

DRAFT

**MINUTES OF THE 179TH MEETING OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

April 14, 2017

The 179th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Friday, April 14, 2017, at the Town & Country Club, St. Paul, Minnesota. Board members present were: Board Vice-Chair Terrie S. Wheeler presiding over the meeting in place of the Chair, Joseph P. Beckman, Jeanette M. Boerner, James P. Cullen, Thomas J. Evenson, Roger Gilmore, Christopher A. Grgurich, Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Peter Ivy, Bentley R. Jackson, Virginia Klevorn, Cheryl M. Prince, Susan C. Rhode, and Robin M. Wolpert. Present from the Director's Office were Director Susan M. Humiston, Deputy Director Patrick R. Burns, and Senior Assistant Directors Craig D. Klausung and Jennifer S. Bovitz. Also present through part of the meeting was LPRB liaison Justice David Stras.

1. APPROVAL OF MINUTES

The minutes of the January 20, 2017, Board meeting were approved.

2. NEW BOARD MEMBER WELCOME AND UPDATED PANEL ROSTERS

Terrie Wheeler welcomed new Board members Jeanette Boerner, Peter Ivy, Virginia Klevorn, and Susan Rhode. Justice Stras also welcomed the new members, reiterating the important service to the bar and public that Board members serve. The new members each gave a brief introduction of themselves. Justice Stras also commented favorably on the recent progress made by the OLPR, and noted the Court continues to have high expectations for the Board and Office for the future. New OLPR Senior Assistant Director Jennifer Bovitz introduced herself to the Board. Susan Humiston noted the revised Panel assignments and committee rosters. She also reviewed the deadlines in Panel probable cause proceedings and noted that when motions are made to Panels for hearings or other relief, the opposing party should be given an opportunity to respond to those motions before a decision is made on them. She noted that the Rules on Lawyers Professional Responsibility (RLPR) do not address the timelines for responses to motions and, going forward, motions made by the Director will include a suggested response time for respondent's response. James Cullen suggested that an amendment to the RLPR should be considered to address this issue. Joe Beckman noted that submission by email is an efficient method of serving and responding to motions.

3. PROPOSED BUDGET FOR NEXT BIENNIUM

Susan Humiston presented the proposed budget as an informational item. She noted the budget presented is in draft form and that she is working with Judicial Finance to finalize the budget. She discussed funds held in reserve and noted that Judicial Finance would like to keep the reserve amount to approximately one year of budgeted funds. She anticipates that funds from lawyer registration fees will be reduced in future years because of a decline in typical year-over-year increase of fee-paying lawyers. This will mean that revenue will remain flat for the near future while costs are increasing, and will likely require going into the reserve next year and in future years. She noted that IT costs will increase in the future because the judiciary wants payment for IT services previously provided at no charge. Additionally, she noted that there will be a need to rebuild the OLPR and CSB websites in FY'19 which will result in additional IT costs. She also noted that the cost of translation services is increasing. Mary Hilfiker asked where the costs of the security upgrades appeared in the budget. Susan replied that much of this expense is included in the current year's budget and in the \$10,000 in "other operating costs" for FY'18. She also noted that there is allocated a \$20,000 cost for upgrading the MJC courtroom audio in FY'18. Roger Gilmore asked about the amounts collected in judgments and efforts to collect on those judgments. Susan noted that the amounts collected were higher last year given the larger number of public disciplines and that efforts to collect on the judgments are ongoing. Cheryl Prince asked if the Director is comfortable with the reductions in the reserve. Susan said she is not and that there may be a need in the future to ask the Court to reallocate the amount of the registration fees distributed to the OLPR and the CSB. She then discussed the budget process, noting that the proposed budget has been sent to Judicial Finance for review, and they will advise of any further needed revisions in May. The final budget will be presented to the Board at the June meeting as well as to the Court in June.

4. COMMITTEE UPDATES

Cheryl Prince reported on the Rules Committee. She noted that proposed amendments to Rule 5.5, MRPC, are being considered by the MSBA Rules of Professional Conduct Committee. Those proposed amendments will be considered by the Rules Committee with the goal of providing input to the MSBA process. Susan Humiston noted a letter recently received from U.S. Representative Goodlatte raising concerns with lawyer advertising pertaining to actions against drug companies. She also noted that she will be asking the Rules Committee to consider amendments to Rule 20, RLPR, to permit sharing of information with Lawyers Concerned for Lawyers

and to Rule 9, RLPR, to make clear that a live hearing on an admonition appeal is not always required.

Anne Honsa reported that the Opinion Committee does not currently have any opinions under consideration. She noted concerns that have been raised with LPRB Opinion 24. Chris Grgurich asked whether Opinion 24 abrogates the “controversy” clause of Rule 1.6(b)(8), Minnesota Rules of Professional Conduct. Pat Burns advised the Board that the language regarding a potential controversy was originally included in the rule to ensure that lawyers could make disclosures to their malpractice carriers for the purpose of claims mitigation. Robin Wolpert suggested responding to the concerns with an article or CLE that would include a discussion of best practices when responding to an on-line review. James Cullen suggested this would be a good topic for the September District Ethics Committee (DEC) seminar.

Terrie Wheeler reported on the DEC Committee’s activity, noting the planning and agenda for the May 5 DEC Chairs Symposium. Susan Humiston discussed the fall seminar and asked for suggestions as to topics to include in that seminar.

5. DIRECTOR’S REPORT

Susan Humiston asked OLPR Senior Assistant Director Craig Klausing to introduce himself to the Board. She noted that Patrick Burns will be receiving a Professionalism Award from the Hennepin County Bar Association. She then discussed case statistics, noting that the Office is close to meeting the goals of no more than 500 open files with no more than 100 files more than one year old. She noted that the number of case filings is down and the number of advisory opinion requests is up. James Cullen asked if the number of complainant appeals is tracked on a monthly basis. Susan noted that she gets reports on this on a quarterly basis but will pull the requested information. Susan noted that Siana Brand has returned to the Office full-time after a period of family leave and this puts the Office at a full staff level. She noted that the Office will be doing a number of webinars through MNCLE in the next couple of months. She discussed her one year review conducted by Justice Stras and noted he gave her high marks. Justice Stras would like her to develop a strategic five-year plan for the Office. She is considering putting together a small task force of both internal and external stakeholders to work on this. There was discussion of creating and posting training videos to the Office website and SharePoint. She noted that the Office will be working on FAQs regarding retainer agreements to post to the website.

6. OTHER BUSINESS

The dates for upcoming meetings and the DEC Seminar were noted.

7. QUARTERLY BOARD DISCUSSION

The Board, in a closed session, conducted its quarterly Board discussion.

Thereafter, the meeting adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Burns', written over a horizontal line.

Patrick R. Burns

Deputy Director

[Minutes are in draft form until approved by the Board at its next Board Meeting.]