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January 31, 2022

Sent via email to: Natalie.Hudson@courts.state.mn.us

The Honorable Natalie Hudson
Minnesota Supreme Court
Minnesota Judicial Center
25 Rev Dr Martin Luther King Jr Boulevard.
St Paul, Minnesota 55155

Re: LPRB recommendation regarding OLPR Director reappointment

Dear Justice Hudson:

Rule 5 of the Rules on Lawyers Professional Responsibility requires the Lawyers Professional Responsibility Board (LPRB) to make a recommendation regarding the reappointment of the Director of the Office of Lawyers Professional Responsibility (OLPR). The Supreme Court has requested that this recommendation be provided by January 31, 2022.

The LPRB stands in a unique position within the lawyer disciplinary system. Unlike the Court, members of the bar, or members of the general public, the LPRB and its members are exposed to all aspects of the work produced by the OLPR. Board members handle appeals of Determinations that Discipline is Not Warranted (“DNW”), participate in panel hearings, make probable cause determinations, and engage in consideration and recommendation of policy and procedure issues that impact the legal profession and the public. In these various roles the LPRB has visibility and is accountable to the public as well as to the Supreme Court. The board members take their responsibility very seriously, and that is particularly true with respect to exercising its responsibility pursuant to Rule 5.

On Friday, January 28, 2022, the LPRB met in closed session to determine its recommendation to the Supreme Court, which has sole responsibility for deciding whether or not the Director should be reappointed. Public accountability, fairness, and integrity were our guiding principles as the Board embarked on the process for making a recommendation. We carefully reviewed case processing and other data provided by the Director, feedback which LPRB had solicited from the bar and the general public, the Director’s responses to that feedback, the Director’s responses to our written questions as well as her responses to questions

during Board meetings, the timeliness and quality of work product on cases and joint projects, and board members' observations of the Director and the OLPR made in the course of discharging their board responsibilities. We are attaching the bar and public comments we received as well as the Director's written responses to our questions and the public comments.

During the course of our January 28 meeting, board members engaged in a robust and constructive discussion addressing a wide variety of concerns. Board members agreed to keep an open mind and to not make a final decision as to how they would vote until all discussion had concluded and each board member had heard what all members had to say. The Board diligently abided by the Court's directive regarding the scope of information the Court permitted us to consider in arriving at a decision.

Due in large part to the Covid-19 pandemic, many board members have not had the opportunity to work in person with the OLPR staff, including the Director. Some board members have not had an opportunity to directly observe the Director other than in public board meetings and trainings. That said, virtually all board members expressed respect for the Director personally. Board members acknowledged that the Director appears to have very good legal skills and that she appears to be knowledgeable about the subject matter with which OLPR is concerned, the Rules of Professional Conduct and lawyer ethics in general. However, as several board members noted, being a good lawyer does not necessarily mean that a person is a good manager and vice versa.

While acknowledging the Director's positive qualities, board members expressed serious concerns regarding the Director's management and leadership of the OLPR. Members based these concerns upon their own experiences with the OLPR, the input from the bar and the general public, the Director's written responses to the LPRB's questions and the comments from the public and the bar, and the Director's interactions with the board members during LPRB meetings. In the paragraphs that follow, I summarize the principal areas of concern expressed by board members regarding the Director's leadership and management of the OLPR.

First, members expressed concern about the Director's inability to complete, in a timely fashion, the LPRB's two significant prioritized projects: a revised panel manual for all participants and a new training manual for board members. The LPRB began this work more than two years ago. Many board members devoted countless volunteer hours to these two projects. But the Director's inactions have significantly stalled both projects.

The Director was provided a draft of the revised panel manual in January 2021. The goal was to present the manual to the Board for final approval in April 2021, and the Director accordingly agreed to provide her comments to the LPRB by March 2021. To date, the Director has not returned the panel manual to the LPRB with her feedback and edits. This is not for lack of clarity on the requirement. The Director has consistently acknowledged her deadline to return the panel manual to the Board and has consistently missed that deadline.

