

# NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

## Agenda - June 21, 2022, Board Meeting Hilton Garden Inn, Fargo ND

Chairman Timian called the meeting to order at 10:02 AM. Roll call was taken.

Board Members present: Chairperson Tim Timian, Corey Kost, Brock DesLauriers, Matt Schlenvogt, and Joe Sheehan  
Staff Present: Jodie Campbell and David Campbell  
Investigative Reviewer: Joe Ibach  
Legal Counsel: Carl Karpinsky

Chairman Timian welcomed Nikki Mertz to the meeting. Chairman Timian's second term on the Board will expire on June 30<sup>th</sup> and Ms. Mertz has been appointed by the Governor to replace Chairman Timian as Ag-Appraiser member.

**Public Comment Period:** No comments.

**Apprentice Permits and Permits issued via Reciprocity-Require Board Confirmation:** The following applicants were issued permits based on meeting the requirements for their respective levels. Board confirmation is required:

Certified General:

- Michael Caba (reciprocity with OR)
- Nathan P. Egholm (reciprocity with WI)
- Kylie B. Klehr (reciprocity with MN)
- Kelsey Malecha (reciprocity with MN)
- James N. Pooley (reciprocity with SD)
- Cory R. Sell (reciprocity with WI)
- Elliott J. Loutsch (reciprocity with MN)
- John H. Urubek (reciprocity with IL)

Apprentice:

- Melissa A. Weddell (Kevin Ternes, Supervisor)
- Amber L. VanZee (Dana Schau, Supervisor)

The following applicant for Certified General requires Board review and approval:

- Owen S. Ard (reciprocity with OK)

Corey Kost moved to: 1) confirm all applicants for their respective levels and 2) approve Owen S. Ard for certified general. Matt Schlenvogt seconded the motion. Chairman Timian called for the vote. Brock DesLauriers, Joe Sheehan, Matt Schlenvogt, Corey Kost and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

### **Case 218-186 and Case 218-187:**

Chairman Timian turned the floor over to Carl Karpinsky, Board Legal Counsel, to provide a brief overview regarding the various options the Board may consider when moving forward with Cases 218-186 and 218-187. Mr. Karpinsky explained, the Board will go into executive session. Legal Counsel will present the various options to the Board, outlining the strengths and weaknesses of each option. Chairman will close Executive session and the Board will move discussion to open meeting.

Mr. Karpinsky introduced Ms. Tiffany Grossman. Ms. Grossman is online on behalf of Jim Nicolai, Board Litigation Counsel to discuss the Weber Cases.

Board members received the Proposed Findings and Order and the letter from Jim Nicolai. The Administrative Law Judge addressed the violations but made no recommended findings of fact relative to discipline. With no recommendation on discipline, the Board needs to determine how to move forward.

Corey Kost interjected. As previously done in these Cases, he would recuse himself from discussion and voting, but questioned whether he would need to recuse himself from listening in on executive session. Legal Counsel advised the Board to not to allow Corey to sit in on executive session.

Tim Timian moved to recuse Corey from discussion on Case 218-186 and 218-187 and executive session. Matt Schlenvogt seconded the motion. Chairman Timian called for discussion. No further discussion took place. Chairman Timian called for the vote. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan, and Tim Timian voted yes to the motion. Motion carried.

Chairman Timian read from the Executive Session Format. The next item on the Agenda is the Weber Case. This item will be discussed in an executive session. The legal authority for closing this portion of the meeting is N.D.C.C. 44-04-19.1 (5). The topic or purpose of this executive session is Attorney consultation. At this time, the Board will convene in executive session. Chairman Timian completed the reading of the Executive Session Format. The minutes will show that the executive session began at 10:16 AM and was attended by Joe Sheehan, Matt Schlenvogt, Brock DesLauriers, and Tim Timian.

The minutes will show that the executive session adjourned at 10:35AM. The public is invited to return to the meeting. The meeting is back in open session.

Discussion took place. In executive session, the Board discussed the strengths and weaknesses of the options in moving forward; offer the Weber's a settlement agreement or turn the matter of disciplinary action over to the administrative law judge. Mr. Nicolai had drafted a Joint Stipulation. Mr. Timian was not in agreement with how the Joint Stipulation came to be, as the Board did not request Mr. Nicolai to negotiate on the Board's behalf. Chairman Timian proposed the Board move forward by offering each of Weber's a settlement agreement.

