

OFFICE OF
APPELLATE COURTS
FILED

MAY 23 1986

STATE OF MINNESOTA
IN SUPREME COURT
C4-85-697

WAYNE TSCHIMPERLE
CLERK

In Re Proposed Rules of Board on
Judicial Standards.

ORDER

WHEREAS, Minn. Stat. § 490.16, subd. 5, empowers this court to make Rules for the Board on Judicial Standards, and

WHEREAS, Rule 15 of the present Rules of the Board on Judicial Standards provides for this court to implement or amend such Rules, and

WHEREAS, the undersigned, by Order dated October 24, 1984, did appoint a Supreme Court Advisory Committee to study the existing Rules and to make recommendations for changes for consideration of the court, and

WHEREAS, the Advisory Committee on Rules of the Board on Judicial Standards has recommended certain amendments to those Rules, and

WHEREAS, this court held a hearing on the 14th day of March, 1986, and is now fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the annexed Rules of the Board on Judicial Standards be, and the same are hereby prescribed and promulgated as the Rules regulating judicial discipline in the State of Minnesota.

IT IS FURTHER ORDERED that these Rules, as amended, shall govern all matters that come before the Board on Judicial Standards on or after the 1st day of July, 1986. The Advisory Committee on Rules of the Board on Judicial Standards is hereby terminated.

Dated this 20th day of may, 1986.

BY THE COURT:


Douglas K. Amdahl, Chief Justice

RULES OF BOARD
ON
JUDICIAL STANDARDS

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Definitions:

"Information" is any communication, oral or written, made by judges, lawyers, court personnel or any member of the general public regarding the conduct of a judge.

"Evaluation" is a prompt and discreet inquiry by the executive secretary into the facts and circumstances of any information which alleges conduct listed in Rule 4(a).

"Investigation" is a full inquiry by the executive secretary, with the authorization of the board, into any complaint filed with the executive secretary.

"Complaint" is information upon which the board finds sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a).

"Judge" is any judge, judicial officer, referee or other hearing officer employed in the judicial branch of the state of Minnesota, any judge of the Minnesota Tax Court or any judge of the Workers' Compensation Court of Appeals.

"Formal Statement of Charges" is information in a complaint upon which the board has determined there is sufficient cause to proceed.

"Formal Statement of Complaint" is information in a Formal Statement of Complaint upon which the board has determined to conduct a formal hearing.

Rule 1. Organization of Board

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of Court of Appeals, 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 resident citizens of Minnesota who are not judges, retired judges, or lawyers. Effective July 1, 1980, the executive secretary, who shall be an attorney licensed to practice in Minnesota, shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate. Minn. St. §490.15.

(b) Term of Office.

- (1) The term of each member shall be four years.
- (2) No member shall serve more than two full four-year terms or their equivalent, not to exceed eight years.

(c) 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 in good standing to practice in the courts of this state or is appointed or elected to a judicial office; or
 - (iv) When a lay member becomes a lawyer; or
 - (v) When a member is no longer a resident citizen.
- (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.

(d) 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 and allegations as to misconduct or disability;
- (2) Make preliminary evaluations;
- (3) Conduct investigations of complaints as directed by the board;
- (4) Recommend dispositions;
- (5) Maintain the board's records;
- (6) Maintain statistics concerning the operation of the board and make them available to the board, and to the Supreme Court;
- (7) Prepare the board's budget for approval by the board, and administer its funds;

- (8) Employ and supervise other members of the board's staff;
- (9) Prepare an annual report of the board's activities for presentation to the board, to the Supreme Court, and to the public;
- (10) 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.

(e) Quorum and Chairperson.

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

(f) 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.

(g) 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 Supreme Court.

(h) 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.

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;
- (3) Matters of voluntary retirement for disability; and
- (4) Review of a judge's compliance with Minn. St. §546.27.

