

**STATE OF MINNESOTA
IN SUPREME COURT
NO. C8-84-1650**

In re:

Amendment to Rules of Professional Conduct

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association (“MSBA”) respectfully asks this Court to adopt the revised Minnesota Rules of Professional Conduct set forth in Attachment A to this Petition in place of the existing Minnesota Rules of Professional Conduct. The differences between the proposed revised Minnesota Rules of Professional Conduct and the existing Minnesota Rules of Professional Conduct are set forth in redlined version in Attachment C to this Petition. The differences between the proposed revised Minnesota Rules of Professional Conduct and the ABA Model Rules of Professional Conduct, as amended through 2002 are set forth in redlined version in Attachment D to this Petition. In support of this Petition, Petitioner would show the Court the following:

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts of the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power and duty to administer justice and to adopt rules of practice and procedure before the courts of this state and to establish the standards for regulating the legal profession and to establish mandatory ethical standards for the conduct of lawyers and judges. This power has been expressly recognized by the Minnesota Legislature. *See* MINN. STAT. § 480.05 (2002).

3. By order dated June 13, 1985, this Court adopted the Minnesota Rules of Professional Conduct (“Minnesota Rules”), modeled in large part on the American Bar Association (“ABA”) Model Rules of Professional Conduct. The Minnesota Rules supplanted the Minnesota Code of Professional Responsibility, which had also been modeled in large part on the ABA Model Code of Professional Responsibility. The MSBA played an important role in reviewing the ABA Model Rules and Model Code and assessing whether and how they should be implemented in Minnesota.

4. This Court has from time to time amended the Minnesota Rules, and the MSBA has repeatedly advised the Court on issues relating to the professional responsibility of lawyers. There has not been any comprehensive review of the Minnesota Rules since their adoption in 1985.

5. In 1997 the ABA undertook a comprehensive review of the ABA Model Rules and how they were being implemented in the various states. The study was performed by a newly-formed committee: the Commission on the Evaluation of the Rules of Professional Conduct, known more commonly as the Ethics 2000 Commission. The ABA Commission’s process is described in Part I of the MSBA Task Force Report, attached to this Petition as Attachment B, at B-2.

6. In July 2002 the MSBA established a task force to study the Minnesota Rules, to review the amendments to the ABA Model Rules, and to recommend any amendments thought appropriate. The MSBA Task Force on the ABA Model Rules of Professional Conduct was chaired by William J. Wernz of Minneapolis, and its procedures and guiding principles are described in detail in its Report, Attachment B at 3. The MSBA Task Force conducted a comprehensive review of the Minnesota Rules and recommended numerous changes to them. Its recommendations, with three modifications set forth below, are included in the proposed rules

attached to this Petition. The MSBA Task Force worked in cooperation with the Minnesota Lawyers Professional Responsibility Board (“LPRB”). Petitioner is informed and believes that the LPRB will support this petition in all respects except for one provision.

7. At a meeting of the MSBA General Assembly held on June 20, 2003, the General Assembly considered the MSBA Task Force report, and made three amendments to it:

- (a) the language of Rule 3.6(a) was modified;
- (b) the proposed Rule 4.1(b) and Comment [3] to that rule were deleted; and
- (c) the language of Rule 5.4(a)(4) was modified.

8. The General Assembly unanimously adopted the report of the MSBA Task Force as amended and the amended version is attached to this Petition as Attachment A.

9. Petitioner submits that the changes to the rules proposed in this petition will advance a number of interests of the Court, the Public, and the Bar in the supervision of the practice of law and the administration of justice. The rationales for the most significant of these changes are set forth in Section III of the MSBA Task Force Report, Attachment B at B-5 through B-15. The proposed changes will promote the uniformity of rules among jurisdictions, an increasingly desirable goal as multi-jurisdictional law practice grows; realize the benefits of the efforts of the ABA and ALI in improving professional standards; and retain and enhance a limited number of rule variations drawn from Minnesota history and values.

10. In addition to adopting the text of the rules proposed in this petition, Petitioner urges the Court to adopt, as “guides to interpretation,” the Comments adopted by the MSBA, which are in turn drawn from the Comments to the ABA Model Rules. Comment [21], Preamble and Scope, ABA Model Rules, describes the status of the Comments as follows:

“21. The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are

intended as guides to interpretation, but the text of each Rule is authoritative.”

In the past, the Court has not adopted Comments to the Minnesota Rules of Professional Conduct. Nonetheless, the MSBA strongly recommends that the Comments be adopted as guidelines with the text of the Rules being “authoritative,” for several compelling reasons. First, the Comments are an integral and increasingly important part of the ABA Model Rules. The number of Comments has greatly increased, *e.g.*, ABA Model Rule 1.7, as adopted in 2002, has 35 Comments, many of them restating important applications of the conflicts rules. Second, the ABA has informed the Task Force that all but a handful of states that have adopted the Model Rules have also adopted the Comments. Third, it has been the custom and practice of the Lawyers Board, the Office of Lawyers Professional Responsibility, the practicing bar, and many courts, including from time to time the Minnesota Supreme Court, to cite the Comments for their interpretative value. Fourth, in this Court’s decisions in *In re 99-42*, 621 N.W.2d 240 (Minn. 2001,) and *In re Westby*, 639 N.W.2d 358 (Minn. 2002), the opinions of the Minnesota Lawyers Professional Responsibility Board were held to be merely the Board’s guidelines to interpreting the Rules. Several of the Board opinions have been recast by the Task Force, on the Board’s recommendation, as proposed Rules or proposed Comments. It is important for the guidance of the bench and bar that the Court adopt the Comments as guidelines for interpretation.

11. The MSBA is undertaking to review and decide whether to make further recommendations relating to Rule 1.10(b), dealing with lateral-hire conflicts, and the ABA’s August 2003 amendment of Model Rules 1.6 and 1.13, dealing with the reporting responsibilities of lawyers for organizations. Petitioner may make further recommendations to this Court in the future on those matters, but does not believe that consideration of the report and revisions contained in this Petition should be delayed.

For the foregoing reasons, Petitioner respectfully requests that the Court amend the Minnesota Rules of Professional Conduct as set forth in and attached to this Petition as Attachment A.

Dated: September ____, 2003.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

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ATTACHMENTS TO PETITION

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