



**INDEPENDENT ETHICS AUDIT REPORT
for Romance Writers of America**

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I. EXECUTIVE SUMMARY

Pillsbury Winthrop Shaw Pittman LLP conducted an independent ethics audit of the Romance Writers of America (“RWA”), with a focus on RWA’s handling of two ethics complaints that were filed against then-member Courtney Milan.¹ Pillsbury reviewed extensive documentation in connection with the audit and conducted interviews with and obtained written statements from participants. Pillsbury’s findings are set out in detail in this report. The key conclusions of the audit include:

- RWA members do not have a commonly shared understanding of the provisions and reach of the member Code of Ethics, nor did those charged with investigating or enforcing allegations of Code violations.
- RWA’s Code provisions and ethics complaint procedures have been frequently modified by RWA’s Board in *ad hoc* fashion without legal review, resulting in ambiguous and inconsistent provisions and variable approaches to addressing ethics complaints.
- The Ethics Committee recommendation of a finding against Ms. Milan was based on its interpretations of concepts that are undefined in RWA’s policies, and the Ethics Committee’s report to the Board did not adequately explain the rationale for its recommendation or the evidence supporting that recommendation.
- The RWA Board was not provided the evidence against Ms. Milan or her responses to the ethics complaints against her. The Board failed to treat the Ethics Committee as an advisory committee and, contrary to RWA policies, in effect delegated its fact-finding authority to the Ethics Committee. The Board voted to find Ms. Milan in violation of the Code despite the expressed concerns of Board members that the Board lacked a sufficient understanding of the rationale for the Committee’s recommendation or the evidentiary foundation for that recommendation.
- The evidence Pillsbury reviewed does not suggest that the adverse finding against Ms. Milan was motivated by animus or bias against her. Rather, the outcome here resulted from deficiencies in RWA’s policies and procedures, a failure to seek legal counsel when needed, and inadequate understanding by Board members of their role and obligations under RWA’s governance structure.

¹ This report will refer to all individuals by the names they use in connection with RWA; many RWA members are authors who go by their pen names.

Consistent with Pillsbury's charge, the report concludes with specific recommendations and options for modifications to RWA's member Code of Ethics and enforcement procedures.

II. SCOPE OF THE ETHICS AUDIT

Pillsbury was retained by RWA on January 3, 2020, to conduct an independent ethics audit of RWA's handling of two ethics complaints that were filed against Courtney Milan in August and September of 2019. The RWA Board had taken action on those complaints in two Executive Session meetings in December 2019. In a December 17th meeting, the Board voted to accept an Ethics Committee finding that Ms. Milan had violated the RWA Code of Ethics and to impose sanctions; on December 24, 2019, the Board rescinded that vote.

Pillsbury is not RWA's regular corporate counsel and has not previously advised RWA with respect to its policies and procedures or the handling of ethics matters. Pillsbury was engaged by RWA on January 3, 2020, with the charge to investigate and review the facts relating to the handling of the complaints against Ms. Milan and to report on our findings. In addition, we were asked to make recommendations for changes to RWA's policies, procedures, and practices. We conducted this audit without preconceptions, with the instruction that our findings should be reported without regard to whether they reflected favorably or unfavorably on RWA, and with the understanding that this report would be shared with RWA's membership.²

Although RWA set the scope of the engagement,³ Pillsbury was given full independence in the conduct of the audit within that scope. RWA provided all documents we requested over the course of the audit. Because of the cost implications for the audit, we sought approval prior to proceeding with including interviews within our activities, and again sought approval to expand the number of interviews we conducted beyond our initial proposal to interview a smaller set of individuals. The RWA Board authorized those expansions, and RWA did not direct Pillsbury's selection of interviewees.

² In January 2020, the Board adopted a motion providing that "the independent audit of matters relating to the ethics complaints against Courtney Milan being conducted by Pillsbury Winthrop Shaw Pittman LLP will be released to the RWA membership in a form that is un-redacted and is not edited. In addition, Courtney Milan, no longer an RWA member, will receive a copy of the report." The Board also amended the Policy Manual section on the confidentiality of Executive Session meetings and passed a resolution to authorize participants in those discussions to share information with Pillsbury in connection with this independent audit.

³ After RWA announced the independent audit, Pillsbury was contacted by current and former RWA members asking for Pillsbury to investigate matters beyond the handling of the ethics complaints against Ms. Milan. We did not have authority to widen the scope of our engagement and to treat the audit as an open-ended inquiry into other concerns about RWA's policies and actions.

Over the period of January and the first week of February 2020, we conducted interviews with, and/or were provided written statements by, twenty-one individuals who had a role in the events at issue. We also invited every person interviewed and all participants in the RWA Board meetings on December 17 and December 24, 2019, to provide any documentation that the individuals considered relevant to Pillsbury's review of these events.⁴ Every individual interviewed or who submitted statements has been fully cooperative in responding to Pillsbury's questions and requests for information.

The audit included interviews with and/or written statements and documentation from:

- Suzan Tisdale – complainant against Ms. Milan; RWA member, author, and publisher;
- Kathryn Lynn Davis – complainant against Ms. Milan; RWA member, author, and acquisition editor for Ms. Tisdale's publishing company;
- Courtney Milan – subject of the Tisdale and Davis complaints; RWA Board member from November 1, 2014 – October 31, 2018; RWA Ethics Committee Chair from November 11, 2018 – August 29, 2019;⁵ RWA member until her voluntary termination of membership on December 23, 2019; author;
- Chair of the Ethics Committee panel that reviewed the complaints against Ms. Milan in November 2019.⁶
- Allison Kelley – Executive Director of RWA until October 31, 2019; served as Controller at RWA until her retirement on December 31, 2019; staff liaison to Ethics Committee until recusal on August 30, 2019;

⁴ Only two participants in those Board meetings did not accept Pillsbury's invitation to provide information. The documentation Pillsbury reviewed, however, includes materials reflecting the perspectives of those two participants about the relevant events.

⁵ As described in this report, Ms. Milan's Ethics Committee Chair role was known among RWA members, although RWA's general practice is to maintain the confidentiality of Ethics Committee appointments.

⁶ The Ethics Committee members, including the Ethics Committee Chair, were appointed in confidential Executive Session and were promised continued confidentiality. Although, in January 2020, the RWA Board amended Board Policy and adopted a motion authorizing the sharing of confidential Executive Session information with Pillsbury in connection with the audit, Pillsbury does not regard it as necessary to identify by name any Ethics Committee members who were promised confidentiality. The Board's January 2020 motion authorizing release of this report noted that the report "will not disclose the names of RWA Ethics Committee members or other RWA members who were involved in prior ethics complaints and were promised confidentiality in connection with the same."

- Carol Ritter – Deputy Executive Director of RWA until October 31, 2019; Executive Director of RWA from November 1, 2019, until January 31, 2020; as staff liaison subsequent to Allison Kelley’s recusal, attended the Ethics Committee meeting that reviewed the Tisdale and Davis complaints;
- HelenKay Dimon – RWA Board President from November 1, 2018 – August 31, 2019;⁷
- Carolyn Jewel – RWA Board President-Elect from November 1, 2018 – August 31, 2019; President from September 1, 2019 – December 26, 2019 (resignation); as President, held *ex officio*, non-voting role on the Ethics Committee until recusal on October 22, 2019;
- Damon Suede – RWA Board President-Elect from September 1, 2019 – December 26, 2019; President from December 26, 2019 – January 9, 2020 (resignation); following the recusal of then-President Carolyn Jewel from her *ex officio*, non-voting role on the Ethics Committee, assumed that role and attended the Ethics Committee meeting that reviewed the Tisdale and Davis complaints;
- Nan Dixon – former RWA Board Treasurer; resigned on February 12, 2020;
- Kate McMurray – former Board member; resigned on February 12, 2020;
- Donna Alward – former RWA Board Secretary; resigned on January 8, 2020;
- Denny Bryce – former RWA Board member; resigned on December 26, 2019;
- Pintip Dunn – former RWA Board member; resigned on December 26, 2019;
- Seressia Glass – former RWA Board member; resigned on December 26, 2019;
- Tracey Livesay – former RWA Board member; resigned on December 26, 2019;
- Adrienne Mishel – former RWA Board member; resigned on December 26, 2019;
- Priscilla Oliveras – former RWA Board member; resigned on December 26, 2019;

⁷ In 2019, RWA changed its fiscal year and the start and end dates of its Board and Officer terms. Officer terms had previously ended on October 31, with successors starting their terms on November 1; in 2019, the change-over of Officer terms occurred on August 31/September 1.

- Erica Ridley – former RWA Board member; resigned on December 26, 2019;
- Farrah Rochon – former RWA Board member; resigned on December 26, 2019, and
- Renee Ryan – former RWA Board member; resigned on January 8, 2020.

Pillsbury was not charged with offering a definitive interpretation of the substantive provisions of RWA’s member Code of Ethics, and we make no determination as to the merits of the ethics complaints against Ms. Milan. RWA’s Code of Ethics provision prohibiting conduct injurious to RWA or its purposes is amenable to different interpretations. Under one reasonable interpretation, Ms. Milan’s conduct, as reflected in the materials contained in the two complaints against her and in her responses, was permissible under the Code. Under a different and also reasonable interpretation, Ms. Milan’s conduct might be considered to violate that provision. The Board’s finding of a violation against Ms. Milan on December 17th, however, was made without a review of that evidence and, in multiple respects, was not in accordance with RWA’s own policies and procedures. Moreover, Pillsbury’s interviews indicate that the Board would not have found Ms. Milan’s conduct to be in violation of the Code if the Board had reviewed the full evidence. For this reason, we characterize the finding against Ms. Milan on December 17th as an unjustified outcome. In the next two sections of the report, we provide an account of what led to that outcome, and we identify what went wrong.

III. WHAT OCCURRED

For the most part, a fairly consistent account of what occurred has emerged from the documentation and the information provided by individuals who participated in the events. The findings described below derive either from definitive documentation or from information provided by one or more participants. Where the accounts of participants conflicted in any material respect, we note those inconsistencies.

A. Background on RWA’s Code of Ethics

At the time Suzan Tisdale and Kathryn Lynn Davis filed their ethics complaints against Courtney Milan, RWA was operating with a member Code of Ethics⁸ and with ethics complaint procedures that several participants described as “hodge podge.” According to former Executive Director Allison Kelley, who had served in that role for RWA from 1995 through October 2019, the Code of Ethics has undergone many revisions over the years. In 2003, the Code was reviewed by

⁸ RWA’s Bylaws provide that the “rights and obligations of membership are set forth in RWA policy.” The member Code of Ethics is part of the policies adopted by the RWA Board. The current member Code of Ethics is publicly available on RWA’s website at https://www.rwa.org/Online/About/Code_of_Ethics_Folder/Member_Code_of_Ethics.aspx.

RWA's corporate counsel and completely rewritten to have a very limited scope. The Code prohibited "*engaging in conduct injurious to RWA or its purposes,*" but did not include many of the current provisions that govern member-to-member conduct. Since that time, and especially frequently since 2014, provisions were gradually added to the Code, and changes were made to the related procedures in piecemeal fashion. Motions were included on the agendas of nearly every Board meeting in the past five years to introduce amendments revising the policies and procedures. These motions were drafted without requesting outside legal review of the amendments or legal advice on the revision process. The motions themselves were often further revised during the Board meetings, which were not attended by RWA's corporate counsel.⁹

HelenKay Dimon, who served on the Board from November 1, 2014 until August 31, 2019, authored almost all of the motions proposing revisions to the Code and related procedures; she has described the incremental revisions as a "Band-Aid" approach to resolving conflicts between Code provisions and adding clarity to sections of the Code.

In January 2016, prompted by vocal concerns from the membership about what the Board described as "a difference in opinion regarding a column from a well-known reviewer on the subject of diversity and members of RWA who did not agree with the reviewer's treatment of the subject," the Board approved a statement to the membership on application of the Code of Ethics to such controversies. The Board statement declared:

Members of RWA's Board of Directors are entitled as individuals to voice their opinions on any issue, as is every member of RWA. Board members are not silenced simply because they sit on the board.

RWA is a professional organization dedicated to furthering the professional interests of romance writers. While many of us have strong friendships with fellow members, RWA is not a social club. As always, RWA encourages open dialogue among members. Differences of opinion are welcome and encouraged. It is not the organization's job or desire to monitor or comment on tone, content, or opinion unless it is found to be in violation of the Code of Ethics.

⁹ RWA did request and receive from its corporate counsel a legal memorandum specifically advising on how to address two ethics complaints against a publisher. That March 2016 memorandum also provided a general overview of case law on due process requirements for association ethics code enforcement and recommendations on best practices for addressing the two complaints. In addition, RWA's corporate counsel attended a November 2016 Board meeting for the purpose of making a presentation on best practices for social media activity by Board members.

The RWA Board created a Social Media Task Force, which reported at the Board's November 2016 meeting on its recommendations for RWA's development of policy on social media. The Task Force recommended that

[the] less restriction on speech the better. Short of "Best Judgment," "Use Tact," "Behave Professionally," etc., and forbidding any kind of harassment, discrimination, etc. against RWA or individual members (as set forth in RWA policy), there's not much more RWA should require.

Codifying that stance, the Board amended the Code at its March 2017 meeting, adopting by general consent a motion to incorporate a new prohibition that included an exception for social media:

To the extent not otherwise addressed above, repeatedly or intentionally engaging in conduct with the intent of harming a member's career, reputation, or wellbeing. Specifically excluded from this section are exchanges of business information, true statements, personal disagreements, and honest discussions of books, social media posts, or marketing materials.

In a June 14, 2019 email, Allison Kelley, then Executive Director, sent a memo to then-President HelenKay Dimon and then-President-Elect Carolyn Jewel, expressing her concern that "RWA has problems because it now has multiple policies that govern behavior." Ms. Kelley listed RWA's Code of Ethics for Members, Forum Rules, Chapter Code of Conduct, rules pertaining to RITA[®] Award judges, and a non-discrimination membership policy. Ms. Kelley wrote:

Members are likely not aware of all of them, and the policies themselves are not consistent.... Complaints are increasing, and usually allege discrimination based on racism.

The board has charged staff with reviewing complaints to determine if they should be escalated to the Ethics Committee. I actually have what I think is a good plan that will guide members through a complaint process to determine, via questions they must answer if the complaint rises to a level that disciplinary action is warranted. However, before that can be implemented, the board must rectify the organization's multiple and conflicting codes... In my opinion, we are on thin ice in many situations, and we need to tread carefully until all policies and related discipline are consistently written and applied....

Ms. Kelley also shared these concerns with the Board at its July 2019 meeting. At that meeting, the Board adopted a motion from Ms. Dimon to amend numerous provisions in the member Code of Ethics, including revising the prohibition on "*engaging in conduct with the intent of harming a member's career, reputation, or*

wellbeing” to exclude “*non-RWA operated social media posts,*” rather than all social media posts.

In addition, the Board voted to add a provision prohibiting a “*violation of the anti-discrimination policy as set out in Section 6.1*” of the Board Policy Manual. That provision, which had not previously been incorporated into the Code of Ethics and thus had been outside the jurisdiction of the Ethics Committee, provides in part that “*In order to create a safe and respectful environment, invidious discrimination is prohibited in RWA.*” The term “invidious discrimination” is not defined.¹⁰ The remainder of Section 6.1 prohibits members, participants in RWA activities, and users of RWA forums and social media accounts¹¹ from discriminating against other members, participants, or users “*based on race, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, disability, physical appearance, body size, or religion.*” Section 6.1 also prohibits denial of RWA membership to adults based on any of the listed protected group statuses.

