

# An Update from The Lawyers Professional Responsibility Board

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Chair, Lawyers Professional Responsibility Board

Lawyers Professional Responsibility Seminar

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In the attorney-regulation system, the people are protected by two separate yet equally important groups:

- ▣ The Office of Lawyers Professional Responsibility, which investigates and prosecutes attorney-discipline cases; and
- ▣ The Lawyers Professional Responsibility Board, which (among other things) adjudicates certain claims by OLPR, complainants, respondents, and attorneys seeking reinstatement.

# The OLPR

- ▣ Professional, paid staff, including Director appointed by Minn. Supreme Court.
- ▣ Investigates complaints against attorneys and decides whether to pursue charges.
- ▣ Prosecutes the charges it brings.
- ▣ Issues private admonitions.
- ▣ Supports or opposes petitions by suspended or disbarred attorneys to be re-licensed to practice law.

# The Board

- ▣ Composed of 23 volunteers.
- ▣ 14 lawyers (including Chair).
  - Large, medium, and small law firms;
  - County and city attorney offices;
  - Prosecutors and private and public criminal defense.
- ▣ 9 non-lawyer “public members” from all walks of life
  - Psychologist;
  - Large & small business employees & owners;
  - DEI specialist.

# The Board

- ▣ Members decide appeals by complainants from determinations that an attorney should not be disciplined.
- ▣ Panels of 3 (2 lawyers; 1 public member) decide:
  - Appeals by lawyers from private admonitions issued by OLPR;
  - Probable cause to support charges that could result in *public* discipline; and
  - Whether suspended or disbarred lawyers should be reinstated, following evidentiary hearings.

# Board Activity - Personnel

- ▣ The Board appointed Kristi Paulson as the new Vice-Chair.
  - Lawyer and professional mediator.
  - Helps Board members with complainant appeals.
  - Invaluable in all aspects of Board work.
- ▣ The supreme court appointed 3 new members.
  - John Zwier: US Attorney's Office and referee.
  - Jill Nitke-Scott: Professional investigator.
  - Tom Gorowsky: Financial and litigation expert.

# Board Activity - Personnel

- ▣ The Court authorized the Board to hire Ava Shannon, its first administrative assistant.
- ▣ Absorbed administrative duties previously performed by OLPR or Board members.
- ▣ Reduces administrative duties of volunteer Board members.
- ▣ New email: [LPRBgeneral@courts.state.mn.us](mailto:LPRBgeneral@courts.state.mn.us)
- ▣ New phone number: (651) 262-1850.

# Board Activity – Appeals

- ▣ Goal: decide complainant appeals within 30 days
- ▣ 2023: Members decided 135 appeals in an average of 25 days.
- ▣ **January – August 2024:**
- ▣ 55 “no investigation” complainant appeals.
  - 52 affirmed, 3 remanded for investigation.
- ▣ 20 “investigation” complainant appeals.
  - All 20 affirmed.
- ▣ 5 admonition appeals by complainants.
  - All 5 affirmed.

# Board Activity – Suggested Rule Amendments

- ▣ GNIP requested consideration of ABA Model Rules on Special Responsibilities of a Prosecutor.
- ▣ Board working group consulted with stakeholders.
- ▣ Board discussed and debated potential recommendations across several meetings.

# Board Activity – Suggested Rule Amendments

▣ Rule 3.8 – A prosecutor shall:

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that a prosecutor is required to disclose under applicable law and procedural rules which, a prosecutor knows or reasonably should know, tends to negate the guilt of the accused or mitigates the offense \* \* \*

# Board Activity – Suggested Rule Amendments

## Rule 3.8(g)

When a prosecutor knows of new, credible, and material evidence creating a reasonable belief that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the prosecutor's current jurisdiction,

- i. promptly disclose that evidence to the defense unless the court authorizes delay, and
- ii. make reasonable efforts to cause an investigation to determine whether the defendant was convicted of an offense that the defendant did not commit.

# Board Activity – Suggested Rule Amendments

## Rule 3.8(h)

When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's current jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

# Board Activity – Suggested Rule Amendments

- ▣ Hennepin County Adult Representation Services requested the Board consider ABA Model Rule on nonprofit/public interest lawyer “gifts” to clients.
- ▣ Concern was current MN rule did not allow public-interest lawyers to arrange for clients’ rides to court, occasional food purchases, etc.

# Board Activity – Suggested Rule Amendments

## Rule 1.8 – Conflict of Interest: Current Clients: Specific Rules

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

\* \* \*

(4) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses. The lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention; and

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client.

# Thank you!

- ▣ Have a great seminar!

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