

**LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
MEETING AGENDA**

Friday, January 20, 2017 –1:00 p.m.
Town & Country Club
St. Paul, Minnesota

1. Approval of Minutes of September 30, 2016, Lawyers Board Meeting (Attachment 1).
2. Retiring Board Members/Returning Members and openings.
3. Committee Updates:
 - a. Rules Committee
 - (i) Rule 6(a) Petition Denied (Attachment 2).
 - (ii) Rule 18(c) Petition Granted (Attachment 3).
 - (iii) Panel Manual – to be updated.
 - (iv) Proposed Rule 20 Change.
 - (v) MSBA Subcommittee on Rule 5.5.
 - b. Opinions Committee
 - (i) LPRB Opinion No. 24.
 - c. DEC Committee.
 - (i) DEC Statistics (Attachment 4)
4. Director's Report (Attachment 5).
5. Other Business:
 - a. Next meeting, Friday, April 14, 2017, 1:00 p.m.
6. Quarterly Board Discussion (closed session).

**MINUTES OF THE 177th MEETING OF THE
LAWYERS PROFESSIONAL RESPONSIBILITY BOARD**

September 30, 2016

The 177th meeting of the Lawyers Professional Responsibility Board convened at 2:45 p.m. on Friday, September 30, 2016, at the Ramada Plaza Hotel, Minneapolis, Minnesota. Board members present were: Board Chair Stacy L. Vinberg, Joseph P. Beckman, James P. Cullen, Thomas J. Evenson, Roger Gilmore, Christopher A. Grgurich, Nancy L. Helmich, Mary L. Hilfiker, Gary M. Hird, Anne M. Honsa, Bentley R. Jackson, Cheryl M. Prince, Gail Stremel, Terrie S. Wheeler, Todd A. Wind, Allan Witz, and Robin M. Wolpert. Present from the Director's Office were Director Susan Humiston and Assistant Directors Timothy M. Burke, Cassie Hanson, Julie E. Bennett, Kevin T. Slator, Megan D. Engelhardt, Joshua H. Brand, Binh T. Tuong, and Mary L. Galvin. Also present was Eric T. Cooperstein.

1. APPROVAL OF MINUTES

The minutes of the June 24, 2016, Board meeting were unanimously approved.

2. SEMINAR REVIEW

Ms. Vinberg stated that she believed the presentations during that day's Lawyers Professional Responsibility Seminar were excellent, the Office had done well putting together materials, and the presentation by Justice Stras was extremely informative.

3. COMMITTEE UPDATES

A. Rules Committee

Ms. Humiston presented a background of the petition which a former complainant has presented to the Supreme Court to amend Rule 6, Rules on Lawyers Professional Responsibility (RLPR). Ms. Humiston reported that the petition sought to preclude a district ethics committee member from assignment to a matter if the complaint arises out of an area of law in which that member practices. The basis was a suggestion that an attorney/investigator who practiced in the same area would have an implicit bias. Ms. Humiston noted that the petition was filed with the Supreme Court, which referred the petition to the Board. The Rules Committee met and issued a report, which was attached to the Board materials. A motion to approve the report was unanimously approved. Ms. Humiston stated that the Office would make the necessary filing with the Supreme Court, which is due October 14, 2016.

Ms. Humiston reported on the Office's consideration of the proposed change to Rule 20, RLPR, regarding the ability of the Office to communicate with Lawyers Concerned for Lawyers (LCL) if during a private disciplinary matter concerns appear to suggest that the respondent attorney may suffer from a chemical or mental health problem. The issues are whether, and if so to what extent, the Director may share information learned in a private matter with LCL. Ms. Humiston reported that representatives of the Office met with representatives of LCL, various states have very differing rules and processes regarding this issue, and that the Office is in the process of looking at whether a change should be made and, if so, the language of the change. The Office would then present the matter to the Board's Rules Committee. Ms. Humiston noted the importance of the distinction between LCL and the Office and of the exemption for LCL from the duty to report contained in Rule 8.3, Minnesota Rules of Professional Conduct (MRPC). Ms. Vinberg noted that the focus in the proposed rule change was on LCL, as opposed to any other lawyer assistance program, because LCL is funded by a grant from the Supreme Court.