No formal ethics complaints were filed under either of those two provisions of the Code until the filing of the Tisdale and Davis complaints against Courtney Milan. According to Ms. Dimon, most of the formal Code of Ethics complaints that RWA had received in recent years related to plagiarism allegations.

At its October 5, 2019 Board meeting, the Board approved a motion by then-President Carolyn Jewel to “create a Task Force to present the Board with a report of recommended updates to the Policy & Procedure Manual sections, including but not limited to, accountability of members and chapters to ensure the P&PM is internally consistent, and in line with the recommendations of RWA’s legal counsel.” Ms. Jewel appointed Ms. Dimon, the previous President, to chair the Task Force. The Task Force had not developed any recommendations by December 2019, when the RWA Board issued decisions on the ethics complaints against Ms. Milan.

B. Background on RWA’s Ethics Complaints Procedures

RWA’s Bylaws provide that “the affairs of RWA shall be governed by its Board of Directors. The Board of Directors may exercise all powers of RWA except as otherwise reserved in these Bylaws and the Certificate of Formation of RWA.” The Bylaws further provide that “the Board of Directors may establish various committees to carry on the affairs of the association. These Standing Committees shall be listed in

¹⁰ Allison Kelley, Executive Director of RWA until October 31, 2019, has stated that she “never had a clear understanding from the Board as to what would constitute invidious discrimination. I did not have a solid feeling of what the Board expected of that policy, when it would be triggered.”

¹¹ Prior to the July 2019 amendments, Section 6.1’s prohibition on discrimination did not specifically identify RWA forums or social media accounts as within the scope of RWA activities.

the P&PM.”¹² Under the Board Policy Manual, members of standing committees “shall, in the performance of committee work, abide by the same fiduciary duty standards applicable to Directors.”

The Board Policy Manual, in Section 10.2, established the Ethics Committee as a Standing Committee, which “shall carry out charges approved by the Board but shall not have or exercise the authority of the Board in the management of RWA.” The Ethics Committee’s charge (as relevant to this report) is to “review, investigate and provide recommendations to the Board for complaints filed pursuant to the Code of Ethics.”

The Ethics Committee is comprised of a chairperson, selected by the President-Elect in consultation with the Executive Director, and “no less than” nine other members selected by the President-Elect, the Executive Director, and the chairperson to present to the Board for appointment.¹³ The Policy Manual does not require any of the members of the Committee to be current Board members, and RWA’s practice has been to appoint Committee members who were not serving a current term on the Board.¹⁴ The chairperson “should be a former member of the Board,” or, if no such candidate is available, “a candidate with RWA Ethics Committee experience.” Those members make up the “Ethics Committee pool.” For each ethics complaint that comes before the Committee, “the chairperson, in consultation with the President and President-Elect, will choose the members from the pool to hear a particular action, taking into consideration committee member expertise for the action and whether the committee member has been used in another action during that term.” Per Section 6.6.4.6.4 of the Policy Manual, the President is an *ex-officio* member of the Ethics Committee but has no vote on the Committee.

It has generally been the Board’s practice to vote on motions for appointment of Ethics Committee members in the confidential Executive Session portions of Board meetings, in order to protect Ethics Committee proceedings from attempted interference. Under Section 3.11 of the Board Policy Manual, “items discussed in Executive Session are held in strict confidence,” with a “summary of motions made in

¹² The Bylaws do not define the “P&PM,” but that is a common term for a board policies and procedures manual. The title of RWA’s collection of board policies is the “Policy Manual,” which is the term this report will use.

¹³ Prior to amendments adopted by the Board at its October 5, 2019 Board meeting, the President of the Board selected the Ethics Committee chairperson and worked with the chairperson to select the slate of candidates for the Committee to present to the Board.

¹⁴ RWA is incorporated in Texas as a nonprofit corporation. Section 22.218 of the Texas Nonprofit Corporations statute permits nonprofit corporations to adopt bylaws provisions that delegate the Board’s authority to committees made up of a majority of current directors. Section 22.219 of the statute prohibits any committee from exercising the authority of the Board if a majority of committee members are not directors. Because none of the voting Ethics Committee members simultaneously serve as Directors of RWA, the Policy Manual provision limiting the Ethics Committee to an advisory capacity, with authority to make recommendations but not to “have or exercise the authority of the Board,” is consistent with the Texas Nonprofit Corporations statute.

Executive Session, excluding sensitive information,” reported in the minutes of the regular Board session. The Board also conducts its review of Ethics Committee reports during confidential Executive Sessions.

Section 6.6 of the Policy Manual sets out the procedures for review of ethics complaints. Only formally filed ethics complaints are considered by the Ethics Committee. The Policy Manual specifies that complaints must be delivered in writing to RWA staff and signed by the complainant, rather than submitted anonymously; the allegations “should be described with sufficient specificity to explain the nature of the complaint,” and any supporting evidence should be submitted with the complaint. If staff refer the complaint to the Ethics Committee, the Policy Manual requires that the accused be notified of the allegation, including the names of complainant(s), and that the accused be provided copies of the supporting evidence. The accused is then provided an opportunity to submit a written response to the allegations. According to Allison Kelley and Carol Ritter, although staff have received many informal complaints from members about the conduct of other members, usually through telephone calls or emails, few formal ethics complaints are filed. Most members have declined to file formal complaints after learning that the subject of the ethics complaint would be informed of who had filed it.

Under RWA’s procedures, the submission of a formal ethics complaint does not guarantee that it will be referred to the Ethics Committee for review. Rather, the Executive Director first “conduct[s] an initial assessment to determine if the matter potentially could be handled informally as a disagreement between members.” If the complainant agrees to an informal process, staff will attempt to resolve the matter through informal communications. The complainant may decide at any time, however, to elect to return the complaint to formal processing.

Per Section 6.6.4.3.1 of the Policy Manual, “Upon receipt of a properly documented claim and after the initial review, the Executive Director must notify the Board and the chair of the Ethics Committee of the allegation.” According to Carolyn Jewel, however, in practice there has been a “firewall” between the Board and the Ethics Committee; the Board does not get involved in whether the complaint is referred to the Ethics Committee.

The Policy Manual is silent as to how the Executive Director determines whether a formally filed complaint constitutes a “properly documented claim.” In practice, the Executive Director has “vetted” the complaints.¹⁵ Ms. Kelley explained that her practice upon receipt of a formal complaint was to read the complaint and review the Code of Ethics carefully every time to assess whether any of the allegations were covered by Code provisions. She noted that because the provisions of the Code were amended so frequently, she always ensured that she compared the complaint to the

¹⁵ Ms. Kelley’s June 14, 2019 email to Ms. Dimon noted that “The board has charged staff with reviewing complaints to determine if they should be escalated to the Ethics Committee.”

relevant provisions of the Code. If she determined that the allegations in the complaint fell outside the provisions of the Code, she would inform the complaining member that the Code did not cover the specific allegations in the complaint. She would sometimes but not always consult with the President about these decisions. If a complaint's allegations did appear to raise a Code violation, she would consult with the President at that point, before referring the complaint to the Ethics Committee. She would also report to the Board at Board meetings about the kind of complaints that RWA was receiving, even if the complaints had not been referred to the Ethics Committee.

Once an Ethics Committee is impaneled – i.e., the committee tasked with reviewing a specific complaint is selected from the Ethics Committee pool – the Committee is to conduct a “thorough investigation within a reasonable period of time, including a review of all information and documentation provided to the Committee. The Committee may ask for additional information if the Committee deems it necessary for clarification or to reach a decision.” The complaint and the accused's written response, along with all supporting evidence, are delivered to the Ethics Committee at the same time, which starts the Committee's investigation. RWA establishes a secure “loop” for each investigation – an online forum hosted by RWA in which the Committee members can engage in written exchanges and access the documentation – and only the members of the Ethics Committee panel, the President (as an *ex officio* member), and the RWA staff liaison (usually the Executive Director)¹⁶ are provided access to that loop.

The Policy Manual requires “Directors, RWA Staff, the Executive Director and the Ethics Committee members involved in the investigation [to] hold all information, including the results of an investigation, in strictest confidence.” In addition, “Ethics Committee members, Directors, and RWA staff with a conflict of interest in an investigation cannot participate in the investigation or vote on the outcome, as applicable.” Accordingly, members of the Ethics Committee panel are required to sign a *Combined Confidentiality and Conflict of Interest Form* when accepting appointment to the panel. Prior to the review of the complaints against Courtney Milan, it had not been RWA's practice to ask the President to sign that agreement.

Once the Ethics Committee panel completes its investigation, it must find for or against the accused. If the accused denies the allegation(s) and the Committee finds against the accused, the Committee must “prepare and submit to the Board a report recommending a penalty.” The Policy Manual provides no guidance as to the extent of the information that should be included in the Ethics Committee report. Ms. Dimon had developed, however, a sample Ethics Committee Report template that

¹⁶ When Carol Ritter served as Deputy Executive Director, she would occasionally serve as staff liaison. For example, when two different complaints were under investigation concurrently by two separate Ethics Committee panels, with two separate chairpersons, Ms. Kelley and Ms. Ritter each took responsibility to serve as staff liaison for one of the panels.

she presented to the Board at its March 2018 meeting, and which the Board approved. The template report called for including:

- a list of the “materials in support of the claim” submitted by the complainant,
- a list of the “material in support of the defense” submitted by the accused,
- a description of the specific allegations in the complaint, and
- identifying the “factors” the committee reviewed and the “findings” made by the committee in determining whether the evidence does or does not support a finding of violation against the accused.

Neither the Policy Manual nor the template address what materials should or may be attached to the Ethics Committee report. The Policy Manual specifies that “[i]f the Board is not meeting in person, all voting Directors must have copies of all documentation and full access to discussion before voting.” There is no guidance on what “all documentation” means nor explanation as to why a lesser level of documentation may be required for Board review of an ethics complaint at an in-person meeting. In practice, RWA staff would create a separate confidential “loop” for Board members for the Executive Session review of an Ethics Committee report and would upload to that loop materials provided by the Ethics Committee panel chair.

The recollections of Board members who participated in Executive Sessions reviewing other ethics complaints differed sharply as to whether the Board had previously been provided the full documentation reviewed by the Ethics Committee. Several former Board members reported that they had been provided copies of the complaints and responses to review, along with the Ethics Committee reports. Other participants in the audit reported that it was not RWA’s practice to provide the Board the complaints and responses that had been submitted to the Ethics Committee. Pillsbury reviewed the Executive Session library files to verify what was provided to the Board in connection with prior ethics complaints. RWA switched software systems in 2018 and did not have a way to access files saved on the old software system, so the available evidence was limited. Review of the Executive Session files from the past two years, however, demonstrates that the complaints and responses from the accused were not provided to the Board during that period. The Ethics Committee reports for those cases were more extensive, however, than the Ethics Committee report submitted in connection with the Tisdale and David complaints. In one case, the documentation uploaded for the Board’s review included other supporting material, such as a chart depicting evidence of passages allegedly plagiarized from other RWA members’ published novels.

The Policy Manual calls for the Board to “review the Committee’s report in Executive Session and vote to either accept or reject the Committee’s recommendation(s).” If the Board rejects the Committee’s recommended findings, it must “make a finding based on the information before it and set out, with specificity, why some or all of the Committee’s findings were not followed.” The parties are then

notified of the Board's decision. The Policy Manual provides for an appeal by the accused of an adverse determination by the Board only on "the basis of newly discovered exonerating evidence." There is no mechanism for appeal based on an assertion that RWA has not followed its published policies or procedures.

C. Events Prior to the Filing of the Tisdale and Davis Complaints

1. Courtney Milan's role with RWA

Courtney Milan served for four years as a Director on the RWA Board, from November 1, 2014 – October 31, 2018. During her time on the Board, she sought to address RWA's challenges with diversity, equity, and inclusion of authors of color, gay and lesbian authors, and other marginalized groups, and she focused the Board's attention on changes needed to support diverse authors. For example, Ms. Milan brought a motion to establish a conference harassment policy, and she was a driving force behind RWA's issuance of a public apology in April 2016 for a 2005 survey that asked RWA members to vote on whether romance should be redefined to include only relationships between one man and one woman.¹⁷ Based on these and other contributions by Ms. Milan, RWA awarded Ms. Milan a Service Award in July 2019.

Ms. Milan also maintained an active social media presence, which had included comments critical of RWA. According to Carol Ritter, when Ms. Milan joined the RWA Board in November 2014, she agreed to "tamp down" her public critiques of RWA. Ms. Milan also recused herself from Board votes on matters she had publicly criticized prior to joining the Board. After her Board service ended, she resumed social media criticism of RWA decisions.

Shortly before the expiration of Ms. Milan's second term on the Board, HelenKay Dimon (who was about to start her term as President) asked Ms. Milan whether she would agree to serve as Chair of the Ethics Committee. In an October 14, 2018 email, Ms. Dimon wrote:

Under the new system you will have a pool of people to draw from for each matter and oversee the group that hears any complaint. I think of this role sort of like the person who makes sure all the trains keep running. This is new and with the Chapter Code of Conduct and the clarity we added to the Ethics Code, it's possible the committee will be used more than it currently is and for matters that really are member disagreements and not ethics issues.... The Ethics Chair's name is not included on the findings and reports. As you know, the committee makes a recommendation and then the Board must vote. The

¹⁷ RWA's current [definition of a romance novel](#), as used for entries into the RITA Award contest, is not limited to heterosexual romances; RWA requires "a central love story and the resolution of the romance [that is] emotionally satisfying and optimistic."

matter is presented to the parties as the Board’s decision. Your work and who is on individual cases will remain confidential.

Ms. Milan replied, stating that she was willing to accept the appointment, but that she would “understand if this is something that you or the Board balk at”:

The only reason I angsted about it for a little bit is that I am worried that because Courtney is Mean, someone will file an ethics complaint against me, and that will complicate things for a bit. (Not completely, but still.)

Ms. Dimon assured Ms. Milan that she was “exactly the right person” for the role:

Allison [Kelley] and I were talking today and [I] told her I asked you. She was greatly relieved and very excited. In my view, and Allison agrees with me, you profoundly changed the direction of RWA for the better by being on the Board. The general membership might not get how instrumental you were in making us look at RWA in a different way – seeing our weaknesses, realizing we were leaving people behind and taking responsibility for our mistakes – but Allison and I know. The staff knows. Anyone who served with you knows.... Thank you for being willing to take this on.

At its November 2018 Board meeting, the Board approved Ms. Milan’s appointment as Ethics Committee Chair. The motion was adopted as part of the Board’s regular agenda items and was listed in the public Board minutes of the Board’s November 11, 2018 meeting, so Ms. Milan’s Ethics Committee Chair role was known among RWA members.¹⁸ As Ethics Committee Chair, Ms. Milan oversaw the review of one ethics complaint.

2. The social media storm

In the final two weeks of Ms. Dimon’s term as President of the RWA Board, Ms. Dimon shared her thoughts on RWA’s Code of Ethics approach to member social media posts in an email to her successor, Carolyn Jewel, the successor President-Elect Damon Suede, retiring Executive Director Allison Kelley, and the successor Executive Director, Carol Ritter. On Friday, August 16, 2019, Ms. Dimon wrote:

I just wanted to bring up a few things because, while I hate when our members misbehave on social media and I get that other members see it and it causes a problem, I’m concerned about what the parameters would look like if the social media exception is taken off.... [M]embers have differing levels of tolerance on what is ok and not okay....

