

MINUTES OF THE 178TH MEETING OF THE LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

January 20, 2017

The 178th meeting of the Lawyers Professional Responsibility Board convened at 1:00 p.m. on Friday, January 20, 2017, at the Town & Country Club, St. Paul, Minnesota. Board members present were: Board Chair Stacy L. Vinberg, Joseph P. Beckman, Timothy Churchwell, James P. Cullen, Roger Gilmore, Christopher A. Grgurich, Nancy L. Helmich, Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Shawn Judge, Michael J. Leary, Lisa Radzak, Gail Stremel, Terrie S. Wheeler, Todd A. Wind, and Allan Witz. Present from the Director's Office were Director Susan Humiston, Deputy Director Patrick R. Burns, and Assistant Directors Joshua H. Brand and Amy M. Mahowald.

1. APPROVAL OF MINUTES

The minutes of the September 30, 2016, Board meeting were approved.

2. RETIRING BOARD MEMBERS/RETURNING MEMBERS AND OPENINGS

Stacy Vinberg noted and thanked Board members Todd Wind, Paul Carlson, Tim Churchwell, and Nancy Helmich whose service on the LPRB is coming to an end. She also noted that Board members Joe Beckman, James Cullen, Roger Gilmore, Mary Hilfiker, Bentley Jackson, and Allan Witz are beginning new terms on the Board. She reported that the Supreme Court has not yet appointed replacements for the retiring Board members. The Executive Committee has submitted recommendations to the Court for filling two of the attorney positions. Due to the low number of public member applicants, that opening has been re-posted, together with a posting for the attorney opening resulting from Tim Churchwell's leaving the Board. New Panel assignments will be forthcoming.

3. COMMITTEE UPDATES

Susan Humiston reported for Cheryl Prince on the Rules Committee. She noted that the citizen petition to amend Rule 6(a), Rules on Lawyers Professional Responsibility (RLPR), was denied by the Supreme Court. The LPRB petition to amend Rule 18(c), RLPR, to specify a 10-day period in which to order a transcript of a Panel reinstatement proceeding if a party wishes to contest the findings or conclusions of the Panel was granted by the Court. It was also noted that Justice Stras has asked that Panels ruling on reinstatement petitions remind the parties of the 10-day deadline.

Susan Humiston told the Board that the Panel Manual is going to be re-written and will be presented to them for review, comment, and adoption at a future meeting. Susan also told the Board that amendments to Rule 20, RLPR, which would permit the sharing of information with lawyer assistance programs, are being considered and will be presented to the Rules Committee and the Board for approval and petition to the Court seeking amendment of the rule. She also reported that the MSBA Rules of Professional Conduct Committee is considering possible amendments to Rule 5.5, Minnesota Rules of Professional Conduct, but that no specific proposals have yet been made.

Todd Wind reported that the Opinion Committee does not currently have any opinions under consideration and invited suggestions for opinions to be considered by that committee. Susan Humiston discussed some of the feedback she has received on LPRB Opinion 24. One concern expressed was that the opinion was not circulated for public comment before adoption. She also suggested that an opinion on the appropriate use of availability retainers may be appropriate.

Terrie Wheeler reported on planning for the May 5, 2017, DEC Chairs Symposium and invited suggestions for topics to be considered at the Symposium. It was noted that both the Symposium and the annual DEC Seminar will be held at the Earle Brown Heritage Center in Brooklyn Park.

Susan Humiston discussed DEC statistics and noted that four DEC's need to add public members in order to meet the 20% public membership rule. She also noted that all of the volunteers in the 17th DEC are at the end of their terms and will have to be replaced with new members. She also noted that the number of matters withdrawn from the DEC's in 2016 was higher than normal.

4. DIRECTOR'S REPORT

Susan Humiston asked staff attorneys Josh Brand and Amy Mahowald to introduce themselves to the Board, noting their backgrounds prior to joining the Director's staff. She then presented the year end statistics for consideration by the Board. She noted that the number of public disciplines in 2016 was lower than in 2015, but was still high in light of the long term average number of public disciplines per year. She noted that two public matters resulted in dismissals in 2016. The number of new complaints was roughly the same as in 2015 and the number of pending files open is improving. The total case inventory at year end was below the target of 500 files and the number of year old files was at 108, eight above the target of 100. The number of advisory opinions for 2016 was 1,890. She noted that progress on reducing the case

inventory and year old files is particularly impressive in light of the fact that during much of 2016 the OLPR did not have a full attorney staff.

Susan also reported on organizational changes in the Office, noting that Patrick Burns is now a Deputy Director and Timothy Burke is now a First Assistant Director. This permits a reassignment of supervisory functions in the Office. She also noted that Jennifer Bovitz has been hired as an Assistant Director and will begin her employment on February 6, 2017.

Susan told the Board that, in conjunction with MNCLE, the Office will be conducting a series of seminars this upcoming April – June, focusing on common professional responsibility topics such as trust account basics and conflicts of interest.

Susan noted that the probation department within the Office has been expanded in order to better handle the number of open probations.

Susan reported that phone calls to the OLPR will no longer be answered by identifying the Office as the “Lawyers Board,” and that the phone will be answered with “Lawyer Regulation.”

Susan reported on a security assessment done for the OLPR and discussed changes that will be made to enhance the physical security of the Office. A discussion of cyber-security issues was had and it was noted that the Office relies heavily on Judicial IT for such issues. The Director was asked to further explore this issue with Judicial IT.

Susan reported on a lawyer who says he intends to sue the OLPR for an unspecified 1983 action arising out of his disciplinary proceeding.

5. OTHER BUSINESS

Roger Gilmore expressed appreciation to the Director’s staff for the hard work in reducing the case backlog while maintaining the high quality of work. The Board joined Roger in this.

Michael Leary asked whether a rule change could/should be made to permit Panel determinations on respondent admonition appeals to be made without a live hearing. Consideration of this issue was referred to the Rules Committee of the Board.

6. **QUARTERLY BOARD DISCUSSION**

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

Thereafter, the meeting adjourned.

Respectfully submitted,

Patrick R. Burns
Deputy Director

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