

**DRAFT**

**MINUTES OF THE 180TH MEETING OF THE  
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

**June 9, 2017**

The 180th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Friday, June 9, 2017, at the Town & Country Club, St. Paul, Minnesota. Board members present were: Board Chair Stacy Vinberg, Jeanette Boerner, James Cullen, Roger Gilmore, Christopher Grgurich, Mary Hilfiker, Peter Ivy, Bentley Jackson, Shawn Judge, Virginia Klevorn, Cheryl Prince, Susan Rhode, Gail Stremel, Terrie Wheeler, Allan Witz, and Robin Wolpert. Present from the Director's Office were Director Susan Humiston, Deputy Director Patrick Burns, and Assistant Directors Timothy Burke, Binh Tuong, Megan Engelhardt, Cassie Hanson, and Kevin Slator. Also present were LPRB liaison Justice David Stras and a member of the public, Harvey Skow.

**1. APPROVAL OF MINUTES**

The minutes of the April 14, 2017, Board meeting were approved.

**2. UPDATE ON APPOINTMENT OF NEW MEMBER**

Susan Humiston reported on the LPRB member opening resulting from the resignation of Lisa Radzak. She noted there were several good applicants and that the Court will be making their appointment soon.

**3. HARVEY SKOW PRESENTATION**

Harvey Skow, a member of the public who has had complaints dismissed without investigation, desired to address the LPRB and was given the opportunity to do so. Mr. Skow discussed the procedures for determining whether to investigate complaints and referred to a *Bench & Bar* article by former Director Martin A. Cole in which Rule 8(a), Rules on Lawyers Professional Responsibility (RLPR), is discussed and the standard for determining whether to investigate a complaint. Mr. Skow stated his opinion that Rule 8(a), RLPR, does not give the Director discretion to not investigate a complaint if that complaint alleges attorney wrongdoing. In further support of his argument, he cited to an article by former Director Michael J. Hoover. He opined that Deputy Director Burns is dishonest in that he does not initiate investigations where complaints specifically allege violations of the Rules of Professional Conduct.

4. 2017 ANNUAL REPORT DRAFT

Susan Humiston discussed changes in the report format from prior years. She noted that she is continuing to try to streamline the report. She noted the addition this year of two charts – one showing the years of practice for attorneys who are disciplined, and another detailing the subject matter of advisory opinion calls. She did note that some of the biographical information for LPRB members in the report may be outdated and asked Board members to check their information and let the Office know if it needs to be updated. Virginia Klevorn asked if the Office is designing training programs around the topics of most interest in the advisory opinion calls. Ms. Humiston noted that the Office is doing a series of webinars through MNCLE on common topics of interest and will be doing FAQs for retainer agreements. Ms. Klevorn asked if these trainings would be incorporated into the training of DEC members. Ms. Humiston replied that the Office is considering substantive rule training for DEC and Board members. Justice Stras noted that the Court is planning ongoing training for referees. A motion was made and seconded to adopt the 2017 Annual Report as presented after updating of statistical information. The motion was adopted by a unanimous vote.

5. COMMITTEE UPDATES

Cheryl Prince reported on the Rules Committee. She discussed the MSBA proposed amendments to Rule 5.5, Minnesota Rules of Professional Conduct (MRPC). She noted that the LPRB Rules Committee is considering these amendments and will be getting input from the MSBA Rules Committee on the topic. She asked the Board for a consensus on how to approach the topic. She noted that the MSBA is potentially on track to present their proposal to the MSBA General Assembly in September. Timothy Burke discussed the Rules Committee process to date and discussed the nature of the proposed rule changes. He expressed concern that the MSBA's "friends and family" exception was overly broad and would create enforcement issues. He did note that concerns regarding the unauthorized practice of law (UPL) are somewhat alleviated if the client is familiar with the lawyer by virtue of a prior attorney-client relationship. He also noted that whatever changes might be made to the rule, this will not change how other jurisdictions view the application of their rules and laws pertaining to UPL.