¹⁸ Subsequently, Ms. Dimon initiated the practice of the Board voting on Ethics Committee members and chair appointments in Executive Session, so as to maintain the confidentiality of Ethics Committee appointments.

Most importantly, we need some sort of standard for the ethics committee to apply to make their determinations – is it one instance, is it subjective, is it what an ordinary person would find discriminatory, etc. There isn't any guidance right now and I see the potential for this issue to blow up and be very messy because everyone comes at this from a very personal place, and we now have different ethics panel[s], which means no two cases should get the same people. The potential for accidental unequal application of the ethics rules seems pretty big.

That same day, Ms. Milan posted a series of tweets about Sue Grimshaw, whom she described as having worked as “the romance buyer for Borders, ... capable of making a romance novelist’s career by putting their work front and center around the country.” Ms. Milan characterized her tweets as in response to “someone going around Romancelandia right now” arguing with “people who have been calling out a major industry player who liked tweets that fell somewhere on the range between ‘yikes racist’ and ‘actual white supremacist.’” Ms. Milan wrote:

[Sue Grimshaw had] the ability to break [someone’s career] by not buying the book at all. We don’t know. We don’t KNOW. But for decades, Black romance authors heard there was no market for their work. But we heard that in a time period when one of the major bookstores was being headed by a person where we now have serious doubts as to whether they could review their work. If you were not in Borders, you would not have a career. And this anecdote actually tells you a lot about what systemic power plus prejudice can do: It can change the course of an entire industry, to the detriment of authors around us. So when people are mad about this? This isn’t a small thing. This isn’t getting on someone’s case about not being woke enough... I do think this is not a thing that can go by without some kind of reckoning, and I didn’t say anything for a while because I didn’t know what kind of reckoning would suffice. And I still don’t, but I think we need to have that conversation as a community. This isn’t okay. This person has potentially done systemic harm. What now?

On Monday morning, August 19, 2019, Ms. Kelley referenced Ms. Milan’s tweets in her response to Ms. Dimon about the “social media exception” in RWA’s Code of Ethics:

I don’t know if you heard, but apparently Courtney attacked Sue Grimshaw on Twitter this weekend, and Sue lost her job.... Courtney also alluded to the fact that RWA might take action against Sue. I am posting this update to HK’s thread because it may make a difference as to how the board will move forward or not.

<https://twitter.com/courtneymilan/status/1162514865912594434> (thread)

[Ms. Milan posted:] Hey, here's one tiny place to start: Sue Grimshaw is (I believe) an RWA member as an industry professional. There is a Code of Ethics for industry professionals that includes a non-discrimination clause.¹⁹

Sue is not a member. That non-discrimination clause was recently added, so it wouldn't apply to past actions by an industry professional. Sue is no longer acquiring. How does this help RWA or its members? I seriously don't know.

Ms. Jewel responded:

So disclosure: some days prior to Courtney naming names I subtweeted²⁰ that I had found Sue's liked tweets and was horrified and blocked the account. I did not name her except in private DMs to people who asked. That includes HelenKay. We agreed Sue should never ever judge an RWA contest.

So part of me says Courtney pointed out the truth. But I do not have those tweets in front of me to say anything about the totality of what she said.

There were a lot of people discussing this. I'm only saying what I know and said not taking a position.

Sue's account prior to her sanitizing it supported anti-Semitic, racist tweets.

Mr. Suede replied soon after:

I don't think what you're describing is an issue, Carolyn. I think I did much the same via subtweet and private convo. Sue's tweets have been screenshotted. There's ample evidence and the community seems widely aware of her history. She's been called out by name for behavior that would get her banned from conference... I see this as the big problem with RWA wading into the social media police role. It SHOULD be something we can enforce with all our member[s]: basic tolerance unbiased professional behavior, but historically we have no (or deeply problematic) precedents.

¹⁹ In addition to the tweet quoted by Ms. Kelley, the referenced thread included this tweet by Ms. Milan: "If you're an author of color/were writing characters of color, and you were rejected by Sue Grimshaw, particularly with rejection letters that made you say 'Hmmm,' and if we have enough of these, they may be enough for RWA to act upon." Another author posted a reply: "I don't have a rejection letter because she refused to read material my former agent pitched to her." Ms. Milan responded: "Wow. Can you write a letter about what the pitch looked like, and the fact that she refused to even read it? Because..."

²⁰ A "subtweet" is a critical tweet that alludes to another Twitter user without mentioning the user's name and without a link to the user's account. See <https://www.merriam-webster.com/dictionary/subtweet>.

Ultimately (though I suspect the lawyers will be more cautious) I'd bet Courtney and Co. can make a pretty watertight case against Grimshaw [for] problematic discriminatory behavior in public with ugly receipts and zero self-awareness. BUT [Grimshaw and others] are the most likely to pipe up with, "Members were mean to me on Twitter and I wasn't marching in Klan robes so all of this is hearsay." How do we navigate that honestly and properly?

What I'm imagining is sort of a Kaiju conflict playing out symbolically via our evolving CoE: on one side "FREE SPEECH" from the apparent racists and on the other "OBVIOUS BIAS" from the outraged folks who know what our bylaws say about discrimination. It's a legitimate conflict: RWA must advance the careers of professional romance authors fairly but ALSO will not tolerate discrimination by its members.

Core question: how much is RWA implicated in racist behavior by industry professionals? How far can/do/should we go?

Ms. Kelley responded:

Damon, I think the last question you posted should be discussed with the attorney because I honestly believe there are antitrust implications if RWA denies membership. I am honestly not trying to sway things one way or another. I do worry about the staff and committee members having to spend significant amounts of time dealing with complaints. Members have options. They can stay or go.

Ms. Jewel replied:

I feel that RWA can't and should not police like that. What we can do is have a process for members to lodge a complaint against other members. Sue is entitled to her beliefs. But she cannot, within the bounds of her RWA membership (if she had one) act in a discriminatory, harassing etc. way to another member at an RWA event.

Ms. Kelley closed out the exchange:

I agree we should not police social media in order to take actions against someone's political (or other beliefs). My concern is the implication that RWA can or should do something to Sue. We can bar her from future conferences if she did, in fact, deny to work with someone based on [RWA's code of conduct for industry members].

IMO, if complainants can supply proof of the reasons any industry professional denies someone an opportunity based on the author's race, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, disability, physical appearance, body size, or religion, they

should be barred from participating in RWA but some members are now expecting RWA to take immediate action to discipline members and industry professionals without proof or due process. I don't think it should be RWA's job to do extensive research in order to determine motive, nor should RWA assume motive.

Over the rest of the week, no further discussions took place at RWA about this, and Ms. Milan did not engage in further postings about Ms. Grimshaw. Other authors, however, learned that Ms. Grimshaw was an acquisition editor for a new independent publishing company, Glenfinnan Publishing, owned by RWA member and author Suzan Tisdale. One author contacted Ms. Tisdale to express concerns about Glenfinnan working with Ms. Grimshaw.²¹ On August 24, 2019, Ms. Tisdale posted a 12-minute video on her Twitter account.²² In her video, Ms. Tisdale stated that Ms. Grimshaw "is no more a racist than I am" and described the controversy as a involving expressions of "political" views.

Later that day, Ms. Milan began posting on Twitter about Ms. Tisdale:

Why is @SuzanTisdale gaslighting us? ... Nobody is saying [Sue Grimshaw]'s a skinhead or a member of the KKK. They're saying that she was a gatekeeper who may have kept marginalized people out of stores and publishing deals. And if your video says that Sue is no more a racist than you, you sound EXTREMELY racist. Nobody wants anyone to hate anyone, but like if someone used institutional power to discriminate on the basis of race, I don't think they should continue to have institutional power. And if your institution insists on giving that person institutional power, I hope your institution fails.

And like, if your line of acceptability is "calling for the annihilation of a group of people" but you don't have an issue with systemically excluding a race of people from bookstores and publishing contracts? Then you are DEFINITELY a racist. And like, @SuzanTisdale is entitled to be a racist and to run her publishing house as a racist, but you know, we're entitled to just not read or review her books because I hate racist books.

The following day, on August 25, Ms. Milan posted further tweets directed at Ms. Tisdale:

Suzan, these are answers you owe to the entire romance community. And I'm not the only asking these questions. This is not a personal disagreement that can be resolved behind closed doors with a handshake.

²¹ In her response to the Tisdale ethics complaint. Ms. Milan shared screenshots of Ms. Tisdale's communications with others that had later been shared with Ms. Milan.

²² The video is available at <http://bit.ly/suzantisdalevideo>.

That same day, Ms. Milan also posted a series of tweets about a novel by RWA member and author Kathryn Lynn Davis, who is also an acquisition editor at Glenfinnan Publishing:

Okay, so you know how Glenfinnan publishing has two editors listed [on its webpage]? And we've been talking about Sue Grimshaw. Someone sent me a link to a book written by the other editor, Kathryn Lynn Davis, and is a fucking racist mess.²³

Ms. Milan posted an image of the cover of Ms. Davis's novel *Somewhere Lies The Moon*, stating, "Here's the book. I didn't finish the sample. I didn't need to. This book is like a bingo card of OH GOD DID YOU REALLY." Ms. Milan stated that the "heroine ... is the obligatory blue-eyed half-Chinese woman" and went on to post a series of screenshots of passages from the novel that she characterized as examples of "standard racist trope[s]." Ms. Milan provided mocking commentary on the excerpted passages (e.g., "did you know that Chinese people don't touch? Not even friends and sisters. It's impolite you know"). She then wrote:

As a half-Chinese person with brown eyes, seriously fuck this piece of shit.... I've said this before and I'll say it again: Don't write books about how much a culture not your own sucks. Just don't. You're not going to get it right and you're going to sound like a fucking racist....

Also, I dragged that book not to be mean, but because people writing shit like that gets women like me assaulted and harassed.

3. RWA begins to address Ms. Milan's social media activity

On August 26, 2019, Sue Grimshaw emailed RWA Deputy Executive Director Carol Ritter about the social media criticism of her:

I need your advice about a situation that's been brewing over the last few weeks. There's a group of authors that seem to have an agenda. It started earlier in the year, as you may know, with a few New York Times bestselling authors accused of being racist and now the accusations are being flung on me.... A small group of authors got very loud on Twitter deciding that I was not open minded enough to acquire for [my employer's publishing] company. Their ridiculous claims and rationale ended up costing me my position at [the] company. I was very disappointed to have lost the job, but what is affecting me more is the hurtful lies this group of ladies are spewing. The comments they are making are so far from the truth it's defaming, and now they are even becoming more vile.... [T]heir lies and hateful talk is affecting another

²³ In her response to the Tisdale complaint, Ms. Milan explains that the phrasing of her tweet contains "a clear grammatical typo," and that she had been characterizing the book as a "racist mess," not the author.

publishing house I'm working with, and have been working with since June (Glenfinnan Publishing, Suzan Tisdale). The author spearheading the hate toward myself and Suzan's company is Courtney Milan, along with a handful of her followers.... Please share your thoughts and suggestions, I'm not sure what I can do at this point....

The following day, August 27, Ms. Ritter replied that "I would like to share with my boss, Allison Kelley."²⁴ She forwarded Ms. Grimshaw's email to RWA's corporate counsel.

That day, Ms. Tisdale called RWA's offices asking about options to seek redress for the social media comments criticizing her and Glenfinnan Publishing. Ms. Kelley and Ms. Ritter told Ms. Tisdale that, if she thought there had been a violation of the Code of Ethics, she could file a formal complaint; they directed her to RWA's webpage about the member Code of Ethics. They also told Ms. Tisdale that RWA could not take any action outside of the ethics complaint process. Around this time, Ms. Davis also called RWA, and Ms. Kelley and Ms. Ritter had a similar conversation with her.²⁵

That same day, August 27, then-President HelenKay Dimon emailed Carolyn Jewel, whose term as President would begin in five days; Ms. Dimon's email copied Ms. Kelley and Ms. Ritter:

Because we are not capable of having a quiet week in RWA, we have this issue...

Courtney is chair of Ethics Comm. She has been on twitter complaining about Sue Grimshaw and talking about how members should complain about her, etc. I'm paraphrasing, but the point is we've had complaints. In general, complaints about not liking Courtney generally don't sway me, but I think we have a problem here.

²⁴ Nothing further happened with respect to a potential complaint by Sue Grimshaw, as she was not then a member of RWA.

²⁵ A January 4, 2020 article in *The Guardian* about these events described Ms. Davis as claiming that "she had been 'used' to secure a political outcome that she had never intended" and that RWA staff "encouraged us. They wanted us very badly to file these complaints." See <https://www.theguardian.com/books/2020/jan/04/kathryn-lynn-romance-novelist-interview-racism-complaint>. Ms. Davis told Pillsbury that *The Guardian* article did not give an accurate account of what she had said to the reporter, and that RWA staff did not encourage her to file a complaint or tell her what to say in the complaint. Rather, Ms. Davis said that RWA staff simply gave her the option to file the complaint and pointed her to information about how to file it. Ms. Tisdale told Pillsbury that RWA staff "sent me to the Ethics Code website" and "told me that RWA couldn't do anything in the absence of an ethics complaint." Ms. Ritter and Ms. Kelley both told Pillsbury that they did not push Ms. Tisdale or Ms. Davis to file complaints.

In social media policy we say: ...

15.9.4.1. RWA Directors, chapter officers, committee members and task force members should understand that by virtue of their leadership positions, their communications might be perceived by third parties as being made on behalf of RWA. While RWA embraces freedom of communication, that freedom must be balanced against one's duties to RWA.

As Ethics Chair I do think we have a potential perception problem and an issue with this Courtney speaking on ethics related issues in this way. I think we need to write to her, advise her of this section and spell [out] the concerns. The problem, of course, is timing. Whatever happens – if Courtney wants to apologize or step down or whatever – will likely fall under your presidency.

Do you have a preference or thoughts on how to proceed? I don't want to launch a grenade and then have it explode on you during the first few days of being president and you get stuck handling it all, but oversight likely requires we do something. Should you handle, should we do it together...thoughts?

Ms. Kelley prompted replied: “FYI, the complaints continue and authors are alleging defamation and injury to their careers.”

Ms. Jewel suggested notifying Ms. Milan that RWA is “worried that the current discussions about the Sue G matter, which has spiraled to at least one other author, are running afoul of” the policy on use of social media by committee members. Ms. Ritter emailed the group to alert them that she and Ms. Kelley “are on the phone” with RWA’s corporate counsel, and that he “thinks RWA is at risk b/c Courtney has an official capacity with RWA.”²⁶

That evening, Ms. Tisdale submitted a formal ethics complaint against Ms. Milan.

