

OFFICE OF
APPELLATE COURTS

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FILED

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

PROMULGATION OF AMENDMENTS TO THE
MINNESOTA CODE OF JUDICIAL CONDUCT AND
RULES OF BOARD ON JUDICIAL STANDARDS.

ORDER

WHEREAS, Minn. Stat. § 490.16, subd. 5, empowers the Supreme Court to promulgate Rules for the Board on Judicial Standards and existing Rule 16, Rules of Board on Judicial Standards provides for periodic amendment, if necessary; and

WHEREAS, a Supreme Court Advisory Committee was appointed to study the existing Code of Judicial Conduct and Rules and to make recommendations for amendments for Supreme Court consideration; and

WHEREAS, the Advisory Committee has recommended certain amendments to the Code and to the Rules; and

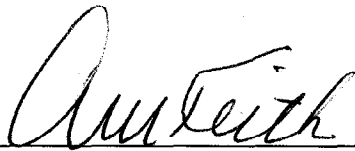
WHEREAS, a hearing was held on April 12, 1995, before the court sitting en banc, at which representatives of the Advisory Committee, attorneys and members of the public provided comments on the amendments as proposed;

IT IS HEREBY ORDERED that the attached Code of Judicial Conduct and Rules of the Board on Judicial Standards be, and the same are, prescribed and promulgated as the Code and Rules regulating judicial conduct and judicial discipline in the State of Minnesota.

IT IS FURTHER ORDERED that this Code and these Rules, as amended, shall govern all matters which come before the Board on Judicial Standards on or after the 1st day of January 1996.

Dated: November 1, 1995

BY THE COURT:



A handwritten signature in cursive script, appearing to read "Am Feith", is written over a horizontal line.

Chief Justice

MINNESOTA CODE OF JUDICIAL CONDUCT
As Amended, Effective January 1, 1996

PREAMBLE

The role of the judiciary is central to American concepts of justice and the rule of law. This Code of Judicial Conduct establishes standards for the ethical conduct of judges to reflect the responsibilities of the judicial office as a public trust and to promote confidence in our legal system. The Code and its individual Canons are designed to provide guidance to judges and candidates for judicial office and to provide a framework for the regulation of conduct through the Board on Judicial Standards. At the same time, the text embodies standards of judicial and personal conduct intended to be binding on judges and candidates for judicial office.

CANON 1

**A Judge Shall 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 high standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

CANON 2

**A Judge Shall Avoid Impropriety
and the Appearance of Impropriety
In All of the Judge's Activities**

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

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

C. A judge shall not hold membership in any organization that practices unlawful discrimination on the basis of race, sex, religion or national origin.

CANON 3

A Judge Shall Perform the Duties of the Office Impartially and Diligently

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

A. Adjudicative Responsibilities.

(1) A judge shall hear and decide promptly, efficiently and fairly matters assigned to the judge except those in which disqualification is required.

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

(3) A judge shall require order and decorum in all proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others dealt with in an official capacity, and shall require similar conduct of lawyers and of court personnel and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit court personnel and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, religion, national origin, disability, age, sexual orientation or socioeconomic status, in relation to parties, witnesses, counsel or others. This Section 3A(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with other judges and with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall abstain from public comment about a pending or impending proceeding in any court, and shall require similar abstention on the part of court personnel subject to the judge's 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. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(10) Except in the Supreme Court and the Court of Appeals, a judge shall prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recess between sessions. A judge may, however, 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 be 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.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require court personnel and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

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

C. Disciplinary Responsibilities.

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

(2) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Section 3C(1) are part of the judge's judicial duties.

D. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge 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) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, significant other, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the proceeding.

(d) the judge or the judge's spouse or significant other or a person within the third degree of relationship to any 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 proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse, significant other and minor children wherever residing.

E. Remittal of Disqualification. A judge disqualified by the terms of Section 3D may disclose on the record the basis of the judge's disqualification, and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be incorporated in the record of the proceeding.

