STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1254

Christopher Ivey,
Appellant,

vs.

Lucinda Jesson,
Commissioner of Human Services,
Respondent.

Filed December 16, 2013
Affirmed as modified
Schellhas, Judge

Judicial Appeal Panel
File No. AP129031

Christopher Ivey, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Barry R. Greller, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges a judicial appeal panel's dismissal of his petition for discharge from civil commitment and denial of his motion for amended findings or a new hearing. We affirm as modified.

FACTS

In May 2004, the district court ordered appellant Christopher Ivey's interim commitment to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and sexually psychopathic personality (SPP). The court found that when Ivey was age 18 in 1989, he murdered a woman in Germany, after burglarizing her home while she slept and sexually assaulting her; between ages 12 to 22, Ivey intentionally brushed up against women over 500 times and "window peeped" approximately 8,000 times; Ivey sexually touched women during 15 of 40 burglaries he committed in Carlton County; while incarcerated in 1993, his participation in sex-offender treatment was almost non-existent; in 1994, prison program staff determined that Ivey was at high risk to reoffend and, in 1998, determined that he "had the potential to become a serial sexual murderer." In November 2003, a civil-commitment-review coordinator opined that Ivey was appropriate for civil commitment. The following month, he appeared to fondle himself while being administered a psychological test by a female professional.

In 2004, the district court indeterminately committed Ivey to the MSOP. In June 2011, Ivey petitioned respondent Minnesota Commissioner of Human Services for "Discharge from Civil Commitment" and requested a hearing before a special review board. A review board conducted a hearing in March 2012 and later recommended denying Ivey's petition for discharge. The review board received a psychologist's report that detailed that Ivey withdrew from sex-offender treatment in January 2005, re-enrolled in the summer of 2006, "dis-enrolled" in 2008, and had not resumed sex-offender treatment as of November 2011. He attempted to escape from the Moose Lake facility in

November 2010, exposed his genital area to Moose Lake staff in March 2011, and triggered the facility's perimeter alarm in August 2011 in an attempt to change his "living conditions." As of November 2011, Ivey resided in Moose Lake's "Unit Omega," a unit for clients who "require specialized treatment programming to address behaviors that are disruptive to the general population and/or affect the safety of the facility." His diagnoses consisted of paraphilia "Not Otherwise Specified," voyeurism, frotteurism, fetishism, exhibitionism, and personality disorder with antisocial and narcissistic features.

Ivey petitioned for a rehearing and reconsideration of his discharge petition by a judicial appeal panel on the bases that (1) the review board's findings were unsupported by the record; (2) "[a]t least" one board member was not qualified to serve on the board; (3) the board is "superfluous as it is being run"; and (4) Minnesota Statutes section 253B.185, subdivision 18 (2010), is "unconstitutional on its face, or, in the alternative, as applied." An appeal panel, comprised of Judges Kathleen Gearin, Leslie Metzen, and Marybeth Dorn, conducted a hearing on January 18, 2013. Ivey participated in the hearing with counsel. The appeal panel received 19 exhibits from the commissioner without objection by Ivey, who called the sole witness, Dr. Nadia Donchenko, a clinical psychologist, to testify.

Dr. Donchenko testified that she interviewed Ivey, reviewed his records from his treatment facility, and issued a report, concluding that insufficient grounds supported Ivey's discharge. Dr. Donchenko noted that Ivey claims that he did not need the MSOP; he claims that his criminal acts were "due to depression and low self-esteem," which he claims no longer exist; he did not consider the MSOP's groups to

be beneficial; he had not progressed out of Phase I of the MSOP in nine years;[1] and Ivey's discharge plan included moving to Florida and possibly selling Viagra that he would acquire from a friend residing in Thailand. Dr. Donchenko opined that Ivey remains sexually dangerous and psychopathic due to his failure to reduce his risk of reoffending; he remains a risk to society, having shown no ability to consistently comply with rules in a controlled environment; and is not ready to live within the community.

