

RULES GOVERNING THE CONDUCT OF JUDGES

Part A. Code of Judicial Conduct

Adopted by the Supreme Court February 20, 1974

As Amended through August 1, 1980

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Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3. A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by

law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions;

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to

either of them, or the spouse of such a person;

- (i) is a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;
- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Canon 4. A Judge May Engage in Activities to Improve the Law, the Legal System, Judicial Administration, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, judicial administration, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, judicial administration, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice or judicial administration.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should

not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, judicial administration and the administration of justice.

Canon 5. A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

(3) A judge should manage his investments and other financial interest to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, judicial administration, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or a fellowship awarded on the same terms applied to other applicants;

(c) A judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, judicial administration, or the administration of justice. A judge, however, may represent his country, state or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should report the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made annually, on or before the first day in May of each year, and should be filed as a public document in the office of the State Court Administrator. Canon 6C shall become effective on May 1, 1975.

Canon 7. A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate for election to judicial office should not:

- (a) act as a leader or hold any office in a political organization;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
- (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2).

(2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may accept invitations to attend and speak on his own behalf at other than partisan political gatherings during the year in which he is a candidate for election or reelection.

(3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

(4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, judicial administration, or the administration of justice.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial official that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

(3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F, and G, and Canon 6C;
 (2) should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves, or act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

B. Retired Judge. A retired judge who receives the same compensation as a full-time judge on the court from which he retired and is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges eligible for recall to judicial service should comply with the provisions of this Code governing part-time judges.

Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

- (a) continue to act as an officer, director, or non-legal advisor of a family business;
- (b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

Part B. Rules of Board on Judicial Standards

As Amended through August 1, 1980

(1) Table of Headnotes

I. General

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(2) Text of Rules

Rule 1. Organization of Board.

(a) **Appointment of Members.** The Board on Judicial Standards shall consist of one judge of district court, one judge of municipal court, one judge of county court, two lawyers who have practiced law in the state for ten years, and four citizens who are not judges, retired judges, or lawyers. Effective July 1, 1980, the executive secretary shall be appointed by the board. All members and alternates shall be appointed by the governor with the advice and consent of the senate. (Source: L. 1978, c. 713, §1.)

(b) Alternate Members. Alternate members, to take the place of those disqualified or absent, shall be selected at the time and in the manner prescribed for initial appointments in each representative class, and shall serve at the call of the board chairperson. (Source: ABA Std. 2.5.)

(c) Term of Office.

(1) The term of each member and alternate shall be four years.

(2) No member shall serve more than two full four-year terms or their equivalent. A member selected to serve the remainder of an unexpired term shall not be considered to have served the equivalent of a full four-year term for purposes of this section. (Source: former rule A[2].)

(d) Vacancy.

(1) A vacancy on the board shall be deemed to occur:

(i) When a member retires from the board; or

(ii) When a judge, who is a member of the board ceases to hold the judicial office which he held at the time of his selection; or

(iii) When a lawyer ceases to be admitted to practice in the courts of this state or is appointed to a judicial office; or

(iv) When a lay member becomes a lawyer.

(2) Vacancies shall be filled by selection of a successor in the same manner as required for the selection of his predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of his predecessor. All vacancies on the board shall be filled within 90 days after the vacancy occurs.

(3) Members of the board may retire therefrom by submitting their resignation to the board, which shall certify the vacancy to the governor and the supreme court. (Source: former rule A[3].)

(e) Duties and Responsibilities of Executive Secretary.

The executive secretary shall have duties and responsibilities prescribed by the board, including the authority to:

(1) Receive information, allegations, and complaints;

(2) Make preliminary evaluations;

(3) Screen complaints;

(4) Conduct investigations;

(5) Recommend dispositions;

(6) Maintain the board's records;

(7) Maintain statistics concerning the operation of the board and make them available to the board, and to the supreme court;

(8) Prepare the board's budget for approval by the board, and administer its funds;

(9) Employ and supervise other members of the board's staff;

(10) Prepare an annual report of the board's activities for presentation to the board, to the supreme court, and to the public;

(11) Employ, with the approval of the board, special counsel, private investigators, or other experts as necessary to investigate and process matters before the board and before the supreme court. The use of the attorney general's staff prosecutors or law enforcement officers for this purpose shall not be allowed. (Source: ABA Std. 2.8.)