CANON 4

A Judge Shall Conduct All Extra-Judicial Activities so as to Minimize the Risk of Conflict With Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

B. Avocational Activities. A judge may write, lecture, teach, speak and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal activities, including the arts, sports and other social and recreational activities, subject to the requirements of this Code.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of 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 and the other requirements of this Code:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of judicial office for that purpose, but may be listed as an officer, director or trustee of such an organization. A judge shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events. A judge may participate in the management and investment of an organization's funds so long as it does not conflict with other provisions of the Code.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

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D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3D;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds \$150, the judge reports it in the same manner as the judge reports compensation in Section 4H.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, conservator, attorney in fact or other fiduciary, except for the estate, trust, conservatorship or person of a family member, and then only if such service will not interfere with the proper performance of judicial duties.

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

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law. A retired judge may participate as mediator or arbitrator if:

(1) the judge does not participate during the period of any judicial assignment,

(2) the judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator, unless all parties to the proceeding consent after consultation, and

(3) the participation does not reflect adversely on the judge's impartiality.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but may not act as advocate or negotiator nor make an appearance as counsel for a member of the judge's family in a legal matter.

H. Compensation, Reimbursement and Reporting.

(1) A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

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

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) A judge shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Income from investments, whether in real or personal property and other sources where the judge does not render service in exchange for the income is not extra-judicial compensation to the judge. This report shall be made annually, on or before the first day of May each year, and be filed as a public document in the office of the State Court Administrator.

I. Disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3D and 3E, or as otherwise required by law.

CANON 5

A Judge or Judicial Candidate Shall Refrain From Political Activity Inappropriate to Judicial Office

A. In General.

(1) Except as authorized in Section 5B(1), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold any office in a political organization;

(b) publicly endorse or, except for the judge or candidate's opponent, publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings; or

(e) solicit funds for or pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

(2) A judge shall resign the judicial office on becoming a candidate either in a primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office, including an incumbent judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5B(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position or other fact, or those of the opponent; and

(ii) by words or conduct manifest bias or prejudice inappropriate to judicial office.

(e) may respond to statements made during a campaign for judicial office within the limitations of Section 5A(3)(d).

B. Judges and Candidates For Public Election.

(1) A judge or a candidate for election to judicial office may, except as prohibited by law,

(a) speak to gatherings on his or her own behalf;

(b) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(c) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

(2) A candidate shall not personally solicit or accept campaign contributions or solicit publicly stated support. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. Such committees shall not disclose to the candidate the identity of campaign contributors. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

C. Incumbent Judges. A judge shall not engage in any political activity except (1) as authorized under any other Section of this Code, (2) on behalf of measures to improve the law, the legal system or the administration of justice, or (3) as expressly authorized by law.

D. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2 of the Minnesota Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full-Time Judges. Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a full-time referee, special master or magistrate, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. Retired Judge. A retired judge who by law is not permitted to practice law is not required to comply:

(1) except while serving as a judge, with Section 4F; and

(2) at any time with Section 4E.

C. Part-time Judge. A part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3A(9);

(b) at any time, with Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), and 5C.

(2) shall not practice law in the division of the court on which the judge serves and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

D. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

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As Amended, Effective January 1, 1996
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RULES OF BOARD ON JUDICIAL STANDARDS
As Amended, Effective January 1, 1996

DEFINITIONS

'Complaint' 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 complaint which alleges conduct listed in Rule 4(a).

'Investigation' is a full inquiry by the executive secretary, with the authorization of the board, into the facts and circumstances of any complaint which alleges 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.

'Statement of Charges' is a complaint upon which the board has determined there is sufficient cause to proceed.

'Formal Complaint' is 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, three judges of district court, two lawyers who have practiced law in the state for at least ten years and four resident citizens of Minnesota who are not judges, retired judges or lawyers. The executive secretary, who shall be an attorney licensed to practice law in Minnesota, with a minimum of fifteen years' experience in the practice of law, including any service as a judge, shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate except that senate confirmation shall not be required for judicial members. 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 held at the time of selection; or

(iii) When a lawyer ceases to be in good standing to practice law 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 the predecessor in office. A member selected to fill a vacancy shall hold office for the unexpired term of the 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 complaints 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 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 complaints, 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) Jurisdiction Over Full-Time and Part-Time Judges. The board shall have jurisdiction over the conduct of all judges. This jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. In cases of full-time judges, including retired judges subject to assignment, this jurisdiction shall be exclusive. In cases of part-time judges, including referees of conciliation court, 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.

(c) 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.

(d) Subpoena and Depositions.