Ms. Prince said she was seeking some guidance or consensus from the LPRB as to the proposed rule changes and opined that someone from the LPRB and OLPR should attend the MSBA General Assembly meeting where the changes will be discussed. Virginia Klevorn asked about the goal of Rule 5.5—to protect the people of the State or to protect lawyer livelihoods? Ms. Prince opined that the rules need to address changes in the practice of law and allow greater ability to practice.

Ms. Humiston discussed the overall process, noting that there would not likely be a Rules Committee position available prior to the MSBA's September General Assembly meeting. She noted that we do not necessarily need an official LPRB position prior to the Assembly. She asked for comments on how best to get LPRB input on the proposed changes. Ms. Prince reiterated that she is looking for a general sense of the LPRB on the proposed changes. Allan Witz opined that the LPRB should work with the MSBA as their proposals are being developed. Ms. Humiston noted that Patrick Burns, from the OLPR, is a member of the MSBA Rules Committee and attended and participated in their meetings where the proposed changes were discussed and developed. Mr. Witz asked what the LPRB does if there is not agreement with the MSBA on the proposed changes. Ms. Humiston noted that the Board could submit comments to the Supreme Court after the MSBA files their petition seeking amendment of the rule. Robin Wolpert asked if there is a minority report from the MSBA Rules Committee. Ms. Humiston said there is not. Ms. Wolpert opined that it would be a good idea to provide input to the MSBA Assembly when they consider the proposal and that it is important that the OLPR and LPRB attend the Assembly meeting. She suggested that it would be good to have a bullet point list of the LPRB's positions and should possibly also seek to have a minority report appended to the MSBA Rules Committee report. She suggested scheduling a special meeting of the LPRB to consider these issues before the MSBA Assembly meeting. Christopher Grgurich opined that he supported the idea of a special meeting to consider this issue after additional information is provided to the Board regarding both the OLPR and MSBA positions.

James Cullen stated it was his understanding that the OLPR would be getting additional information to the LPRB Rules Committee and that, thereafter, there would be another meeting of the Rules Committee. Ms. Prince opined that a full Board meeting on the issue rather than a Rules Committee meeting would be a better way to proceed. Mr. Cullen opined that the Rules Committee should first reconvene and then make a recommendation to the full Board. Ms. Wolpert opined that the MSBA ought to hear from the LPRB on this and asked if the Board could move quicker on it. Stacy Vinberg opined that the Rules Committee should make a recommendation to the Board before any special meeting of the full Board. Ms. Prince opined that that could be done if the special meeting is set for August. Bentley Jackson noted that the MSBA Rules Committee wants input in the LPRB's consideration of the proposed changes. Mr. Burke noted that Eric Cooperstein, a member of the MSBA Rules Committee, wants to address the LPRB Rules Committee. Ms. Prince noted that the Rules Committee could finish their deliberations and make a recommendation to the full Board after one more meeting of the Rules Committee. Mr. Cullen asked for additional input on the issue from the OLPR.

Roger Gilmore moved that a special meeting of the LPRB be set for the first Friday in August. The motion was seconded. Mr. Witz inquired as to what would be discussed at the special meeting. It was noted that the MSBA's proposal would be discussed with an eye towards developing a formal LPRB position on the proposal. Ms. Wolpert noted that submissions to the MSBA Assembly need to be submitted by mid-August in order to be considered at the September Assembly meeting. Mr. Witz asked if Board members could participate in the meeting by phone, and was told that is possible. The motion on the floor was amended to call for a special meeting on July 28. The motion was voted on and adopted by a unanimous vote. Jeanette Boerner asked if an actual meeting is necessary or whether the proposed rule changes could just be posted with the Rules Committee's comments. Ms. Prince opined that an actual meeting would be better for the purpose of formulating a position. Mary Hilfiker asked whether the meeting could be done by conference call. Ms. Vinberg opined that these are important rule changes and it is better to have a full review and discussion of the LPRB Rules Committee report and recommendation. Allan Witz expressed agreement with this.

