

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD
EXECUTIVE COMMITTEE
POLICY AND PROCEDURE NO. 4

DIRECTOR-INITIATED INVESTIGATIONS

Background:

Rule 8(a), Rules on Lawyers Professional Responsibility (RLPR), provides:

At any time, with or without a complaint or a District Committee's report, and upon a reasonable belief that professional misconduct may have occurred, the Director may make such investigation as he or she deems appropriate as to the conduct of any lawyer or lawyers; provided, however, that investigations to be commenced upon the sole initiative of the Director shall not be commenced without the prior approval of the Executive Committee.

Procedure for Requesting Executive Committee Approval:

When the Director believes it appropriate to open an investigation file on their sole initiative, the Director must submit to the Board Chair a request to do so. The Chair must forward the Director's request to each Executive Committee member, and must inquire of each member her, his, or their opinion on whether the Executive Committee should approve the request. If any Executive Committee member requests that the Committee meet to consider the request, then the Board Chair must convene a meeting of the Executive Committee, at which the Committee will discuss and vote on the Director's request. The Executive Committee must promptly issue a written decision on the Director's request and must provide that decision to the Director.

Definitions and Interpretation:

- A. The Executive Committee interprets the Director's authority to initiate an investigation on her, his, or their "sole initiative" to permit the Director to initiate investigations in the following instances without being required to seek Executive Committee prior approval; that is, these are matters in which it is considered that a complaint against a lawyer exists:
1. When a complainant wishes to remain anonymous.
 2. An investigation against the same lawyer or against another lawyer that is ancillary to an ongoing investigation. For example, investigation of a lawyer's trust account would be considered

ancillary to an investigation of a complaint regarding delay in probate administration; or investigation of a matter not covered by a complaint when there is already a pending public disciplinary proceeding or charges of unprofessional conduct; or investigation of attorney non-cooperation during a disciplinary investigation. Similarly, investigation of similar client matters in addition to one raised by a complaint (i.e., reviewing court dockets to determine whether an attorney has been sanctioned in other cases than one about which a complaint has been filed. *See In re Nathanson*, 812 N.W.2d 70 (Minn. 2012)).

3. Matters referred by the Minnesota Department of Revenue or appropriate child support agencies (*see* Rule 30, RLPR) or other governmental agencies, even if submitted without a specific request for an investigation.
 4. Matters in which a District Ethics Committee, having investigated a complaint against one lawyer, recommends that the Director initiate an investigation of different matter against the same lawyer or recommends an investigation of another lawyer.
- B. Pursuant to Rule 8(a), RLPR, the Executive Committee gives prior approval to the Director's for initiating investigations where approval would otherwise be required, in the following types of matters:
1. Matters in which it has come to the Director's attention that a lawyer has entered a guilty plea to or been convicted of a crime of the type described in Rule 10(c), RLPR. If the attorney has been indicted or charged with such a crime but is not yet convicted, then the Director must seek Executive Committee approval to investigate.
 2. Matters in which an attorney may be holding himself or herself out as an attorney or practicing law, during a period when Supreme Court records indicate that the attorney is on restricted status. This may overlap with Section A.2 (ancillary matter) above but is intended to authorize investigation of this issue even if the underlying complaint matter is dismissed without investigation.
 3. Matters in which an attorney on probation fails to cooperate with the OLPR's requests for information necessary to ensure compliance with the terms of probation.
 4. Matters in which following a Supreme Court order of suspension for

which the attorney is required to notify clients, courts and opposing parties pursuant to Rule 26, RLPR, no affidavit of compliance has been timely filed and it appears from any source that the attorney is continuing to practice law.

5. Matters in which another jurisdiction forwards to the Director a public disciplinary determination, which the disciplined attorney has not forwarded to the Director as required by Rule 12(d), RLPR. If the Director learns of the other-jurisdiction discipline by other means, then the Director must seek Executive Committee approval to investigate.
6. Matters not otherwise covered above in which it appears that an attorney who is required to do so may not be properly maintaining an Interest on Lawyers Trust Account (IOLTA).
7. Matters in which a suspended attorney appears to have been employed by a licensed attorney and no written notice as required by Rule 5.8, Minnesota Rules of Professional Conduct, has been served upon the Director.

Dated: Jan. 27, 2023

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

/s/ Jeanette Boerner

By: Jeanette Boerner
Chair