Ms. Grossman and Mr. Karpinsky discussed the option of amending the order. The Board can amend the order and offer sanctions but cannot supplement the record because the record is closed. There is the possibility that the Board could request an evidentiary hearing solely on discipline. An evidentiary hearing would allow the Board the opportunity to supplement the record.

According to Miss Grossman, Mr. Nicolai believes the record is sufficient to address the sanctions. She further explained the Board could do an oral argument. The oral argument is not an evidentiary hearing. The Board would explain why the Board came to its conclusions based on the evidence already submitted.

Mr. Karpinski questioned how the Board could bring in additional information that was not in the record. Ms. Grossman explained that the Board could not bring in new evidence without going back to a hearing. The exhibits have already been submitted and are part of the record; the Board would use the record to amend the decision and add sanctions.

Chairman Timian commented, the violations are there, and they are significant. The Weber's did not follow USPAP. He questioned whether the Weber's would have the right to appeal if the Board went the route of amending the order.

Board Legal Counsel confirmed, if the Board amends the order and the Weber's do not sign, they can appeal. Chairman Timian questioned where the matter goes should the Weber's appeal? Ms. Grossman clarified that the Weber's would have 30 days from the issuance of final order to appeal the matter to district court.

Legal Counsel explained that once an order is sent the only option for the respondent is to appeal. However, prior to a final order, the Board has the options to 1) enter into a settlement agreement, 2) do oral arguments, or 3) request an evidentiary hearing solely on the discipline. An evidentiary hearing would allow the Board to introduce documents that show consistency in the Board's decision.

Brock DesLauriers made a motion to go back to the administrative law judge and let him decide the sanctions based on the evidence. Matt seconded the motion. Discussion took place. If the Board goes this route, the Board turns the decision on sanctions over to the administrative law judge.

Chairman Timian called for a break.

Chairman Timian called the meeting back to order. Legal Counsel clarified that until the Board does something with the Order there is an interim step the Board can consider, an offer to settle.

Jim Nicolai came online. Discussion continued. Mr. Nicolai believes the record is adequate to determine sanctions. He is of the opinion that the Board's decision regarding the level of sanctions proposed in the original offer was appropriate. He advised the Board to refer back to the minutes that are in the record and the level of sanctions that were offered in the original proposed settlement agreement.

Mr. Nicolai was in agreement that the Board has the option to offer a settlement agreement.

Chairman Timian called for further discussion of the motion on the table. No further discussion took place. Chairman Timian called for the vote. Tim Timian, Matt Schlenvogt, Brock DesLauriers, and Joe Sheehan voted no to the motion. Motion denied.

Joe Sheehan moved to table Cases 218-186 and 218-187. Matt Schlenvogt seconded the motion. Discussion took place. Based on all the new information provided today, Board members were in agreement additional time is needed to make an educated decision on the Options presented. The Board was reminded there is a spread sheet of past disciplinary actions included as part of the interrogatories, specifically Document 17. Chairman Timian called for the vote. Matt Schlenvogt, Joe Sheehan, Brock DesLauriers, and Tim Timian voted yes to the motion. Motion carried.

**Case 220-108 and Case 220-111:**

The Board offered Mark Thelen a settlement agreement, dated April 21, 2022. The Agreement included the following terms:

- Mr. Thelen's license will be suspended for a period of one year.
- After suspension of his license, Mr. Thelen will be on probation for a period of two years. During this two-year probationary period, Mr. Thelen must provide a monthly experience log. The Board may select reports from the log for review for compliance with USPAP.
- Mr. Thelen must pay a fine of \$4600 to help cover investigative costs.

Mr. Thelen presented the Board with a counteroffer:

- Mr. Thelen's business and livelihood are on the line. The one-year term of suspension must be significantly reduced. Mr. Thelen would agree to a one-month suspension.
- Mr. Thelen would agree to a two-year probationary period after suspension and submission of a monthly experience log. The Board may select reports for review for compliance with USPAP.
- It must be clear that the agreement is prospective in nature and applies to work completed after suspension.
- Mr. Thelen agrees to pay a \$4600 fine to cover investigative costs.

