

FILED

July 14, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8042

**ORDER PROMULGATING AMENDMENTS TO THE
RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY**

We are responsible for the rules that govern the conduct of lawyers, *see* Minn. Stat. § 480.05 (2020); *In re Disciplinary Action against Riehm*, 883 N.W.2d 223, 231–32 (Minn. 2016). In 2020, we reviewed the rules that establish the administrative duties for the Lawyers Professional Responsibility Board (Board) and the Director of the Office of Lawyers Professional Responsibility (Office), specifically, Rules 4 and 5 of the Rules on Lawyers Professional Responsibility (RLPR). We considered amendments to these rules to clarify the appropriate lines of supervisory responsibility and administrative duties as between the Board, the Director, and the Judicial Branch. After securing the input of the Board, we opened a public comment period on the proposed amendments.

Comments were provided by former Office Directors, former Board chairs, a committee of the Minnesota State Bar Association, and the current Board, among others. We have carefully considered these thoughtful and helpful comments. We share with the Board, the Director, the Office, and Minnesota lawyers an unwavering commitment to integrity in regulating Minnesota’s legal profession while adhering to the ethical practice of law. The comments uniformly note the high regard in which Minnesota’s attorney discipline and disability system is held and on that point, we fully agree. Minnesota’s attorney discipline system operates with the confidence and respect of the practicing bar

and judicial officers because the Board, the employees and staff of the Office, and the Director have administered the system in a manner that promotes fairness, due process, and transparency.

The amendments to Rules 4 and 5 are not intended to and will not diminish these attributes. Nor will the amendments diminish the critically important role that the Board plays in independently administering the investigative, prosecutorial, and adjudicative functions of the Office. *See, e.g.*, Rules 8–10, 18, RLPR. These amendments will not disturb the substantial, meaningful, and necessary contributions made by Board members, including specifically the Board’s non-lawyer public members, to a lawyer regulation system that protects the public and enhances the ethical practice of law.

In reaching these conclusions, we have fully considered the concerns expressed in the comments about altering the relationship between the Board and the Director in a way that would leave the Board without adequate information or the Director without adequate guidance on the operations of the Office. We do not expect these concerns will materialize. The amendments to Rule 4, RLPR, are promulgated to clarify the Board’s responsibility for policy governance while guiding the Director with advice and recommendations. The amendments to Rule 5, RLPR, place responsibility for the day-to-day operations of the Office with the Director, guided as necessary by either the Board or State Court Administration. This appropriate division of responsibilities better reflects the longstanding purpose of these rules. *See Supplemental Rep. of Sup. Ct. Advisory Comm.*, No. C1-84-2140, at 7 (filed Dec. 2, 1985) (explaining that the amendments proposed in 1985 regarding the Board’s administrative responsibilities were not intended to “directly

involve[]” board members “in the details of the day-to-day management” of the Office). In addition, the comments we received during this process assured us that the Director is best suited to, and does, exercise supervisory responsibility over the operations of the Office. *E.g.*, Wernz Cmt. at 3, No. ADM10-8042 (filed Apr. 15, 2021); Former OLPR Directors’ Cmt. at 3, No. ADM10-8042 (filed Apr. 13, 2021); Former LPRB Board Chairs’ Cmt. at 3, No. ADM10-8042 (filed Apr. 8, 2021); MSBA Pro. Regul. Comm. Cmt. at 4, No. ADM10-8042 (filed Mar. 30, 2021). Thus, the changes made in these rules will not alter the relationship between the Board and the Director; we expect and intend for that relationship to continue to benefit from a mutual sharing of information, guidance, input, and collaboration, focused on the integrity of our profession’s system of self-regulation.

Finally, several comments suggested that it may be time to appoint a discipline system review committee. *See, e.g.*, Board Cmt. at 9–10, No. ADM10-8042 (filed Apr. 19, 2021). We have appointed similar committees in the past, with beneficial results. *See Order Establishing Sup. Ct. Advisory Comm. on Lawyer Discipline*, No. C1-84-2140 (Minn. filed Aug. 31, 1984); *Advisory Comm. to Review Lawyer Discipline in Minn.*, No. C1-84-2140 (Minn. filed Sept. 9, 1992); *Order Establishing the Sup. Ct. Advisory Comm. to Review the Lawyer Discipline Sys.*, No. ADM07-8001 (Minn. filed Feb. 14, 2007). The American Bar Association also provides evaluation resources for state disciplinary authorities, which we have used in the past. These resources and periodic reviews have shaped Minnesota’s well-functioning attorney discipline and disability system. Thus, we will evaluate the options for a review of Minnesota’s attorney discipline and disability

system, seek input from the Director and the Board, and at a later date, implement a review of the attorney discipline and disability system in Minnesota.

IT IS HEREBY ORDERED that the attached amendments to the Rules on Lawyers Professional Responsibility are prescribed and promulgated as shown below. The amendments are effective as of the date of this order.

Dated: July 14, 2021

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 4. Lawyers Professional Responsibility Board

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(c) **Duties.** The Board ~~shall have general supervisory authority over the administration of the Office of Lawyers Professional Responsibility and these Rules, and is responsible for administering these rules, for establishing the policies that govern the lawyer discipline and disability system, and for providing recommendations and guidance to the Director regarding the operations of the Office of the Lawyers Professional Responsibility.~~ 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 Board may elect a vice-chair and specify the vice-chair's duties. Board meetings are open to the public except that 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 two lawyers and two nonlawyers designated annually by the Chair, shall be responsible for carrying out the duties set forth in these Rules ~~and for general supervision of the Office of Lawyers Professional Responsibility.~~ The Executive Committee shall act on behalf of the Board between Board meetings. If requested by the Executive Committee, it 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.

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Rule 5. Director

(a) **Appointment.** The Director is an employee of the Judicial Branch, shall be appointed by and serving at the pleasure of this Court, ~~and shall be paid such salary as this Court shall fix.~~ The Board shall review the performance of the Director every 2

~~years or at such times as this Court directs~~ State Court Administrator will evaluate the Director's performance, with input from the Board, annually or at such times as this Court directs. Every 2 years the State Court Administrator and the Board shall make recommendations to this Court concerning the continuing service of the Director.

(b) **Duties.** The Director ~~shall be responsible and accountable directly to the Board and through the Board to this Court for the proper administration of the Office of Lawyers Professional Responsibility and these Rules~~ 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 Board an annual report covering the operation of the Office of Lawyers Professional Responsibility, and shall make such other reports to the Board as the Board or this Court through the Board may ~~require the Director to provide order.~~

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