The commissioner moved to dismiss Ivey's discharge petition, and the judicial appeal panel granted the motion, finding that no evidence showed that Ivey "is capable of making an acceptable adjustment to open society; is no longer dangerous to the public; and is no longer in need of important treatment and supervision." The appeal panel also found that Ivey failed to produce "any competent evidence to meet his initial burden of production to establish a prima facie case for full discharge."

Ivey moved for a new hearing before the appeal panel and amended findings under Minn. R. Civ. P. 52.02, 59.01–.06. He argued that the appeal panel failed to consider his competent evidence of his changed mental-health diagnosis; erred by considering his sex-offender treatment status and whether he had an acceptable discharge plan; erroneously applied Minn. Stat. § 253B.185, subd. 18 (2010); made clearly erroneous factual findings; and failed to address his constitutional arguments. He also argued that he received ineffective assistance of counsel and, in a motion addendum, argued that the appeal panel failed to view the evidence in the light most favorable to him and erroneously permitted the commissioner to submit exhibits.

[1] The MSOP includes three phases, Phase I being first and "foundation[al]."

On June 13, 2013, the appeal panel denied Ivey's motion for a new hearing and amended findings.

This appeal follows.

D E C I S I O N

Denial of Discharge Petition

> A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.
>
> In determining whether a discharge shall be recommended, the special review board and judicial appeal panel shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Minn. Stat. § 253B.185, subd. 18 (2010).[2]

"When appearing before the Appeal Panel, the committed person 'bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief.'" *Coker v. Jesson*, 831 N.W.2d 483, 485 (Minn. 2013) (quoting Minn. Stat. § 253B.19,

[2] We note that, in its first conclusion of law, the appeal panel stated that "Minn. Stat. § 253B.18 governs full discharge." The panel was mistaken as to SDPs and SPPs, like Ivey. Minnesota Statutes section 253B.18 (2010) pertains to "Persons who are mentally ill and dangerous to the public." Minnesota Statutes section 253B.185 (2010) applies to SDPs and SPPs. (Emphasis added.) But the panel's error was harmless because both sections include the same discharge criteria. *Compare* Minn. Stat. § 253B.18, subd. 15, *with* Minn. Stat. § 253B.185, subd. 18.

subd. 2(d) (2012)). "If the committed person satisfies [that] burden of production, then the party opposing the petition 'bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied.'" *Id.* at 486 (quoting Minn. Stat. § 253B.19, subd. 2(d)). "The proceeding in which a committed person produces evidence is commonly referred to as a 'first-phase hearing.'" *Id.* "The proceeding in which the opposing party attempts to prove that the discharge petition should be denied is commonly referred to as a 'second-phase hearing.'" *Id.*

At the conclusion of the first-phase hearing, the commissioner moved to dismiss Ivey's petition. Minnesota Rule of Civil Procedure 41.02(b) provides that, "[a]fter the plaintiff has completed the presentation of evidence, the defendant . . . may move for a dismissal on the ground that upon the facts and the law, the plaintiff has shown no right to relief." "When considering a motion to dismiss under Minn. R. Civ. P. 41.02(b), a Supreme Court Judicial Appeal Panel is required to view the evidence produced at the first-phase hearing in a light most favorable to the committed person." *Coker*, 831 N.W.2d at 484.

Ivey argues that the judicial appeal panel erred by admitting 19 exhibits offered by the commissioner. In *Coker*, the supreme court stated that "[t]he Appeal Panel's decision to allow the Commissioner to submit exhibits during the first-phase hearing unnecessarily complicated the analysis of the Commissioner's subsequent motion to dismiss under Minn. R. Civ. P. 41.02(b)," and that "the better practice would be to wait until the second-phase hearing before receiving the exhibits, testimony, and other evidence offered by the Commissioner." *Id.* at 491 n.9. But the appeal panel in this case did not have the

benefit of the *Coker* decision because it heard the appeal four months before the supreme court filed *Coker*. Regardless, this case is distinguishable from *Coker* in which the appeal panel admitted the commissioner's exhibits over Coker's objection. *Id.* at 487. Here, Ivey's counsel specifically informed the appeal panel that Ivey did not object to the panel's receipt of the exhibits offered by the commissioner.

