suspended lawyer must state that the lawyer is prepared to demonstrate, by clear and convincing evidence, satisfaction of the requirements in this paragraph for reinstatement. Within 30 days after service of a petition that complies with paragraph (b) of this Rule, the Director shall file, and serve on the lawyer, a statement addressing whether the requested reinstatement is opposed. To be reinstated, a suspended or disbarred lawyer must prove by clear and convincing evidence:

(i) That the lawyer has undergone moral change, meaning that the lawyer must show (A) remorse and acceptance of responsibility for the lawyer's misconduct; (B) a change in the lawyer's conduct and state of mind that corrects

the underlying misconduct that led to the suspension or disbarment; and (C) a renewed commitment to the ethical practice of law; and

(ii) That the lawyer has the competence to practice law; and

(iii) That the lawyer has complied with the conditions of suspension or disbarment imposed by the court; and

(iv) That the lawyer has complied with Rules 24 and 26 of these rules, is current in Continuing Legal Education requirements, and has complied with the requirements of this Rule 18.

(3) Reinstatement following Resignation or Transfer to Disability Inactive Status. A petition for reinstatement following resignation from the bar or transfer to disability inactive status under Rule 28 of these rules, filed under paragraph (c) of this rule, must demonstrate by clear and convincing evidence that the lawyer has the necessary competence, fitness, and character to practice law and is current in Continuing Legal Education requirements.

(4) Additional Requirement for Reinstatement after Disbarment. Unless such examination is specifically waived by this Court, no lawyer, after having been disbarred by the Court, may petition for reinstatement until the lawyer has successfully completed and has a valid score on such written examinations as may be required of applicants for admission to the practice of law by the State Board of Law Examiners.

(5) Unless specifically waived by this Court, no lawyer shall be reinstated to the practice of law following disbarment, suspension, resignation, or transfer to disability inactive status under Rule 28 of these rules until the lawyer has satisfied any subrogation claim against the lawyer by the Client Security board.

(f) Investigation of Petitions; Report.

(1) The Director shall publish an announcement of a petition for reinstatement in a publication of general statewide circulation to attorneys, soliciting comments regarding the appropriateness of the petitioner's reinstatement. Any comments made in response to such a solicitation shall be absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person making the statement.

(2) The Director shall investigate the petition for reinstatement. The Director shall meet with the lawyer and disclose the results of the Director's investigation, before reporting the Director's investigation and conclusions to a Panel. The Director's Report of the investigation shall be filed with the Court following the conclusion of the Panel proceedings.

(g) Proceedings Before the Panel.

(1) Upon the Clerk of the Appellate Court's docketing of a petition for reinstatement and assignment of a court file number, the Director shall provide a notice to

the Board Chair of the petition. The Board Chair shall assign the matter to a Panel and provide notice to the Director and petitioner of the assignment.

(2) Following receipt of the required statement from the Director under paragraph (e)(2) of this rule, the Panel Chair shall notify the petitioner and the Director of the date for a pre-hearing scheduling conference. Prior to the scheduling conference, petitioner and the Director shall confer to identify mutually agreeable dates when the parties, their counsel, if any, and their witnesses will be available for a hearing before the Panel, and when the parties will make written submissions to the Panel. The Panel Chair shall issue a scheduling order with a date certain for the hearing to be held before the Panel, and for any further pre-hearing conferences as the Panel Chair deems necessary for the fair and efficient disposition of the petition. The Scheduling Order may be modified for good cause shown upon motion made orally or in writing more than 30 days before the date of the panel hearing. Any motion to modify the scheduling order that is made less than 30 days before the panel hearing may only be granted upon a showing of exceptional circumstances or to prevent a manifest injustice.

(3) The Panel shall conduct a hearing on a petition for reinstatement filed under paragraphs (b)-(c) of this rule. The Panel may waive the hearing for a petition for reinstatement filed under paragraph (c) of this rule. The Panel shall make its findings of fact, conclusions, and recommendations, which shall be served upon the petitioner and the Director, and filed with this Court. Unless the petitioner or Director, within 10 days of the date of service, orders a transcript and so notifies this Court as set forth in paragraph (h), the Panel's 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.