Ms. Humiston reported on the status of a proposed change to Rule 18, RLPR, which is a technical amendment to align the time to make a transcript request after a Panel report in a reinstatement proceeding with the time to file such a request after a referee report in a lawyer discipline proceeding. Ms. Humiston reported that one comment had been filed by Eric Cooperstein. Ms. Humiston reported that the matter is under advisement with the Court.

B. Opinion Committee

Mr. Wind reported on a proposed opinion addressing the issue of what, if any, information a lawyer may reveal in response to a negative comment about the lawyer on social media. Mr. Wind discussed the scope of the opinion, noting that it is limited to an analysis under Rule 1.6(b)(8), MRPC, and does not address the implication of any other section of Rule 1.6, MRPC. Mr. Wind reported that the Executive Committee had approved the Opinions Committee's proposed opinion. Eric Cooperstein stated that an amendment or review of the proposed opinion should be conducted and expressed concern that as drafted the opinion may suggest that a lawyer may not reveal information which is able to be disclosed pursuant to other subsections of Rule 1.6, MRPC. Mr. Wind proposed a friendly amendment to add in the last sentence of the proposed opinion "under Rule 1.6(b)(8)."

A motion to approve the proposed opinion, as amended, passed, with one dissenting vote.

C. District Ethics Committee (DEC)

Ms. Wheeler reported that the DEC Committee had spent substantial time preparing for the seminar held this day and was looking forward to the DEC Chairs Symposium in May 2017. She also reported that she had received a copy of the reviews from the May 2016 Chairs Symposium, which were generally positive, and would be used to plan the next Symposium.

4. DIRECTOR'S REPORT

Ms. Humiston reported on the Office statistics, noting that complaints appeared to be on the same pace as in 2015 and that the Office continues to make progress in the processing of matters despite the challenges of various staff absences.

Ms. Vinberg thanked the staff for the progress made to date, and commended the Office on its focus on the backlog as directed by the Supreme Court.

Ms. Humiston reported the hiring of Casey Brown as volunteer coordinator/SharePoint clerk, Nick Ryan as law clerk, and Mary Galvin as a temporary attorney in the Office. Ms. Humiston also reported Julie Bennett resigned from the Office to accept a position with the Indiana Disciplinary Commission, departing on October 7, 2016. Ms. Bennett was thanked by the Board for her work at the Office. Ms. Humiston stated that the Office had recently done a teambuilding exercise which she viewed as productive, and that various attorneys in the Office are undertaking training offered by the Minnesota Judicial Branch.

Ms. Humiston reported that many of the administrative departments in the Office had been reassigned to promote cross-training of skills and ease transitions upon a lawyer's departure from the Office. Ms. Humiston shared an updated roster of all in-house department assignments.

Ms. Humiston reported that the Office's new database project has launched, and that as part of the database project the Office would review its processes to improve efficiency.

Ms. Humiston noted that a security assessment of the Office was recently completed, the Office is in the process of pricing proposed improvements, and Office personnel will undergo active shooter training in November 2016 provided by the Judicial Branch.

Ms. Humiston reported that a motion to dismiss was granted and not appealed in the Rickmyer matter filed against the Office of Lawyers Professional Responsibility.

5. **OTHER BUSINESS**

At the Executive Committee's request, Ms. Humiston provided information to the Board on the Supreme Court's recent decision regarding the unauthorized practice of law.

Ms. Humiston stated that the Office has been reviewing its policies to ensure that on any matter in which a Board member was involved, that particular Board member would receive a copy of the final disposition.

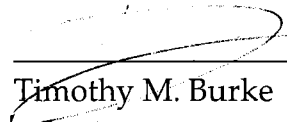
Ms. Vinberg noted that the next meeting would be on January 20, 2017, at the Town and Country Club.