The next day, Ms. Dimon, Ms. Jewel, Ms. Kelley, and Ms. Ritter continued their discussions of how to address Ms. Milan’s role as Ethics Committee Chair and continued to consult with corporate counsel about what procedural steps to pursue. In an email on August 28, corporate counsel advised, “I don’t think you are going to have any choice but to proceed with the ethics complaint against [Ms. Milan].” Later that day, he reiterated: “I believe RWA needs to act on this complaint.... Here, a temporary chair of the Ethics Committee will need to be appointed as Courtney will need to recuse herself from the Committee’s proceedings (if she doesn’t resign as chair first).” RWA did not engage in any further consultation with corporate counsel

²⁶ In accordance with its commitment to transparency of the independent audit findings, the RWA Board authorized Pillsbury to include in its report relevant accounts of communications with RWA’s corporate counsel, even though those communications would otherwise be protected from disclosure due to attorney-client privilege.

relating to the ethics complaints against Ms. Milan between the end of August 2019 and December 26, 2019, after Ms. Jewel resigned as President.

The following day, on August 29, Ms. Dimon emailed Ms. Milan, asking her to step down as Ethics Chair:

RWA's attorney reviewed your Tweets after we received several complaints about them. He is concerned that the Tweets suggesting that RWA members file complaints with RWA is a potential conflict of interest in your position as RWA Ethics Committee Chair, in that they give the impression you are speaking on behalf of RWA, and that they could subject RWA to potential liability for defamation, tortious interference, and other possible claims.

Since hearing from the attorney, a member has filed an ethics complaint against you with RWA. Allison will be contacting you about that if she hasn't already. I've discussed the attorney's concerns with Carolyn, since we are nearing the end of the Board year and this impacts her upcoming year as Board president. We both think the best solution would be for you to voluntarily step down as RWA Ethics Committee Chair. This eliminates any conflict of interest issue with the complaint against you that will be coming before the Committee. In any event, you would need to recuse yourself from the Committee's deliberations. I don't think it resolves the potential liability issue, but we will need to wait and see.

We won't make an announcement of any type. We'll simply appoint a new Ethics Committee Chair and move forward from there, with all ethics issues being confidential, as always.

Ms. Milan responded within 15 minutes, offering her resignation.²⁷

On August 30, 2019, Allison Kelley emailed Ms. Dimon:

I respectfully ask to recuse myself from this particular complaint. I will send the letter to notify Courtney, but after that, with your permission, Carol will work with the review panel.

After defending Courtney's right to free speech to members for at least four years, I have reached my limit. I honestly and sincerely appreciate that

²⁷ Ms. Milan told Pillsbury that she does not view Ms. Dimon's request for her to step down as Ethics Committee Chair as improper, but she regards it as "a little overly cautious."

Courtney opened my eyes to problems I was blind to, but I simply cannot defend her tactics.²⁸

After that, Ms. Kelley's role in the matter was very limited. She sent Ms. Tisdale's complaint to Ms. Milan that same day, in accordance with RWA's procedures. Ms. Kelley also forwarded to Ms. Ritter any of the email communications on the matter that Ms. Ritter had not previously received, and she turned the matter over to Ms. Ritter. When Ms. Davis submitted her formal complaint, Ms. Ritter forwarded it to Ms. Milan. Ms. Kelley assisted in identifying candidates for the Ethics Committee pool, but she did not participate substantively in the work of the selected Committee members in reviewing the complaints against Ms. Milan.

On August 31, Ms. Milan emailed both Ms. Dimon and Ms. Jewel:

I hereby officially disagree with those claims for the record. I don't want to unresign—my policy has always been that if you want my service, you have it, and if you don't, I will spare myself the workload—but I will remind HelenKay that I explicitly told her this could be an issue when she asked me to serve.

For Carolyn: Now that I have had a chance to review this complaint and think about it in depth, we are going to have to talk at some point about the fact that staff did not follow their usual procedure for Ethics complaints in this case—a thing that I am personally aware of, since I have had discussions with Allison about usual procedure, which I suspect very few other people have.

I can only guess at the reasons, and while I'm sure that the thinking was that this was in the institution's best interest and not anything personal to me, I am also not okay with the fact that I have not been given the same procedure as others.²⁹

²⁸ Ms. Kelley explained to Pillsbury that she had additional reasons to recuse herself: she was "out of energy," was going to be out of the office for much of October, and was scheduled to retire as Executive Director on October 31, 2019.

²⁹ Ms. Milan told Pillsbury that she viewed the Tisdale complaint as not containing substantial evidence of a violation of the Code and as addressing conduct occurring on non-RWA sponsored social media, which is excluded from the coverage of the member-to-member conduct prohibition. Ms. Milan's understanding of the "usual procedure" was that staff would not forward such complaints to the Ethics Committee for review. Since the Tisdale ethics complaint was referred to the Ethics Committee for consideration, Ms. Milan regarded that as a deviation from "usual procedure." Ms. Milan explained to Pillsbury that, at the time she sent her August 31 email, she "believed that because Tisdale had threatened a lawsuit, Allison Kelley had sent the matter on to the Ethics Committee in an abundance of caution to avoid potential liability." Ms. Jewel initially told Ms. Milan that she would get back to her in response to her email after the holiday weekend, but she never followed up with Ms. Milan.

On September 1, 2019, Ms. Jewel's term as President began, and Ms. Dimon no longer served on the Board.

On September 4, 2019, Ms. Milan submitted a formal response to the Tisdale complaint, and on September 11, she submitted a formal response to the Davis complaint.

The Tisdale and Davis complaints and Ms. Milan's responses to them, as well as all supporting materials submitted with them, are included in the Appendix to this report. The Tisdale complaint consisted of seven pages, which included images of screenshots of social media postings. The Davis complaint consisted of thirteen pages, which included images of screenshots of social media postings. Ms. Milan's response to the Tisdale complaint was seven pages long, including some screenshots, and accompanied by voluminous exhibits (Exhibits A through S) that showed the full threads of pertinent social media posts and exchanges, by Ms. Milan and others, that were relevant to the allegations against her. Ms. Milan's response to the Davis complaint was three pages long and expressly incorporated Ms. Milan's response to the Tisdale complaint and the supporting exhibits. This report will address key aspects of those submissions, but we will not undertake in the body of the report to describe fully all of the allegations and responses.

D. Establishing a new Ethics Committee Panel

Ms. Jewel promptly identified a replacement chairperson for the Ethics Committee who agreed to serve out the remainder of Ms. Milan's term, and she notified Ms. Kelley of that on September 1. Ms. Jewel also decided to constitute an entirely new Ethics Committee panel and to establish a firewall between it and the existing Ethics Committee. In a phone call with Ms. Ritter, Ms. Jewel raised two concerns. She did not want to ask current Ethics Committee members who had served on the Committee under Ms. Milan's leadership to consider ruling against their former Chair. In addition, Ms. Jewel was concerned that, even if current Ethics Committee members felt they could review the complaints fairly and thus chose not to recuse themselves, there would be the appearance of a conflict of interest that might lead the complainants to perceive that their complaints had not been fairly reviewed.

On September 10, the Board appointed an interim Ethics Chair in Executive Session via a conference call. On September 13, the successor Committee Chair notified Ms. Jewel of a change of mind and declined to serve. The individual shared in conversation with Ms. Jewel that a motivating concern was that the individual's identity would be leaked by the Board,³⁰ and that the individual might experience

³⁰ Some of the participants interviewed by Pillsbury stated that there have been past incidents of Board members disclosing information from confidential Executive Sessions. The Ethics Committee Chair told Pillsbury that Ethics Committee members were gravely concerned about leaks of their identities.

career-harming backlash or online attacks as a result of involvement with the ethics complaint process.

On September 25, at Ms. Jewel's request, Ms. Ritter forwarded Ms. Jewel a list of names for potential new members of the Committee. She stated that she and Ms. Kelley "were trying to locate members that we thought were trustworthy, could be neutral and fair, some with past board experience, etc.... Allison is not sure if the other members of the ethics committee have been informed that we are looking for additional members, and thought they should be warned."³¹ Over the next two weeks, RWA staff worked with Ms. Jewel to recruit volunteers for the Ethics Committee pool and to identify a new candidate to chair the Committee. On October 1, RWA sent out an all-member message that "RWA is looking for volunteers for our Policy Advisory and Ethics Committees," with information about both committees and instructions on how to apply. Ms. Jewel or Ms. Kelley contacted volunteers that Ms. Jewel had identified for the expanded panel, taking care to ensure that the pool included diverse members. At its Board meeting held the first weekend in October, the Board approved in confidential Executive Session a new slate of additional Ethics Committee members and a new Ethics Committee Chair. The Board was not told that the expanded pool was for the purpose of establishing a separate Ethics Committee panel, nor was the Board told that ethics complaints had been filed against Ms. Milan.

The new Chair of the Ethics Committee panel that was constituted to review the complaints against Ms. Milan had past experience serving on RWA's Ethics Committee. The Chair did not select the individuals serving on the panel but learned their names when notified of her appointment as Chair. With respect to the existing Ethics Committee panel, her understanding was that "there would be no intersection because of perceived conflict of interest from the initial committee."³²

E. The Ethics Committee Review of the Tisdale and Davis Complaints

RWA established a confidential Ethics Committee "loop" for the panel reviewing the complaints against Ms. Milan, and the members of the Committee were all required to sign the *Combined Confidentiality and Conflict of Interest Form*. Ms. Ritter, as staff liaison, and Ms. Jewel, as an *ex officio* member of the Committee due to her position of President, were also added to the forum. Damon Suede, as President-Elect, was

³¹ Ms. Jewel ultimately decided not to notify the current members of the Ethics Committee pool about the new additions or the review of the ethics complaints against Ms. Milan.

³² On October 7, 2019, Ms. Jewel emailed the Ethics Committee Chair, explaining that "Our plan is to have two forums – one will be the existing forum and its current members and another consisting of the new members. I feel it's important to maintain a firewall between committee members who were working under the previous chair and the new members." On October 9, Ms. Jewel provided further explanation: "on the chance that the original committee members have an issue with the subject of the pending complaints we wanted to keep the new members separate. We didn't want unintentional comments or remarks by the former group regarding that subject to affect or influence the new members."

added to the forums for all committees. On October 21, 2019, Ms. Ritter uploaded the Tisdale and Davis complaints, Ms. Milan's responses, and all supporting documentation to the Ethics Committee Dropbox folder, with a link provided on the Ethics Committee forum.

Ms. Milan's response to the Tisdale complaint included a reference to Ms. Jewel:

Public attention first came to [the Sue Grimshaw] matter on August 7, 2019, when Carolyn Jewel tweeted as follows: "Well, I saw that someone who's been YEARS in the publishing (not writing) business liked a highly problematic tweet and when I checked if that was an accident, their timeline was full of likes of hateful, racist tweets. Sorry, but blocked."

Shortly after reviewing Ms. Milan's response, Ms. Jewel notified Mr. Suede, Ms. Ritter, and Ethics Committee Chair that she had decided to recuse herself. In an email dated October 22, 2019, Ms. Jewel wrote:

In reviewing the materials for a matter before the ethics committee, I saw that one of the parties included a tweet of mine in their supporting materials. I spoke about this with Carol and we agreed that we do not want even the appearance of a Board Member/President having a preconceived opinion or any degree of conflict when it comes time to vote. Nor do we want there to be any question about the fairness of the conduct of the matter or its conclusion, whatever that might be.

I asked Carol to remove me from that ethics forum and from the Dropbox folder of materials. I will be abstaining from any vote on this matter and recusing from any Board discussion.

Damon, you will be added to that forum in my place.

Mr. Suede had not previously been aware that formal ethics complaints had been filed against Ms. Milan. Ms. Jewel did not participate in any further manner in the Ethics Committee panel's activities regarding the Tisdale and Davis complaints.

The Ethics Committee panel engaged in a small amount of discussion of the Tisdale and Davis complaints or the materials before the Committee met by Zoom videoconference on November 19, 2019. The majority of the discussions on the Ethics Committee forum prior to the meeting related to scheduling the meeting. On November 1, however, the Chair posted a question to the Committee: "Are we all satisfied with the information that has been provided, or do we wish to have additional documentation? Is there anything we already have that needs clarification?"

One Committee member responded:

In terms of info, I would like to know if everyone who can view this committee's posts is required to sign the confidentiality agreement we received. In other words, can other board members review the posts, or members of the staff, and if so do they first have to sign the agreement?

As for information regarding this complaint, I believe I have what I need already, and do not need more. It seems to me that considering the board did exclude social media – for whatever reason – in doing so they pretty much gutted that provision of the ethics policy that has to do with harming another member's business, career, etc. I'm not sure why we even have that clause now.

That day, Ms. Ritter contacted Mr. Suede and said that the Ethics Committee panel had concerns about breaches of confidentiality by anyone participating in the case. She asked if Mr. Suede felt comfortable signing a separate confidentiality agreement than the one signed by all Board members. He agreed. Both Ms. Ritter and Mr. Suede signed confidentiality agreements, the content of which largely tracked the agreements signed by Ethics Committee members. The agreements called for disclosure of any conflict of interest relating to the complainants or the accused. In addition, the agreements stated:

I am aware that, during the course of my service as either Board or RWA staff liaison for the Ethics Committee, confidential information will be made available to me. I acknowledge my full understanding of my duty to show discretion concerning membership information and to keep confidential all committee business designated as being privileged or sensitive.

I hereby agree that upon completion of the committee's review and filing of a report on this matter for the Board, I shall promptly destroy or return all confidential materials. I agree and understand that my failure to comply with the intent and letter of this statement shall place my RWA membership/employment in jeopardy and might leave me liable for any damages that result from my breach of this agreement.

On November 2, Ms. Ritter responded to the member's comment on the Ethics Committee forum:

I can confirm that every member of this committee has signed the combined confidentiality and conflict of interest form. I am the staff liaison and Damon Suede is the board liaison. We have both signed the confidentiality and conflict of interest form for RWA staff and board liaisons. We are the only two people outside the committee that are allowed access to this forum. Our role on the forum is to respond to questions or assist in gathering additional information when requested. Our role is not to participate in the discussion or be involved in the decisions made by the committee.

On November 8, Ms. Ritter forwarded the Ethics Committee Chair the template for the Ethics Committee report. Ms. Ritter stated that the “ethics report template ... should help. The committee should decide in favor or not and if need[ed] (based on decision) should also make a recommendation.”

Prior to the Committee’s meeting, Ms. Ritter also responded to a Committee member’s question on the forum with timeline information on Ms. Milan’s Board and Committee service.

The Ethics Committee meeting on November 19 lasted for over two hours. Pillsbury interviewed the Ethics Committee Chair, Ms. Ritter, and Mr. Suede about the Committee’s discussions in the meeting, and their accounts were consistent.

The panel discussed the allegations in the complaint in accordance with each alleged violation of the Code and also as whole.³³ The Committee reviewed no evidence other than the documents in the Tisdale and Davis complaints, Ms. Milan’s responses, and the supporting exhibits, which they discussed in light of the policy violations that each complainant had asserted. The evidence consisted of:

- (1) Extensive social media posts by Ms. Milan and others, critical of (i) Sue Grimshaw’s social media commentary and actions as a buyer for Borders to the alleged detriment of authors of color and authors of romance novels that depicted diverse characters, (ii) Suzan Tisdale’s response to the Grimshaw concerns, in particular the content of her defense of Ms. Grimshaw and of Glenfinnan Publishing, and (iii) depictions of Chinese characters in Kathryn Lynn Davis’s novel *Somewhere Lies the Moon*. The tone of Ms. Milan’s posts was inflammatory, suggesting that both Ms. Tisdale and Ms. Davis “sound racist” – in posts that included swear words – and referring to Ms. Davis’s novel as “shit,” as well as stating about Glenfinnan Publishing that “I hope your institution fails.”
- (2) Assertions by Ms. Davis and Ms. Tisdale that each had suffered business injury as a result of the attacks and negative attention on social media. Ms. Davis asserted that because of Ms. Milan’s “cyber-bullying, I lost a three-book contract that had been promised to me ... with a publisher whom I cannot name because they fear having their own name linked to Ms. Milan’s.”³⁴ Ms. Tisdale asserted that she “lost three of my Glenfinnan authors – not because they agreed with Ms. Milan and those of her ilk, but

³³ The discussion began with a review of confidentiality expectations. Some Committee members expressed concerns about the danger of online vilification if anything leaked.

