

MINUTES OF THE 186TH MEETING OF LAWYERS PROFESSIONAL RESPONSIBILITY BOARD JANUARY 31, 2019

The 186th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Thursday, January 31, 2019, at the Town and Country Club, St. Paul, Minnesota. Present were: Board Chair Robin Wolpert, and Board Members Joseph P. Beckman, Jeanette M. Boerner, James P. Cullen, Thomas J. Evenson, Roger Gilmore, Christopher A. Grgurich (by phone), Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Cheryl M. Prince, Susan C. Rhode, Brent Routman, Gail Stremel, Bruce R. Williams and Allan Witz (by phone). Present from the Director's Office were: Director Susan M. Humiston, Deputy Director Timothy M. Burke, Senior Assistant Directors Binh T. Tuong and Jennifer S. Bovitz, and Assistant Directors Amy M. Halloran and Nicole S. Frank. Also present were Minnesota Supreme Court Associate Justice David L. Lillehaug, and Landon J. Ascheman, who will join the Board effective February 1, 2019.

1. APPROVAL OF MINUTES.

The minutes of the September 28, 2018, Board meeting were unanimously approved.

2. FAREWELL TO RETIRING BOARD MEMBERS.

Robin Wolpert reiterated her remarks during the luncheon which preceded the Board meeting about how much she enjoyed working with, and appreciated the service and contributions of, retiring Board members Norina Jo Dove, Anne M. Honsa, Michael J. Leary, Cheryl M. Prince and Brent Routman. Ms. Wolpert also acknowledged the kind and generous remarks Justice David L. Lillehaug made about those members during the luncheon.

3. UPDATED PANEL AND COMMITTEE ASSIGNMENTS.

Ms. Wolpert informed the Board that on January 28, 2019, the Supreme Court issued its order appointing Board members effective February 1, 2019. Based on the composition of the Board, Ms. Wolpert had made the following assignments.

- Executive Committee: The membership will remain the same, with the exception that Christopher Grgurich will replace Cheryl Prince as Vice-Chair and member of the Executive Committee.
- Rules Committee: Membership will be James Cullen (Chair), Jeanette Boerner, Christopher Grgurich, Gary Hird, Virginia Klevorn and Gail Stremel.

- Opinions Committee: Membership will be Gary Hird (Chair), Joseph Beckman, Mark Lanterman, and Susan Rhode.
- DEC Committee: Membership will be Peter Ivy (Chair), Thomas Evenson, Roger Gilmore, Mary Hilfiker, Bruce Williams and Allan Witz.
- Panels: Panels will be constituted as follows:
 1. Thomas Evenson (Chair), Katherine Brown Holmen, and Mark Lanterman.
 2. Susan Rhode (Chair), Bruce Williams, and Shawn Judge.
 3. James Cullen (Chair), Jeanette Boerner, and Susan Stahl Slieter.
 4. Gary Hird (Chair), Landon Ascheman, and Gail Stremel.
 5. Allan Witz (Chair), Kyle Loven, and Mary Hilfiker.
 6. Peter Ivy (Chair), Virginia Klevorn, and a member to be determined.

Ms. Wolpert informed the Board that there were two vacancies effective February 1, 2019, for public members but only one application was received. Because of this, Ms. Wolpert would ask public Board members to substitute on Panel 6 as necessary. Ms. Wolpert anticipates that the posting for the public member Board position will be posted soon.

Ms. Wolpert asked Board members to vigorously recruit qualified potential public members and for ideas on how to spread the word. Joseph Beckman stated that he was considering asking neighbors who could make the required time commitments. Mary Hilfiker inquired whether a person had to have served on a district ethics committee (DEC) in order to serve on the Board. Ms. Wolpert replied that service is not required but is preferred.

Roger Gilmore inquired whether a push for public members had been made through the DEC's. Susan Humiston replied it had.

Bruce Williams stated that he would reach out to former DEC public members. Ms. Wolpert stated her appreciation and stressed the importance of geographic and other diversity. Ms. Wolpert also stated her belief that personal phone calls work best for recruitment. She also suggested Board members consider civic organizations and, for those in law firms, non-lawyer assistants.

Ms. Humiston stated that she has asked the Clerk of Appellate Courts to post the opening and hoped it would be done soon.