(h) Proceedings Before the Court. A party ordering a transcript of the proceedings before the Panel shall, within 10 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 for the petitioner and one for the Director. Failure to timely confirm that satisfactory financial arrangements have been made for the transcription shall result in the Panel's findings of fact and conclusions being deemed conclusive. No later than the time for filing the certificate as to transcript referenced in this rule, or if no transcript is ordered, promptly upon the conclusion of the 10-day period referenced in this rule, each party shall file with the Clerk of Appellate Courts the exhibits received into evidence at the Panel hearing, and the Director's Report of Investigation referenced in paragraph (f). At the same time, the Director shall also notify the Court, by a written request filed with the Clerk of Appellate Courts, whether a briefing schedule is needed. The Court shall issue an order notifying the parties of the briefing schedule. 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.

Unless the Court orders otherwise, a hearing will be held before this Court on the petition. Should this Court determine that further consideration on the petition is necessary,

this Court may appoint a referee and the same procedure shall be followed as under Rule 14.

RULE 19. EFFECT OF PREVIOUS PROCEEDINGS

(a) Criminal Conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted. The same is true of a conviction in a foreign country if the facts and circumstances surrounding the conviction indicate that the lawyer was accorded fundamental fairness and due process.

(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.

(2) 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.

(3) 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.

(c) Stipulation. Unless the referee or this Court otherwise directs or the stipulation otherwise provides, a stipulation before a Panel remains in effect at subsequent proceedings regarding the same matter before the referee or this Court.

(d) Panel proceedings. Subject to the Rules of Civil Procedure for District Courts and the Rules of Evidence, evidence obtained through a request for admission, deposition, or hearing under Rule 9 is admissible in proceedings before the referee or this Court.

(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 reasonable cause has been determined under Rule 9(a) 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 a member of the District Ethics Committee or the Board, the Director, or the 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 the 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, 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 lawyer's 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), or a diversion agreement has been entered into under Rule 31 of these Rules;

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

(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 Reasonable Cause or Commencement of Referee or Court Proceedings. Except as ordered by the referee or this Court and except for work product, after reasonable cause has been determined under Rule 9(a) 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.

(d) Referee or Court Proceedings. Except as ordered by the referee or this Court, the files, records, and proceedings before a referee or this Court under these Rules are not confidential.

(e) Expunction of Records. The Director shall expunge records relating to dismissed complaints as follows:

(1) Destruction Schedule. All records or other evidence of a dismissed complaint shall be destroyed three years after the dismissal, except that records of diversion agreements will be destroyed 5 years after successful completion of the diversion agreement, with the exceptions noted in Rule 31(c)(6);

(2) Retention of Records. Upon application by the Director to a Panel Chair chosen in rotation, for good cause shown and with notice to the respondent and opportunity to be heard, records which should otherwise be expunged under this Rule may be retained for such additional time not exceeding three years as the Panel Chair deems appropriate.

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

(1) in the course of disciplinary proceedings arising out of the facts or circumstances of the advisory opinion, overdraft notification, diversion program, or probation; or

(2) upon consent of the lawyer who requested the advisory opinion or was the subject of the overdraft notification, diversion program, or probation.

Advisory Committee Comment—1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. *See also* R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.

RULE 21. PRIVILEGE; IMMUNITY

(a) Privilege. A complaint or charge, or statement relating to a complaint or charge, of a lawyer's alleged unprofessional conduct, to the extent that it is made in proceedings under these Rules, or to the Director or a person employed thereby or to a District Committee, the Board or this Court, or any member thereof, is absolutely privileged and may not serve as a basis for liability in any civil lawsuit brought against the person who made the complaint, charge, or statement.