³⁴ Newspaper articles about Ms. Davis note that she has since conceded that she had no written contract for the three-book deal. In her interview with Pillsbury, Ms. Davis explained that she had accepted an oral offer for a three-book deal, had discussed and come to agreement on all the terms but one, and was awaiting receipt of the written contract to review. The publisher then told Ms. Davis it was withdrawing the offer because of the accusations of racism against her.

because they are afraid of any backlash from Ms. Milan, ... that if Ms. Milan starts attacking them, they will lose future contracts and sales.... These attacks are costing us potential income.”

- (3) Assertions by Ms. Tisdale and Ms. Davis that Ms. Milan’s leadership role with RWA when she made these posts exacerbated the harm they experienced. Ms. Davis wrote that Ms. Milan “is a well-known voice for RWA, particularly for the Ethics Committee, and in regard to the question of diversity. Through cyber attacks such as this one, she is increasing public awareness in a very negative way, harming me and many others and making it more difficult for us to earn a living as full-time writers.”³⁵ Ms. Davis asked that Ms. Milan “cannot be allowed to hold a position of authority or to use her voice to urge others to follow her lead.” Ms. Tisdale argued that it was wrong for

Ms. Milan [to] be the chair of the RWA Ethics Committee when she continually and repeatedly behaves in this manner and launches disgusting attacks against other authors and other RWA members.... Because Ms. Milan helped put into the code of ethics rules ‘what happens on twitter stays on twitter,’ she is allowed to bully innocent people unchecked and unrestrained. Ms. Milan is not what the face of RWA needs to be.

- (4) Exchanges between Ms. Milan and Ms. Tisdale via Twitter. These messages were not included in either the Tisdale or Davis complaints; rather, Ms. Milan had included screenshots of the messages in her response to the Tisdale complaint. The exchanges related to Ms. Milan posing questions about Glenfinnan’s process of selecting manuscripts and whether the company had published authors of color. Ms. Milan then made public posts commenting critically on Ms. Tisdale’s responses to those questions.³⁶
- (5) Evidence, from Ms. Milan, that many other individuals had engaged in similar social media criticisms of Ms. Tisdale and of Ms. Davis’s novel.

³⁵ In her interview with Pillsbury, Ms. Davis said that she would have filed her complaint even if Ms. Milan had been a rank-and-file member, given the number of followers Ms. Milan had on social media, but that she also felt that Ms. Milan was not acting ethically in taking excerpts of her book out of context, attacking it as racist without reading it or approaching Ms. Davis directly to discuss it, and using “foul language” with an “army to echo it.”

³⁶ It appears that these exchanges were both direct messages between Ms. Milan and Ms. Tisdale and posted publicly simultaneously to Ms. Milan’s Twitter page, as they were addressed to both @suzantisdale and @courtneymilan. Ms. Milan submission of supporting materials included texts between Ms. Tisdale and another author, which occurred outside of social media, but which were later referenced in social media posts.

In addition to the evidence, Ms. Milan’s submissions advanced arguments against the allegations that her conduct violated the Code. In pertinent part,³⁷ her arguments included:

- The assertion that she did not violate RWA’s anti-discrimination policy as set out in Section 6.1 of the Policy Manual: “A violation of this provision requires me to have discriminated against [Ms. Davis] because of her race. Discussing how I believe *all* authors should write characters of a certain race is not discrimination on the basis of race. The way I responded to her had nothing to do with her whiteness, and everything to do with the fact that I believed her book was harmful.... I believe that writers should write about marginalized people with care and respect, and be aware that they have the potential to do harm.”
- A rejection of Ms. Davis’s defense that her book is historically accurate, which Ms. Milan argued lack evidence and did not in any case “trum[p] my actual lived experience and family history—so much so that I should not be allowed to voice my honest opinion about her book. My honest opinion about the flaws in her book are not things that I made up to punish her for writing while white; they are sincere beliefs shared by many other people.... But even if I was entirely mistaken about everything I said about her book, RWA’s Code of Ethics is very clearly meant to exclude honest discussions of books.”
- The assertion that “The tweets [Ms. Tisdale] highlights are a discussion of business practices. Discussing the character and content of several editors who are selling services to authors as independent editors, and who are the editors of record for a publisher that publishes authors, is a business discussion.... Tisdale also references my commentary on a book, which is clearly an honest discussion of that book. I also believe that my statements are true, and that we have a personal disagreement on the meaning of the word ‘racism’ which has led to this dispute.”
- An assertion that she did not engage in “conduct injurious to RWA,” for two reasons:
 - “(1) I asked [Ms. Tisdale] how many authors of color [her company] had published, and was critical of her answer. This question is not injurious to RWA or its purposes; in fact, the question of how many authors of color a publishing house publishes is one of significant

³⁷ This report will not address the asserted Code violations by the complainants on which the Ethics Committee recommended in favor of Ms. Milan and on which the Board also found in favor of Ms. Milan in its December 17th meeting. The arguments, evidence, and basis for the Ethics Committee’s recommended findings on those points are laid out in the materials in the Appendix.

interest to both RWA and the romance community.

- (2) [In reference to Ms. Milan’s description of Ms. Davis’s book]: “To clarify: the tweet in question states that the book is a racist mess.... The character in question is, like me, half-Chinese. My explanation of why the book was harmful stems from my lived experience and is relevant and useful to authors who don’t want to harm others. Educating authors on how to strive for excellence in fiction is one of RWA’s purposes.... I do not believe that it serves RWA’s interests or purposes to ask members to refrain from sincere, emotional discussions of racial stereotypes in romance fiction; instead, I believe that open discussions of how to avoid negative depictions of characters of color are absolutely necessary for RWA’s future.”

The Committee found in favor of Ms. Milan on all alleged violations but one: the prohibition on “*Repeatedly or intentionally engaging in conduct injurious to RWA or its purposes.*” The Committee interpreted that provision as incorporating RWA’s statement of its “General Policy” in Section 6.1 of the Policy Manual: “*In order to create a safe and respectful environment, invidious discrimination is prohibited in RWA.*” They focused especially on the idea of “invidious discrimination.” One member looked up an online definition of the phrase, which is undefined in the Policy Manual. The definition the Committee used was “By word or deed likely to arouse, inflame, or incur resentment or anger in others; tending to cause discontent, animosity, envy; words that created an unjust comparison or were unfairly discriminating.”³⁸ The Committee concluded that it could consider Ms. Milan’s social media posts with respect to the “*conduct injurious to RWA*” provision, because the exclusion of social media related only to the Code provision prohibiting member-to-member harassment or intimidating conduct.

The Committee did not engage in discussion of whether Ms. Milan’s social media posts were racially motivated or otherwise discriminatory. The Ethics Committee Chair told Pillsbury that the Committee members “really focused on the attack itself” and “the specific language that [Ms. Milan] used,” including the use of swear words. That the attack used inflammatory language against members of RWA was what Committee members found the most compelling. The Ethics Committee Chair said that, if Ms. Milan had more calmly and in less “incendiary” fashion expressed her opinion that certain conduct or a novel was racist, that would likely have resulted in a different decision by the Committee: “I think that probably would have cast it very differently, the language itself was so incendiary, it was so problematic, so horrible. It was considered a very horrific thing to go after another member of RWA’s publishing house, and the reputation of RWA would suffer probably as much as anything else.”

³⁸ Pillsbury has not been able to identify the source of this definition, which is a nonstandard definition. A standard legal definition is “Treating a class of persons unequally in a manner that is malicious, hostile, or damaging” (see https://www.law.cornell.edu/wex/invidious_discrimination).

The Committee did not regard the tone of Ms. Milan’s comments as “safe and respectful” for a community of writers.

Committee members brought up Ms. Milan’s leadership role on the Ethics Committee, which she held at the time of the comments at issue, her past Board service, and the negative impact they viewed these inflammatory interactions as having on RWA’s reputation and sense of community. One member of the Committee stated the view that this kind of intentional online hostility undermined RWA’s best efforts with Diversity, Equity, and Inclusion. The Committee did not give particular weight to the alleged loss of a book contract; one Committee member mentioned that lost book deals were common in the industry. Rather, the Committee’s shared view was that Ms. Milan’s methods, rhetoric, and apparent intentional targeting of other RWA members with “incendiary” language injured the interests of RWA as an organization and damaged the kind of community that RWA aims to be.

The Committee unanimously voted to recommend a finding of violation on the “conduct injurious to RWA or its purposes” accusation. Mr. Suede did not vote. One Committee member proposed a lifetime revocation of membership, but that suggestion was quickly rejected. The Committee decided to recommend three sanctions: (i) a censure, to explain the basis for the finding against Ms. Milan, (ii) a one-year suspension of her membership, as a short-term punishment that would allow her to return, and (iii) a permanent ban on holding a leadership position at RWA.

A few days after the conclusion of the Committee meeting, the Ethics Committee Chair wrote up the report of the Ethics Committee, using the template she had been provided as a base. The Chair first shared the draft of the report with the Committee and with Ms. Ritter, but no substantive revisions were made to the draft in that process.

The full Ethics Committee Report – just over four pages – is included in the Appendix to this report. No documentation or exhibits were included with the Report. The Report detailed the complaints against Ms. Milan as follows:

Suzan Tisdale outlined [her] allegations in a letter to the RWA Board Members and Ethics Committee, received by the Executive Director, and supported the allegations with a stream of social media posts that disparaged Ms. Tisdale, her publishing company (Glenfinnan Publishing), and several of her acquiring editors. Most particularly, Ms. Tisdale and her associates were accused of being racists in derogatory terms.

The committee received a corollary complaint filed by member Kathryn Lynn Davis against fellow member Courtney Milan, alleging several violations of the RWA Code of Ethics, and alleging the consequence of which was the loss of a three-book contract... [Ms. Davis] supported the allegations with screen

shots of social media posts posted by Ms. Milan. These highlighted passages in Ms. Davis's books, most particularly in *Somewhere Lies the Moon*, published twenty years ago.

The Report also listed the specific provisions of the Code that Ms. Tisdale and Ms. Davis accused Ms. Milan of violating.

The Report summarized Ms. Milan's response to Ms. Tisdale's complaint as follows:

Ms. Milan responded to the committee in writing and justified the language cited in Ms. Tisdale's accusations. In a lengthy rebuttal of the evidence presented, Ms. Milan particularly noted, among other points:

1. She is a Chinese-American woman who spoke out against negative stereotypes of Chinese-American women.
2. The issue was discussed by many members of the writing community before August 16, 2019, when she joined the conversation in earnest.
3. She did not refer to an acquiring editor of Glenfinnan as a "fucking racist mess" but was referring to a book.
4. Ms. Tisdale does not assert any conduct on the part of Ms. Milan which is in violation of the RWA Code of Ethics, and enumerates the various sections she cites in the complaint as "clearly inapplicable on their face."

The Report summarized Ms. Milan's response to Ms. Davis's complaint as follows:

Ms. Milan ... only referenced Ms. Davis in regard to the complaints submitted by Suzan Tisdale [and added]:

"My objections to [*Somewhere Lies the Moon*] were laid out in full Exhibit O (sic). While she refers to the thread as 'false,' she does not explain what is false about them, and indeed, the majority of the thread consists of direct screenshots from the book so those who follow along can make up their own mind. I continue to believe the book by Davis was a racist mess."

The Report provided a one-paragraph explanation for the Committee's reasoning for finding a violation of the Code, using the same rationale for its findings with respect to both the Tisdale and the Davis complaints:

In the matter of engaging in conduct injurious to RWA or its purposes (Section 6.1.1), the committee determined that Ms. Milan's comments were in violation of the organization's expressed purpose of creating a "safe and respectful environment" for its community of writers. Most particularly, the committee considered the legal phrase of "invidious discrimination," defined as "By word or deed likely to arouse, inflame, or incur resentment or anger in others; tending to cause discontent, animosity, envy; words that created an unjust comparison or were unfairly discriminating," as being applicable to this

case. In addition, the committee determined that Section 6.1.1 is not qualified by Section 15.9.4[’s exclusion of social media comments] (noted below).

Finally, the Report included a recommendation for the Board to review the social media exclusion from the Code provision prohibiting member-to-member harassment: “Inasmuch as the committee felt its hands were tied in the matter of adjudicating postings on social media not operated by RWA, no matter how egregious the author’s intent, the committee recommends that the RWA Board revisit this matter with respect to the circumstances of this complaint.”

F. The Board’s Initial Decision on the Tisdale and Davis Complaints

On December 11, 2019, then-President Carolyn Jewel posted in the Executive Session “loop” that a Board meeting had been set to review the Ethics Committee Report, that would be “uploaded for everyone to read and consider shortly.” Ms. Jewel wrote:

The Board’s duty is to consider the report and either accept or reject the findings. The committee considered extensive documentation and engaged in hours of discussion prior to producing this report. The Board should not relitigate, change, or modify the conclusions the committee reached.

To the extent that there are recommendations for penalties, the Board’s task is to either accept the Ethics Committee’s recommendations or reject them. If the penalty recommendations are not accepted, then the Board must decide what penalty(ies) is/are appropriate, if any.

I have recused myself from discussion of this matter, and Damon was added to the forum to manage and oversee the matter. Although I saw the complaints that were filed and I have read the Committee’s report, I was not a member of the forum the Ethics Committee used for discussion and consideration of this matter. I did not see any documents that might have been filed after the complaints.

Damon will direct the discussion, but I will be assisting in keeping the discussion on track and from diving into weeds.

Please do not discuss any part of this report anywhere, including on this loop. I’ll repeat a previous reminder that private messages and texts may not stay private even though you are absolutely sure they will. The Board’s discussion should take place only on the call.

If, however, you have questions about the process, Damon, Carol, or I can answer them here.³⁹

The Board convened by Zoom videoconference on the evening of December 17th to discuss the ethics complaints against Ms. Milan. Ms. Ritter, who was then serving as Executive Director, also attended the call. Ms. Jewel reiterated that she had recused herself from the decision and turned the meeting over to Mr. Suede as President-Elect, but she did not explain the reason for her recusal.⁴⁰

From the start of the meeting, many members asked for more specifics from the Ethics Committee discussion and specifics from the evidence. They expressed the view that the Ethics Committee Report stated what the Committee had decided and their reasons, but it did not identify the factual basis for the Committee's recommended findings. Board members pressed Mr. Suede for more information, as he had observed the Committee's deliberations. Mr. Suede stated that he and Ms. Ritter had signed confidentiality agreements with the Ethics Committee, so he did not feel comfortable answering questions about evidence that was not described in the Report. Ms. Jewel commented that, as a strategic board, the Board's job was to oversee committee work and assess appropriate responses for the association.⁴¹

Mr. Suede stated that the Committee had taken hours in their deliberation and assured the Board that the Committee had gone line by line, sometimes word by word, through the complaints and the Code.