(f) Quorum and Chairperson.

(1) A quorum for the transaction of business by the board shall be five members of the board.

(2) The board shall elect from its members a chairperson and a vice-chairperson, each of whom shall serve a term of two years. The vice-chairperson shall act as chairperson in the absence of the chairperson. (Source: former rule A[5].)

(g) Meetings of the Board. Meetings of the board shall be held at the call of the chairperson; the vice-chairperson; the executive secretary; or the written request of three members of the board. (Source: former rule A[6].)

(h) Annual Report. At least once a year the board shall prepare a report summarizing its activities during the preceding year. One copy of this report shall be filed with the chief justice of the supreme court and other copies may be made available to the public by a majority vote of the full board. (Source: former rule A[7].)

(i) Expenses of the Board and Staff.

(1) The expenses of the board shall be paid from appropriations of funds to the Board on Judicial Standards.

(2) Members of the board shall be compensated for their services as provided by law.

(3) In addition to the executive secretary, the board may appoint other employees to perform such duties as it shall direct, subject to the availability of funds under its budget. (Source: former rule A[4].)

Rule 2. Jurisdiction and Powers of Board.

(a) Powers in General. The board shall have the power to receive information, investigate, conduct hearings, and make recommendations to the supreme court concerning:

(1) Allegations of judicial misconduct;

(2) Allegations of physical or mental disability of judges; and

(3) Matters of voluntary retirement for disability. (Source: ABA Std. 1.5-1.7.)

(4) Review of a judge's compliance with Minn. Stat. 546.27.

(b) Persons Subject to Discipline. At any level of government, anyone exercising judicial powers and performing judicial functions, including judges assigned to administrative duties within the judicial branch, shall be subject to judicial discipline and disability retirement under these rules. (Source: ABA Std. 1.2.)

(c) Jurisdiction Over Sitting Judges. The board shall have exclusive jurisdiction over the conduct of all persons subject to discipline under section (b), including all sitting full and part-time judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. (Source: ABA Std. 3.1.)

(d) Jurisdiction Over Former Judge. The Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or prior to the time when the lawyer held judicial office, provided such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the supreme court. (Source: ABA Std. 3.2.)

(e) Subpoena and Discovery.

(1) At all stages of a proceeding under these rules, both the board and any judge being investigated shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge as witness, and to provide for the inspection of documents, books, accounts, and other records.

(2) The power to enforce process may be delegated by the supreme court. (Source: ABA Std. 4.18-4.19.)

(f) Rules of Procedure and Forms. The board shall have the authority to submit rules of procedure for the approval of the supreme court, and to develop appropriate forms for its proceedings. (Source: ABA Std. 2.6.)

(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8. (Source: ABA Std. 1.8.)

Rule 3. Immunity.

Members of the board, referees, board counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties. (Source: ABA Std. 2.9.)

Rule 4. Grounds for Discipline.

(a) Grounds for a discipline shall include:

- (1) Conviction of a felony;
- (2) Willful misconduct in office;
- (3) Willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;
- (4) Conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute;
- (5) Any conduct that constitutes a violation of the code of judicial conduct or professional responsibility. (Source: ABA Std. 3.3.)

(b) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive, or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Claims of error shall be left to the appellate process. (Source: ABA Std. 3.4.)

Rule 5. Confidentiality.

(a) Before Probable Cause Found.

- (1) All proceedings shall be confidential until there has been a determination of probable cause and formal charges have been filed pursuant to Rule 8(c).
- (2) The board shall establish a procedure for enforcing the confidentiality provided by this rule.
- (3) A judge under investigation may waive his right to confidentiality prior to a filing of formal charges. (Source: ABA Std. 4.6-4.8.)

(b) Public Statements by Board. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the judge, the board may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudice, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for his comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared. (Source: ABA Std. 4.9.)

(c) Disclosure for Judicial Selection, Appointment, or Assignment. If in connection with the selection or appointment of judges, any state or federal agency seeks information or written materials from the board concerning a judge, information may be divulged in accordance with procedures prescribed by the supreme court, including reasonable notice to the judge affected, unless the judge signs a waiver. If in connection with the assignment of a retired judge to judicial duties any appropriate authority seeks information or written materials from the board about that judge, information may be divulged in accordance with procedures prescribed by the supreme court, including reasonable notice to the judge affected, unless the judge signs a waiver. (Source: ABA Std. 4.10.)