Ivey argues that the judicial appeal panel erred by dismissing his discharge petition because he satisfied his burden of production by producing evidence of "significant changes to his mental diagnoses." He claims that, although he suffered from depression and low self-esteem when he committed his past offenses, he no longer suffers from those problems. Indeed, Dr. Donchenko stated in her report that "Ivey attributed the sexual offending to low self-esteem and depression, neither of which [is] currently an issue." But Dr. Donchenko rejected Ivey's depression-and-low-self-esteem explanation for his prior sexual conduct, stating that, "[a]lthough this may have been sufficient rationalization for his early window peeping, it does little to explain the course of . . . Ivey's escalating violence, rape and murder." We are not persuaded that Ivey's claimed improvements satisfy the discharge criteria in Minn. Stat. § 253B.185, subd. 18. "[A] slight change or improvement in the person's condition is not sufficient to justify discharge." *Call v. Gomez*, 535 N.W.2d 312, 319 (Minn. 1995).

Ivey argues that the judicial appeal panel erred by considering his failure to complete sex-offender treatment and the absence from his discharge plan of a treatment component. He argues that the discharge criteria in Minn. Stat. § 253B.185, subd. 18, do not require him to complete treatment or have a discharge plan. His argument lacks merit.

Although section 253B.185, subdivision 18, does not mention treatment or having a satisfactory discharge plan, it predicates discharge on a committed person being "capable of making an acceptable adjustment to open society, . . . no longer dangerous to the public, and . . . no longer in need of inpatient treatment and supervision." Minn. Stat. § 253B.185, subd. 18.

We conclude that the judicial appeal panel did not err by considering Ivey's failure to complete treatment and failure to have an adequate discharge plan. Even when viewed in the light most favorable to him, Ivey did not satisfy his burden of production because he produced no evidence to show that he satisfied the discharge criteria. *See Coker*, 831 N.W.2d at 491 (noting that rule 41.02(b) dismissal "might be appropriate when the committed person does not meet his burden of production" in response to argument that "reversal is not required in this case because 'even if this Court were to discount all of the Commissioner's exhibits and credit Coker's various offers of proof, Coker still failed to meet his burden of production'"). Even Dr. Donchenko, Ivey's sole witness at the appeal-panel hearing, did not support Ivey's discharge.

Ivey argues that the judicial appeal panel erred by failing to consider the due-process arguments that he made in his petition for a new hearing and amended findings. Although Ivey did not raise his constitutional challenges to the review board, the review-board proceeding was an "administrative procedure." *In re K. B. C.*, 308 N.W.2d 495, 497 (Minn. 1981). Ivey did raise constitutional issues before the judicial appeal panel, which was his "first opportunity in a forum possessing subject matter jurisdiction." *Neeland v. Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977); *cf. Lidberg v.*

Steffen, 514 N.W.2d 779, 782 (Minn. 1994) ("The appeal panel upheld the constitutionality of Minn. Stat. § 253B.18, subd. 15, on its face and as applied to respondent.").

Ivey challenged the constitutionality of Minn. Stat. § 253B.185, subd. 18, on its face or as applied to him, arguing that it violates his due-process right by (1) permitting continued confinement of a patient who "no longer suffers from a serious disorder," (2) requiring "both remission of dangerousness and mental illness," and (3) being irrelevant to SDPs and SPPs. "No State shall . . . deprive any person of life, liberty, or property, without due process of law," U.S Const. amend. XIV, § 1; *accord* Minn. Const. art. I, § 7, and, "[b]ecause civil commitment deprives a person of liberty, the protections of the Due Process Clause apply to civil-commitment proceedings," *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 548–49 (Minn. App. 2011), *aff'd*, 825 N.W.2d 716 (Minn. 2013). But, "in a facial challenge to constitutionality, the challenger bears the heavy burden of proving that the legislation is unconstitutional in *all* applications." *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013) (emphasis added) (quotation omitted). And, "[s]o long as civil commitment is programmed to provide treatment and periodic review, due process is provided." *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994). In his due-*process* arguments, Ivey does not attempt to show that the *discharge criteria* in Minn. Stat. § 253B.185, subd. 18, even as applied to him, denies him treatment or periodic review.