Board members expressed frustration that as "jurors" they were not being allowed to see the case unfold fully in real time, to review the evidence themselves. Several Directors asked why confidentiality was so important: if they had the report, why could they not review all the materials the Ethics Committee panel had seen? One Board member asked whether the Board was expected to "rubber stamp" the findings. Ms. Ritter cited to the Policy Manual and stated that the Board's job was to accept or reject the Report, and if it was accepted to then decide on appropriate punishment.

Several Board members pointed out that for previous ethics complaints, the Board indeed received excerpts of the referenced conduct along with the Ethics Committee report. Mr. Suede said that in this case, it would be impossible to cherry-pick such screenshots, and besides it was unnecessary to do so. At some point during the meeting, Mr. Suede described the evidence as both "overwhelming" – with "reams and reams" of documents – and "egregious." According to the accounts of some

³⁹ Some Board members told Pillsbury that they found these instructions off-putting and at odds with their prior experience of review ethics complaints that had gone before the Board.

⁴⁰ Ms. Jewel explained the basis for her recusal during the Board's December 24th Executive Session.

⁴¹ According to information shared with Pillsbury, RWA leadership had received training on the importance of boards operating on a strategic level and not interfering operationally with how RWA staff carried out the work of RWA, other than through the Board's role in supervising RWA's Executive Director.

Board members, Mr. Suede stated his confidence that the Committee had reached the correct conclusions.⁴²

One Board member asked why the findings acknowledged the social media carve-out, but still sanctioned Ms. Milan; if her tweets were not the primary focus, how did the Committee come to any conclusions at all? Mr. Suede stated that the decision had involved more than tweets seen publicly. He checked with Ms. Ritter about what he could say, and she suggested he keep the explanation general.

Mr. Suede told Pillsbury how he described the information to the Board:

I explained that the ethics panel had reviewed material that wasn't visible online, and that private communication had played a factor. [One Board member] asked again if this evidence involved discussion that wasn't held in public on social media. I confirmed that was so. I also pointed out that the panel had expressed repeatedly a strong hope that the Board would deal with the social media loophole because that exception in the harassment policy had left their hands tied; [the Committee] stated plainly multiple times that Milan's behavior was so abusive and egregious that any professional organization should have policy in place to protect members, especially from its leaders. I pointed the directors to that explicit concern in the report.

I spoke in generality about the discussion and the panel's concerns about a "hostile workplace." [Board members] asked me to explain the logic of the ruling and I compared it to coming into an office where you are threatened, harassed, and attacked every day by people in authority.

Several Board members told Pillsbury that Mr. Suede stated that Ms. Milan's behavior was analogous to a boss repeatedly "whipping his penis out."

Against this backdrop, the Board discussed both the concept of "conduct injurious to RWA and its purposes" and "invidious discrimination." The Board discussed that Ms. Milan was the Ethics Committee Chair at the time of the conduct in question, and that it could hurt RWA to hold a position of power and "assault a member essentially." Mr. Suede stated the Committee had found that Ms. Milan's behavior could not be acceptable from any member because it went against RWA's mission, which includes advocacy for all romance writers. He also stated that Ms. Milan had made RWA an unsafe space for members with the hostility of her attacks, and that it

⁴² There are no detailed minutes or recordings of the Executive Session. Pillsbury interviewed or was provided statements by all but two of participants in the meeting, and this report recounts the consistent recollections of participants. Unless the report attributes a recollection to a specific participant, all events described in the report were recounted to Pillsbury by two or more participants. Many of the participants were unsure of the order in which Board discussion proceeded, however. Some of the comments related here may therefore have been discussed earlier or later in the meeting than described here.

was important for RWA to demonstrate that the organization supports inclusivity for all members.

Several Board members stated again that they wished that the Report had given them more of a narrative so they could understand all the factors and documents that had gone into the decision. Two Board members said that the violation was not clear at all. Mr. Suede read aloud from the Report and stated that it seemed perfectly clear to him, that the Report spoke for itself. Several Board members expressed that it also seemed straightforward to them, because the Committee had found that Ms. Milan engaged in invidious discrimination.⁴³ Mr. Suede said that there was “extensive evidence” that Ms. Milan’s conduct was “very bad.” Other directors again asked for corroborative detail to help them make sense of the report.

Ms. Jewel stated that, if the Board trusted the panel to do their job, then it had to consider the report as it stands and respond with any appropriate sanctions if necessary. The dissenting members said they trusted the panel, but they needed to know why and how they had made each decision. Ms. Jewel said that doing so was by definition not trusting the Committee. One Board member said that the Board itself had voted in every member of the Ethics Committee and should trust the Committee to have done its work.

Ms. Ritter stated that if the Report did not answer the Board’s questions, the Board could send it back for expansion or another review of the case. Mr. Suede stated that no recent board had ever rejected an Ethics Committee’s findings. Ms. Jewel said that she was uncertain of whether sending the Report back would also require impaneling a new Ethics Committee panel – that would have to be discussed later. Ms. Ritter said that, while the Board could send the report back to the Ethics Committee if they felt it was invalid or incomplete, the Ethics Committee could only reexamine the complaints, and that the report could not be sent back with an expectation of a different finding. One member asked what would happen if, when the Ethics Committee report was returned, they reached the “same result.” Mr. Suede suggested that the Ethics Committee would not provide the Board the full complaints if the Board sent the matter back to the Ethics Committee. He reminded the Board that they could also vote “no” if they didn’t accept the Committee’s report, and he told the Board members to vote their conscience. Several Board members nonetheless reported to Pillsbury that they felt that pressured not to take the approach of returning the report to the Ethics Committee, based on the tone of the responses to their

⁴³ In an interview with Pillsbury, one of these Board members explained that the use of the term “invidious discrimination” implied behavior at a level of egregiousness that would violate the Code. The Board member was therefore comfortable voting in favor of a finding of a violation against Ms. Milan without knowing the specific nature of her conduct, because the Board member felt that the Report had defined Ms. Milan’s conduct as in the nature of invidious discrimination. The Board member confirmed that the use of a term like “sexual assault” would be comparable – although that term encompasses a range of behavior, any conduct meeting that definition would be unacceptable, and details would not be required to reach that judgment.

questions; they told Pillsbury that their impression was that sending the report back would result in a misuse of volunteers' time.

Shortly before the vote, a Board member asked if RWA's attorney had been contacted about this and, if so, what the attorney had said. Ms. Ritter said that yes, RWA's attorney was aware of the complaints. She said the attorney had been concerned about Ms. Milan's actions and recommended that "action should be taken," and that RWA faced potential litigation because of how it looked for Ms. Milan to have engaged in this conduct while Chair of the Ethics Committee.

Ultimately, the Board voted to accept the findings of the Ethics Committee on the ethics complaints against Ms. Milan, by roll call vote with ten ayes, five nays, and one abstention. Several Board members who voted in favor of a finding against Ms. Milan told Pillsbury that they were uncomfortable with the lack of evidence but felt pressured to "trust" the Committee. They said that they relied on the characterization of Ms. Milan's conduct as egregious, and on Mr. Suede's statement that the finding of violation included conduct outside of social media.

For the discussion of sanctions, Ms. Ritter read from the policy manual about censures, suspensions, and bans. Several Board members expressed hesitation about censuring Ms. Milan, as recommended by the Ethics Committee. Mr. Suede stated his view that if the Board did not censure her, there would be no way for RWA to explain clearly to the membership what she had done or why she had been found culpable. The majority of Board members disagreed, saying that ethics complaints were never made public, and so by not censuring Ms. Milan the Board was giving her a graceful way to avoid conflict. The Board decided not to censure Ms. Milan and voted to impose the penalties of suspension from RWA membership for one year and a lifetime ban on holding any position of leadership on the RWA National Board, or on an RWA Chapter Board. The motion was adopted by roll call vote with twelve ayes, two nays, and two abstentions.

G. The Aftermath

1. Board members express concerns with December 17th meeting

The next day, on December 18, 2019, one Board member posted to the Executive Session "loop":

I'd like to ask that we have a discussion regarding information that should be included in committee reports – specifically, those that require Board approval and action that could have legal ramifications or dire consequences – and if we need to consider adding language about this in the P&PM. After the lengthy meeting last night, it appears evident that a nebulous report makes it extremely difficult for board members to do their jobs or carry out their fiduciary duty without reservation.

My request has nothing to do with not trusting the Ethics Committee members; nor does it have anything to do with any particular party involved on either side of the issue. This is not about emotion or fear of reprisal or pushback from anyone. It has to do with wanting to carry out duties responsibly and make an informed vote. It has to do with a report that did not provide enough definitive language to allow many board members to feel comfortable making a decision – whether it was a yay or nay decision.... In the past, the board has been shown examples of tweets/tweet threads and other documents when making their decisions. If the body of evidence or information was too expansive to share or if there was some that needed to remain confidential (something not placed on social media already), a sample of the egregious behavior that repeatedly occurred (a phrase that was not in the report but was mentioned in the meeting) should have been provided. And, if some of the behavior took place off of Twitter or social media, it's unclear why the board could not be apprised of what that behavior was or, at least, where it took place – nebulous information.

Again, this is not to question the Committee we approved or to re-evaluate all the information but to address the need to have at least an example of why/how the decision the board has been asked to approve was determined.

Another Board member posted agreement: “Last night’s meeting was uncomfortable on several fronts, but mostly because it felt as if I had to make an extremely important decision with insufficient facts. We’ve had several Ethics Reports brought before us during my board tenure but none were as nebulous ... as this one.”

A third agreed too:

I believe the report should be presented in such a way that the Board can vote without as many questions (about the content of the report, etc.) as voiced. Also, I admit that my decision needed the clarifications/[anecdotes] provided by those in attendance at the Committee’s meeting on this issue. Is that protocol? Or should the report be the primary source of information for our vote. And, I’m not questioning the Committee’s conclusion but whether the report presented its case effectively so we could vote with more confidence on the recommended consequences.

Another Board member expressed feeling “exceedingly uncomfortable last night because I was asked to make an important decision – when I had only the most surface level idea of what I was making a decision about”:

I think a summary of facts – that doesn’t have to be exhaustive – that would **not** have been questioned or relitigated – would have gone a long way to helping us understand what we’re making a decision about. I don’t think anyone was interested in saying - oh, x, y, and z doesn’t amount to invidious

discrimination! It was more about – what is this case even about?... [T]here's a reason the board has to approve the findings and the consequences. If we're not allowed to ask questions, or to understand what is going on, then what is the point of board approval? Why not just have the President or President-elect or whoever is sitting in on these conversations make the approval?

I voted yes last night because I suspected that even if we sent the report for clarification by the ethics committee, we would reach the same conclusion. I do trust the ethics committee, and I didn't want to waste their time or the board's time. At the same time, I am exceedingly uncomfortable.

Two other Board members made suggestions about review of or revisions to the Ethics Committee report template. Ms. Jewel responded and closed out the discussion:

I feel this discussion may be premature. The P&PM committee is supposed to be rewriting the Ethics section (among other things) with the assistance of our attorney. If we have a March motion to amend that section, this discussion could be entirely mooted by those changes. I will get back to everyone with the status of that process. If they don't think they'll have something by March, then we should have this discussion with an eye toward addressing this with a P&PM amendment in March.

2. The Board's decision goes public

On December 23, Ms. Ritter notified Ms. Tisdale, Ms. Davis, and Ms. Milan's of the Board's decision, each by an email that attached the Ethics Committee Report and the minutes of the Board's decision. In her email to Ms. Milan, Ms. Ritter also notified her of her right to appeal the Board's decision within ten days, on the basis of newly discovered exonerating evidence. Ms. Milan responded that she would ask RWA to refund her membership fees.

Ms. Milan provided a friend with copies of all of the materials – the complaints, her submissions in response, and the Ethics Committee Report – and her friend posted them online the evening of December 23rd.

By the next morning, an outcry had erupted on social media. RWA Board members also reviewed the materials for the first time. Board member Chanta Rand submitted her resignation. RWA members began contacting Ms. Jewel, in her role as President, asking questions about the sanctioning of Ms. Milan and describing their own online conduct. To one member, who told Ms. Jewel that she had also used expletives in social media posts that called out what she perceived as racism, Ms. Jewel sent an email in response, which then was shared more broadly by the recipient. Ms. Jewel stated:

The complaint that was made public was only the starting point and does not represent the totality of what the Ethics Committee considered. In addition, RWA specifically excludes social media posts from the Ethics Code so, to the extent that the complaint included such claims, they were not considered a violation. The work of the Ethics Committee is strictly confidential so I cannot comment on what specific portions of the complaint were found to be relevant to the Ethics Code, but I can say they were not related to Ms. Milan speaking out about racism....

If it happened that someone filed an Ethics complaint against you for your social media posts, the response would be that by policy such posts cannot be the subject of a complaint. The situation involving Ms. Milan went beyond her social media posts and included factors that would not apply to you or your social media posts.⁴⁴

Ms. Jewel's message caused more online expressions of concern, as Ms. Milan stated publicly that she had never been provided material other than the complaints.

Board members began posting on their RWA "loop" with questions. One Board member posted a question about why the full documentation had not been shared with the Board, referencing Policy Manual Section 6.6.4.4.4, which calls for all voting Directors reviewing an Ethics Committee report at a meeting that is not held in person to "have copies of all documentation and full access to discussion before voting."

Another Board member stated, "This is a crisis of epic proportions" and called for a Board meeting that day to address it. Other Board members posted their availability and waived the notice requirements for a meeting.

Yet another Board member posted:

I need to know what other harassment there was outside of what went down on Twitter. I specifically asked this in our meeting last Tuesday and was told that it was "far beyond" social media. Is that true or was the board blatantly lied to?

Mr. Suede responded:

Since Courtney has breached the confidentiality we promised to all the people involved in this complaint, [Ms. Ritter] said that I should feel free to share what I know as long as I maintain the anonymity of the committee itself and

⁴⁴ Ms. Jewel explained to Pillsbury that her impression from the December 17th Executive Session had been that the Ethics Committee considered not just social media tweets but also direct messages and emails, and that somehow those direct messages had caused the complainants to lose contracts – although she acknowledged that nothing in the Ethics Committee report said that, and that Mr. Suede did not describe the content of the direct messages.

its deliberation process.... I was not lying to anyone and I shared as much as I felt I could given the circumstances. The original *complaints* reference the way this situation pushed beyond social media and the impact thereof. As I said on our zoomed Exec Session, the consequences for the complainants and other members played a part in that decision. The ethics committee agonized over this and argued for hours to come to a sensible decision. The committee weighed this so carefully they actually softened the recommendations and tossed out the more egregious section of the complaint: the attacks on social media (because they were hamstrung by the P&PM). They TOLD us that egregious social media attacks were an issue we needed to deal with because the behavior was deeply injurious to RWA; they also did not base their findings on them, because they couldn't. Evidence of the professional impact was offered and though the initial explosion grew out of social media, the vitriol extended to other communication as the outrage caught fire and spread. To be blunt, having a contract terminated because of internet pillory is in the complaint and *right there in the public record*. Is Courtney trying to claim that no one emailed or spoke to each other as a result? Is anyone online pretending that a job wasn't terminated or a contract wasn't canceled?

The committee itself was diverse, comprised a wide cross-section of backgrounds and experiences. Obviously they had to be to weigh this credibly, but because they cannot speak to this and we are tasked with weathering the storm, that cannot be clarified in any dramatic public way.... THIS is the reason the ethics committee must be able to work in anonymity. Can you imagine what they would be facing now? Taking this heat is our job.