Jeanette Boerner stated that she believed it would be helpful to have a writing to share with people interested in the position. Ms. Humiston stated that she would create a writing with information beyond what is in the posting the Supreme Court makes through the Clerk of Appellate Courts. She would include information such as what Board members do, when the Board meets, etc. Ms. Boerner thought that including why Board service is important would be beneficial as well.

Ms. Humiston reminded the Board members that the new Panel memberships are effective February 1, 2019, but that if a Panel has a hearing scheduled or is otherwise in the midst of a probable cause proceeding, then the matter will be heard by the Panel as constituted when the matter was initiated.

Ms. Wolpert reminded Board members that Panel Chairs should act as mentors to new Board members for any questions or concerns. Ms. Wolpert will inform new members of this, as well. Although Board members are free to talk with any other Board member regarding any issues, Ms. Wolpert believes that it is good to have a mentor assigned when a new member joins.

4. COMMITTEE UPDATES.

A. Rules Committee.

i. MSBA Petition and LPRB Response.

Christopher Grgurich noted that the past year has been very busy for the Rules Committee.

Mr. Grgurich summarized the petition pending before the Supreme Court from the Minnesota State Bar Association (MSBA) to amend Rules 1.6(b) and 5.5, Minnesota Rules of Professional Conduct, and the responses the Board and the Director had filed. Oral presentations to the Court were made on January 15, 2019. Ms. Wolpert, who presented on January 15, stated her belief that the debate before the Supreme Court was robust, with the Court asking good questions. Ms. Humiston informed the Board that the argument is available to view through the Minnesota Judicial Branch website.

ii. RLPR Proposed Changes.

Mr. Grgurich stated that a number of proposed changes to the Rules on Lawyers Professional Responsibility (RLPR) designed to facilitate the process had emanated from the Director's Office, the changes were reviewed and approved by the Rules Committee, and a subcommittee of the MSBA Rules of Professional Conduct Committee had no strong objections to any of the proposals.

Ms. Humiston reported that the MSBA subcommittee established to consider adding rules regarding succession planning had, by split decision, recommended no rule amendments be proposed at this time, and that the conversation continues. Mr. Williams stated that Ms. Humiston's article regarding succession planning had been very helpful and thanked her for it. Ms. Humiston noted that she has received many comments about that article.

iii. Proposed ABA Advertising Rule Changes.

Mr. Grgurich reported that in 2018 the ABA amended Model Rule 7 regarding advertising and solicitation. The MSBA Rules of Professional Conduct Committee established a subcommittee, which included Mr. Grgurich and Timothy Burke, to consider whether any or all of the changes should be adopted in Minnesota. Mr. Grgurich summarized what he viewed as the two most substantial changes. These involve use of the word "specialist," and the definition of "solicitation." The MSBA subcommittee voted to adopt the ABA changes in whole. Mr. Grgurich reported that the MSBA will move this issue through its process, and that separately the Board's Rules Committee will consider the issue for presentation to the Board in April 2019.

B. Opinions Committee.

Anne Honsa reported that the Opinions Committee is considering whether the Board should modify LPRB Board Opinion No. 21 in light of ABA Opinion No. 481. The Opinions Committee is in the process of gathering information regarding what other states are doing, and will continue its consideration of the matter.

Ms. Humiston stated that she has referred to the Opinions Committee the issue of whether to follow ABA Formal Opinion 11-461 on advising a client about direct party-to-party contact with a represented party.

C. DEC Committee.

Ms. Humiston reported on the excellent agenda for the upcoming DEC Chairs Symposium. Ms. Humiston complimented Peter Ivy for his extensive efforts in planning and preparation, which included speaking with many DEC Chairs for their input and suggestions. Unfortunately, Justice Lillehaug is unable to attend, and Justice Paul C. Thissen will attend in his place. The agenda includes a well-being session tied to implicit bias, and a substantial portion of the Symposium will contain practical advice for DEC Chairs. Mr. Williams stated that he had requested Mr. Ivy include on the agenda the issue of a criminal defense lawyers being required to provide the file to the client when that file may contain private or sensitive information about the victim.

5. DIRECTOR'S REPORT.

Ms. Humiston thanked Mark Lanterman for speaking at the National Organization of Bar Counsel conference in January 2019 in Las Vegas on cybersecurity. Ms. Humiston stated that the audience greatly appreciated that presentation.