Although the judicial appeal panel did not expressly address Ivey's due-process arguments, we construe the panel's April 2013 order as implicitly rejecting them. *See*

Thiele v. Stich, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented *and considered by* the trial court in deciding the matter before it." (emphasis added) (quotation omitted)); *Reome v. Levine*, 379 N.W.2d 208, 210 (Minn. App. 1985) ("An exception to this general rule may be made when the appellant has previously raised the constitutional issue below and a ruling can be inferred from the trial court's action." (citing *McGuire v. C & L Rest. Inc.*, 346 N.W.2d 605, 610 (Minn. 1984) (considering constitutional issue that district court only implicitly rejected))), *review denied* (Minn. Feb. 19, 1986).

For the first time in his reply brief, and not in response to any new matter raised in the commissioner's response brief, Ivey requests that this court "exercise its supervisory power" to "correct" what he argues was the appeal panel's erroneous reliance on Dr. Donchenko's testimony. But "[t]he reply brief must be confined to new matter raised in the brief of the respondent." Minn. R. Civ. App. P. 128.02, subd. 4. Ivey's request in his reply brief "was not proper subject matter for [his] reply brief and, therefore, is waived and [must be] stricken." *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009). Moreover, "[t]he court of appeals does not exercise supervisory powers that are reserved to [the supreme] court." *State v. Ramey*, 721 N.W.2d 294, 302 n.6 (Minn. 2006).

We conclude that the judicial appeal panel did not err by dismissing Ivey's discharge petition.

Denial of Motion for New Hearing and Amended Findings

Ivey argues that the judicial appeal panel erred by denying his motion for a new hearing and amended findings under Minnesota Rules of Civil Procedure 52.02 and

59.01–.06. He argued in his motion that his counsel provided him ineffective assistance "by not submitting evidence that he had wished entered onto the record and by not raising certain issues which were pertinent to his petition for discharge." We do not consider Ivey's ineffective-assistance-of-counsel argument because "the Commitment Act does not provide any procedures for a patient indeterminately committed as an SDP or SPP to raise nontransfer, nondischarge claims such as ineffective assistance of counsel." *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012). And we are unpersuaded by Ivey's arguments for a new hearing because we have rejected his evidentiary, statutory, and constitutional arguments on which he based his new-hearing motion.

Ivey argues that certain findings in the judicial appeal panel's April 4, 2013 order are clearly erroneous and require modification. *See Johnson v. Noot*, 323 N.W.2d 724, 728 (Minn. 1982) (reviewing findings of judicial appeal panel for clear error). We agree.

In finding #2, in pertinent part, the judicial appeal panel found Ivey's diagnosis to be as follows:

> The current diagnosis is:
>
> Axis I: Fetishism
> Exhibitionism
> Frotteurism
> Paraphilia, Not Otherwise Specified (hebephilia)
>
> Axis II: Personality Disorder, Not Otherwise Specified, with Antisocial and Narcissistic features.

We modify finding #2 to conform with the November 8, 2011 MSOP "SPECIAL REVIEW BOARD TREATMENT REPORT," removing "(hebephilia)" and adding "Voyeurism."[3]

In finding #3, in pertinent part, the judicial appeal panel found as follows: "In April of 1992, Appellant was convicted of Second Degree Burglary and Fourth Degree Criminal Sexual Conduct . . . ." Based on documents filed in district court on March 31, 1993, entitled, "CRIMINAL JUDGMENT UPON CONVICTION / WARRANT FOR COMMITMENT" in case K0-93-38, we modify finding #3 as follows: "In March of 1993, Appellant was convicted of First Degree Burglary and Fourth Degree Criminal Sexual Conduct . . . ."