In July 2021, the Board sent the training manual to the Director for final comments and edits. A former OLPR staff member, Jennifer Bovitz, reviewed the draft manual almost immediately and passed it along to the Director. The Director did not return the training manual to the Board in 2021. At its January 2022 meeting, the Board's Executive Committee

requested that the Director immediately return the training manual. The Director responded that she would do so after she had yet another staff member review it. Finally, on January 27, 2022, the LPRB received the training manual back from the Director with the following comment: “I’m sorry we have not been able to synthesize the comments, which was my hope and add more content per the comments, but resources are stretched so lots of prioritizing happening.”

Second, a substantial majority of the board members expressed concern about the Director’s apparent failure to effectively delegate. The Director has often stated that she reads every single document, participates in every single moot court event, takes every call, litigates cases, and has reviewed all 500 cases currently open. This appears to be impossible. To the extent it is true, such a practice does not reflect effective management or leadership. An organization of the size and complexity of the OLPR requires a leader who can marshal direct reports and their subordinate staff to operate in a timely and efficient manner. Moreover, an effective leader must have the confidence and ability to manage their direct reports and staff by effectively delegating work to them and giving them the opportunity to excel within a clear and effective reporting structure. The Director at best struggles with this important aspect of her leadership position.

Third, of overriding concern to board members was the OLPR’s delays in case processing. Although the Director has consistently acknowledged the importance and attainability of meeting this Court’s case-processing goals, the OLPR has consistently failed to do so throughout the Director’s tenure. While the pandemic presented numerous challenges, it also presented an opportunity for the OLPR to focus attention on a backlog of cases and projects because court was closed down for a significant portion of 2020 and 2021. This should have freed up staff who might otherwise have been participating in hearings and oral arguments. It does not appear that the Director was able to achieve this, as the number of old open cases has remained relatively consistent. Importantly, information received in comments from the bar and from the general public, together with our own observations, confirm that the inordinate and inexcusable length of time some cases have languished has caused and continues to cause significant harm to respondent lawyers and complainants.

Fourth, some board members expressed concern about the uneven quality of the work product which the board members receive from OLPR in case files assigned to them. Board members relayed their opinion that some of the work product reflects inadequate investigation of facts alleged by complainants or respondents, inadequate or nonexistent analysis of important legal questions, and failure to include attachments referenced in materials. Likewise, board members noted they have received documents drafted by the OLPR that included unacceptable levels of grammatical or typographical errors. While the Board acknowledges that mistakes will always occur, some members felt strongly that the volume of these types of problems reflects poorly upon the Director. This was particularly true because the Director herself said she was directly involved in every file in the OLPR.

In her written response to our questions, the Director raised the issue of personnel turnover as a factor contributing to these problems. Although the board members noted that excessive staff turnover is often a result of failed leadership, in keeping with the Court’s directive the LPRB did not consider staff turnover in reaching its recommendation. We trust

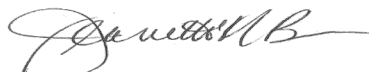
that the Court will be considering that subject matter separately based upon its own investigation.

Finally, board members, in particular public members and lawyers with substantial leadership experience, were troubled by the Director's attempt to shift responsibility for the problems in the OLPR. In her written responses to our questions and to the public comments, the Director used phrases such as "Despite efforts by others to create a crisis narrative..." and "And, although most only have their own perspective, and usually an incomplete or misinformed picture..." Board members are concerned that this type of defensiveness and avoidance does not evince effective management or leadership, especially of a public agency charged with the important work of the OLPR.

Board members believe that effective leadership requires personal accountability, organization, timely discharge of responsibilities and the ability to delegate, all areas in which they find the Director's performance to be deficient. In sum, the Board believes the OLPR is being poorly managed, and believes that the Director's poor management is hindering the office's important work. Accordingly, after careful consideration and thorough deliberation, the LPRB recommends that Director Humiston not be reappointed.

Respectfully submitted,

Lawyers Professional Responsibility Board

By: 

Jeanette Boerner, Chair

Cc: Jeff Shorba, State Court Administrator (via email)

Enclosures: Director's responses to Board Questions, Public Comments, and Director's email regarding public comments