(b) Immunity. Board members, other Panel members, District Committee members, the Director, and the Director's staff, and those entering into agreements with the Director's Office to supervise probations, or diversion programs, shall be immune from suit for any conduct in the course of their official duties.

RULE 22. PAYMENT OF EXPENSES

Payment of necessary expenses of the Director and the Board and its members incurred from time to time and certified to this Court as having been incurred in the performance of their duties under these Rules and the compensation of the Director and persons employed by the Director under these Rules shall be made upon vouchers approved by this Court from its funds now or hereafter to be deposited to its credit with the State of Minnesota or elsewhere.

RULE 23. SUPPLEMENTAL RULES

The Board and each District Committee may adopt rules and regulations, not inconsistent with these Rules, governing the conduct of business and performance of their duties.

RULE 24. COSTS AND DISBURSEMENTS

(a) Costs. Unless this Court orders otherwise, the Director in any disciplinary proceeding decided by this Court in which discipline is imposed or conditional admission is revoked, or the lawyer in any proceeding in which the Court concludes that no discipline is warranted, shall recover costs in the amount of $900.

(b) Disbursements. Unless this Court orders otherwise, the Director in any proceeding or revocation of conditional admission proceedings decided by this Court in which discipline is imposed or conditional admission is revoked, or the lawyer in any proceeding in which this Court concludes that no discipline is warranted, shall recover, in addition to the costs specified in subdivision (a), all disbursements necessarily incurred after the filing of a petition for disciplinary action or a petition for revocation of conditional admission 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 shall be as set forth in Rule 139 of 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, disbarment, or revocation of conditional admission is ordered. No suspended lawyer shall be permitted to resume practice and no disbarred lawyer 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 Nonlitigation 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 as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status in a pending matter other than litigation or administrative proceedings of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, 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 as of the date of the resignation or the order imposing discipline or transferring the lawyer to disability inactive status of the lawyer's disbarment, suspension, resignation, revocation of conditional admission, 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, or a lawyer whose conditional admission has been revoked, 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. The returned receipts from the certified mailing shall be provided to the Director within two months of the mailing of notices.

(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 lawyer, proof of compliance with this Rule and with the disbarment, suspension, resignation, disability, or revocation of 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, 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 lawyer whose conditional admission has been revoked, 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. LAWYER DISABILITY PROCEEDINGS

(a) Scope of Rule and Standard for Transfer to Disability Inactive Status. Lawyers may voluntarily select inactive, retired, or permanent disability status through the Minnesota Lawyer Registration Office according to the Rules of the Supreme Court on Lawyer Registration. For the purposes of this rule, the Director may proceed under this rule when a lawyer's disability raises public protection issues. A lawyer who has been judicially declared incompetent, is subject to a current order of commitment, is under guardianship, or whose physical, mental, or cognitive condition, including substance misuse, prevents the lawyer from fulfilling their professional obligations or defending a discipline proceeding is disabled, and may be involuntarily or by stipulation transferred to disability inactive status under this rule.

(b) Effect. While a lawyer is on disability inactive status, the lawyer is prohibited from practicing law.

(c) Procedures for Transfers to Disability Inactive Status.

(1) Petition Premised on Order of Commitment, Guardianship, or Judicial Declaration of Incompetence. On learning that a lawyer is subject to a current order of commitment, is under guardianship, or has been judicially declared incompetent, and the lawyer continues to practice, the Director may file with the Court a petition seeking the lawyer's transfer to disability inactive status, accompanied by proof of the basis for the petition. On receiving a properly supported petition, the Court shall immediately transfer the lawyer to disability inactive status. The Director must provide notice of the transfer to the lawyer or, where applicable, to the lawyer's guardian or the director of the facility to which the lawyer has been committed.

(2) Petition Premised on Reciprocal Disability.