In finding #3, in pertinent part, the judicial appeal panel also found as follows: "In August of 1992, Appellant was convicted of First Degree Burglary and First Degree Criminal Sexual Conduct after he broke into a home and forced a 14-year-old to engage in oral sexual conduct." Based on documents filed in district court on March 31, 1993, entitled, "CRIMINAL JUDGMENT UPON CONVICTION / WARRANT FOR COMMITMENT" and a September 21, 1993 plea-hearing transcript in case K0-93-41, we also modify finding #3 as follows: "In March of 1993, Appellant was convicted of First Degree Burglary and Second Degree Criminal Sexual Conduct after he broke into a home, forcefully held down a 14-year-old, fondled her breasts and genital area, and forcefully removed her undergarments."

[3] Ivey requested that finding #2 be modified to conform with the diagnosis listed in Dr. Donchenko's January 2013 report. But Dr. Donchenko testified that she "did not do any testing" of Ivey and that her contact with him was limited to a two-hour interview.

In finding #3, in pertinent part, the judicial appeal panel found as follows: "In addition to the criminal convictions, records indicate that Appellant has committed at least 17 other sexual assaults on women that did not result in criminal convictions." We modify that finding to conform with Ivey's concession at a March 24, 2004 civil-commitment hearing as follows: "In March of 2004, at a civil-commitment hearing, Ivey affirmed that 'between the ages of 18 and 22' he 'assaulted 20 women,' which included women that he touched and women that he attempted to rape."

In finding #6, based on what Ivey told Dr. Donchenko about his discharge plan, the judicial appeal panel found as follows: "[Ivey] plans to go to Florida to live with his mother and support himself by selling Viagra." But Dr. Donchenko's report reveals that selling Viagra was only one of several option's that Ivey was considering:

> Ivey's discharge plan consists of working a "normal job" and leading a "normal life." He would like to relocate to Florida where his mother resides and with whom he would live. . . . Ivey was able to brain storm several job prospects. "I'm a pretty sharp guy" who has been capable of learning jobs in the wood and sign shops and can do "anything with computers." A friend who resides in Thailand has ready access to Viagra which . . . Ivey could then sell via the internet as " . . . a way around the system."

We therefore modify the appeal panel's finding as follows: "Ivey plans to go to Florida to live with his mother and, among other things, is considering supporting himself by selling Viagra."

Jurisdiction

Ivey asks this court to vacate the judicial appeal panel's April 4, 2013 dismissal of his discharge petition and remand for a new hearing on the basis that the appeal panel

lacked "jurisdiction" to issue the dismissal order because two of the three judicial panelists—Judges Metzen and Dorn—were retired judges and Judge Dorn's appointment by the supreme court was not effective until two weeks after the appeal hearing on January 18, 2013. After the appeal panel issued its dismissal order, Ivey raised this issue in a letter to the Minnesota Supreme Court Commissioner, who responded as follows:

> First, you indicate that Judge MaryBeth Dorn was not appointed as a panel member in the May 30, 2012 Order, but sat on a panel in January 2013. The order effective at that time authorized Judge Smith, as Chief Judge of the appeal panel, to "designate active and alternate members to sit as a second panel as necessary to insure the timely processing of appeal hearings." The additional district court judges, listed in paragraph 3 of the order, are appointed as "alternate members" of the panel.
>
> Second, Minnesota Statutes section 2.724 (2012) authorizes the use of retired judges to "act as a judge of any court." Thus, appointed retired judges are "acting judges."

"Whether a court has jurisdiction is a question of law that [an appellate court] review[s] de novo." *Cnty. of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 538 (Minn. 2012). "Subject matter jurisdiction refers to a court's authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision." *Giersdorf v. A & M Constr., Inc.*, 820 N.W.2d 16, 20 (Minn. 2012) (quotation omitted). Although the record provides no indication that Ivey raised his jurisdictional argument to the appeal panel, generally, "[d]efects in subject-matter jurisdiction may be raised at any time and cannot be waived." *Williams v. Smith*, 820 N.W.2d 807, 813 (Minn. 2012) (quotation omitted).