Discussion took place. The previous agreement of 12/24/2020 states that "*In the event of future complaints (allegations reported to the Board) are validated by the Board, with the Board voting to initiate a formal administrative complaint proceeding, Thelen will automatically be subject to a one-year suspension*". Matt Schlenvogt questioned the timeline of the current Cases.

Carl Karpinski, Board Legal Counsel, confirmed that even though it may be confusing to some as to what a complaint is versus allegation, the way the Board handles the two is distinct. In review of the timelines, they add up. Legal further explained, if the Board treated everything as a complaint right from the start, then the timeline would not fit.

Discussion turned to aggravating circumstances. A number of issues have led to the severity of discipline related to these two cases: 1) Mr. Thelen has prior disciplinary history with the Board, 2) there have been a number of appraisals over the years with a number of violations, 3) the Board has found there is a consistent pattern of similar violations and 4) Mr. Thelen's refusal to acknowledge the violations.

Discussion turned to the length of suspension. A one-month or three-month suspension does not match the number of violations, nor Mr. Thelen's history with the Board. Corey Kost conceded that he would consider a reduction to a 6-month suspension, just as a show of good faith, but nothing less. His reasoning; Mr. Thelen is under a two-year probationary period and if further issues show up during that probationary period the Board can revisit it and at that point revocation could result.

Chairman Timian called for a break.

Chairman Timian allowed Mr. Leo Wilkin, Counsel for Mark Thelen, time for comment:

- Mr. Wilkins disagreed with Mr. Karpinski's opinion of the December 2020 language "*In the event future complaints (allegations reported to the board) are validated by the Board, with the Board voting to initiate a formal administrative hearing proceedings, Thelen will automatically be subject to a one-year suspension*". It is ambiguous.
- The Board is acting on issues that have already been discussed as allegations. It was Mr. Thelen's understanding that because they were past allegations, they would not be held against him in the future.

- A one-year suspension is off the table as it would end Mr. Thelen's career. Mr. Thelen has been a licensed appraiser for 10-11 years. There have been violations in the past, but the Board is only looking at two complaints out of what could be 2000 appraisals completed by Mr. Thelen in the past seven years.
- A 3-month suspension would be a significant penalty in the loss in clients, leading to a significant loss of income. A one-year or even a 6-month suspension would end his career.
- Mr. Thelen has learned from prior actions of this Board. To end the career of an appraiser on the basis of two complaints in the past seven years does not make sense. Mr. Thelen would agree today for a 3-month suspension and a 3-year probation.

Board member discussion took place. The Board's decision is not based on just these two complaints or these two complainants. The Board must take into consideration past complaints and the pattern of violations over the years.

Board members were in disagreement with Mr. Wilkin's comment that Mr. Thelen has learned from his mistakes. The issues that were before the Board seven years ago are before the Board again today. Corey Kost reiterated he would be open to offering a 6-month suspension as a show of good faith.

Discussion concluded and Chairman Timian called for a motion.

Matt Schlenvogt moved to stand with the original settlement agreement as proposed by the Board. Corey Kost seconded the motion. Discussion took place. Legal Counsel clarified the intent of the motion. The Board will be voting to 1) not consider Mr. Thelen's counteroffer and 2) reoffer the original agreement. If Mr. Thelen does not accept the offer, the Cases go to administrative hearing.

Chairman Timian called for the vote. Matt Schlenvogt, Corey Kost, Brock DesLauriers, Joe Sheehan, and Tim Timian all voted yes. The vote was unanimous. Motion carried.

Case 221-118: An allegation has been filed against Joe Ibach, Board Investigative Reviewer. At a previous meeting Corey Kost requested he be recused from discussion and voting on Case 221-118 as he is Mr. Ibach's employer. Mr. Kost is again making a request to be recused.

Matt Schlenvogt moved to recuse Corey Kost from discussion on Case 221-118. Chairman Timian seconded the motion. Chairman Timian called for discussion. No further discussion took place. Chairman Timian called for the vote. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan, and Tim Timian voted yes to the motion. Motion carried.

