

DRAFT

**MINUTES OF THE 185TH MEETING OF LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD SEPTEMBER 28, 2018**

The 185th meeting of the Lawyers Professional Responsibility Board convened at 3:00 p.m. on Friday, September 28, 2018, at the Earle Brown Heritage Center, Brooklyn Center, Minnesota. Present were: Board Chair Robin Wolpert, and Board Members Jeanette M. Boerner, James P. Cullen, Thomas J. Evenson, Roger Gilmore, Christopher A. Grgurich, Mary L. Hilfiker, Anne M. Honsa, Peter Ivy, Bentley R. Jackson, Virginia Klevorn, Michael J. Leary, Cheryl M. Prince, Susan C. Rhode and Bruce R. Williams. Present from the Director's Office were: Director Susan M. Humiston, Deputy Director Timothy M. Burke, Senior Assistant Directors Cassie Hanson, Jennifer S. Bovitz, Josh Brand, Siana Brand and Keshini M. Ratnayake, and Assistant Directors Binh T. Tuong, Amy A. Mahowald, Nicole S. Frank, Aaron D. Sampsel and Rebecca L. Huting. Also present were Minnesota Supreme Court Associate Justice David L. Lillehaug and Nicolas Ryan.

1. **APPROVAL OF MINUTES.**

The minutes of the June 8, 2018, Board meeting were unanimously approved.

2. **DEC SEMINAR DISCUSSION/FEEDBACK.**

The annual Lawyers Professional Responsibility Board seminar was held immediately before the Board meeting. Robin Wolpert solicited feedback from the Board members on the seminar. Ms. Hilfiker stated that she believed the seminar was the best that she had ever attended. Ms. Humiston noted that she thought the presentations at this year's seminar on neuro-science and technology were particularly good, as these are areas of the law which are changing quickly, and she asked Board members to let the Office know of topics members would like addressed at future seminars.

Peter Ivy appreciated the investigation checklist which was part of the materials regarding Rule 1.5, Minnesota Rules on Professional Conduct (MRPC). Mr. Ivy believes that practical items for District Ethics Committee (DEC) investigators are particularly valuable as investigators will keep and refer to these types of materials. Also, drafting these materials allow the Director's Office to help train the DEC investigators.

Ms. Wolpert thought there was a particularly good discussion regarding confidential documents which may arise during disciplinary investigations, and thought a checklist could be developed for this topic. Ms. Wolpert requested the Board

members email her, Ms. Humiston and Mr. Ivy with ideas for the DEC Chairs Symposium in May 2019 and the LPRB seminar in September 2019.

3. LAWYER WELL-BEING SUPREME COURT INITIATIVE.

Ms. Wolpert noted that Justice Lillehaug had discussed the topic of lawyer well-being during the seminar and turned the floor over to him. Justice Lillehaug stated that the Supreme Court call to action on lawyer well-being is scheduled for February 28, 2019, with public notice regarding the event and the date forthcoming. Justice Lillehaug noted with approval that at least one of the authors of the Hazelden/ABA study of lawyer substance use disorders and mental health would be present, and that Ms. Humiston and representatives of many stakeholder groups are represented on the program committee.

4. COMMITTEE UPDATES.

A. Rules Committee.

i. MSBA Petition Update. Mr. Grgurich reported that the MSBA has filed a petition to amend Rules 1.6 and 5.5, MRPC. The petition was included in the meeting materials. Ms. Humiston stated that the Office would draft the initial response on behalf of the Board and the Office. Ms. Wolpert informed the Board that the Supreme Court had issued an order establishing a public comment period, with written comments due November 20, 2018, and oral argument on January 15, 2019.

ii. LPRB Proposed Changes Update. Mr. Grgurich stated that a change had been proposed to Rule 1.1, MRPC, to address lawyer well-being, and a number of more administrative or process rule changes have been proposed to other rules. These proposals are being studied by an MSBA subcommittee chaired by William Wernz, which has taken a preliminary look at these proposals. Mr. Grgurich reported that he, Mr. Wernz and Timothy Burke had talked about the proposals. As to the administrative or process proposed changes, Mr. Grgurich did not expect much opposition. As to Rule 1.1, MRPC, Mr. Grgurich reported that he, Mr. Wernz and Mr. Burke believed it was best to table this item for the present because this is an issue the ABA is closely studying as well. Therefore, it appears appropriate to wait before proceeding to see how the ABA addresses this issue, including what language, if any, to include in Rule 1.1, or its comments.

iii. Joint Committee Proposal. Mr. Grgurich reported that the MSBA had proposed a joint committee with the LPRB to address proposed changes to Rules 7.1 through 7.5, MRPC, which address advertising and solicitation. The ABA has adopted changes to these Model Rules of Professional Conduct. The MSBA has established a subcommittee to determine the appropriate Minnesota approach. Members of this committee include Board members Mr. Grgurich and Cheryl Prince, as well as Mr. Burke from the Director's Office. The hope is for a joint proposal to emanate for the consideration of the Board and the MSBA. This subcommittee's first meeting will be on October 4. Ms. Wolpert and Mr. Grgurich issued an open call for volunteers, including Board members who are not on the Rules Committee, who may wish to join this committee.