In a May 30, 2012 order, noting its obligation to "appoint an appeal panel under the provisions of Minn. Stat. § 253B.19, subd. 1," the supreme court reappointed a three-judge appeal panel, which includes Judges Joanne Smith and Kathleen Gearin. *In re Appointment to Appeal Panel Pursuant to Minn. Stat. § 253B.19, subd. 1 (2010)*, No. ADM09-8003, at *1 (Minn. May 30, 2012) (2012 Appointment Order). In that order, the supreme court reappointed a number of judges as "alternate members of the appeal panel for a period of one year beginning May 1, 2012," who included Judge "Leslie M. Metzen – retired." *Id.* at *1–2. The court also reappointed Judge Smith as the panel's chief judge and authorized her to "designate active and alternate members to sit as a second appeal panel as necessary to insure the timely processing of appeal hearings." *Id.* at *1.

In a February 8, 2013 order, the supreme court reappointed Judges Gearin and Smith to the three-judge panel, reappointed Judge Smith as chief judge, and authorized Judge Smith to "designate active and alternate members to sit as a second appeal panel." *In re Appointment to Appeal Panel Pursuant to Minn. Stat. § 253B.19, subd. 1 (2012)*, No. ADM09-8003, at *1 (Minn. Feb. 8, 2013) (2013 Appointment Order). In that order, the court reappointed a number of alternate members, including Judge "Leslie M. Metzen – retired," and appointed as an alternate member Judge "MaryBeth Dorn – retired." *Id.* at *1–2. And the court stated that the appointments were effective on February 1, 2013. *Id.* at *1.

We are not persuaded that the retired statuses of Judges Metzen and Dorn disqualified them from being appointed by the supreme court as alternate appeal-panel members. Indeed, Minnesota Statutes section 253B.19, subdivision 1 (2010), which

governs the "[c]reation" of the appeal panel, provides that "[t]he Supreme Court shall establish an appeal panel composed of three judges and four alternate judges appointed from among the *acting* judges of the state." (Emphasis added.) We do not question the supreme court's implicit construction of Minn. Stat. § 253B.19, subd. 1, in its May 2012 and February 2013 orders as permitting the appointment of retired judges as alternate panelists. *2013 Appointment Order*, No. ADM09-8003, at *1–2; *2012 Appointment Order*, No. ADM09-8003, at *1–2. "[T]his court has no authority to overrule decisions of the supreme court." *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 483 (Minn. App. 2006), *review denied* (Minn. Aug. 23, 2006).

We also are not persuaded by Ivey's argument that Judge Dorn's appointment date rendered the judicial appeal panel without jurisdiction to issue its dismissal order. Although Judge Dorn's appointment as an alternate panel member was not effective until February 1, 2013, two weeks after the appeal panel presided over the January 18 hearing, *2013 Appointment Order*, No. ADM09-8003, at *1–2, we conclude that Judge Dorn was at least a de facto panelist. "A de facto judge is a judge operating under color of law but whose authority is procedurally defective." *State v. Harris*, 667 N.W.2d 911, 920 n.5 (Minn. 2003) (quotation omitted). "The acts of a de facto judge, actually occupying the office and transacting business, are valid." *State v. Windom*, 131 Minn. 401, 420–21, 155 N.W. 629, 637 (1915) (applying de facto judge doctrine "[t]o avoid useless controversy or litigation"); *see Carli v. Rhener*, 27 Minn. 292, 293, 7 N.W. 139, 139 (1880) ("The acts of [a de facto] officer are valid as respects the public and persons interested therein, and as to them cannot be questioned."). The de facto judge doctrine does not apply to

"case[s] where the defect in the underlying statute is not merely technical but embodies a strong policy concerning the proper administration of judicial business." *Harris*, 667 N.W.2d at 920 n.5 (quotation omitted).

Ivey offers no legal support for an argument that an alleged defect based on the inclusion of a retired judge on a three-judge panel two weeks before the filing of her appointment order is contrary to a strong policy concerning the proper administration of judicial business and not merely technical, and we are aware of none. We conclude that the judicial appeal panel did not lack jurisdiction to dismiss Ivey's discharge petition.

Affirmed as modified.