Joe Sheehan requested he be recused from discussion and voting on Case 221-118 as he has a customer/client relationship with the complainant.

Matt Schlenvogt moved to recuse Joe Sheehan from discussion and voting on Case 221-118. Brock DesLauriers seconded the motion. Chairman Timian called for discussion. No further discussion took place. Chairman Timian called for the vote. Matt Schlenvogt, Brock DesLauriers, and Tim Timian voted yes to the motion. Motion carried.

Because the allegation was filed against the Board Investigative Reviewer, Chairman Timian directed Staff to contract with an independent Reviewer to complete investigative review. David Campbell contracted with Amy Milne, an appraiser out of Vermont with investigative review qualifications to complete the investigation.

The Reviewer completed a Standard 3 Review on the appraisal report in question. The Reviewer found the report to be a credible report that substantially meets all USPAP requirements. Discussion took place. Board members were in agreement with the findings of the Reviewer and further commended the appraiser in taking on complicated assignments of this nature.

Matt Schlenvogt moved to dismiss the allegations against Joe Ibach. Brock DesLauriers seconded the motion. Chairman Timian called for further discussion. No further discussion took place. Chairman called for the vote. Matt Schlenvogt, Brock DesLauriers, and Tim Timian all voted yes to the motion. Motion carried.

Proposed Rules: Staff provided a second draft. Discussion took place.

101-02-02-03. Apprentice

#2. Scope of Practice: Revise the language to meet the Appraisal Qualifications Board criteria. Revise to read "supervisory appraiser".

#5 and #6. Remove language relating to requiring "forms".

101-02-02-05. Licensed.

#2. Scope of Practice: Revise language to meet the Appraisal Qualifications Board criteria.

#4. Experience: Reference Appraisal Qualifications Board criteria.

101-02-02-06. Certified Residential

#2. Scope of Practice: Revise language to meet the Appraisal Qualifications Board criteria.

#4. Experience: Reference Appraisal Qualifications Board Criteria.

101-02-02-07. Certified General

#2. Scope of Practice: Revise language to meet the Appraisal Qualifications Board criteria.

#4. Reference Appraisal Qualifications Board Criteria.

101-02-02.1-01. Issuance of permits to applicants licensed or certified by another state: Remove "d".

Staff will make the changes for approval at a following meeting.

Finances: Staff provided the current financial reports to Board members for reviews. Discussion took place. Staff was asked to leave the room. Board members discussed the management contract.

Chairman Timian moved to accept the financial report and increase the management fee to \$80,000. Matt Schlenvogt seconded the motion. Chairman Timian called for further discussion. No further discussion took place. Chairman Timian called for the vote. Corey Kost, Brock DesLauriers, Joe Sheehan, Matt Schlenvogt, and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Other Business:

Executive Session: Board members discussed instituting a policy to address investigations in executive session to be able have a more open discussion rather than in a public forum and even more important, addressing a frivolous allegation in executive session would protect the reputation of the appraiser being complained upon.

A survey was forwarded to the two ND appraiser associations requesting input relative to three options the Board had discussed. However, based on information received through Legal Counsel Boards are encouraged to narrow the use of executive session. Therefore, the Board follow the current process to move into executive session for attorney consultation. In addition, statutory language does allow discussion of investigative files in executive session.

Discussion turned to frivolous allegations. If there is a frivolous allegation the Board would like to prevent appraisers from having reputational damage. To accomplish this goal could refrain from using the appraiser's name when discussing allegations and refer to those involved as the complainant or respondent. However, if the appraiser wishes to comment, it is his/her prerogative.

Matt Schlenvogt made a motion to continue with the Board's current investigative process, the Board will not move into executive session until warranted. Furthermore, the Board will set a policy to refrain from using the use of the complainant and respondent's names when discussing allegations, unless the appraiser wishes to comment or until the allegation is raised to the level of a complaint. Brock DesLauriers seconded the motion. Chairman Timian called for further discussion. No further discussion took place. Chairman Timian called for the vote. Matt Schlenvogt, Joe Sheehan, Brock DesLauriers, Corey Kost and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

NDAA March 2022 Summit Report: Joe Summers, President of NDAA was in attendance and discussed the goals of the Summit, which included opening the lines of communication amongst the different stakeholders; realtors, lenders, appraisers, etc. Board members thanked NDAA for taking on this task. Comments after the Summit indicated it was well received by the attendees.