6. **QUARTERLY BOARD DISCUSSION**

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

Thereafter, the meeting adjourned.

Respectfully submitted,



Timothy M. Burke
First Assistant Director

FILED

November 17, 2016

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM 10-8043

**IN RE PETITION TO AMEND THE RULES
ON LAWYERS PROFESSIONAL RESPONSIBILITY**

O R D E R

A petition to amend Rule 6(a) of the Rules on Lawyers Professional Responsibility (RLPR) was filed on February 23, 2016. The proposed amendment would preclude an investigator assigned to investigate a complaint of alleged lawyer misconduct from practicing law in the same area of law as the lawyer subject to investigation, or for a non-lawyer investigator, from working in a profession that receives referrals from lawyers who practice in the same area of the law as the lawyer under investigation. The proposed amendment is intended to reduce conflicts of interest between the investigator and the lawyer subject to the investigation.

After consideration of the petition, the court referred the petition to the Lawyers Professional Responsibility Board, which has general supervisory authority over the Rules, *see* Rule 4(c), RLPR. *In re Petition to Amend Rule 6, Section A, of the Rules on Lawyers Professional Responsibility*, No. ADM 10-8043, Order (Minn. filed June 27, 2016). The Board requested an extension of time to respond, which was granted. *In re Rules on Lawyers Professional Responsibility*, No. ADM 10-8043, Order (Minn. filed July 14, 2016). The Board then filed its response to the petition on October 11, 2016, also serving that response on petitioner. The Board opposes the proposed amendment to Rule 6(a) for

several reasons, the most important of which is that sufficient safeguards currently exist, in the Rules and in procedures adopted by the Board, to guard against actual or perceived conflicts of interests in those investigations.

The purpose of the Rules on Lawyers Professional Responsibility, among others, is to ensure that allegations of lawyer misconduct are investigated “with fairness and justice.” Rule 2, RLPR. The court has considered the reasons offered in support of the proposed amendments and the reasons offered by the Board in opposition to those amendments. After careful consideration of the petition and the response, the court has determined that the current safeguards in place to protect against actual or potential conflicts of interest in conducting investigations of alleged lawyer misconduct promote objectivity in the investigation. An amendment to Rule 6(a), RLPR is, therefore, not necessary at this time.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition to amend Rule 6(a), RLPR be, and the same is, denied.

Dated: November 17, 2016

BY THE COURT:



Lorie S. Gildea
Chief Justice

FILED

November 18, 2016

OFFICE OF
APPELLATE COURTS

RECEIVED

NOV 18 2016

OFFICE OF LAWYERS
PROF. RESP.

STATE OF MINNESOTA

IN SUPREME COURT

ADM 10-8043

**IN RE PETITION TO AMEND THE RULES
ON LAWYERS PROFESSIONAL RESPONSIBILITY**

O R D E R

On April 18, 2016, the Lawyers Professional Responsibility Board filed a petition proposing amendments to Rule 18, Rules on Lawyers Professional Responsibility (RLPR), to include procedures for proceedings held after a panel makes a recommendation on a petition for reinstatement to the practice of law. *See* Rule 18(c), RLPR (stating a panel may “conduct a hearing” and “shall make its recommendation” on a reinstatement petition). The Board’s petition noted the contrast between Rule 14(e), RLPR, which “provides detailed guidance to the parties about how to proceed” after a referee makes a recommendation on a petition for discipline, versus Rule 18, RLPR, which “contains no guidance” for post-panel proceedings on a petition for reinstatement. We opened a public comment period on the Board’s proposed amendments and received two written comments.

The first, from the Minnesota State Bar Association, supported the petition and the proposed amendments. The second, from attorney Eric Cooperstein, supported the petition and the proposed amendments with one exception. Cooperstein proposed that the deadline to order a transcript of the panel hearing in a reinstatement proceeding be 30 days after the panel’s recommendation is served on the petitioner, rather than 10 days as proposed in the Board’s petition. Cooperstein contends that the attorney requesting reinstatement needs

more time to decide whether to order a transcript and that differences between discipline and reinstatement proceedings justify a difference in the deadline to order a transcripts.