Rule 6. Procedure Prior to Probable Cause Determination.

(a) Initiation of Procedure.

- (1) An inquiry relating to conduct of a judge may be initiated upon any reasonable basis, including oral or written complaints made by judges, lawyers, court personnel, or members of the general public.
- (2) The board may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.
- (3) Upon request of the chief justice of the supreme court, the board shall make an investigation under this rule of the conduct or physical or mental condition of a judge. (Source: ABA Std. 4.1, former rule D[1].)

(b) Absolute Privilege. A complaint submitted to the board or its staff or testimony related to the complaint shall be absolutely privileged, and no civil action predicated on the complaint may be instituted against any complainant or witness, or their counsel. (Source: ABA Std. 4.2.)

(c) Screening, Preliminary Investigation, and Evaluation.

(1) Upon receipt of a complaint, report, or other information as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet, and confidential investigation and evaluation.

(2) Under guidelines prepared by the board, the executive secretary shall, based on his investigation and evaluation, determine whether there exists sufficient cause to proceed against the judge. The executive secretary shall have the authority to dismiss unfounded complaints, but the results of all investigations shall be routinely submitted to the board. (Source: ABA Std. 4.4, 4.14.)

(d) Discretionary Notice.

(1) Notice that a complaint has been made may be given to the judge named in the complaint. (Source: ABA Std. 4.5.)

(2) No action shall be taken on any complaint in which the judge is not notified within 90 days after the receipt of such complaint, and if not notified the complaint cannot be used against the judge.

(e) Probable Cause Determination.

(1) The board shall promptly consider the results of an investigation and evaluation conducted by the executive secretary. If the board determines that there is probable cause to proceed, it shall comply with Rule 8.

(2) A finding of probable cause shall require the concurrence of a majority of the full board. (Source: ABA Std. 4.23.)

(f) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be notified. If the judge has been informed of the proceeding, he shall also be notified of its termination, and the file shall be closed.

(2) A closed file may be referred to by the board in subsequent proceedings.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, information concerning the lack of cause to proceed shall be released by the board. (Source: ABA Std. 4.11-4.13.)

(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find probable cause to proceed with a formal hearing, it may make any of the following dispositions:

(1) The board may issue a private reprimand.

(2) The board may by informal adjustment dispose of a complaint by:

(i) Informing or admonishing the judge that his conduct is or may be cause for discipline;

(ii) Directing professional counseling or assistance for the judge; or

(iii) Imposing conditions on a judge's conduct. (Source: ABA Std. 6.6.)

Rule 7. Interim Sanctions.

(a) Suspension for Felony. A judge shall be suspended with pay immediately by the supreme court without necessity of board action, upon the filing of an indictment or information charging him with a felony under state or federal law. Such suspension shall not preclude action by the board with respect to the conduct which was the basis for the felony charge, before or after a conviction, acquittal, or other disposition of the felony charge. (Source: ABA Std. 6.1.)

(b) Suspension of Misdemeanor. Conduct resulting in the filing of misdemeanor charges against a judge, if it adversely affects his ability to perform the duties of his office, may be grounds for immediate suspension with pay by the supreme court, without necessity of board action. A conviction, acquittal, or other disposition on a misdemeanor charge, shall not preclude action by the board with reference to the conduct upon which the charge was based. (Source: ABA Std. 6.2.)

(c) Misdemeanor Suspension Review. Any judge suspended under section (b) of this rule shall be given a prompt hearing and determination by the supreme court

upon his application for review of the interim suspension order. (Source: ABA Std. 6.3.)

(d) Other Interim Suspension.

(1) Interim suspension with pay, pending final decision as to ultimate discipline, may be ordered by the supreme court in any proceeding under these rules.

(2) Upon a determination by the board of a judge's incompetence, there shall be an immediate interim suspension, with pay, pending a final disposition by the supreme court. (Source: ABA Std. 6.4, 7.12.)

(e) Disability Suspension. A judge who claims that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules shall be placed on interim suspension, with pay. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is such a disability, the judge shall be retired. If there is a finding of no disability, the disciplinary proceeding shall continue. (Source: ABA Std. 6.5.)