(b) Persons Subject to Discipline. Anyone exercising judicial powers and performing judicial functions within the judicial branch, including judges assigned to administrative duties, shall be subject to judicial discipline and disability retirement under these rules. Judges of the Minnesota Tax Court are likewise subject to judicial discipline and disability retirement under these rules.

(c) Jurisdiction Over Sitting Judges. The board shall have 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. In cases of sitting full-time judges, this jurisdiction shall be exclusive. In cases of sitting part-time judges, the board shall have exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board may also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of a part-time judge not occurring in a judicial capacity, including conduct occurring prior to the assumption of judicial office.

(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.

(e) Subpoena and Discovery.

(1) During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(e), failure or refusal of a judge who is the subject of information to cooperate or the intentional misrepresentation of a material fact by the judge shall constitute conduct prejudicial to the administration of justice and may be sufficient cause for the board to proceed under Rule 2(e)(2).

(2) At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(e), both the board and the judge being investigated shall be entitled to compel, by subpoena, attendance and testimony of witnesses, including the judge as a witness, and the inspection of documents, books, accounts and other records.

(3) The power to enforce process may be delegated by the Supreme Court. The District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(e) requests.

(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.

(g) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 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.

Rule 4. Grounds for Discipline

(a) Grounds for Discipline Shall Include:

- (1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude;
- (2) A persistent failure to perform judicial duties;
- (3) Incompetence in the performance of judicial duties;
- (4) Habitual intemperance;
- (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute;
- (6) Conduct that constitutes a violation of the code of judicial conduct or professional responsibility.

(b) Disposition of Criminal Charges. A conviction, acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.

(c) 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.

Rule 5. Confidentiality

(a) Before Formal Statement of Complaint and Response.

- (1) All proceedings shall be confidential until the Formal Statement of Complaint and Response have been filed with the Supreme Court pursuant to Rule 9.
- (2) The board shall establish procedures for enforcing the confidentiality provided by this rule.
- (3) A judge under investigation may waive confidentiality at any time during the proceedings.

(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.

(c) Disclosure for Judicial Selection, Appointment, or Assignment. When any state or federal agency seeks material in connection with the selection or appointment of judges or the assignment of a retired judge to judicial duties, the board may release information from its files only (1) if the judge in question agrees to such dissemination and (2) if the file reflects some action of the board pursuant to Rule 6(g) or Rule 8.

Rule 6. Procedure Prior to Sufficient Cause Determination

(a) Initiation of Procedure.

(1) An inquiry relating to conduct of a judge may be initiated upon any reasonable information.

(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.

(3) Upon request of the chief justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.

(b) Absolute Privilege. Information or related testimony submitted to the board or its staff shall be absolutely privileged, and no civil action predicated on the information may be instituted against the informant or witness, or their counsel.

(c) Evaluation, Screening and Complaint.

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

(2) The results of all evaluations shall be routinely submitted to the board. If the board determines that there exists sufficient cause to believe that a judge has engaged in conduct listed in Rule 4(a), it may authorize an investigation by filing the information as a complaint with the executive secretary.

(d) Discretionary Notice.

(1) Notice that a complaint has been filed may be given to the judge named in the complaint.

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

(e) Sufficient Cause Determination.

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

(2) A finding of sufficient cause shall require the concurrence of a majority of the full board.

(f) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the informant, 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 not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 6(g) or Rule 8.

(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 may be released by the board.

(g) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient 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.

(h) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6 (g) may demand a full hearing before a factfinder as provided in Rule 9.

Rule 7. Interim Sanctions

(a) Mandatory Suspension. The Supreme Court shall, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging him with a crime punishable as a felony under state or federal law. The Supreme Court may suspend the pay of such judge upon a conviction of a crime punishable as a felony under state or federal law or any other crime involving moral turpitude. If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(b) Permissive Suspension. The Supreme Court may, on its own motion or upon recommendation of the board, suspend a judge with pay.