We have considered the Board's petition, the proposed amendments, and the written comments. The concerns Cooperstein identifies with respect to the deadline for ordering a transcript were fully considered by the court. The Board's objective in proposing amendments to Rule 18 was to obtain consistency with the current procedures for discipline proceedings, which we conclude is important both for clarity and to assist attorneys who practice in this area. We also believe that there are other ways to ensure that attorneys are fully aware of the deadline for ordering a transcript in reinstatement proceedings.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition to amend the Rules on Lawyers Professional Responsibility be, and the same is, granted. The Rules are amended as shown in the attachment to this order. The Rules as amended are prescribed and promulgated to be effective as of January 1, 2017, and shall apply to all proceedings pending on, or filed on or after, that date.

Dated: November 18, 2016

BY THE COURT



Lorie S. Gildea
Chief Justice

Amendments to the Rules on Lawyers Professional Responsibility

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

Rule 18. Reinstatement

* * *

(c) **Recommendation.** The Panel may conduct a hearing and shall make its findings of fact, conclusions, and recommendations. The recommendation shall be served upon the petitioner and filed with this Court. Unless the petitioner or Director, within ten days of the date of service, orders a transcript and so notifies this Court, the findings of fact and conclusions shall be conclusive. If either the petitioner or the Director so orders a transcript, then none of the findings of fact or conclusions shall be conclusive, and either party may challenge any findings of fact or conclusions. A party ordering a transcript shall, within ten days of the date the transcript is ordered, file with the clerk of the appellate courts a certificate as to transcript signed by the court reporter. The certificate shall contain the date on which the transcript was ordered, the estimated completion date (which shall not exceed 30 days from the date the transcript was ordered), and a statement that satisfactory financial arrangements have been made for the transcription. A party ordering a transcript shall order and pay for an original transcript for the Court plus two copies, one for the petitioner and one for the Director. A party ordering a transcript shall specify in the initial brief to the Court the Panel's findings of fact, conclusions, and recommendations that are disputed.

(d) **Hearing Before Court.** There shall be a hearing before this Court on the petition unless otherwise ordered by this Court. Should this Court determine further consideration on the petition is necessary, this Court may appoint a referee. If a referee is appointed, and the same procedure shall be followed as under Rule 14, except subdivision (f) will not apply.

District Ethics Committee Statistics

1/12/2017

DEC	OLPR Liaison	Total Members	Terms expiring in 2017	Attorney	Public	Percentage Public Members	Number of Withdrawals in 2016	New Files Opened During 2016
1	Cassie	15	8	12	3	20	1	16
2	Craig	30	4	26	4	13	4	57
3	Kevin	10	1	7	3	30	0	7
4	Pat	98	7	74	24	24	26	137
5	Josh	8	0	4	3	37	2	7
6	Craig	5	0	4	1	20	0	12
7	Siana	21	2	15	6	28	0	17
8	Amy	12	2	9	3	25	3	9
9	Kevin	5	0	4	1	20	0	2
10	Amy	6	0	6	0	0	0	3
11	Megan	9	1	7	2	22	0	7
12	Siana	7	0	5	2	28	0	1
13	Josh	9	1	6	3	33	0	2
14	Megan	5	0	4	1	20	0	1
15	Megan	4	1	4	0	0	2	5
16	Siana	7	0	4	3	42	0	1
17	Amy	6	6	4	2	33	0	0
18	Tim	7	3	4	3	42	0	5
19	Binh	7	2	4	2	28	0	15
20	Megan	6	2	4	2	33	0	2
21	Tim	15	3	11	4	26	1	9