(1) Depositions Limited. Depositions shall not be allowed, provided that, for good cause shown, a deposition may be taken of a witness living outside the state or physically unable to attend the hearing.

(2) Subpoenas for Investigation. During the evaluation and investigative stage of a proceeding, prior to a finding of sufficient cause to proceed pursuant to Rule 6(d), and subject to the limitations of Rule 2(d)(1):

(i) Upon resolution of the board, the executive secretary may make application for the issuance of a subpoena compelling any person, including a judge, to attend and give testimony, and to produce documents, books, accounts and other records. Such subpoena shall issue upon a showing that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(ii) 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(d)(3).

(3) Subpoenas for Hearing. At all other stages of the proceeding following a finding of sufficient cause to proceed pursuant to Rule 6(d), and subject to the limitations of Rule 2(d)(1), 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.

(4) Issuing Subpoenas. The District Court of Ramsey County shall issue subpoenas.

(5) Motions. Prior to the appointment of a factfinding panel pursuant to Rule 10(a), the District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(d) requests. Following the appointment of a factfinding panel, the presider of the factfinding panel before whom the matter is pending shall have jurisdiction over motions arising from Rule 2(d) requests and shall have all the powers of a district court judge. Any resulting decision or order of the presider of the factfinding panel or the District Court of Ramsey County may not be appealed before entry of the final order in the disciplinary proceeding. The judge shall be denominated by number or randomly selected initials in any District Court proceedings.

(e) Impeachment. Nothing in these rules shall affect the impeachment of judges under the Minnesota Constitution, Art. 8.

RULE 3. IMMUNITY; PRIVILEGE

Information submitted to the board or its staff and testimony given in the proceedings under these rules shall be absolutely privileged, and no civil action predicated thereon may be instituted against the complainant or witness, or their counsel. 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, including, but not limited to, discrimination against or harassment of persons on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, disability or age.

(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 understood by the judge. Claims of error shall be left to the appellate process.

RULE 5. CONFIDENTIALITY

(a) Before Formal Complaint and Response. Except as otherwise provided in this rule, all proceedings shall be confidential until the Formal Complaint and response, if any, have been filed with the Supreme Court pursuant to Rule 8. The board shall establish procedures for enforcing the confidentiality provided by this rule.

(1) Upon determination that there is insufficient cause to proceed, the complainant, if any, shall be promptly notified and given a brief explanation of the board's action. The complainant shall also be promptly notified of any disposition pursuant to Rule 6(f).

(2) If at any time the board takes action as may be authorized pursuant to Rule 6(d)(1)(ii), such action shall be a matter of public record.

(3) Any action taken by the board pursuant to Rule 6(f) may be disclosed to the chief justice, chief judge and/or district administrator of the judicial district in which the judge sits. Such disclosure is at the discretion of the board and shall be for the purpose of monitoring future conduct of the judge and for assistance to the judge in modifying the judge's conduct. To the extent that any information is disclosed by the board pursuant to this provision, the chief justice, chief judge and/or district administrator shall maintain the confidentiality of the information in accordance with Rule 5.

(b) After Formal Complaint and Response. Upon the filing of the Formal Complaint and written response, if any, with the Supreme Court, the files of the board, other than the Formal 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.

(c) Work Product. The work product of the executive secretary and board counsel, and the records of the board's deliberations, shall not be disclosed.

(d) Public Statements by Board.

(1) 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 comments and criticisms prior to its release, but the board in its discretion may release the statement as originally prepared.

(2) 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.

(3) The board may make such disclosures as it deems appropriate whenever the board has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(e) Disclosure for Judicial Selection, Appointment, Election 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(d), Rule 6(f) or Rule 7. If the board action was taken on or after January 1, 1996, such information may also be released if a judge is involved in a contested election, subject to the same restrictions.

(f) Waiver of Confidentiality. A respondent judge may waive confidentiality at any time during the proceedings.

RULE 6. PROCEDURE PRIOR TO SUFFICIENT CAUSE DETERMINATION

(a) Initiation of Inquiry. An inquiry may be initiated as follows:

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

(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) Preliminary Evaluation. Upon receipt of a complaint as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation. The results of all evaluations shall be routinely submitted to the board.

(c) Investigation; Discretionary Notice.