Discussion turned to NDAA call to action initiatives:

PAREA: NDAA requests the Board adopt the PAREA Program for 100% of experience credit for licensure and certified residential.

There are now viable PAREA programs that will be in place in the near future. AQB Criteria allows 100% of experience credit maybe gained through the PAREA Program for both the licensed and certified residential levels. At this point, there is no specified module for the certified general. However, the AQB Criteria allows for 50% of experience credit for the certified general level be gained through residential experience. Therefore, 50% of experience for the certified general level may be gained through the PAREA program.

There is concern with not knowing all the different entities that will be offering the PAREA program. The Board may not have the same comfort level with all providers. Therefore, review of work product by the Board may be prudent.

Corey Kost moved to update Rules to allow for PAREA consistent with the AQB Criteria. Matt Schlenvogt seconded the motion. Chairman Timian called for further discussion. No further discussion took place. Chairman Timian called for the vote. Matt Schlenvogt, Joe Sheehan, Brock DesLauriers, Corey Kost and Tim Timian voted yes to the motion. The vote was unanimous. Motion carried.

Evaluations: NDAA is requesting the Board allow licensed and certified appraisers the option to complete evaluations, while allowing the Board oversight through the ethics and competency rules, and requiring evaluations be only performed for financial institutions. Currently in North Dakota, any person may complete an evaluation except for the licensed or certified appraiser. Evaluations could provide training for trainees. While evaluations would not count for experience credit, it would provide for experience, as well as an income source.

The Board clarified that current Statute does allow licensed and certified appraisers to complete evaluations, as long as the evaluations are completed in compliance with USPAP. Therein lies the problem, lending institutions that want evaluations do not want the full blown USPAP compliant report.

Recap of NDAA's request:

- Licensed and certified appraisers may complete evaluations consistent with the Interagency Guidelines which are not consistent USPAP;
- Evaluations may be completed by appraisers who are not employees of a lender;
- Evaluations may only be completed for lenders, not for the general public, and
- The evaluations would only be subject to the competency and ethics provisions of USPAP.

Concerns:

- Difficult to enforcement; and
- Allowing licensed and certified appraiser to complete evaluations outside of USPAP could diminish the number of appraisers completing appraisals. Appraisers could decide to complete evaluations over completing appraisals. North Dakota needs the appraisers to be completing appraisals.
- The Board should not be advocating for evaluations. If other groups want to pursue legislation, it would be at that point the Board would review make a decision on whether or not to support it, or remain neutral.

NDAA is also requesting the Board collaborate with NDAA in working towards a centralized assessing database system. The Board discussed whether grant money could be used for this effort.

Mass Appraisal Experience Hours: Corey Kost provided comment; the intent of the AQB criteria is that any experience used to gain credit for an appraiser permit needs to be completed in compliance with USPAP. If the mass appraisal experience is completed in compliance with Standards 5 and 6 of USPAP the Board can allow that experience. However, if it is not completed in compliance with Standards 5 and 6, the Board can not accept that experience for credit.

A concern was brought up that when the Board has an applicant applying for a permit, and that individual is applying using mass appraisal experience, the Board there is no mechanism in place to verify that the work was completed in compliance with USPAP. Board members questioned that if the Board does not have a mechanism in place, how can the Board accept the experience?

The Board has not required mass appraisal experience log be reviewed in accordance with Standards 5 and 6. The applicant submitting mass appraisal experience must revise reports from their experience log for review for compliance with USPAP Standards 1 and 2. The Board discussed an option may be to outsource review of experience from the experience log to a reviewer familiar with Standards 5 and 6. Montana has a process in place which includes the a review of three reports selected from the applicant's experience log for compliance with Standards 5 and 6. The applicant must submit a demonstration report for review for compliance with Standards 1 and 2.

