

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

IN RE RULES OF BOARD ON JUDICIAL STANDARDS

ORDER

WHEREAS, by order dated March 20, 1998, this Court reconstituted the Advisory Committee on the Rules of the Board on Judicial Standards to consider amendments to the Rules of the Board on Judicial Standards and the related Rules on Lawyers Professional Responsibility; and

WHEREAS On October 15, 1998, the Advisory Committee submitted a report recommending amendments to the Rules of the Board on Judicial Standards and related Rules on Lawyers Professional Responsibility;

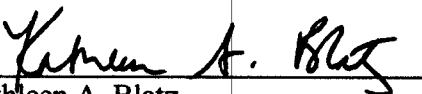
WHEREAS, on March 16, 1998, the Court held a hearing to discuss the recommendations and is fully advised in the premises;

NOW, THEREFORE, it is ordered that:

1. The attached amendments to the Rules of the Board on Judicial Standards and the Rules on Lawyers Professional Responsibility be, and the same hereby are, prescribed and promulgated to be effective immediately.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

DATED: March 30, 1999

BY THE COURT:


Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

MAR 30 1999

FILED

**AMENDMENTS TO RULES OF THE BOARD ON JUDICIAL STANDARDS [R.Bd.Jud.Std.] AND
RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY [R.L.Prof.Resp.]**

[R.Bd.Jud.Std.] **RULE 1. ORGANIZATION OF BOARD**

* * *

(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;
- (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. The use of the director and staff of the Office of Lawyers Professional Responsibility for this purpose shall be allowed if the matter involves conduct of a judge, other than a Supreme Court Justice, that occurred prior to the judge assuming judicial office. Individuals employed or providing assistance under this section shall be deemed to be counsel to the Board on Judicial Standards for the purposes of these rules.

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Advisory Committee Comment—1999 Amendment

Rule 1(d)(10) has been modified to allow the use of the director and staff of the Office of Lawyers Professional Responsibility to provide investigative and support services in situations involving conduct that occurred prior to a judge assuming judicial office. Related changes grant the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct

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warrants lawyer discipline. R.Bd.Jud.Std. 2; R.L.Prof.Resp. 6Z(a). It is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility [R.Bd.Jud.Std. 6Z(b); R.L.Prof.Resp. 6Z(b)(2)], and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards. Related changes also authorize the use of the hearing record, findings, and recommendations of the lawyer disciplinary process in the judicial disciplinary process. R.Bd.Jud.Std. 6Z(d); R.L.Prof.Resp. 6Z(b)(4).

Rule 1(d)(10) prohibits the use of the staff of the Office of Lawyers Professional Responsibility when the pre-bench conduct at issue involves a Supreme Court Justice because the office's director and staff are appointed and compensated by the Court. If such a case were to arise, it is contemplated that the Office of Lawyers Professional Responsibility would follow existing conflict procedures, which include assigning a former attorney or former board member to review and follow up on patently frivolous complaints and hiring outside counsel and investigators to handle other complaints. The prohibition against the use of office staff does not prohibit communication of confidential information between the two boards regarding matters involving the conduct of a justice occurring prior to assumption of judicial office.

Modifications to Rule 1(d)(10) also clarify that individuals employed or providing assistance to the executive secretary and the board are considered counsel to the board for purposes of these rules. This ensures, for example, that the immunity and privilege provisions under Rule 3 and the confidentiality and work product provisions under Rule 5 apply to these individuals when they are assisting the executive secretary and the board.

[R.Bd.Jud.Std.] RULE 2. JURISDICTION AND POWERS OF BOARD

- (a) **Powers in General.** The board shall have the power to receive complaints, investigate, conduct hearings, make certain summary dispositions, 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.
- (b) **Jurisdiction Over Full-Time and Part-Time Judges.** The board shall have jurisdiction over the conduct of all judges, including full time judges, retired judges subject to assignment, and part time judges such as conciliation court referees. 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

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involving conduct occurring in a judicial capacity. The Lawyers Professional Responsibility Board ~~may also exercise~~ shall have jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, such as a referee of conciliation court, not occurring in a judicial capacity, including conduct occurring prior to the assumption of judicial office.

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Advisory Committee Comment—1999 Amendment

Rule 2(a) has been amended to recognize that the board may make certain summary dispositions. These dispositions include proposed public reprimands under Rule 6(d)(1)(ii), which are subject to a judge's right to demand a formal hearing before the reprimand is made public, and nonpublic warnings, conditions, counseling, treatment, and assistance directed by the board under Rule 6(f).

Rule 2(b) has been modified to permit the Lawyers Professional Responsibility Board to also exercise jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office. As set forth in the definition section of these rules, the term "judge" includes any judge, judicial officer, referee or other hearing officer employed in the judicial branch, and any judge of the Minnesota Tax Court or Worker's Compensation Court of Appeals. See Minn. Stat. §§ 490.15-.18; 175A.01, subd. 4; 271.01 (1998). The procedure to be followed in situations involving pre-bench conduct is set forth in rule 6Z of these rules.

[R.Bd.Jd.Std.] **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.

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- (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.
- (4) Information may be disclosed between the Board on Judicial Standards or executive secretary and the Lawyers Professional Responsibility Board or the director in furtherance of their duties to investigate and consider conduct that occurred prior to a judge assuming judicial office.

Advisory Committee Comment—1999 Amendment

Rule 5(a) has been modified by the addition of clause (4) to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.