OLPR Dashboard

1/3/2017

	Total Files	Total Lawyers	
Total Open Matters	479	368	
New Files YTD	1216		
Closed Files YTD	1264		
Files Opened in December 2016	90		
Files Closed in December 2016	156		
Public Matters Pending	25		
Panel Matters Pending	5		
Matters Pending with the DEC's	100		
Advisory Opinion Requests YTD	1890		
Advisory Opinion Requests Declined YTD	116		
Total Files Over 1 Year Old	108	68	
Matters Pending Over 1 Year Old w/o Charges	47	37	
Matters Pending Over 2 Years Old w/o Charges	0	0	
Matters Pending Over 3 Years Old w/o Charges	0	0	

Discipline YTD	Total # Lawyers
Disbarred	6
Suspended	28
Reprimand & Probation	4
Reprimand	6
	Total # Files
Private Probation	27
Admonition	115

All Files Pending Files as of 01/03/2017

Year/Month	SD	DEC	REV	OLPR	AD	ADAP	PROB	PAN	SUP	S12C	SCUA	REIN	RESG	TRUS	Total
2011-12										1					1
2013-05											1				1
2014-01								1	1						2
2014-05									1						1
2014-06									2		1				3
2014-07									3	2					5
2014-08									2						2
2014-09									2						2
2014-10									1						1
2014-11									1		1				2
2014-12									1						1
2015-01				2					3	1					6
2015-02									2	1					3
2015-03				7	1				1	1					10
2015-04				1					1	1	2				5
2015-05				2			2		1	1					6
2015-06				6							1			2	9
2015-07				1		1		1							3
2015-08				3			1				1				5
2015-09				8				1	2		3				14
2015-10				6				1	1		2				10
2015-11				8				1	2		1				12
2015-12				3										1	4
2016-01				3	1				1						5
2016-02				12	1		2		4		1			2	22
2016-03				23											23
2016-04				15	1										16
2016-05				27					2		1	1		1	32
2016-06		4		20			1		2						27
2016-07		3	3	23			1		1						31
2016-08		12	2	29				1			1				45
2016-09		11	2	15										1	29
2016-10		19	1	18									1		39
2016-11		27	1	16	1							2			47
2016-12	14	24		15									1		54
2017-01	1														1
Total	15	100	9	263	5	1	7	6	37	8	16	3	2	7	479

Files Over 1 Year Old as of 01/03/2017

Year/Month	OLPR	AD	ADAP	PROB	PAN	SUP	S12C	SCUA	TRUS	Total
2011-12							1			1
2013-05								1		1
2014-01					1	1				2
2014-05						1				1
2014-06						2		1		3
2014-07						3	2			5
2014-08						2				2
2014-09						2				2
2014-10						1				1
2014-11						1		1		2
2014-12						1				1
2015-01	2					3	1			6
2015-02						2	1			3
2015-03	7	1				1	1			10
2015-04	1					1	1	2		5
2015-05	2			2		1	1			6
2015-06	6							1	2	9
2015-07	1		1		1					3
2015-08	3			1				1		5
2015-09	8				1	2		3		14
2015-10	6				1	1		2		10
2015-11	8				1	2		1		12
2015-12	3								1	4
Total	47	1	1	3	5	27	8	13	3	108