Rule 8. Procedure Where Probable Cause Found.

(a) Sworn Complaint or Statement.

(1) After a finding of sufficient cause to proceed, the board shall ask the complainant to file a detailed sworn complaint against the judge. When a sworn complaint is not obtained, a clear statement of the allegations against the judge and the alleged facts forming their basis shall be prepared by the executive secretary. Where more than one act of misconduct is alleged, each shall be clearly set forth.

(2) The judge shall be served promptly with a copy of the sworn complaint or statement of allegations. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The documents served under section (2) shall require the judge to respond to the complaint or statement in writing within 20 days. A personal appearance before the factfinder shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, his statement shall be recorded. (Source: ABA Std. 4.15, 4.16, 4.20, former rule E[2]-[3].)

(b) Termination after Response. The board may terminate the proceeding and dismiss the complaint following the response by the judge, or at any time thereafter, and shall in that event give notice to each complainant and to the judge that it has found insufficient cause to proceed. (Source: ABA Std. 4.21.)

(c) Formal Statement of Charges.

(1) If termination under section (b) is not appropriate, the board shall file a formal statement of charges with the executive secretary. Confidentiality ceases upon this filing.

(2) The judge shall be served promptly with a copy of the formal statement of charges and shall respond as provided in section (a)(2) and (3) of this rule. (Source: ABA Std. 5.1-5.3.)

(d) Notice of Hearing.

(1) Upon the filing of formal charges, the board shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 30 days following the receipt of the judge's response under section (c)(2) of this rule. The judge and all counsel shall be notified of the time and place of the hearing.

(2) In extraordinary circumstances, the board shall have the authority to extend the hearing date as it deems proper.

(3) The judge and the board shall be entitled to discovery to the extent available in civil or criminal proceedings, whichever is broader. (Source: ABA Std. 5.4-5.7.)

Rule 9. Formal Hearing.**(a) Factfinder.**

(1) The formal hearing shall be public and conducted before a factfinder, which may be the entire board, three-member hearing panels appointed by the chairperson, or a referee appointed by the supreme court.

(2) If the board directs that the hearing be held before a referee to be appointed by the supreme court, the board shall file an ex parte written request to the supreme court to appoint a referee for such purpose, accompanied by a copy of the complaint. The supreme court shall, within 10 days from receipt of such request, appoint a referee to conduct such hearing.

(3) The person designated to preside at a hearing shall be either a judge or a lawyer who is familiar with ruling on motions and admission of evidence.

(Source: ABA Std. 5.9, 5.10, former rule G[2].)

(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the Minnesota Rules of Evidence shall apply, and the judge shall be accorded due process of law.

(c) Presentation: Burden of Proof; Cross-examination; Recording.

(1) An attorney or attorneys of the board's staff, or special counsel retained for the purpose, shall present the matter to the factfinder.

(2) The board has the burden of proving by clear and convincing evidence the facts justifying action.

(3) The judge shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim. (Source: ABA Std. 5.12-5.14, 5.18.)

(d) Amending Allegations. By leave of the board or by consent of the judge, the statement of charges may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response. (Source: ABA Std. 5.16.)

Rule 10. Procedure Following Formal Hearing.

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation. (Source: ABA Std. 5.19.)

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations. (Source: ABA Std. 5.20.)

(c) Review by the Board. The findings and conclusions and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder. (Source: ABA Std. 5.21, 5.22.)

(d) Disciplinary Sanctions. The board's decision shall include a recommendation to the supreme court of any of the following sanctions:

- (1) Removal;
- (2) Retirement;
- (3) Imposing discipline as an attorney;
- (4) Imposing limitations or conditions on the performance of judicial duties;
- (5) Reprimand or censure;
- (6) Imposing a fine;
- (7) Assessment of costs and expenses;
- (8) Any combination of the above sanctions. (Source: ABA Std. 6.7.)

(e) Recommended Discipline.

(1) A recommendation for discipline shall be reported to the court only if concurred in by a majority of all members of the board.

(2) If a majority of the members of the board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the supreme court with the majority decision. (Source: ABA Std. 5.23-5.25.)

Rule 11. Costs.**(a) Witness Fees.**

(1) All witnesses shall receive fees and expenses to the same extent allowable in an ordinary civil action.