**[R.Bd.Jud.Std.] RULE 6. PROCEDURE PRIOR TO SUFFICIENT CAUSE
DETERMINATION**

* * *

(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 where authorized under rule 6Z(c), proceed directly to Rule 8; or
 - (ii) if the judge's conduct was unacceptable under one of the grounds for judicial discipline that does not merit formal proceedings or further discipline by the Supreme Court, issue a public reprimand. Prior to the

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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.

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Advisory Committee Comment—1999 Amendment

The change in Rule 6(d)(1)(i) recognizes that the Board on Judicial Standards may proceed directly to issuance of a formal complaint under Rule 8 when there has been a related public proceeding before the Lawyers Professional Responsibility Board involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under rule 7 may only serve to delay the disciplinary process.

Modifications to Rule 6(d)(1)(ii) allow the board to submit a proposed public reprimand to the judge for conduct that is unacceptable but not so serious as to warrant further discipline, e.g., a censure, by the Supreme Court. Disciplinary bodies in other jurisdictions have similar authority. See, e.g., Rule 6(g)(1), Rules of Procedure for the Arizona Commission on Judicial Conduct; Rules of the Georgia Judicial Qualifications Commission, Definition (c). The change is intended to provide the board with guidance regarding when it is appropriate to proceed directly to a proposed reprimand (which is subject to a judge's right to demand a formal hearing before the reprimand is made public) in lieu of formal charges under Rules 7 and 8.

**[R.Bd.Jud.Std.] RULE 6Z. PROCEDURE FOR CONDUCT OCCURRING PRIOR TO
ASSUMPTION OF JUDICIAL OFFICE**

(a) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility initiates an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all

**AMENDMENTS TO RULES OF THE BOARD ON JUDICIAL STANDARDS [R.Bd.Jud.Std.] AND
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proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

- (b) Investigation.** Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.
- (c) Authority of Board on Judicial Standards to Proceed Directly to Public Charges.** If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.
- (d) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding.** If there is a hearing under rule 9 or rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the board may be permitted to introduce additional evidence, relevant to alleged violations of the Code of Judicial Conduct, at the hearing under rule 10.

Advisory Committee Comment—1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Related changes grant the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2; R.L.Prof.Resp. 6Z(a).

The provisions of Rule 6Z(a)-(d) are repeated in R.L.Prof.Resp. 6Z(b)(1)-(4). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

**AMENDMENTS TO RULES OF THE BOARD ON JUDICIAL STANDARDS [R.Bd.Jud.Std.] AND
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Rule 6Z(a) requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(a) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(a) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

Under rule 6Z(b) it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(c) authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under rule 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under rule 7 may only serve to delay the disciplinary process.

Rule 6Z(c) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow Rule 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(d) authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under rule 6Z(d) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the rule 10 judicial disciplinary hearing. Counsel for the board and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. *See, e.g., In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as factfinder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the rules do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

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**[R.Bd.Jud.Std.] RULE 7. PROCEDURE WHERE SUFFICIENT CAUSE
FOUND**

(a) Statement of Charges.

- (1) If no reprimand is issued under Rule 6(d)(1)(ii) ~~a~~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.

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Advisory Committee Comments—1999 Amendments

The cross reference to Rule 6(d)(1)(ii) recognizes that in certain situations the board may proceed directly to a proposed reprimand (which is subject to a judge's right to demand a formal hearing before the reprimand is made public) in lieu of formal charges under Rules 7 and 8.

[R.Bd.Jud.Std.] RULE 11. PROCEDURE FOLLOWING FORMAL HEARING

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- (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 c~~Censure;
- (6) Imposing a civil penalty;
- (7) Suspension with or without pay; or
- (8) Any combination of the above sanctions.

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Advisory Committee Comment—1999 Amendment

Rule 11(d)(5) has been modified by deleting reprimand from the list of sanctions that may be issued after a formal hearing. Under Rule 6(d)(1)(ii), a reprimand may be issued by the board without resort to formal proceedings in situations involving conduct that is unacceptable under one of the grounds for judicial discipline but not so serious as to warrant further discipline, such as a censure, by the Supreme Court.

[R.L.Prof.Resp.] RULE 6Z. COMPLAINTS INVOLVING JUDGES

(a) Jurisdiction. The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.

(1) Complaint; Notice. If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

(2) Investigation. Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges. If probable cause has been determined under Rule

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9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

- (4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding.** If there is a hearing under rule 9 or rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under rule 10.

Advisory Committee Comment—1999 Amendment

Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.

The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.

Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.

Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.

Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.

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Under rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.

Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(C) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.

Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).

Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.

Under rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. *See, e.g., In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as factfinder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.

[R.L.Prof.Resp.] RULE 20. CONFIDENTIALITY; EXPUNCTION

- (a) **General rule.** The files, records, and proceedings of the District Committees, the Board, and the Director, as they may relate to or arise out of any complaint or charge of unprofessional conduct against or investigation of a lawyer, shall be deemed confidential and shall not be disclosed, except:

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- (10) As between the Director and the Board on Judicial Standards or its executive secretary in furtherance of their duties to investigate and consider conduct of a judge that occurred prior to the judge assuming judicial office.

Advisory Committee Comment—1999 Amendment

Rule 20 has been modified to permit the exchange of information between the two disciplinary boards and their staff in situations involving conduct of a judge that occurred prior to the judge assuming judicial office. See also R.L.Prof.Resp. 20(a)(10). Both the Board on Judicial Standards and the Lawyers Professional Responsibility Board have jurisdiction in such cases. R.Bd.Jud.Std. 2(b); R.L.Prof.Resp. 6Z.