(i) Duty to Notify. A lawyer is transferred to disability inactive status in another jurisdiction must notify the Director of the transfer within 30 days of the order transferring the lawyer to disability inactive status;

(ii) Petition. Upon learning from any source that a lawyer has been transferred to disability inactive status in another jurisdiction, the Director may file a petition for the lawyer's transfer to disability inactive status, along with a copy of the order of the other jurisdiction. The Director must serve the lawyer with the petition and must file an affidavit of service. Personal service is not required.

(iii) Order to Show Cause. A final adjudication in another jurisdiction that a lawyer, whether admitted to that jurisdiction or not, has been transferred to disability inactive status conclusively establishes the disability for purposes of this rule. The Court shall issue an order to show cause as to why we reciprocal transfer to disability inactive status should not be ordered. The Court shall transfer a lawyer

to disability inactive status after notice unless the procedures in the other jurisdiction were unfair such that the lawyer did not have notice of the intent to transfer to disability inactive status and the opportunity to present evidence of the absence of a disability. The Court may order such proceedings as it deems necessary to determine the fairness of the other jurisdiction's proceedings.

(3) Petition Initiated by the Director Without Court Order.

(i) Petition. If the Director reasonably believes that a lawyer is disabled under paragraph (a) of this rule, and that the lawyer's continued practice of law presents a risk to the public, the Director may, with the approval of the Board Chair, file a petition setting forth the basis for the Director's reasonable belief. The Director must serve the lawyer with the petition and must file an affidavit of service. Personal service is not required.

(ii) Answer. Within 20 days after service of the petition, the respondent lawyer shall file an answer to the petition in this Court, with proof of service on the Director. The answer shall set forth the reasons why the lawyer believes that transfer to disability inactive status is not warranted.

(iii) Referee proceedings. If the lawyer contests the transfer to disability inactive status, the Court shall appoint a referee with directions to make findings, conclusions and a recommendation regarding whether there is clear and convincing evidence to warrant transfer of the lawyer to disability inactive status. The referee may, in their discretion, hold a hearing and order the lawyer to submit to an independent medical examination or evaluation by a designated professional at the respondent lawyer's cost unless the lawyer is unable to pay for such examination, in which case the Director shall bear such cost. The referee may appoint counsel to represent the lawyer if the lawyer requests appointment of counsel and the lawyer is financially eligible for appointment of counsel.

(iv) Financial eligibility shall be determined by the referee in the same manner as eligibility for appointment of a public defender in a criminal case. The referee's findings, conclusions and recommendation may be challenged by following the process set forth in Rule 14.

(v) Adverse Inference. A lawyer may refuse to testify or produce records to the extent consistent with the lawyer's constitutional privilege against self-incrimination. The referee and the court may draw an adverse inference from a lawyer's decision not to testify, produce records, or comply with any order issued in a disability proceeding for reasons other than a valid invocation of the lawyer's constitutional right against self-incrimination.

(4) Asserting Disability in Disciplinary Proceedings. A lawyer may assert a disability in defense or mitigation in a disciplinary proceeding or investigation, or a revocation of conditional admission proceeding or investigation. Such assertion shall be deemed a waiver of any applicable patient-treating professional privilege as it relates to the

condition that is asserted as the basis of the disability or mitigation alleged. Where a referee has been appointed, the referee may order an examination or evaluation by such persons as the referee designates. If a lawyer asserts a disability and is unable to assist in the defense of an investigation or proceeding, the Director shall inform the Court of the Director's position regarding the allegation. The Court may:

(i) Transfer the lawyer to disability inactive status;

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

(iii) Appoint counsel if the lawyer has not retained counsel and the lawyer is financially eligible for appointed counsel. Financial eligibility shall be determined by the referee appointed by the Court to hear the disciplinary or disability petition in the same manner as eligibility for appointment of a public defender in a criminal case;

(iv) Stay disciplinary proceedings or revocation of conditional admission proceedings until it appears the lawyer can assist in the defense;

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

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

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

(d) Reinstatement. This Court may reinstate a lawyer to active status from disability inactive status upon a showing that the lawyer is fit to resume the practice of law. The parties shall proceed by petition as provided in Rule 18. The lawyer's petition for reinstatement shall be deemed a waiver of any applicable patient-treating professional privilege as it relates to the specific incapacity or disability.