(1) Upon the filing of misdemeanor or gross misdemeanor charges against the judge if it adversely affects his ability to perform the duties of his office.

(2) Upon the claim by the judge that a physical or mental disability prevents his assisting in the preparation of his defense in a proceeding under these rules. Once an interim suspension has been imposed, there shall be a determination of whether in fact there is such a disability. If there is a finding of no disability, the disciplinary proceeding shall continue.

(3) Upon the recommendation to the Supreme Court by the Board of Judicial Standards for his removal or retirement.

(4) Upon a finding by the board or the factfinder that a judge has a physical or mental disability that seriously interferes with the performance of his duties.

(5) In any other proceeding under these rules.

(c) Review of Permissive Suspension. 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.

(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.

(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.

Rule 8. Procedure Where Sufficient Cause Found

(a) Formal Statement of Charges.

(1) After a finding of sufficient cause to proceed, a Formal Statement of Charges against the judge and the alleged facts forming its 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 Formal Statement of Charges. 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 Formal Statement of Charges in writing within 20 days. A personal appearance before the board 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.

(b) Termination after Response. The board may terminate the proceeding and dismiss the Formal Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event give notice to each informant and to the judge that it has found insufficient cause to proceed.

Rule 9. Formal Statement of Complaint and Notice

(a) Formal Statement of Complaint.

(1) The board shall prepare and sign a Formal Statement of Complaint.

(2) The judge shall be served promptly with a copy of the Formal Statement of Complaint. Service shall be accomplished in accordance with the Rules of Civil Procedure in effect at the time of the service. The judge shall respond

to the Formal Statement of Complaint in writing within 20 days. The executive secretary, upon receiving the written response of the judge, or if none has been received, within 25 days of service of the Formal Statement of Complaint, shall file the Formal Statement of Complaint and any written response thereto with the Supreme Court.

(3) The files of the board, other than the Formal Statement of Complaint and the written response thereto, shall remain confidential unless and until any documents, statements, depositions, or other evidence in the files of the board are introduced or used in a public hearing as provided in Rule 10.

(b) Notice of Hearing.

(1) Upon the filing of Formal Statement of Complaint and Response, if any, with the Supreme Court, 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 90 days than the time limits set under section (a) (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.

Rule 10. Formal Hearing

(a) Factfinder.

(1) The formal hearing shall be public and conducted before a factfinder, which may be a referee or three-member referee panel, appointed by the Supreme Court.

(2) The Supreme Court shall appoint a factfinder to conduct such hearings within 10 days of the filing of the Formal Statement of Complaint.

(3) Whenever possible, referees appointed by the Supreme Court to preside at a hearing shall be retired judges, in good standing, but in any event, referees shall be either judges or lawyers.

(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.

(d) Amending Allegations. By leave of the factfinder or by consent of the judge, the Formal Statement of Complaint 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.

Rule 11. 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.

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations.

(c) Review by the Board. The findings and recommendations and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder.

(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 civil penalty;
- (7) Any combination of the above sanctions.

(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.

Rule 12. 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.

(b) Transcript Cost. A transcript of all proceedings shall be provided to the judge without cost.

(c) Other Costs. All other costs of these proceedings shall be at public expense.

Rule 13. 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.

(b) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the Court shall promptly docket the matter for expedited consideration.

(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 Civil Appellate Procedure.

(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.

(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.

(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.

(g) Consideration of Lawyer Discipline. When the Board on Judicial Standards recommends the removal of a judge, the Supreme Court shall promptly notify the judge and the Lawyers Professional Responsibility Board and give them an opportunity to be heard in the Supreme Court on the issue of lawyer discipline.

(h) Charge Against Supreme Court Justice. When any charge has been filed against a member of the Supreme Court, the charge shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or his designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Justice.

(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.

Rule 14. 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.

(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.

(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.

Rule 15. 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.

(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.

Rule 16. 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.