There are several personnel updates. Ms. Humiston extended congratulations to Binh Tuong on her promotion to Senior Assistant Director, and Cassie Hanson on her promotion to Managing Attorney. Josh Brand has been out since early October with a chronic health issue, with no return to duty date set. Mr. Brand and Siama Brand just had a daughter born, and Ms. Brand is on a six-month parenting leave.

Patrick R. Burns has returned to the Office on a part-time basis. Ms. Humiston stated that he has been a big help to the Office. Rebecca Huting took a job with a law firm and departed. The Office has completed its hiring process, identified a candidate, and hopes to finalize the hiring process in the immediate future.

The paralegal position remains open. The Office previously posted for hiring, the pool of applicants was not as hoped, there was one finalist, but she did not accept the position. The position has been reposted, and more than 80 applications were received.

Ms. Humiston informed the Board that the Office will be hiring a financial analyst to help with audits, which are primarily done by paralegals. Currently, there are 14 audits pending, and help is needed. Ms. Humiston also stated that the Office will

have a paralegal intern who will be working with the Office as part of her class work. Finally, Ms. Humiston has been considering, and will communicate with Justice Lillehaug and Ms. Wolpert about, whether the Office should hire a temporary attorney.

Ms. Humiston reported that Amy Halloran had received compliments for her work in improving the operations of the professional firms department. The Office is in charge of administering the Professional Firms Act, and there are about 8,000 professional firms who register through the Office each year. Ms. Halloran is in charge of that department, substantially streamlined the processes, and developed an FAQ and a tutorial. Ms. Halloran is working to make more improvements, such as developing the ability to file and pay registration fees online.

Ms. Humiston gladly reported that Jennifer Bovitz had a case with a very appreciative complainant, who noted the importance, impact and quality of the work Ms. Bovitz had done on the matter.

Ms. Humiston reported to the Board that Bentley Jackson, as the Board's personnel liaison to the Office, meets quarterly with staff to hear concerns and to thank people on behalf of the Board. Staff greatly appreciates the opportunity to have this conversation, and these quarterly conversations will continue.

Ms. Humiston briefly discussed the year just concluded. She noted that there were more public disciplines, more disbarments and more private disciplines. Of particular note is that there were six matters in which a lawyer was transferred to disability-inactive status. This is a significant departure, as in most years only one or two lawyers are transferred to disability-inactive status. Ms. Hilfiker inquired whether there was a certain type of disability which was prevalent in these matters. Ms. Humiston replied that there was not. Ms. Hilfiker also inquired as to whether the lawyers involved typically were in the same age range. Ms. Humiston stated that the age range varied, which highlighted the importance of lawyer well-being.

Ms. Humiston stated that a lot of progress had been made toward eliminating the Office's backlog and acknowledged the importance of eliminating the backlog. She stated the Office has a plan and teams devoted to complete in February the oldest files which remain under investigation.

Ms. Humiston noted that there is one matter involving one lawyer which has 22 separate complaint files. In this matter, the lawyer has been suspended pursuant to Rule 12(c), RLPR. The Director's brief will be due in February, and then the matter will be on the way toward adjudication and closure.

Ms. Humiston noted that Mr. Gilmore has encouraged the Office to think of data in a graphic way, which is why the Office has been presenting more year-over-year comparisons. Also included in the Board materials is a graph which shows from 1985 to date the year-end number of complaints received, open files in the system, and number of files over one year old. Also included is a chart of public discipline during that time frame. Ms. Humiston found the large variations in public discipline between years to be surprising.

Ms. Humiston reported that Mr. Gilmore and the Executive Committee have tasked the Office with how the Office could continue to put greater context into the statistics presented to the Board, and the Office continuously strives to do so. Mr. Beckman stated that he found the graphs included in the materials to be exactly what the Board wants.

Cheryl Prince inquired about the total file, and files over one year old, statistics in the 1980s. Ms. Humiston reported that Mr. Burns, who worked for the Office at that time, said that many dispositional documents, particularly dismissals, were much briefer. Ms. Prince thought that leads to an interesting question for the Board, which is whether the Office is expending an appropriate, or too much, time investigating its files; Ms. Prince believes the time spent on investigations is appropriate. Ms. Boerner asked if the reports could also include the percentage of older files relative to the total number of open files and stated her belief that this may tell a good story.

