

# LAWYERS PROFESSIONAL RESPONSIBILITY BOARD SEMINAR

Friday, September 28, 2018

Earle Brown Heritage Center, 6155 Earle Brown Drive,  
Minneapolis, MN 55430

## Seminar Agenda

- 8:00 – 8:45 *Registration and Breakfast (provided)*
- 8:45 – 8:50 **Welcome**  
Robin Wolpert, Chair, Lawyers Professional Responsibility Board (LPRB)  
Special Guest, Paul Godfrey, President, Minnesota State Bar Association
- 8:50 – 9:35 **Year in Review: Key Supreme Court Discipline Cases**  
Honorable David Lillehaug, Associate Justice, Minnesota Supreme Court
- 9:35 – 9:50 **Remarks on the First LPRB and Advice for the Future**  
Allen Saeks, Retired Shareholder, Stinson Leonard Street
- 9:50 – 10:00 *Break*
- 10:00 – 11:00 **Aging Attorneys: The Complex Intersection of Dementia and Disciplinary Action**  
Dr. Francis X. Shen, Associate Professor, University of Minnesota Law School
- 11:00 – 11:40 **Technology Competence: How to Avoid Phishing, Doxxing and Cyber Attacks**  
Kyle Loven, National Director, Computer Forensic Analysis
- 11:40 – 11:55 **Lawyer Well-Being: The Connection to Ethics and Competency**  
Katherine Pohlman, Board Member, Lawyers Concerned for Lawyers
- 11:55 – 12:00 **Presentation of Volunteer of the Year Award**  
Honorable David Lillehaug, Associate Justice, Minnesota Supreme Court
- 12:00 – 12:45 *Lunch (provided)*
- 12:45 – 1:15 **Common Ethics Mistakes in Fee Agreements**  
Keshini Ratnayake, Senior Assistant Director, OLPR
- 1:15 – 2:00 **When We Depart: Case Scenarios**  
Susan Humiston, Director, OLPR
- 2:00 – 2:45 **District Ethics Committee Workshop**  
Susan Humiston, Director, OLPR, Jennifer Bovitz, Senior Assistant Director, OLPR, and Amy Mahowald, Assistant Director, OLPR
- 3:00 p.m. **Lawyers Professional Responsibility Board Quarterly Meeting**

## Session Descriptions

### **Year in Review: Key Supreme Court Discipline Cases**

Justice David Lillehaug is the newly appointed liaison justice to the Lawyers Professional Responsibility Board and Office of Lawyers Professional Responsibility. Every year, the Minnesota Supreme Court considers dozens of public discipline cases which result in a range of sanctions, from public reprimands to the ultimate sanction of disbarment. Justice Lillehaug will discuss key discipline cases from the last year, and outline additional areas of misconduct the Court sees, such as prosecutorial misconduct, as a cautionary tale to practitioners, and as an example of the types of ethical misconduct which can lead to public discipline.

### **Remarks on the First LPRB and Advice for the Future**

Allen Saeks was appointed to the first Lawyers Professional Responsibility Board in the early 1970s, and maintained an active role in areas of professional responsibility throughout his long career. Allen's remarks will focus on how and why Minnesota designed its ethics and discipline system to incorporate public member participation, the value that role still brings today, and how, through innovative programs like the IOLTA program, Minnesota has been a leader in the area of ethics and access to justice.

### **Aging Attorneys: The Complex Intersection of Dementia and Disciplinary Action**

Dr. Shen teaches extensively on the intersection between neuroscience and the law. Whether from age-related impairments or substance use disorders, lawyers are not immune to the cognitive implications of brain disorders. Dr. Shen will discuss current research on this topic, distilled for a non-scientific audience, and provide practical advice on what impairment may look like in lawyers, best practices on what tests to use to diagnose these disorders and recommendations for the profession from his research on policy initiatives.

### **Technology Competence: How to Avoid Phishing, Doxxing and Cyber Attacks**

The ethics rules expect lawyers to maintain competence, which includes keeping abreast of the benefits and risks of technology. In order to assist lawyers and non-lawyers alike in ensuring a baseline competency in technology, Mr. Loven will provide information on the latest ways in which our identity and information, as well as that of our clients, is at risk on the internet. This presentation will discuss how hackers target the weakest link, us, through phishing efforts, where and how your personal information ends up on the internet and what to do about it, and tips for elevating your technology competency, for your own benefit and for the benefit of your clients.

## **Lawyer Well-Being: The Connection to Ethics and Competency**

This short session will highlight the latest information on how pivotal well-being is to the competent practice of law and the growing awareness in the profession that without change we are failing both ourselves and our clients. This session will also highlight resources for investigators and employers alike who want to answer the call to action, or know of a colleague in need.

## **Common Ethics Mistakes in Fee Agreements**

The ethics rules have specific guidance for attorneys on how to ethically structure fee arrangements with clients. Annually, however, attorneys often include provisions in their fee agreements that are not ethical, largely due to lack of education on this specific topic. This session will cover the common fee agreement ethics mistakes the OLPR sees in ethics cases that lead to discipline each year.

