

**MSBA Judiciary Committee
Meeting Summary**

November 5, 2015

3:30 p.m.

MSBA Honors Room

Present: Dan Cragg – Chair, Jim Backstrom, Don Betzold, Hilary Fox, Paul Godfrey, Hon. Carol Hooten, Linda Mealey-Lohmann, Ann O'Reilly, Nancy Mischel-MSBA Staff.

By phone: Charlie Clippert, Karen Cole, Lisa Godon, Mark McNeil, Kevin Riach, William Sjolholm.

Update on Joint Rules Working Group: The working group consists of two members of the Judiciary Committee and two members of the Court Rules and Administration Committee. They are reviewing nonconformities between the Federal Rules of Civil Procedure and Evidence and the Minnesota Rules of Civil Procedure and Evidence. The group has met once so far. They plan to have their recommendations ready by the end of December 2015. These recommendations will be heard by the Court Rules and Administration Committee, and then the Judiciary Committee. If approved, the recommendations will be before the MSBA Assembly in April.

Proposed Amendments to the Rules on the Board of Judicial Standards: The MN Board of Judicial Standards is proposing changes to the Rules on the Board of Judicial Standards that were posted by the court for comment last week. The deadline for comment is December 28. The Board indicated the proposed changes are supported by the MN District Judges Association. Members discussed whether to propose the MSBA comment on any of the proposed rule changes.

The most significant changes are in the area of private admonitions and creation of a new Rule 7. Some Committee members felt the Board should have the right to appeal the review panel's decision, even though the Board wrote the proposed changes and did not request this right. This sentiment stemmed from a desire to ensure appropriate checks and balances. A motion was made that the MSBA propose amending Rule 7 to allow the Board to petition for review of a decision of the panel. The motion was seconded. A friendly amendment was proposed to include language ensuring that the proceeding remain private. Members felt this concern was already addressed in the proposed language. The friendly amendment was withdrawn. A vote was taken on the proposed comment that the court amend Rule 7 as stated earlier. All those on the phone voted yes except for Ms. Godon, who abstained. Of those present in the room, four voted yes and three voted no. The chair abstained. The motion passed.

The Committee expressed interest in knowing more about the background to Ms. Mischel will contact the Board of Judicial Standards for this information and share it with the Committee. This information may result in the Committee deciding not to move ahead with its proposed comment.

Other Business: Mr. Cragg mentioned that the Court Rules & Administration Committee is reviewing MN Rule of Civil Procedure 5.04 and may propose some

changes. Practitioners are encountering inconsistency with how the one-year dismissal language is being applied by judges and court administration.

Additional Information: Following this meeting, Ms. Mischel spoke with Tom Vasaly from the Board of Judicial Standards. He stated the Board did not really discuss the fact that the proposed changes do not allow for the Board to appeal a private admonition. However, Tom indicated this was probably based on the way similar proceedings are handled under the [Rules on Lawyers Professional Responsibility](#).

On November 10, Ms. Mischel sent an email to the Judiciary Committee with this information, along with a follow-up email she received from Mr. Vasaly and the meeting summary from November 5, and calling for a vote of members whether or not to withdraw their proposed comment in light of the information from Mr. Vasaly. Eight members voted to withdraw the proposed comment, and six voted in favor of the comment. There was one abstention. Based on the vote, the Committee did not propose the MSBA comment on the changes to the Rules on the Board of Judicial Standards.