The issue here is one of professional safety and the right to do business in Romance. But let's be clear: **No one has said members can't call out racism in word and deed.** This lie is already spreading online, including the DEI forum.... Twitter will always have lots to say when juicy outrage is in the offing, but the truth is...the ethics committee reviewed the evidence and issued a ruling. We accepted their findings and we issued a partially mediated punishment after a lot of discussion. As I reminded y'all several times, voting to NOT accept that report was an option. No one said any of these decisions were easy; they *shouldn't* be easy.

I'll add another point: Courtney knows full well the legal implications and the responsibilities of folks working in an official capacity for RWA.... The issue is not that she was "mean on Twitter" but that she attacked members in any way possible *while working for RWA* and then scurried behind the social media figleaf for cover when someone complained. Worse, she did it **KNOWING** that that rule was in place. Why? **Because she voted on it.**

Our job is to keep the ship steady and follow our own rules. We did exactly that. Outrage is not a strategy. What we need to do now is have confidence in

our process and stance. We have continued to stand against bigotry, but neither are we allowing that to act as a get-out-of-jail-free card to break the rules. Courtney's positive actions do not negate what she did here.

(Emphasis in original.)

3. The Board rescinds its finding against Ms. Milan

The Board met in emergency Executive Session by Zoom conference the afternoon of December 24th. Board members were upset that the general public had more information than the Board did when they voted on the ethics complaints. In advance of the meeting, one Board member submitted a motion that the Board “rescind the penalties against Courtney Milan and restore her membership to RWA and remove the lifetime ban on holding any position of leadership on the RWA National Board, or on an RWA Chapter board.” The stated rationale for the motion was:

The board was not allowed to review the full complaint submitted by Susan Tisdale nor the response from Courtney Milan as factual evidence. The original complaint does not fall within the requirements of a valid Ethics Complaint and should have been rejected and recommendations should have been declined.

Board members criticized Mr. Suede and asked him to point to the non-social media evidence of a violation by Ms. Milan. Mr. Suede stated that there was “no smoking gun.” Board members expressed deep anger and dismay that their votes had exposed them to ridicule and hostility on social media. Board members pointed to inconsistencies between how the complaint was handled and Policy Manual provisions, and also stated that they would have voted against the finding a violation if they had seen all of the evidence.

Several Board members accused Mr. Suede of lobbying them to vote against Ms. Milan. Mr. Suede reminded them that he had repeatedly told the Board of its option to vote “no” and to vote their consciences, and Ms. Ritter reminded the Board that she had advised them of their option to return the Report to the Ethics Committee if they felt it was inaccurate or incomplete. The Board members maintained that they had been persuaded by Mr. Suede. The meeting lasted for several hours and included considerable discussion of “gaps” in RWA policies. Ultimately the Board voted “to rescind the vote on accepting the findings of the Ethics Committee report and the consequent penalties against Courtney Milan pending an opinion from RWA’s attorney.”

4. RWA’s leadership resigns

As has been widely reported, over the subsequent seven-week period, the entire leadership of RWA resigned. After the Executive Session on December 24th, a group of eight Board members – Denny Bryce, Pintip Dunn, Seressia Glass, Tracey Livesay,

Adrienne Mishel, Priscilla Oliveras, Erica Ridley, and Farrah Rochon – demanded the resignations of Carolyn Jewel as President and of Damon Suede as President-Elect, contending that Ms. Jewel had abdicated her leadership responsibilities and that Mr. Suede had breached his fiduciary duty. Ms. Jewel resigned on December 26, 2019, resulting in Mr. Suede succeeding her as President. The group of eight Board members also resigned on December 26th. On January 8, 2020, Donna Alward, Renee Ryan, and Barbara Wallace⁴⁵ resigned. Mr. Suede resigned on January 9, 2020.⁴⁶ When Pillsbury was first retained to conduct this independent audit, Executive Director Carol Ritter served as our liaison. Following criticism from RWA membership of her serving as liaison for an audit of matter in which she had been involved, RWA staff member Leslie Scantlebury replaced her as liaison. Ms. Ritter also submitted her resignation as Executive Director, effective January 31, 2020,⁴⁷ and Ms. Scantlebury was appointed Interim Executive Director effective February 1, 2020.⁴⁸ On February 12, 2020, the remaining members of RWA’s Board resigned after calling for a special election to elect a new Board.⁴⁹

IV. WHAT WENT WRONG

The episode that prompted this independent audit arose from a multiplicity of factors, which in combination have led to an organizational crisis. Notably, the audit has uncovered no evidence that any RWA staff member, Director, Officer, or Committee member acted in bad faith or based on personal animus against Ms. Milan. Rather, the outcome here appears attributable to more fundamental challenges the organization faces, as well as to mistakes in judgment. Each of the following problems contributed to the outcome here:

- RWA members do not have a shared understanding of whether it is consistent with RWA’s purposes and its ethics code for one prominent member, based on her values and life experience, to criticize another member’s work and business

⁴⁵ Ms. Wallace was an advisory member of the Board at the time of the Board’s consideration of the ethics complaints against Ms. Milan and did not participate in those Executive Sessions.

⁴⁶ See https://www.rwa.org/Online/News/2020/Announcement_from_the_RWA_Board_of_Directors.aspx.

⁴⁷ Both Ms. Ritter and Ms. Scantlebury cooperated fully in providing Pillsbury all information that Pillsbury requested in connection with the audit. Ms. Ritter’s resignation was announced on January 9, 2020, and shortly thereafter RWA announced that Ms. Scantlebury would assume the role of liaison with Pillsbury. See https://www.rwa.org/Online/News/2020/Update_from_the_RWA_Board_of_Directors_Jan_14_2020.aspx.

⁴⁸ See https://www.rwa.org/Online/News/2020/Update_from_the_RWA_Board_of_Directors_January_21_2020.aspx.

⁴⁹ See https://www.rwa.org/Online/News/2020/RWA_Board_Resigns_Sets_Special_Election.aspx.

associations on a public platform in a way that foreseeably, or even intentionally, results in harm to the other member's career and business.

- Ms. Davis told Pillsbury that she believes Ms. Milan's social media attacks on her were injurious to RWA because "RWA should be a place of safety and encouragement"; in Ms. Davis's view, Ms. Milan's attacks were "antithetical to the definition of what RWA does" and to a "safe and respectful environment." Some individuals interviewed by Pillsbury expressed a similar view, including the Ethics Committee Chair.
- Others told Pillsbury that they did not regard "conduct injurious to RWA" as addressing member-to-member disputes and disagreed with the view of RWA as a mutual support society. Rather, they understood the provision as prohibiting conduct exposing the RWA organization to financial liability or hurting the organization's reputation, such as using RWA to engage in boycotts in violation of antitrust laws, urging members to leave RWA, or creating a threatening or unsafe environment at RWA's conferences. They viewed the purpose of RWA as supporting romance as a genre, not shielding individual members from criticism of their work or actions.
- Ms. Milan also told Pillsbury that she regarded her Twitter comments as legitimate commentary about Ms. Tisdale and Ms. Davis in their capacity as acquisition editors and publishers, although they are also romance authors, and although her criticism of Ms. Davis focused on one of Ms. Davis's novels. Ms. Milan does not view the RWA Code as prohibiting criticism of publishers and editors.
- The understanding of the concept of "invidious discrimination" is similarly fractured. Some of the individuals interviewed by Pillsbury viewed that term as relating only to conduct targeting individuals based on their membership in a class, as listed in RWA's policy prohibiting harassment on bases on which people can be marginalized. The Ethics Committee, on the other hand, interpreted the term to cover any conduct with a tendency to inflame others.
- RWA's Code of Ethics and ethics complaint procedures have been changing and patched together on an *ad hoc* basis, without careful and thorough consideration and without the benefit of legal review, resulting in inconsistent and unclear substantive and procedural provisions that affected the handling of the ethics complaints against Ms. Milan.
 - Procedural inconsistencies and ambiguous provisions were a key factor in the Board's decision to find Ms. Milan in violation – and later to rescind that vote. The Board's vote resulted in significant part from the Board's

lack of access to any evidence other than the scanty summary in the Ethics Committee Report. Mr. Suede and Ms. Ritter signed confidentiality agreements that they viewed as barring them from describing the additional evidence. The Policy Manual provides that voting Directors reviewing the Committee's report "must have access to all documentation" before voting, at least in non-in-person meetings, but it has not been RWA's practice to provide the Board all of the materials reviewed by the Ethics Committee in any Board meetings to review Ethics Committee reports.

- Inconsistencies and lack of definition of the substantive provisions in the Code also contributed to the findings against Ms. Milan, enabling the Committee to import a concept of "invidious discrimination" into a provision about injury to RWA, and without a policy foundation on which to interpret those provisions.
- Neither staff nor Board leadership had a clear understanding of the Board's options if an Ethics Committee Report contained insufficient information for the Board to reach a finding, and the Policy Manual contained no guidance on this point. Individuals interviewed by Pillsbury consistently reported that they knew of no rule barring an Ethics Committee panel from including as much evidence in a Report as the Committee chose to include. Nonetheless, suggestions of sending the report back to the Ethics Committee panel for expansion of the evidence were not supported.
- These policies and procedures were drafted in piecemeal fashion by Board members – and adopted by the Board – without seeking legal review. Until the start of Ms. Jewel's term as President, no task force was charged with engaging in a comprehensive review of the Code provisions and policies. That task force did not produce any work product or engage with RWA's corporate counsel prior to the Board's consideration of the complaints against Ms. Milan.
- RWA leadership was aware of some of these procedural and policy flaws when the ethics complaints against Ms. Milan were received, but the complaints were processed without guidance or warning to the Ethics Committee or to the Board about how these issues might impact review of the complaints.
 - In June 2019, Allison Kelley alerted leadership and then the full Board to her concerns about the "problems" with RWA's "multiple and conflicting codes," and cautioned that the organization was "on thin ice in many situations," with a "need to tread carefully until all policies and related discipline are consistently written and applied." Less than two weeks before the filing of the Tisdale complaint, all three of the Presidents during

whose terms these events unfolded engaged in discussion and debate, along with Ms. Kelley, about the very issue of their uncertainty over whether RWA's policies gave it a role in policing social media posts – with specific reference to Ms. Milan's posts about Sue Grimshaw. Neither the substance of these discussions – or that they had occurred – was shared with the Ethics Committee or with the Board. Neither the Committee nor the Board was advised that the Code of Ethics did not provide clear or consistent guidance on how to address the conduct that was the subject of the complaints.

- Despite these discussions, RWA's Board leadership also did not seek legal counsel on how the Code applied to conduct such as Ms. Milan's or to the specific complaints against Ms. Milan; RWA's requests for legal guidance from its corporate counsel were limited to the procedural issue of Ms. Milan continuing to serve as Ethics Committee and on referring the complaints to the Ethics Committee.
- The Ethics Committee recommended findings against Ms. Milan based on importing concepts that were neither defined in the Policy Manual nor incorporated into the specific ethics code provision the Committee found Ms. Milan to have violated. In addition, the Committee's report did not provide an adequate explanation of the evidence supporting its finding or the rationale for the Committee's finding that Ms. Milan's conduct violated the Code. As a result, the Board misapprehended the Committee's rationale for its recommended finding.
 - The Ethics Committee based its interpretation of the Code on a definition that was not in the Policy Manual and was never shared with Ms. Milan. The Committee provided no examples of how Ms. Milan's comments "were in violation of the organization's expressed purpose of creating a 'safe and respectful environment' for its community of writers." The level of detail the Committee provided was so scanty that Board members who voted in favor of a finding against Ms. Milan essentially voted based on trust that the Committee had a solid evidentiary foundation for its finding.
 - The Ethics Committee's recommended decision was based in significant part on its view that the tone and method of Ms. Milan's online rhetoric was injurious to RWA's purpose (as viewed by the Committee) of creating a respectful community for romance writers. The Committee's recommended decision included Ms. Milan's social media posts. The Board did not examine the premise of the Committee's conclusion, so its decision cannot be regarded as an affirmation of the Committee's interpretation of the Code. Rather, the Board's finding against Ms. Milan was based in large part on the mistaken understanding that Ms. Milan had engaged in extensive and egregious conduct outside of social media that

placed RWA at risk of legal liability. Indeed, based on her impressions from the discussions in the Board's December 17th Executive Session, Ms. Jewel stated – inaccurately – that “to the extent that the complaint included [allegations of social media conduct], they were not considered a violation.... The situation involving Ms. Milan went beyond her social media posts and included factors that would not apply to you or your social media posts.”

- Mr. Suede and Ms. Ritter misunderstood the confidentiality agreement that they signed and interpreted it as barring them from sharing with the Board information considered by the Ethics Committee that was not incorporated in the Ethics Committee Report. Based on that misunderstanding, they should have declined to sign the agreement. Having signed it, Mr. Suede should have refrained from characterizing evidence considered by the Ethics Committee which he felt himself restrained from identifying. The characterizations and analogies he used in discussing these events contributed to the Board's inaccurate impression of Ms. Milan's conduct.
 - It is a conflict of interest for a Board member to withhold from the Board information relevant to a Board's informed decision. These situations may arise on occasion when a Board member has a competing obligation of confidentiality, such as due to privilege, contractual obligations, court orders, or conflicting fiduciary duties. In Mr. Suede's and Ms. Ritter's case, the confidentiality agreement they signed created an obligation to RWA as an organization, not a contractual obligation of silence to the Ethics Committee. Their contrary understanding was mistaken.
 - Several Board members told Pillsbury that Mr. Suede's characterization of Ms. Milan's conduct as similar to relentless workplace harassment – on the level of exposure of genitalia – led them to believe that her conduct was egregious and not behavior RWA should condone. Those Board members told Pillsbury that when they later reviewed the evidence in the complainants' and Ms. Milan's submissions, they did not regard the analogy as apt and felt misled. Mr. Suede told Pillsbury that he had struggled to describe the evidence without breaching his confidentiality agreement. In reaching for imperfect comparisons, however, his approach necessarily meant that the Board's determination rested on a faulty foundation – and one to which Ms. Milan had no opportunity to respond.
- RWA's Directors and Officers had an inadequate understanding of the governance structure of the organization under its Bylaws. The Board inappropriately (and contrary to its own Policy Manual) delegated the authority of the Board to a committee constituted of non-directors. The Board members then proceeded with a finding and sanctions against Ms. Milan, without understanding the nature of the

conduct that they voted to sanction, and despite recognizing that the record before them provided insufficient specific evidence of conduct warranting such a finding.