## **When We Depart: Case Scenarios**

While the OLPR relies upon the work of district ethics committees, sometimes it is necessary to depart from recommendations the committees make. Why? Through an analysis of specific factual scenarios, this session will help investigators refine their legal analysis and fact-gathering skills, and strengthen their knowledge of the Minnesota Rules of Professional Conduct.

## **District Ethics Committee Workshop**

This annual workshop will focus on best practices for ethics investigations, with an emphasis on investigation techniques. How do you interview witnesses? What evidence supports common rule violations? What do you do with noncooperation, whether it is from a complainant or a respondent? How do you handle confidentiality or privilege objections to disclosure of information? How do you determine if clear and convincing evidence exists? How do you then document your findings in a report that supports the final disposition of the case? These questions and more will be covered in this interactive session.

## Speaker Bios

### **Robin M. Wolpert**

Robin Wolpert is a criminal defense attorney, business litigator, and appellate practitioner at Sapia Law Group in Minneapolis. She uses her unique blend of government, in-house, and private sector experience to develop creative problem-solving strategies for her clients, managing cases seamlessly from trial through appeal. Robin handles a diverse mix of criminal and civil cases, focusing on business fraud and misappropriation, money laundering, data privacy and cybersecurity, and business compliance. Robin represents clients in litigation involving private parties or the government, including cases with parallel criminal and civil proceedings, civil and criminal appeals, and investigations.

Robin is passionate about public service. She has an extensive pro bono practice and serves as Chair of the Lawyers Professional Responsibility Board. Robin is past President of the Minnesota State Bar Association and serves on the Executive Council of the National Conference of Bar Presidents.

### **Honorable David L. Lillehaug**

David Lillehaug was appointed to the Minnesota Supreme in 2013 and was elected to a six-year term in 2014. Justice Lillehaug graduated with highest honors from Augustana College and with honors from Harvard Law School. He served as a law clerk to a U.S. District Court Judge in Minnesota.

During 30-plus years of lawyering, Lillehaug appeared in some of the state's highest-profile lawsuits and investigations. From 1994 to 1998, he was the United States Attorney for the District of Minnesota, the federal government's chief prosecutor.

As a Justice, Lillehaug has authored about 100 opinions. He serves as the Court's liaison to the Lawyers Professional Responsibility Board, the Client Security Board, and the Rules of Criminal Procedure Committee.

### **Allen Saeks**

Allen Saeks recently retired from the full-time practice of law after more than 60 years as a lawyer in Minnesota. While in practice, Allen represented clients in commercial and business litigation, including bankruptcy litigation, bank litigation, legal malpractice defense, trust and estate litigation, white collar crime and professional disciplinary proceedings. His substantial experience in bankruptcy litigation arises out of his handling of various real estate developments and creditor claims arising from Ponzi schemes, including the defense of Ponzi scheme clawback claims. In addition, he has handled shareholder disputes in closely held corporations, represented defendants

in complex hostile takeover litigation and has successfully defended major financial institutions and their officers.

Allen has always been a frequent CLE lecturer on various litigation subjects, including law firm breakups, ADR and, more recently, ethics. He has provided the ethics commentaries to the Civil Practice Deskbook published by Minnesota CLE. In 2009, he was appointed by the Minnesota Supreme Court as chair of a committee to evaluate the disciplinary system in Minnesota.

### **Dr. Francis X. Shen**

Dr. Francis X. Shen, J.D., Ph.D. is an Associate Professor of Law, McKnight Presidential Fellow, and faculty member in the Graduate Program on Neuroscience at the University of Minnesota, where he directs the Shen Neurolaw Lab ([www.fxshen.com](http://www.fxshen.com)). The Lab motto is, "Every story is a brain story." He is also the Harvard MGH Center for Law, Brain and Behavior Senior Fellow in Law and Neuroscience at the Petrie-Flom Center at Harvard Law School, where he is directing a new project exploring the intersection of neuroscience, dementia, and the law.

In Minnesota, Dr. Shen is leading a statewide effort to improve youth sports concussion policy. He serves as the Executive Director of Education and Outreach for the MacArthur Foundation Research Network on Law and Neuroscience, and speaks nationally and internationally to legal and scientific audiences. Dr. Shen is currently a member of the National Institutes of Health Neuroethics Subgroup.

Dr. Shen received his B.A. from the University of Chicago, his J.D. from Harvard Law School, and his Ph.D. from Harvard University. Dr. Shen conducts empirical and legal research at the intersection of law and neuroscience. He has co-authored three books, including the first Law and Neuroscience casebook (Aspen). He has also published articles on a range of neurolaw topics, including memory and lie detection, enhancement, criminal justice, brain injury, evidentiary admissibility, sports concussion, juror decision-making, criminal mental states, dementia, and mental health. He also teaches and writes on artificial intelligence and the law.