Evaluations: Staff has heard from an individual who has completed evaluation work for his employer. This individual has completed the initial appraisal classes and is looking to the Board to see if the work experience he has completed will qualify for credit towards licensure. In reviewing the work product samples from this individual has submitted, it appears that on the surface the work product is similar to an appraisal report. However, when you get into the details the work product does not appear to be USPAP compliant. ND does accept 100% experience for nontraditional clients. Therefore, this individual could take the evaluation work that he has completed, convert the evaluations to appraisals that comply with USPAP and resubmit them as experience.

Spring AARO Conference Overview: The conference included a presentation by Lyle Radke with Fannie Mae. Mr. Radke discussed the notices provided to States by Fannie Mae titled "Tips". Fannie Mae does not consider these "Tips" as allegations or complaints. They have no expectations in how the States handle them. He assured the States that these "Tips" are not computer driven. Mr. Radke explained that prior to sending "Tips" to the States, Fannie Mae goes through a very detailed process and various stages of remediation, which includes working directly with the appraisers.

Corey indicated the topic of Fannie Mae "Tips" was discussed in the Board member breakout session. A number of Board members from various states felt the "Tips" were more computer generated. States varied in the processing of a "Tip" when received: 1) forward the "Tip" on to the appraiser with no further action, 2) disregard the "Tip", 3) process the "Tip" as a complaint or 4) process the "Tip" as an allegation.

At the meeting of April 19<sup>th</sup> the Board tabled two conditionals dismissals that stemmed from Fannie Mae "Tips" (Case 220-113 and Case 220-114). Based on Mr. Radke's discussion relative to how "Tips" are generated, the Board will continue its current policy to treat a Fannie Mae "Tip" as an allegation and move forward with the conditional dismissals as written.

Appraisers Ghosting Clients: States are receiving complaints of "ghosting". There appear to be different levels of ghosting, but the presentation was more specific to the issue of an appraiser accepting orders from a client and then going off the grid, completely unresponsive. This issue reflects poorly on appraisers, the profession, and public trust. Historically North Dakota has found a way to enforce this issue based off on our Statute. An individual at the conference suggested Line 235 of USPAP addresses the issue of ghosting as well (procuring an assignment, based on the false pretense of completing in a timely manner).

Discussion turned to the Board's review process, specifically timeliness and consistency of the reviews. Look to the Reviewer to set timeframes (ex. 3-months for a upgrade review). Expand to the use of a panel of reviewers to assist in meeting timeframes. To remain consistent, the panel would go through the Staff Reviewer.

ASC Grant: Board discussed funding for an NDSU RE Appraiser Degree Program, assist in a State-Wide Data Base, the development of an online ND Supervisory course, and an Interface Database System with the ASC National Registry. Corey had a discussion with Jim Parks, Executive Director of the ASC as to whether grant money could be used to assist in developing a State-Wide Data Base. Mr. Parks indicated it could work as long as the Board could connect it to Title XI of FIRREA. Board members discussed a possible connection could be the State-Wide Data Base would assist in addressing the timeliness issue when working in the rural areas.

Election of Chairman, effective July 1, 2022: Chairman Timian's term expires June 30<sup>th</sup>. Therefore, the Board needs to elect a new Chairman and Vice Chair. Chairman Timian called for nominations for Chair. Brock DesLauriers moved to nominate Corey Kost as Chairman. Matt Schlenvogt seconded the motion. Chairman Timian called for discussion. No discussion took place. Chairman Timian called for the vote. Brock DesLauriers, Matt Schlenvogt, Joe Sheehan, Tim Timian, and Corey Kost voted yes to the motion. The vote was unanimous. Motion carried.

Chairman Timian called for nominations for Vice Chair. Brock DesLauriers moved to nominate Matt Schlenvogt as Vice Chairman. Joe Sheehan seconded the motion. Chairman Timian called for discussion. No discussion took place. Chairman Timian called for the vote. Brock DesLauriers, Joe Sheehan, Tim Timian, Corey Kost and Matt Schlenvogt voted yes to the motion. The vote was unanimous. Motion carried.

Chairman Timian called for adjournment. The meeting adjourned.

Respectfully Submitted,

Jodie R. Campbell  
Executive Secretary