B. Opinions Committee.

Anne Honsa reported that the Opinions Committee is studying LPRB Opinion No. 21 in light of ABA Formal Opinion 481. The Opinions Committee has had two meetings by conference call with Director's Office liaison Cassie Hanson. The Opinions Committee generally agrees there should be a change to Opinion No. 21. Ms. Honsa briefly summarized the differences between this Opinion and ABA Formal Opinion 481. Ms. Honsa reported that Ms. Hanson has offered to survey other states to determine what changes they have made in light of ABA Formal Opinion 481 and then the Opinions Committee will meet again, hoping to have a recommendation ready to present by the time of the January 2019 Executive Committee meeting.

Ms. Honsa reported that two additional topics may be ripe for consideration by the Opinions Committee. One is guidance on availability fees, and the other is the lack of propriety in representing both parties in a marital dissolution proceeding. As to the latter issue, Ms. Honsa stated that Ms. Humiston has stated that she would survey other state positions on this topic, and then report her findings to the Opinions Committee. Ms. Humiston noted that she had published an article on the topic of representing both parties in a marital dissolution proceeding, and that the feedback she received was that it resonated. The general sense she received was that lawyers either agreed, or at least grudgingly accepted, Ms. Humiston's conclusion in the article. In light of this feedback, Ms. Humiston wonders if an additional Board opinion on this topic is necessary.

C. DEC Committee.

Mr. Ivy reported that he and Joshua Brand will be starting to prepare for the May 17, 2019, DEC Chairs Symposium, which will be held at the Earle Brown Heritage Center. Board members are encouraged to mark their calendars.

5. DIRECTOR'S REPORT.

Ms. Humiston noted that the format of the monthly reports had changed a bit. The reporting format continues to be a work-in-process to give helpful information to the Board about the work of the Office. Thus, the Dashboard has been updated to include year-over-year comparisons. Also, at the recommendation of the Executive Committee, the report highlights the Hold and Rule 12(c) columns. These are categories of cases that are inactive for reasons beyond the control of the Office. Ms. Humiston believed that adding these columns gives greater perspective. Presently, there are 116 active cases more than one year old, and 32 additional cases on hold or otherwise not archived which are more than one year old.

Ms. Humiston noted that the number of older files in the Office is holding steady. The fact that the number of open and old files are not at the Board's targets frustrates the Office staff, which is doing a good job to handle the caseload. Ms. Humiston brought particular attention to the file statistics related to DEC's. The number of investigations conducted by DEC's is down, and the number of investigations conducted by the Office is up. Additionally, the DEC's are making more recommendations for discipline, including public discipline, than previously.

Ms. Humiston stated that she is very proud that the Office has worked through the older cases in the Office without falling behind. She expressed pride in the fact that the Office is handling all matters simultaneously, as the Office strives to achieve the Board's target of no more than 100 open files in the disciplinary system. Ms. Hilfiker asked if any matters were more than two years old. Ms. Humiston stated that the oldest file in the system was opened in January 2015, and the oldest file under investigation was opened in February 2016.

Ms. Humiston noted the five-year anniversary with the Office of legal secretary Nancy Humphrey, and the 25-year anniversary with the Office of Mr. Burke.

Ms. Humiston noted that the Office has received words of appreciation from persons outside the system for work done by staff in the Office. Jennifer S. Bovitz received a highly complimentary letter from a complainant in a recently completed public discipline matter which had also been handled by Mr. Slator before it was

transferred to Ms. Bovitz. Ms. Humiston received a letter from a Colorado lawyer who represented a lawyer in a reciprocal discipline proceeding stating the appreciation of that lawyer and his client for how Ms. Humiston approached the matter. Ms. Humiston has also received a thank you note from an attorney for the help Ms. Humiston gave to that attorney through the advisory opinion service.