### **Kyle Loven**

Kyle is a 22-year veteran of the FBI and served as Chief Division Counsel for the Minneapolis Division from 2004 to 2017. In this role, Kyle addressed all legal issues which affected the division and ensured all FBI operations in Minnesota, North Dakota, and South Dakota were compliant with internal policies, the AG Guidelines, and the U.S. Constitution. He also served as the Ethics, Privacy, and Compliance Officer for the division, while also acting as the spokesperson for six years.

Kyle served as a Special Agent in both the San Diego and Minneapolis Field Divisions, and also served as the Acting Legal Attaché to Singapore in 2009. As an investigator with the FBI, Kyle investigated a number of violent, white collar, and cybercrime matters. These investigations included an international "Murder for Hire" scheme which resulted in the arrest and conviction of both a South African and Italian national, as well as the indictment of a prominent South African attorney.

Kyle was designated an adjunct instructor by the FBI and provided instruction to law enforcement, judicial, and business professionals in Hungary, El Salvador, and Kazakhstan. He also conducted numerous presentations on behalf of the FBI domestically while serving as the division's community outreach supervisor. He also serves the Minnesota State Bar as an instructor for Minnesota Continuing Legal Education events.

Kyle received his Bachelor's Degree from Saint John's University in Collegeville, Minnesota, and his Juris Doctor from Mitchell Hamline School of Law in Saint Paul, Minnesota. He is also a Certified Compliance and Ethics Professional.

### **Katherine Pohlman**

Katherine is a nurse attorney, coach, and consultant whose passion is advocating for, counseling, and coaching health care providers regarding their legal rights, practice, and professional and personal well-being. She is an integrative practitioner who works within a holistic perspective, taking into consideration body, mind and spirit. She brings heart and mind to the art of practice and incorporates mindfulness and expressive arts as often as possible, whether providing legal, coaching or consulting services. Find more at [katherinejpohlman.com](http://katherinejpohlman.com)

### **Keshini Ratnayake**

Keshini Ratnayake is a Senior Assistant Director with the Office of Lawyers Professional Responsibility. She graduated from the University of Minnesota Duluth in 2001 with a B.A. in criminology and political science, and from the University of St. Thomas School of Law in 2004. Following law school, Keshini moved to southern New Mexico and began her legal career as an assistant public defender in Las Cruces, representing clients on misdemeanor matters. In 2006, Keshini returned to Minnesota and began working as a public defender in Hennepin County until April 2018. During her 12 years at the Hennepin County Public Defender's Office, Keshini handled a variety of adult criminal matters, from misdemeanors to murders. Keshini is excited to bring a criminal defense perspective to the OLPR, and is enjoying this new chapter in her career.

## **Susan Humiston**

Susan Humiston is the Director of the Office of Lawyers Professional Responsibility and Client Security Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background, including service on the Minneapolis Ethics Board, and as an investigator for the Fourth District Ethics Committee. Prior to her appointment, Susan was Vice-President and Assistant General Counsel for Alliant Techsystems Inc. and its public company spin-off Vista Outdoor Inc., and was a litigation partner at Leonard, Street and Deinard, now Stinson Leonard Street. She clerked for U.S. District Court Judge David S. Doty, is an honors graduate of the University of Iowa College of Law, and received her B.A. with honors from the University of Nebraska-Lincoln.

## **Jennifer Bovitz**

Jennifer Bovitz joined the Office of Lawyers Professional Responsibility in 2017 as a Senior Assistant Director. In this role, she is responsible for investigating and prosecuting allegations of lawyer misconduct and enforcing the Minnesota Rules of Professional Conduct. Jennifer earned her J.D. from William Mitchell College of Law in 2001, and served as a felony prosecutor prior to her employment at the Office of Lawyers Professional Responsibility. Jennifer's trial experience includes a wide range of criminal cases and her experience extends to appellate practice at the Minnesota Court of Appeals and the Minnesota Supreme Court. Jennifer has served as adjunct faculty at Mitchell Hamline College of Law, serves on the Washington County Community Corrections Advisory Board, and is a past board president of Friends in Need Food Shelf.

## **Amy Mahowald**

Amy Mahowald joined the Minnesota Office of Lawyers Professional Responsibility in August 2015 as an Assistant Director. In this role, Amy is responsible for investigating and prosecuting allegations of lawyer misconduct and enforcing the Minnesota Rules of Professional Conduct. Amy received her B.S. from the United States Military Academy at West Point. She was commissioned as a Second Lieutenant and served in the United States Army from 2004 to 2009. She deployed as a platoon leader to Iraq in 2006, and in 2008 worked for the United States Corps of Engineers in Kuwait. Upon returning to Minnesota after active duty, Amy joined the Minnesota National Guard. She commanded the Headquarters and Headquarters Support Company, 84th Troop Command in Minneapolis, Minnesota. Amy received her J.D. from William Mitchell College of Law in 2012. After admission to the Minnesota Bar, she worked as an associate attorney at a Twin Cities law firm representing employers and insurers in workers' compensation administrative proceedings.