James Cullen inquired about the trusteeships currently being handled by the Office. Ms. Humiston reported that these trusteeships are newer. Mr. Cullen asked if these trusteeships involve wills. Ms. Humiston replied that at least one of them does. This trusteeship consists of more than 100 boxes. Mr. Cullen asked if the Office had received inquiries from people looking for their wills. Ms. Humiston replied that the Office has not. Ms. Humiston reminded the Board that when the Office destroys files pursuant to the Supreme Court's order appointing the Office as trustee, the Office removes all valuable original documents such as titles, wills, and abstracts.

Justice Lillehaug inquired as to the status of the proceeding identified as a proceeding under Rule 12(c), RLPR. Ms. Humiston stated that the matter is in briefing and gave an overview of the process pursuant to Rule 12(c), RLPR.

Ms. Humiston noted that there are three lawyers who account for significant numbers of open files. In one matter, the lawyer and the Director have filed a stipulation for disbarment with the Supreme Court, which remains pending. The Office has ten more files which are not included in the pending public proceeding. Another matter involves the lawyer with 22 files proceeding pursuant to Rule 12(c), RLPR. In

another matter, there is a pending petition, other files are being investigated, and this totals 15 files.

Mr. Gilmore inquired about the one year period a lawyer has to appear under Rule 12(c), RLPR, and asked if other states had a similar one year period. Ms. Humiston stated she was not familiar with that. Ms. Humiston noted that this does tap into a larger issue of revisiting the RLPR, to revise and update these rules.

Mr. Grgurich asked if the cases on hold are included in the file numbers. Ms. Humiston replied they were. Mr. Grgurich opined that perhaps they ought not to be as the Office is unable to take any action on these matters. Ms. Humiston believes it is appropriate to include these files because they are open files in the Office.

Mr. Williams asked about a file which is on hold and received in 2015. There was then a discussion about whether the Director should be taking further action regarding this matter.

6. **OTHER BUSINESS.**

Ms. Wolpert reported that she had recently attended the National Council of Bar Presidents meeting. This included a session for bar leaders on lawyer well-being. Minnesota and Pennsylvania gave a detailed presentation of the work these states are doing. This was an opportunity to showcase the work of the Board, the Office, the Bar and the Supreme Court.

Ms. Wolpert noted the well-being summit the Supreme Court will host on February 28, 2019. Justice Lillehaug stressed the Court's commitment to disseminating the August 2017 task force study to all Minnesota lawyers and to focus on the importance of lawyer well-being. The Call to Action Summit will be at the University of St. Thomas. The Court has invited a broad array of attendees from all constituencies, including large firms, solo and small firm practitioners, corporate attorneys, and public attorneys. One goal is to try to persuade employers such as large firms to implement well-being programs in their firms. National experts will give addresses to the audience, and there will be breakout sessions tailored to each particular group. The entire Supreme Court is invested in lawyer well-being and will attend. Chief Justice Lori S. Gildea will present welcoming remarks, and Justice Lillehaug will close the seminar. Justice Lillehaug extended the Court's thanks to the Court's partners, including the Board, the Office, Lawyers Concerned for Lawyers (LCL), and others, in planning the Call to Action. Ms. Hilfiker expressed her pleasure that the Court is hosting this event and asked about conveying the message and material regarding lawyer well-being to small and rural firms. Justice Lillehaug acknowledged the

importance of doing that, noted the challenges, and hopes that the Call to Action will be a foundation for expanding the important message of lawyer well-being. Along these lines, Ms. Humiston noted that Ms. Wolpert, Joan Bibelhausen of LCL, and others have tried very hard to invite leaders who can spread the word.

Ms. Wolpert stated that on her own personal agenda is to talk in 2019 to every district bar association to receive feedback on how to get the message on well-being to them. Ms. Wolpert believes that individual DEC members can be part of this process, too. She noted and appreciated the fact that the Supreme Court is working to normalizing well-being, changing the culture, and changing the dialogue and expectations.

Mr. Routman inquired about outreach on this topic to the law schools. Justice Lillehaug stated that University of St. Thomas law school has been leaders in collecting data on this topic and that all three law school deans have been invited to the Call to Action.

7. **QUARTERLY BOARD DISCUSSION.**

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

Thereafter the meeting adjourned.

Respectfully Submitted,



Timothy M. Burke
Deputy Director

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