(e) Confidentiality. The provisions of Rule 20 govern the confidentiality of records in proceedings where a lawyer's disability is at issue. The lawyer and the Director shall work together to designate medical records as confidential, and the Director shall seek such court orders as are necessary to protect against disclosure of the designated medical records of a lawyer.:

RULE 29. EX PARTE COMMUNICATIONS

Ex parte communications to any adjudicatory body including panels, referees and this Court are strongly disfavored. Such communications should not occur except after first attempting to contact the adversary and then only if the adversary is unavailable and an emergency exists. Such communications should be strictly limited to the matter relating to the emergency and the adversary notified at the earliest practicable time of the prior attempted contact and of the ex parte communication.

RULE 30. ADMINISTRATIVE SUSPENSION

(a) Upon receipt of a district court order or a report from an Administrative Law Judge or public authority pursuant to Minn. Stat. § 518A.66 finding that a licensed Minnesota attorney is in arrears in payment of maintenance or child support and has not entered into or is not in compliance with an approved payment agreement for such support, the Director's Office shall serve and file with the Supreme Court a motion requesting the administrative suspension of the attorney until such time as the attorney has paid the arrearages or entered into or is in compliance with an approved payment plan. The Court shall suspend the lawyer or take such action as it deems appropriate.

(b) Any attorney administratively suspended under this rule shall not practice law or hold himself or herself out as authorized to practice law until reinstated pursuant to paragraph (c). The attorney shall, within 10 days of receipt of an order of administrative suspension, send written notice of the suspension to all clients, adverse counsel and courts before whom matters are pending and shall file an affidavit of compliance with this provision with the Director's Office.

(c) An attorney administratively suspended under this rule may be reinstated by filing an affidavit with supporting documentation averring that he or she is no longer in arrears in payment of maintenance or child support or that he or she has entered into and is in compliance with an approved payment agreement for payment of such support. Within 15 days of the filing of such an affidavit the Director's Office shall verify the accuracy of the attorney's affidavit and file a proposed order for reinstatement of the attorney requesting an expedited disposition.

(d) Nothing in this rule precludes disciplinary proceedings, if the attorney's conduct also violates the Minnesota Rules of Professional Conduct.

RULE 31. DIVERSION

(a) Purpose. Diversion is not a form of discipline. The purpose of diversion is to protect the public by improving the professional competency of attorneys through educational, remedial, and rehabilitative programs so that attorneys modify practices, procedures, or other conduct that does not comply with the Minnesota Rules of Professional Conduct. Diversion is intended as an alternative to a disciplinary sanction. Diversion is designed to primarily address isolated, non-serious, or less harmful misconduct where a lawyer may benefit from guidance to improve the lawyer's skills, knowledge of the Rules of Professional Conduct, or to manage a behavioral health issue, including a mental health or substance use issue.

(b) Eligibility.

(1) A lawyer is eligible to participate in a diversion program only if it is unlikely that the lawyer will harm the public during the program, the Director can adequately supervise the terms of diversion, and the lawyer's participation in the program is likely to benefit the lawyer and serve the public interest..

(2) A matter generally should not be diverted under this section when:

(i) The typical level of discipline for the alleged misconduct is greater than public reprimand under Minnesota Supreme Court caselaw and past practices of the Office of Lawyers Professional Responsibility;

(ii) The conduct involves dishonesty, deceit, fraud, or intentional misrepresentation;

(iii) The conduct involves a felony conviction;

(iv) The conduct resulted in or is likely to result in a client's or another person's loss of money or property unless restitution is made a term of diversion;

(v) The lawyer has been publicly disciplined for any misconduct in the last five years.

(vi) The misconduct is of the same nature as misconduct for which the lawyer has been disciplined in the last five years.

