

STATE OF MINNESOTA
IN SUPREME COURT

Rules of Board on Judicial Standards

O R D E R

Pursuant to a public hearing held before this court on June 29, 1978, for consideration of amendments to the Rules of the Board on Judicial Standards,

IT IS HEREBY ORDERED THAT

(1) Rules A through Y, both inclusive of the present rules of the Board on Judicial Standards, are repealed;

(2) Rules 1 through 15, a copy of which is attached to this order and made a part thereof, are hereby adopted as the rules for the Board of Judicial Standards.


Dated: July 5, 1978.

SUPREME COURT
FILED

JUL 5 1978

JOHN McCARTHY
CLERK

BY THE COURT


Robert J. Sheran
Chief Justice

Rules of Board on Judicial Standards

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: present 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: present 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: present 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: present 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: present 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: present 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. St. 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 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 prejudgment, 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, present 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 for 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, present 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, present 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, present 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. St. 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: present rule Y)