(1) Upon review of the preliminary evaluation, or on its own motion, the board may, by resolution, authorize an investigation.

(2) Notice that an investigation has been authorized may be given to the judge whose conduct or physical or mental condition is being investigated.

(d) Sufficient Cause Determination.

(1) The board shall promptly consider the results of the investigation. If the board determines that there is sufficient cause to proceed, it shall either:

(i) comply with Rule 7; or

(ii) issue a public reprimand. Prior to the issuance of a public reprimand pursuant to this Rule 6(d)(1)(ii), the judge shall be served with a copy of the proposed reprimand and a notice setting forth the time within which these rules require the judge to either submit comments and criticisms or to demand a formal hearing as provided in Rule 8. Within 20 days of service of the proposed reprimand, the board shall be served with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If a timely demand for a formal hearing is made, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the reprimand as originally prepared.

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

(e) Insufficient Cause to Proceed.

(1) Upon determination that there is insufficient cause to proceed, the board shall promptly comply with Rule 5(a)(1). If informed of the proceeding, the judge shall also be promptly 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(d) or (f), or Rule 7.

(f) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed pursuant to Rule 7, it may make any of the following dispositions, unless the underlying conduct is part of a pattern involving the same or similar conduct:

- (1) The board may warn the judge that the conduct may be cause for discipline.
- (2) The board may impose reasonable conditions on a judge's conduct.
- (3) The board may direct professional counseling, treatment or assistance for the judge.

(g) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(f) may demand a full hearing before a factfinder as provided in Rule 8.

(h) Representation by Counsel. A judge may be represented by counsel, at the judge's expense, at any stage of the proceedings under these rules.

RULE 7. PROCEDURE WHERE SUFFICIENT CAUSE FOUND

(a) Statement of Charges.

(1) After a finding of sufficient cause to proceed, the executive secretary shall prepare a Statement of Charges against the judge setting forth the factual allegations and the time within which these rules require the judge to serve a written response. 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 Statement of Charges. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The judge shall serve a written response on the board within 20 days of service of the Statement of Charges. 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, a verbatim record of the proceedings shall be made.

(b) Termination after Response. The board may terminate the proceeding and dismiss the Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event comply with Rule 5(a)(1) and give notice to the judge that it has found insufficient cause to proceed.

(c) Quorum. If the board elects to proceed as authorized in Rule 8, such action must be by concurrence of a majority of the full board.

RULE 8. FORMAL COMPLAINT AND NOTICE

(a) Formal Complaint.

(1) Promptly following the board's determination pursuant to Rule 7(c), or when required pursuant to Rule 6(d)(1)(ii) or Rule 16(a), the board shall issue a Formal Complaint setting forth the charges against the judge, the factual allegations and the time within which these rules require the judge to serve a written response. 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 Complaint. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The judge shall serve a written response on the board within 20 days of service of the Formal Complaint. 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 Complaint, shall file the Formal Complaint and the written response, if any, with the Supreme Court.

(b) Notice of Hearing.

(1) Upon the filing of Formal 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 after the filing of the Formal Complaint with the Supreme Court. 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.

RULE 9. DISCOVERY

(a) Witnesses; Depositions. Within 20 days after the service of a response, or after the expiration of the time for service of a response, whichever occurs first, counsel for the board and the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. The presider of the factfinding panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. Subpoenas and depositions shall be governed by Rule 2(d).

(b) Other Evidence. Counsel for the board and the judge shall exchange:

(1) non-privileged evidence relevant to the Formal Complaint, documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing; and

(2) other material only upon good cause shown to the presider of the factfinding panel.

(c) Exculpatory Evidence. Counsel for the board shall provide the judge with exculpatory evidence relevant to the Formal Complaint.

(d) Duty of Supplementation. Both the board and the judge have a continuing duty to supplement information required to be exchanged under this rule.

(e) Completion of Discovery. All discovery must be completed within 60 days of the service of the response or the expiration of the time for service of the response, whichever occurs first.

(f) Failure to Disclose. The presider of the factfinding panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness' name and address, any statements taken from the witness or summaries of any interviews with the witness.

(g) Resolution of Disputes. Disputes concerning discovery shall be determined by the presider of the factfinding panel before whom the matter is pending. The decisions of the presider of the factfinding panel may not be appealed before entry of the final order in the disciplinary proceeding.