Stacy Vinberg noted that Justice Stras may be leaving as liaison to the LPRB in that he has been nominated to fill a position on the 8<sup>th</sup> Circuit Court of Appeals. Justice Stras noted that nothing is yet finalized with respect to his nomination and thanked all involved for doing a great job improving the attorney discipline system.

Terrie Wheeler reported on behalf of the DEC Committee, summarizing the recent DEC Chairs Symposium and noting the survey results from Symposium attendees.

There was no report from the Opinions Committee.

## 6. DIRECTOR'S REPORT

Ms. Humiston asked the other OLPR staff members present to introduce themselves. After the introductions, Ms. Humiston discussed case statistics. She noted an overall decrease in the file inventory and the number of year old files. New filings are the same year-to-date as last year, but not on a pace to meet last year's numbers in light of the fact that last year's numbers were slightly inflated by a late-in-the-year filing of multiple complaints against various county attorneys for failure to prosecute police officers.

Ms. Humiston noted that there has been some stagnation of progress on disposing of old files and set the goal of having all cases charged or dismissed within one year by September 1. She noted that the oldest pending case dates to May 2013. She noted that Advisory Opinions are up year-over-year in 2016, but still down

somewhat from prior years. She presented the Board with a chart showing the number of complainant appeals per month for 2015 and 2016, per the prior request of Jim Cullen, and noted that Board members should generally expect one complainant appeal per month.

Ms. Humiston discussed her objectives for the Office and the strategic plan process. She noted that a team has been formed for the strategic planning committee. Justice Stras noted that it is best that the strategic planning committee have a free-flowing discussion and thinks it is better if he or his replacement as liaison not be involved until the latter part of the process.

Ms. Humiston noted that she and Chair Vinberg will be presenting the budget to the Court on June 21. She noted that merit increases for employees will be adjusted down from 3.5% to 2.5% in light of the legislature's allocation of funds to the judiciary. She also noted that she has reduced the estimate of upcoming IT costs.

Ms. Humiston noted that the Office recently completed the employee review process and noted that several employees were nominated for Spot Awards. Ms. Humiston then read from a letter received from the spouse of a deceased lawyer for whom the OLPR handled a trusteeship. The spouse expressed her praise and appreciation for the manner in which Joshua Brand and Lynda Nelson handled the trusteeship and the manner in which they interacted with her during a difficult time. She also noted receipt of a letter from a respondent complimenting Cassie Hanson and Sofia Manning on the professional manner in which they prosecuted his case. She also noted that Timothy Burke had recently done a very good job in interviewing a witness who was the victim of a crime.

Ms. Humiston then discussed the Office's collection of judgments owed to it, noting that approximately \$180,000 is owed. The Office will be reviewing these to see if more can be done to collect on these judgments.

Ms. Humiston noted that she had had discussions with Judicial IT regarding ensuring cybersecurity and the steps they are taking. Justice Stras noted that the Judicial Branch had been the victim of three or four denial of service attacks last year and steps have been taken to enhance security.

Ms. Humiston noted that amendments to the Panel Manual are still in process and hopefully will be presented to the Board for consideration at the next meeting. Mr. Cullen asked about the trusteeship report in the Annual Report and asked about trusteeship files that are eligible for expunction. He inquired whether the wills in the Director's possession in a particular trusteeship could be scanned as opposed to expunged. Ms. Humiston said she would follow-up on that.

7. **OTHER BUSINESS**

Stacy Vinberg noted the 2018 meeting dates. Susan Humiston noted that the June 18, 2018, meeting conflicts with the MSBA Annual meeting and will be rescheduled.

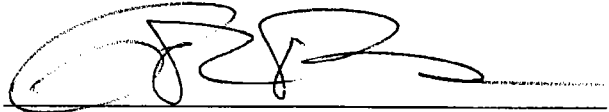
Ms. Humiston then discussed the issue of the submission of DEC reports as evidence in Panel proceedings. She noted that the Supreme Court, in *In re Nwaneri*, held that DEC reports and recommendations are non-binding suggestions to the Director and the Director is free to depart from them. She noted that the OLPR routinely objects to admission of the reports into evidence in that they are inadmissible hearsay and not relevant.

8. **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', is 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.]