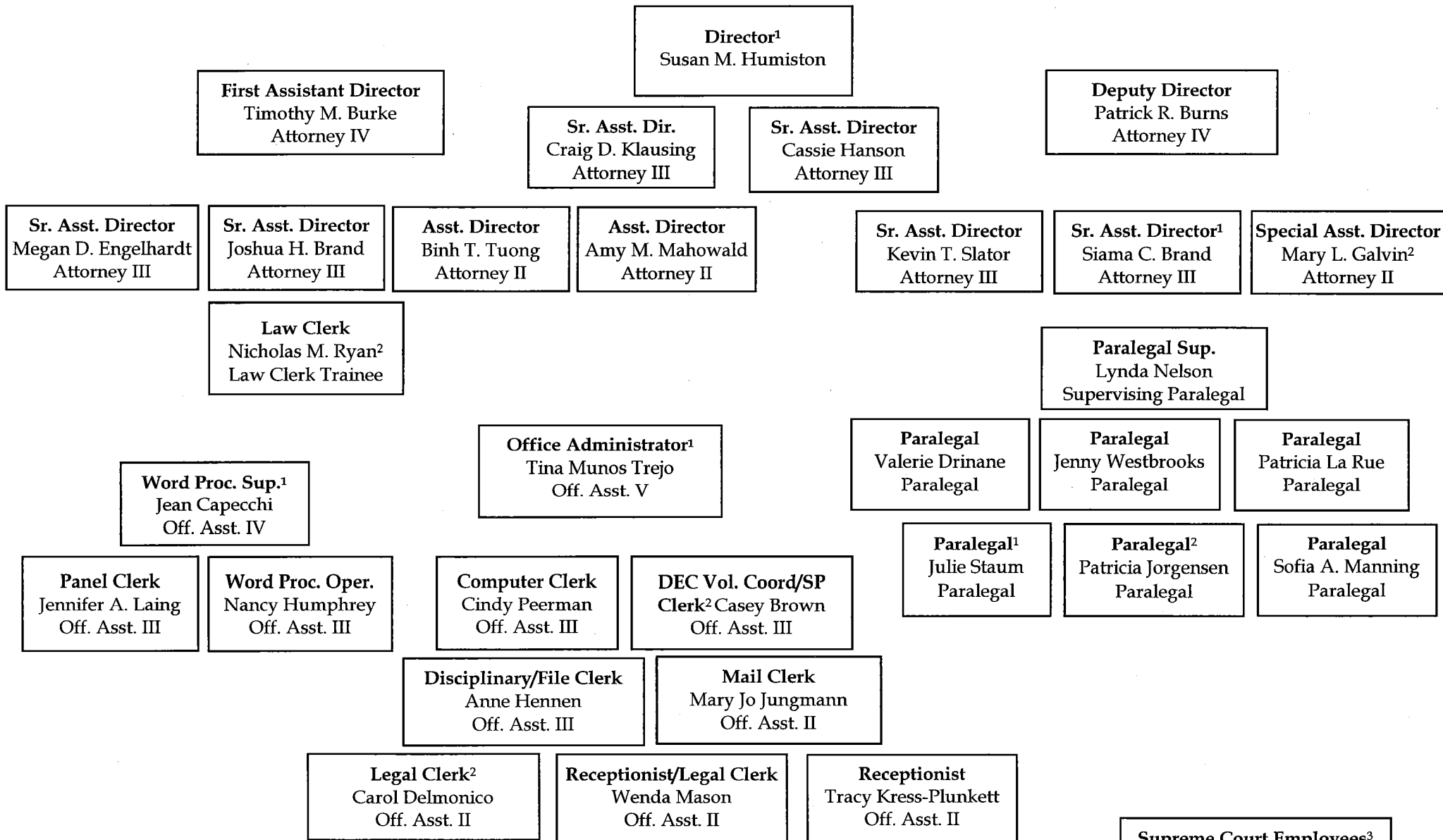
	Total	Sup. Ct.
Sub-total of Cases Over One Year Old	87	30
Total Cases Under Advisement	21	21
Total Cases Over One Year Old	108	51

ALL FILES PENDING & FILES OVER 1 YR. OLD REPORTS STATUS KEY

SD	Summary Dismissal
DEC	District Ethics Committees
REV	Being reviewed by OLPR attorney after DEC report received
OLPR	Under Investigation at Director's Office
AD	Admonition issued
ADAP	Admonition Appealed by Respondent
PROB	Probation Stipulation Issued
PAN	Charges Issued
SUP	Petition has been filed.
S12C	Respondent cannot be found
SCUA	Under Advisement by the Supreme Court
REIN	Reinstatement
RESG	Resignation
TRUS	Trusteeship

Office of Lawyers Professional Responsibility

FY'17 Organizational Chart



¹ Also Client Security Board Staff

² Part time position

³ Not administratively subject to Director's Office.

Office pays percentage of their salary