(h) Civil Rules Not Applicable. Proceedings under these rules are not subject to the Rules of Civil Procedure regarding discovery except Rules 26.03, 30.02-.07, 32.04-.05, and 37.04

RULE 10. FORMAL HEARING

(a) Factfinder. The formal hearing shall be a public hearing conducted before a three-member panel, acting as a factfinder. Members of the factfinding panel shall be appointed by the Chief Justice of the Supreme Court within 10 days of the filing of the Formal Complaint with the Supreme Court. One member of the factfinding panel who is either a judge or a lawyer shall be designated as the presider by the Chief Justice of the Supreme Court. Whenever possible, two members of the factfinding panel shall be retired judges, in good standing, but in any event, shall be either judges or lawyers, and one member of the factfinding panel shall be a citizen who is not a judge, retired judge or lawyer.

(b) Rules of Evidence and Due Process. In the hearing, all testimony shall be under oath, the 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 Rules of Evidence.

(4) Every formal hearing conducted under these rules shall be recorded verbatim.

(d) Amendments. By leave of the presider of the factfinding panel for good cause shown or by consent of the judge, the Formal Complaint may be amended after commencement of the hearing if the judge and the judge's 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) Recommended Discipline. Based on clear and convincing evidence in the hearing record, the board shall make 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) Suspension with or without pay; or

(8) Any combination of the above sanctions.

(c) Quorum; Dissent; Dismissal.

(1) A recommendation for discipline shall be reported to the Supreme Court only if concurred in by a majority of the full board.

(2) If a majority of the full 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 is related to the disability; or

(ii) The judge is exonerated of the charges, in which case the Supreme Court may determine that the imposition of costs and expert witness fees would work a financial hardship or injustice and shall then 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 Supreme Court, serve copies upon the respondent judge. Proof of service shall also be filed with the Court.

(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 shall, and the judge may, file briefs with the Court in accordance with the requirements of Rule 128, 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 stay proceedings 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 stay proceedings 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 recommendation of the board.

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

(h) Charge Against Supreme Court Justice. When any Formal Complaint has been filed against a member of the Supreme Court, the review under Rule 13 shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Judge or designee.

(i) Petition for Rehearing. In its decision, the Court may direct that no petition for rehearing will be entertained, in which event its decision shall be final upon filing. If the Court

does not so direct, the respondent may file a petition for rehearing in accordance with the requirements of Rule 140, Rules of Civil Appellate Procedure.

RULE 14. INTERIM SUSPENSION

(a) Pending Criminal Prosecution. The Supreme Court may, without the necessity of board action, suspend a judge with pay upon the filing of an indictment or complaint charging the judge 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 the conviction is reversed, suspension terminates and the judge shall be paid the salary for the period of suspension.

(b) Pending Final Decision. Interim suspension, with pay, pending final decision as to ultimate discipline, may be ordered by the Supreme Court in any 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 application for review of the interim suspension order.

(d) Incompetency Suspension. 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 the judge from assisting in the preparation of a 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 pursuant to Rule 15 of whether in fact there is such a disability. If there is such a disability, the judge may be retired. If there is a finding of no disability, the disciplinary proceeding shall continue.

RULE 15. SPECIAL PROVISIONS FOR CASES INVOLVING PHYSICAL OR MENTAL 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 or, if a factfinding panel has been appointed, the presider of the factfinding panel, shall appoint an attorney to represent the judge 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 the judge's 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 16. 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 as provided in Rules 8, 9, 10 and 11. The Supreme Court shall then proceed as provided in Rule 13.

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

RULE 17. EXPUNGEMENT

The executive secretary shall expunge records as follows:

(a) Dismissals. All records or evidence of a complaint found without sufficient cause shall be destroyed three years after the complaint is received by the board or the board authorizes an investigation, whichever occurs first, except in the event of a new complaint involving the same judge within the three years which event shall renew the three year period.

(b) Case Files on Deceased Judges. All case files on deceased judges shall be destroyed.

(c) Exceptions. Upon application by the executive secretary to the chairperson for good cause shown and with notice and opportunity to be heard to the judge, records which would otherwise be expunged under this rule may be retained for such additional time as the chairperson may deem appropriate.

RULE 18. 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.