

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
EXECUTIVE COMMITTEE
POLICY AND PROCEDURE NO. 1

COMPLAINANT APPEALS

Background:

Board members must hear and decide appeals from complainants dissatisfied with the Director's disposition of a complaint under Rule 8(d)(1) determination that discipline is not warranted, (2) OLPR-issued private admonition, or (3) stipulated probation. When deciding such an appeal, the Board member may:

- (1) Approve the Director's disposition;
- (2) Direct that further investigation be undertaken;
- (3) If a district ethics committee recommended discipline, but the Director determined that discipline is not warranted, the Board member may instruct the Director to issue an admonition; or
- (4) In any case that has been investigated, if the Board member concludes that public discipline is warranted, the Board member may instruct the Director to issue charges of unprofessional conduct for submission to a Panel other than the Board member's own.

Minn. Rules Lawyers Prof. Resp. 8(e). The reviewing Board member must set forth an explanation for the Board member's action. *Id.*

Assignment:

The Director must promptly refer complainant appeals to the Board for assignment. The Board Chair or the Board Chair's designee will assign Complainant Appeals in a random and equitable manner. This process is designed to be blind to the Director's Office. The Chair or Chair's designee has discretion to modify assignments to accommodate personal and professional conflicts, Board member availability, expertise, and competence in a particular subject matter, and other relevant considerations.

Timeliness:

Board members are expected to render their decisions expeditiously and no more than 30 days from receipt of the appeal. If an appeal is pending more than 30 days, the Vice-Chair of the Board will contact the Board member to inquire as to the status of the matter. If the appeal is still pending after an additional 30 days, then the Board Chair may reassign the appeal to a new Board

member. The complainant and the respondent shall be informed in writing of any such reassignment.

Scope of Review:

The record on appeal consists of the facts, allegations, and other information submitted to or considered by the Director. If the Director explains that the OLPR has considered publicly available information from a court or other source, then the reviewing Board member may consider the same or similar information.

Standard of Review:

The standard of review depends upon the type of matter at issue. The Director's determination, following investigation, that discipline is not warranted should be reviewed for abuse-of-discretion. An abuse of discretion occurs only when the decision "is based on an erroneous view of the law or is inconsistent with the facts in the record." *Hudson v. Trillium Staffing*, 896 N.W.2d 536, 540 (Minn. 2017) (citation omitted). This "very deferential standard" recognizes that the Director is best suited to determine the scope of an investigation in any particular case and that the Director's conclusions following an investigation should be given considerable weight. *Teffeteller v. Univ. of Minnesota*, 645 N.W.2d 420, 427 (Minn. 2002). But while the Director's decisions should rarely be overturned, "rarely is not never." *State v. Soto*, 855 N.W.2d 303, 305 (Minn. 2014). If the Director makes findings that are unsupported by the evidence, misapplies the law, or delivers a decision that is "against logic and the facts on record," *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022), then the reviewing Board member may take one of the other actions authorized by Rule 8(e).

If the Director determines that discipline is not warranted without investigating the complaint, then the Board member's review is *de novo*, meaning that the Board member need not defer to the Director's determination, but may recognize the Director's discretion not to investigate. This standard is appropriate because a determination without investigation that discipline is not warranted is akin to the granting of a motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12. Such decisions are reviewed *de novo*. *Krueger v. Zemen Const. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). In such a case, both the OLPR and the reviewing Board member must "accept the facts alleged in the complaint as true and give the [complainant] the benefit of all favorable inferences." *Id.* A complaint should be dismissed without investigation only if the complaint does not assert facts "which would support granting the relief demanded." *Halva v. Minn. St. Colleges and Univs.*, 953 N.W.2d 496, 501 (Minn. 2021).

Directing Further Investigation Based Upon New Information:

If new information relevant to a complaint is provided to the reviewing Board member, and the member determines that the new information merits further investigation of the complaint, then the Board member should direct further investigation pursuant to Rule 8(e)(2). The Board

member may not undertake such an investigation or seek out information that was not submitted to the Director and/or the Director did not consider. For example, if the Director did not state that the OLPR considered certain publicly available information, then the Board member may not seek that information out.

Reporting:

The Board Chair or designee shall maintain records of all Complainant Appeal assignments and report the data quarterly to the Board. The process and records regarding assignments shall be transferred to Board Chair successor and Board Chair's successor designee upon completion of Chair term.

Dated: Jan. 27, 2023

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RESPONSIBILITY BOARD

/s/ Jeanette Boerner

By: Jeanette Boerner
Chair