(3) An admission of misconduct is not required as a condition of entry into or as a term of a diversion agreement; however, a lawyer may be required to admit facts related to the matter. Participation in a diversion agreement is voluntary.

(c) Diversion Agreement.

(1) Procedure.

(i) The Director, in their discretion, may offer the lawyer the opportunity to participate in a diversion agreement.

(ii) If the lawyer agrees, then the diversion agreement must be submitted to the Board Chair for approval. If the Chair rejects the agreement, then the investigation and disposition must proceed as otherwise provided in these rules.

(2) Contents.

(i) The terms of the diversion must be set forth in a written agreement between the lawyer and the Director. The agreement must specify the general purpose of the diversion, the facts that gave rise to the agreement, the terms and conditions of the diversion program, how compliance will be monitored, the length of the diversion period, required payment of costs, and any required payment of restitution.

(ii) Terms may include, but are not limited to, one or more of the following: mediation, fee arbitration, law office management assistance, continuing legal education courses, trust account education, ethics education, referral to a lawyer assistance program, assessment of and treatment for medical or behavioral health issues including mental health and substance use issues, verified attendance

at abstinence recovery meetings, self-assessments, mentorship, and monitoring of the lawyer's practice or accounting procedures.

(iii) The Director must monitor the lawyer's compliance with the diversion agreement.

(3) Length. A diversion agreement may last no longer than 2 years, except the diversion agreement may be extended by one year with Board Chair approval.

(4) Notice. The Director must notify the complainant, if any, and the Chair of the District Committee that has investigated the complaint, if applicable, of a diversion agreement at the time of entry, and shall provide a copy of the diversion agreement to the complainant, if any, and District Committee, if applicable, provided that the copy of the diversion agreement provided to the complainant and District Committee, as applicable, shall be redacted to remove any private, sensitive, or personal health information, including, without limitation, any treatment, abstinence, or other mental health or substance use references, terms, conditions, or requirements.

(5) Appeal. Notwithstanding any other rule, a complainant cannot appeal a diversion agreement and cannot appeal a dismissal under Rule 8(d)(1) following successful completion of a diversion agreement.

(6) Record of Entry Into Diversion Agreement. At the tine of entry into a diversion agreement, the lawyer and the Director together shall create, in a separate document from the diversion agreement, a record stating that the lawyer was offered and accepted diversion and describing the nature of the charge that led to the diversion agreement. This document need not contain all of the details that must be included in the written agreement of the diversion agreement under paragraph 31(c)(2). Upon successful completion by a lawyer of a diversion agreement, the Director shall create a record indicating that the diversion agreement was successfully completed. The records required to be created under this provision shall not be subject to destruction under Rule 20(e)(1).

(d) Effect of Diversion.

(1) Entry into a diversion agreement is not a finding of misconduct.

(2) When a diversion agreement is approved, the underlying disciplinary investigation is closed subject to reopening if the diversion agreement is not successfully completed. A lawyer participating in a diversion agreement is not under investigation and is not subject to a disciplinary proceeding while the agreement is in effect.

(3) Upon successful completion of a diversion agreement program, the Director must issue a determination that discipline is not warranted under Rule 8(d)(1).

(e) Material Breach of Diversion Agreement.

(1) If the Director believes that a lawyer had materially breached the diversion agreement, then the Director must notify the lawyer and give the lawyer an opportunity to respond in a reasonable amount of time.

(2) The Director then may decide that the agreement should remain in effect, offer to modify the diversion requirements, or terminate the diversion agreement, reopen the investigation, and proceed as otherwise provided by these rules.

(3) A breach of the diversion agreement is not a violation of the Rules of Professional Conduct but the conduct that caused the breach may be the basis for discipline.

(f) Confidentiality.

(1) Files and records relating to a matter in which diversion is entered may be disclosed only as permitted by Rule 20.

(2) The Director shall maintain statistics regarding the number, type, and terms of each diversion matter, including but not limited to whether diversion is successfully completed.