Ms. Humiston provided some personnel updates. Siama C. Brand will be going on maternity leave, and during that time Patrick Burns will return to the Office part-time for a number of weeks. Also, Patricia Jorgensen is retiring from the Office after almost 34 years of service. Ms. Humiston noted that the Office will lose her substantial amount of institutional knowledge. The Office has begun the process of hiring a full-time replacement for this position, which had been part-time. Finally, Ms. Humiston reported that the new hires continue to do very well in getting up to speed.

Ms. Humiston reported that the Office is focusing on the parts of the strategic plan around lawyer well-being and organizational competencies. The Office is working toward implementation and developing plans around the strategic planning goals but is focusing on case processing right now.

Ms. Humiston directed the Board's attention to the Lawyer Well-Being Toolkit published by the ABA. This document has hands-on ideas for legal employers and is available on the Lawyers Concerned for Lawyers' website and will be available on the Office's website. Closer to home, Ms. Humiston stated that the Office is in the process of forming a well-being committee within the Office.

Ms. Humiston also reported that ABA Formal Opinion 482, issued September 19, 2018, addresses continuity of operations plans. The Minnesota Judicial Branch is engaged in a concerted effort regarding continuing of operations planning, an effort in which the Office is participating.

Ms. Humiston reported that the database project continues to progress. The Director has approved approximately \$30,000 for enhancements, from funds that had been budgeted. Development is being finalized toward a system that looks like it will be awesome and will allow about half of the matters to proceed in a paperless manner. Ms. Humiston acknowledged the work of Mr. Burke, Office Administrator Chris Wengronowitz, and other staff who have devoted substantial time to the project, with which Ms. Humiston is very pleased.

Ms. Humiston's October 2, 2018, *Bench and Bar* article will address the issue of trust accounts. Also on that topic, the Office will be offering a free seminar in

conjunction with the State Law Library on the basics of trust accounting. Ms. Hanson, Ms. Bovitz and paralegal supervisor Lynda Nelson of the Office will present at the free seminar. Ms. Humiston appreciated the effort of the State Law Librarian to reach out to facilitate this seminar which allows for 240 people to participate live through Webex, and the session will also be available on demand. Ms. Humiston noted that this presentation dovetails with the Office's strategic objective to develop outreach and education. Another approach in this regard may be reaching out to community law libraries that offer many seminars for solo and small firm attorneys.

6. **OTHER BUSINESS.**

A. *Michelle Lowney MacDonald vs. Lawyers Professional Responsibility Board.*

Ms. Humiston reported that the United States Supreme Court denied Ms. MacDonald's petition for a writ of certiorari, and the case is concluded.

B. Unclaimed Property.

Ms. Humiston summarized that the issue of wills taken by the Office through trusteeships and whether such wills are subject to destruction has been raised in the past by Jim Cullen and Gary Hird. The Office talked to the Department of Commerce about whether wills taken through trusteeships could be forwarded to the Department of Commerce pursuant to the unclaimed property act statute. The Department replied that by statute the only physical property that it could take was safety deposit boxes from financial institutions.

Mr. Cullen noted the recent passing of a lawyer and asked if that lawyer had the most wills which would be affected by the Supreme Court order allowing the Office to destroy such wills after a period of time. Ms. Humiston stated that she believed that the Office had a substantial number of wills from that trusteeship. Ms. Humiston specifically stated that she does not want anyone prejudiced because of the passing of a lawyer and understands the concern that Messrs. Cullen and Hird have raised regarding destruction of wills, but also noted that some of the wills date back to the 1960s and 1970s. Mr. Cullen stated that he would like a review of each will to determine whether the testator/testatrix remained alive. Ms. Humiston noted that there are approximately 600 such wills and that the Office is in no rush to destroy them as space is not an issue.

C. LPRB Well-Being Session.

Ms. Wolpert noted that the next quarterly Board conversation will be on November 30, 2018, and will address the topic of lawyer well-being. Ms. Wolpert recognized that people do not always read lengthy reports such as those that have been issued on this topic but thought it was important for people to be provided with the vocabulary necessary to be agents for change regarding lawyer well-being. During this session, Joan Bibelhausen of Lawyers Concerned for Lawyers will make a presentation, and likely Ms. Humiston will as well. Ms. Wolpert noted that other organizations, including the Supreme Court and the MSBA, are committed to the topic of lawyer well-being. The session will be at the Minnesota Judicial Center and consist of the presentations, an opportunity for conversation, and lunch.

D. Next Meeting.

Ms. Wolpert reminded members that the next meeting will be on January 31, 2019, and noted that this meeting will be on a Thursday. The meeting will be at the Town and Country Club.

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]