(2) Expenses of witnesses shall be borne by the party calling them, unless:

(i) Physical or mental disability of the judge is in issue, in which case the board shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or

(ii) The judge is exonerated of the charges against him, in which case the supreme court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him and order that those fees be reimbursed. (Source: ABA Std. 5.26-5.27.)

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost. (Source: ABA Std. 5.28.)

(c) Other Costs. All other costs of these proceedings shall be at public expense. (Source: ABA Std. 5.29.)

Rule 12. Supreme Court Review

(a) Filing and Service. The board shall, at the time it files its record, findings, and recommendations with the court, serve copies upon the respondent judge. Proof of service shall also be filed. (Source: ABA Std. 7.1.)

(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the court shall promptly docket the matter for expedited consideration. (Source: ABA Std. 7.3.)

(c) Briefs. The board and the judge shall file briefs with the court in accordance with the requirements of Rule 128 of the Rules of Appellate Procedure. (Source: ABA Std. 7.2.)

(d) Additional Findings and Filings; Supplemental Record.

(1) If the court desires an expansion of the record or additional findings with respect either to the recommendation for discipline or to the sanction to be imposed, it shall remand the matter to the board with appropriate directions, retaining jurisdiction, and shall hold the matter pending receipt of the board's filing of the additional record.

(2) The court may order additional filings or oral argument as to specified issues or the entire matter.

(3) The court without remand and prior to the imposition of discipline may accept or solicit supplementary filings with respect to medical or other information, provided that the parties have notice and an opportunity to be heard. (Source: ABA Std. 7.4-7.6.)

(e) Delay for Further Proceedings. The court, on receipt of notice of an additional proceeding before the board involving the same judge, may delay decision and hold the matter pending the board's termination of this additional proceeding. In the event that additional recommendations for discipline of the judge are filed, the court may impose a single sanction covering all recommendations. (Source: ABA Std. 7.7.)

(f) Decision. The court shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing such disciplinary action as it finds just and proper, accepting, rejecting, or modifying in whole or in part, the recommendations of the board. (Source: ABA Std. 7.8, 7.9, 7.11, former rule V.)

(g) Consideration of Lawyer Discipline. The court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal of a judge is deemed appropriate by the court, it shall notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard on the issue of the lawyer, discipline, if any, to be imposed. (Source: ABA Std. 7.13.)

(h) Charge Against Supreme Court Justice. Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that other members of the court shall disqualify themselves under Minn. Stat. 2.724, subd. 2, as they deem necessary. (Source: ABA Std. 7.14.)

(i) Motion for Rehearing. In its decision, the supreme court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct and the respondent wishes to file a motion for rehearing, he may present a motion for rehearing within 15 days after filing of the decision. (Source: present rule W.)

Rule 13. Special Provisions for Cases Involving Mental or Physical Disability

(a) Procedure. In carrying out its responsibilities regarding physical or mental disabilities, the board shall follow the same procedures that it employs with respect to discipline for misconduct. (Source: ABA Std. 8.2.)

(b) Representation by Counsel. If the judge in a matter relating to physical or mental disability is not represented by counsel, the board shall appoint an attorney to represent him at public expense. (Source: ABA Std. 8.3.)

(c) Medical Privilege.

(1) If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege, and the judge shall be required to produce his medical records.

(2) If medical privilege is waived, the judge is deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the board. The report of the medical practitioner shall be furnished to the board and the judge. (Source: ABA Std. 8.4-8.5.)

Rule 14. Involuntary Retirement.

(a) Procedure. A judge who refuses to retire voluntarily may be involuntarily retired by the supreme court. If attempts to convince a judge to retire voluntarily fail, then the board shall proceed to file a formal complaint, hold a public hearing, make findings of fact, and present recommendations to the supreme court. (Source: ABA Std. 8.6, 8.7.)

(b) Effect of Involuntary Retirement. A judge who is involuntarily retired shall be ineligible to perform judicial duties pending further order of the court and may, upon order of the court, be transferred to inactive status or indefinitely suspended from practicing law in the jurisdiction. (Source: ABA Std. 8.8.)

Rule 15. Amendment of Rules.

As procedural and other experience may require or suggest, the board may petition the supreme court for further rules of implementation or for necessary amendments to these rules. (Source: former rule Y.)