- Under RWA's Bylaws and Policy Manual, the Ethics Committee is limited to an advisory function, without the authority to make determinations on behalf of the RWA Board; nonetheless, the Board abdicated its fact-finding function to the Committee. Board members were told to "trust" the Committee to have done its job. In doing so, Board members could be seen as not exercising their fiduciary function and duty of care in ensuring that the Board's finding was based on a solid evidentiary foundation. The Board could have, consistent with its governance role, interpreted the Code provisions to reach a finding that the evidence in the complaints and Ms. Milan's submissions demonstrated that Ms. Milan had violated the Code. Rather, the Board endorsed the Committee's determination on that point without understanding what evidence supported the Committee's recommendation – and with a full acknowledgment that they lacked that understanding. As noted above, the Board's vote against Ms. Milan was also based on different premises than the Ethics Committee's recommended finding, as a result of mistaken assumptions about the basis for the Committee's decision.
- RWA's Board members are also provided a copy of James G. Seeley's book, *The Legal Guide – For Association Board Members*, which includes the guidance that board members may "rely on information, opinions, reports, or statements" that are prepared by "a committee of the board on which the director does not serve, as to matters within its designated authority, which committee the director believes to merit confidence." The RWA Board did not appear to give adequate attention, however, to the difference between committees that are delegated the authority of the Board (such as RWA's Executive Committee) and committees that are advisory in nature and only able to make recommendations to the Board (as with RWA's Ethics Committee).
- The Board did not seek legal counsel on its procedural options or concerns about the application of the Code to the issue before it. Instead, several Board members mistakenly interpreted the reported comments of RWA's corporate counsel on the potential for a legal challenge and about his procedural recommendation as a legal evaluation of the merits of whether Ms. Milan's conduct constituted a violation of the Code and warranted the imposition of sanctions.
 - Ms. Ritter's reporting to the Board of the comments of RWA's corporate counsel was accurate but lacked crucial context. She stated to the Board that RWA's corporate counsel had advised that RWA needed to act on the complaints against Ms. Milan. The action that corporate counsel had in mind was the procedural measure of referring the complaints to the Ethics

Committee for consideration, which would not necessarily have resulted in any finding against Ms. Milan. Ms. Ritter also stated that corporate counsel had been concerned about potential legal risk to RWA. Corporate counsel's concern about potential legal exposure, however, was not a comment on the merits of the allegations in the Tisdale or Davis complaints, but rather stemmed from Ms. Milan's holding the Ethics Committee Chair position at the time of her comments. If the Board had consulted with legal counsel, they would have gained this important context, as well as the benefit of corporate counsel's advice on interpretation of the Code and procedural options for the Board. Instead, several Board members interpreted the reported comments of corporate counsel as an indication that Ms. Milan's conduct was severe and wrongful.

V. RECOMMENDATIONS

Identifying what went wrong in the handling of the Tisdale and Davis complaints in itself produces lessons and recommendations. Organizations, like individuals, can learn from past mistakes. Yet RWA can build even stronger procedures and policies by taking steps beyond merely avoiding repetition of those mistakes. We recommend that RWA engage in a formative process of redefining and rearticulating its approach to member ethics matters and that it adopt best practices in implementing its policies.

A. Defining RWA's Member Expectations

RWA has chosen to promulgate a member Code of Ethics and to adopt a structure in which volunteers – Committee members and Board members – make factual findings on ethics complaints and impose sanctions on members. There are a number of options, discussed below, for improving the current model. Before proceeding with those, however, we recommend that RWA address the first fundamental problem we identified as a contributing cause of the current crisis: the lack of a shared understanding among RWA members of the purposes of the organization and the appropriate reach of its conduct rules. That definitional step should precede other changes. Because RWA is a membership organization, we recommend that the Board not make decisions on these issues without first seeking the views of the membership.

There are several principal options for RWA in moving forward with defining its expectations for its members' conduct:

Option 1: RWA would withdraw its member Code of Ethics and undertake no further efforts to enforce the Code. RWA may adopt member requirements with respect to conduct affecting the rights of RWA as an organization – such as collection of dues and appropriate use of RWA trademarks – but RWA would not seek to establish a larger member Code.

Option 2: RWA would eschew regulation and control of member behavior and adopt a merely aspirational ethics code. RWA could encourage, for example, fair and honest practices by members, support for diverse voices, and other conduct consistent with the organization's values and mission. This aspirational code would be launched as an educational effort to influence, not regulate, members' behavior. Promulgation of an aspirational code would make clear that there would be no efforts by RWA to enforce the provisions of the code. Instead, RWA would rely upon the good faith and common sense of members.

Option 3: RWA would adopt and enforce a streamlined member Code of Ethics that, perhaps in addition to aspirational elements, addresses only behavior by members that relates to, or affects, the activities of RWA. Examples might be misuse by members of RWA membership credentials, harassment or defamation of others using RWA communications channels, or unsafe or offensive behavior of members at RWA events. All other member conduct would be outside of RWA's purview, even if the same conduct would violate RWA's code if it had occurred within the RWA organization, such as at an RWA-sponsored event. Adjudication of any member complaints would be conducted in accordance with defensible, consistently followed procedures.

Option 4: RWA's member code would prohibit conduct that RWA views as antithetical to its purpose and activities, even if the conduct does not directly affect or involve RWA, and even when the conduct takes place on external communication channels or social media or occurs at non-RWA events – but RWA would not act as the principal fact-finder. Rather, sanctions would be imposed only if the conduct is undisputed (e.g., the offending member admits to the facts and all elements of the asserted violation) or if there has been a judicial or similar adjudication or finding that provided full due process to the parties. For example, RWA might suspend a member convicted of assaulting another member or who has been found liable for plagiarism, but RWA would not investigate or make the original determination as to whether the conduct constituted an assault or the published passages constituted plagiarism. Similarly, for an incident similar to the events that gave rise to the complaints against Ms. Milan, RWA could decline to take enforcement action unless and until a complainant obtained a civil judgment against the offending member for defamation or tortious interference with business expectancy. If a complaining member decided not to pursue a matter in a court of law, RWA would not serve as a substitute dispute resolution forum. Although RWA would rely on findings from other proceedings that afforded due process, RWA's own adjudication of any member complaints would still be conducted in accordance with defensible, consistently followed procedures. RWA could reserve the right to act as original fact-finder only on matters directly affecting RWA as an organization.

Option 5: RWA could, as presently, adopt and enforce a code that requires members to refrain from specifically described conduct considered detrimental to the field of romance writing. That code might be more detailed than currently and might

address such issues as members' use of non-RWA social media. In effect, the code would establish commonly shared conduct expectations for those who seek the privilege of affiliating with RWA. The code would expressly address whether and when its provisions reach conduct that occurs outside of members' professional lives and outside of RWA facilities and events. RWA would have procedures to adjudicate complaints as a fact-finder of first resort, as is currently the case. If RWA chooses this option, we recommend adopting an ethics program that ensures substantively reasonable and consistent conduct prohibitions, clear communication of those expectations, and procedural protections that exceed minimal due process.

Pillsbury does not offer a recommendation as to which of these options RWA should take. RWA may lawfully adopt any of these approaches to member conduct rules and adjudications of member complaints. Other professional societies and trade associations operate successfully under each of these models or with variants of the options we have described here. As a private, non-governmental membership organization, RWA must define for itself its expectations of its members, its role in policing those expectations, and what responsibilities and rights are held by those who join RWA as members.

B. Best Practices for Enforceable Member Codes

If RWA chooses to move forward with a member Code of Ethics that is more than purely aspirational, we recommend the following improvements and best practices:

A. RWA should develop guidance documents or official commentary to promote compliance with, and consistent enforcement of, any broadly phrased substantive Code provisions, unless there is a commonly shared understanding of the meaning of the provision. RWA should enforce such provisions conservatively to ensure that members are not sanctioned for conduct that they reasonably did not view as violative of the Code. The more attenuated the connection between the conduct and RWA's core purposes or activities, the more restrained RWA should be in treating the conduct as a violation.

For example, an ethics code may prohibit "unethical" conduct. In the absence of further guidance, a member would not expect to be found in violation of such a provision for failing to recycle, lying to a friend about a personal matter, or falsely claiming sick leave for a trip to the beach. On the other hand, unethical business dealings by a romance author with a publisher or agent would, given RWA's mission, more appropriately be the basis for a finding of a violation if RWA's Code included a prohibition on "unethical" conduct. More egregious conduct, even unconnected to the romance authorship profession, could also appropriately trigger sanctions under such a provision – such as with child sexual abuse, fraud, or other conduct commonly regarded as beyond the pale and in direct conflict with the stated values of RWA. In making determinations about whether to take action on an alleged violation of a subjective and broadly phrased Code provision,

RWA should consider whether it is likely that many other members have engaged in the same conduct without sanctions or complaints against them. Although it is, and should be, rare for RWA to initiate complaints against its own members, the inconsistency of sanctioning one member for conduct tolerated in other members should be avoided.⁵⁰

Guidance documents, especially those that include illustrative examples, have a dual benefit. Such guidance not only promotes more consistent, fair, and defensible enforcement decisions; it also educates the membership on the organization's conduct expectations and may, as a result, reduce the incidence of violations. Many organizations similar in structure to RWA regard their ethics programs primarily as educational and allocate their resources accordingly.

- B. RWA should charge staff with initial review and investigation of ethics complaints, either with staff recommendations forwarded for decision to a Board committee or staff given decision authority paired with an appeal process.** This is a common approach among membership organizations. It has several advantages.

First, because staff hold or have access to institutional knowledge of the handling and decisions on other ethics complaints, this approach increases the consistency and fairness of ethics code enforcement – especially in comparison with RWA's current approach of selecting different panels of members for each ethics complaint. Second, staff have greater knowledge of and familiarity with the development and specific provisions of the Code than an Ethics Committee panel of volunteer members with no prior experience with the Code. That history and context assists in interpreting Code provisions. Third, staff have access to corporate counsel for guidance, as well as to the Executive Committee and the Board if needed. Fourth, there is greater accountability to the Board and to the membership if investigations and recommendations or initial decisions are handled by employees of the organization who address ethics complaints as part of their jobs, rather than by volunteer committee members whose professions do not necessarily equip them to interpret and enforce membership ethics codes. Fifth, as illustrated by the concerns involved in selecting the Ethics Committee panel to review the complaints against Ms. Milan, charging members with investigating complaints and recommending sanctions against fellow members, who may be colleagues, friends, or competitors within the profession, carries with it conflict of interest concerns that generally do not apply to staff review of

⁵⁰ Efforts to enforce ethics codes inevitably miss some (or even many) violations that escape attention or are not the subject of complaints or for which there is not reliable evidence. As reflected, however, in RWA's own discussions about excluding non-RWA hosted social media from the provision governing member-to-member conduct, attempting to regulate discussions on social media is one example of an area likely to result in inconsistent and spotty policing of rules. Membership organizations that look the other way in response to known violations of the organization's rules will be understandably perceived as unfair if the rules are selectively enforced.

membership matters. Sixth, if there is an increase in volume or complexity of ethics cases, that can be addressed through staffing, rather than relying on volunteers to shoulder the additional work.

An important component of this approach is the right to appeal or request review of a staff recommendation or initial decision. The ultimate decision about disputed decisions affecting membership rights – except on administrative matters such as payment of dues – may appropriately rest with the Board, whose members are elected by the membership, or with a Board committee that is delegated Board authority in accordance with any applicable bylaws provisions and the governing statute (such as the Executive Committee). To the extent that staff is provided the authority to make the initial decision, a right of appeal to the Board or a Board committee ensures that members have access to independent review of decisions that they dispute. Because the Board or Board committee (as applicable) will not have made the initial decision, the findings of staff may be reviewed with a fresh and objective eye. In many instances, members may choose not to appeal an ethics complaint decision, which will also lessen the burden on the Board or Board committee.

- C. RWA should ensure that any decisions on ethics complaints – whether recommendations, initial findings, or findings after appeal – are based on a review of the full evidentiary record.** No information should be considered or used as a basis for decision unless that information is provided to the accused, and the accused is given an opportunity to respond. This comports not only with basic due process principles – of notice and an opportunity to be heard – but also is consistent with the duty of care component of fiduciary duty. The decisionmakers may still render determinations on which reasonable people may disagree, based on interpretation of Code provisions or judgments of the severity or impact of the conduct at issue. It is common for decisionmakers to make judgments on the credibility of statements by the parties or of the documentary evidence before them, for example. Decisions affecting members’ rights and reputations should not be made, however, based on incomplete or inaccurate information. Even at the appeal or review level, the reviewing body should have access to the full information, so it can make a considered judgment as to whether the recommendations or initial decision were well-founded and supported by the evidence. Decisions should be accompanied by written statements of the evidentiary and policy basis for the decision, which should be shared with the complainants and the subject of the complaint.
- D. RWA should develop policies regarding the confidentiality of ethics complaint materials.** Although RWA’s current policies require that staff, the Ethics Committee, and the Board maintain the confidentiality of ethics complaint submissions, that policy does not bar either complainants or the accused from

sharing those materials publicly.⁵¹ The publicity surrounding the handling of the ethics complaints against Ms. Milan has harmed the organization, created concerns among Ethics Committee members and candidates about participating in the process, and magnified the negative attention and reputational harm experienced by Ms. Tisdale and Ms. Davis. Neither of the complainants expected that their submissions would be made public. RWA may choose to publicize certain levels of member discipline and have partial or complete transparency of its processes once it renders a final decision on a matter – as is the case with most civil legal actions – or it may choose to require confidentiality of all participants – as is the case with many alternative dispute resolution forums. At a minimum, if RWA continues with its current approach of confidentiality only for some participants in the process, it should ensure that all involved are aware of the potential for publicity.

- E. RWA should develop and implement robust and recurring training of Board members and Committee members on RWA policies and practices and on governance principles.** As a best practice, membership organizations develop and deliver onboarding and orientation trainings to all Board members and all Committee members who carry out fiduciary responsibilities on behalf of the organization. RWA could benefit from strengthening its efforts in these areas.
- F. RWA should seek legal review of its Board Policy Manual and any changes proposed to those policies and procedures before the Board is asked to vote on adopting or changing such provisions.** Although RWA’s practice has been to have Directors who propose motions submit drafts of their motions to the Board in advance of the Board meetings at which those motions are considered, RWA has not regularly requested legal review of the motions. RWA’s Board often includes some members with legal training. Their role, however, is not to provide legal advice to the Board, and indeed their position as Directors precludes them from having an attorney-client relationship with RWA. It is not necessary for corporate counsel to participate in Board meetings as a general rule unless there is an agenda item requiring legal counsel – although some nonprofit Boards do request that legal counsel attend all or a portion of their Board meetings on a regular basis. Nonetheless, legal advice can be sought and provided in written form to the Board on relevant matters, so the Board may engage in a more informed discussion of those matters and reach a decision with the benefit of legal advice.

⁵¹ The sanctions against Ms. Milan came to public attention because she provided the ethics complaint materials to a friend, who posted them publicly. Before doing so, Ms. Milan confirmed with RWA staff that she was not restricted from sharing the material. In response to a question from Ms. Milan, Allison Kelley stated in an August 30, 2019 email that “the organization (RWA), its staff and committee members, are bound by confidentiality, but the same does not apply to the complainant and the accused. I confirmed this with HelenKay, and she agreed.”

C. Closing Out This Chapter

Finally, we recommend that RWA take action to close out the complaints against Ms. Milan. The RWA Board voted on December 24, 2019, to “rescind the vote on accepting the findings of the Ethics Committee report and the consequent penalties against Courtney Milan pending an opinion from RWA’s attorney.” This vote did not reach the merits of the complaints. It neither upheld the findings but with different sanctions nor substituted a finding in favor of Ms. Milan, so the matter is, in effect, in limbo. Ms. Milan, Ms. Tisdale, and Ms. Davis are entitled to closure on this matter.

VI. APPENDIX

Appended to this report are the full Tisdale and Davis complaints, Ms. Milan’s submissions in response to both complaints, including her exhibits A-S, and the Ethics Committee Report that was submitted to RWA’s Board.⁵²

⁵² These materials have been previously posted publicly.