

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

ADM-08-8004

ORDER PROMULGATING AMENDMENTS
TO THE RULES OF THE BOARD ON
JUDICIAL STANDARDS

In its report filed March 14, 2008, the Committee on Rules of the Board on Judicial Standards recommended certain amendments to the rules. This Court invited comment and held a hearing on the proposed recommendations on July 9, 2008. The court has reviewed the recommendations, comments, and the proposed amendments, and is fully advised in the premises.

IT IS HEREBY ORDERED:

1. The attached amendments to the Rules of the Board on Judicial Standards be, and the same hereby are, prescribed and promulgated to be effective July 1, 2009.
2. The Advisory Committee comments are included for convenience and do not reflect court approval of the statements made therein.

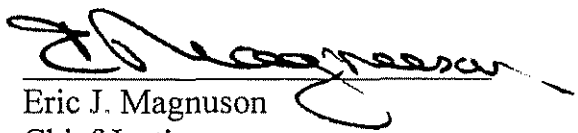
Dated: 3/31/09

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAR 31 2009

FILED


Eric J. Magnuson
Chief Justice

AMENDMENTS TO THE RULES OF THE BOARD ON JUDICIAL STANDARDS

Note to publishers: Deletions are indicated by a line drawn through the words; additions are underlined.

DEFINITIONS

“Censure” is a formal public sanction by the Supreme Court based on a finding that the judge has committed serious misconduct.

“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.

“Deferred Disposition Agreement” is an agreement between the judge and the board or hearing panel for the judge to undergo treatment, participate in education programs, or take other corrective action, based upon misconduct or disability that can be addressed through treatment or a rehabilitation program.

“Disability” is a physical or mental condition of a judge that seriously interferes with the capacity of the judge to perform judicial duties, including, but not limited to, impairment due in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances. A disability may be permanent or temporary.

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

“Formal Complaint” is a complaint upon which the board has determined to conduct a public hearing.

“Formal Statement of Disability Proceeding” is a statement that the board has determined to conduct a public hearing to determine the appropriate action with regard to a judge alleged to have a disability.

“Investigation” is a full inquiry by the executive secretary, with the authorization of the board, into the facts and circumstances of any complaint ~~which~~ information that alleges conduct listed in Rule 4(a).

“Judge” is any judge, including full-time, part-time, and retired judges, judicial officer, referee, magistrate, 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.

"Letter of Caution" is a nondisciplinary letter that advises the judge regarding future conduct.

"Private Admonition" is a nonpublic sanction imposed by the board for misconduct of an isolated and non-serious nature.

"Public Reprimand" is a public sanction imposed by the board or hearing panel based on a finding that the judge has committed serious misconduct.

"Reasonable Cause" is a reasonable belief in the existence of facts warranting discipline or a finding of disability.

~~"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 the 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 who is a member of the board 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~~ is not ~~be~~ allowed. The use of the director and staff of the Office of Lawyers Professional Responsibility for this purpose ~~shall be~~ is 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.

(e) Performance Review of Executive Secretary. The board shall annually conduct a performance review of the executive secretary.

(ef) 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.

(fg) 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.

(gh) 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.

(hi) 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.

(j) Code of Ethics. The board shall maintain a Code of Ethics setting forth the ethical standards expected of board members in the performance of the board's responsibilities.

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 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.

RULE 2. JURISDICTION AND POWERS OF BOARD

(a) Powers ~~in General~~ of the Board.

(1) Disposition of Complaints. The board shall have the power to receive complaints, investigate, conduct hearings, make certain summary dispositions, and make recommendations to the Supreme Court concerning:

- (1i) Allegations of judicial misconduct;
- (2ii) Allegations of physical or mental disability of judges;
- (3iii) Matters of voluntary retirement for disability; and
- (4iv) Review of a judge's compliance with Minn. Stat. § 546.27.

(2) Advisory Opinions. The board may issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. An advisory opinion may be requested by a judge or a candidate for judicial office. A request for an advisory opinion shall relate to prospective conduct only, and shall be submitted in writing and contain a complete statement of all facts pertaining to the intended conduct and a clear, concise question of judicial ethics. The board shall issue a written opinion within 30 days after receipt of the written request, unless the time period is extended by

the board. The fact that the judge or judicial candidate requested and relied on an advisory opinion shall be taken into account in any subsequent disciplinary proceedings. The advisory opinion shall not be binding on the hearing panel or the Supreme Court in the exercise of their judicial-discipline responsibilities.

(b) Jurisdiction Over ~~Full-Time and Part-Time Judges.~~ The board shall have jurisdiction over ~~the conduct of~~ allegations of misconduct and disability for all judges, including full-time judges, retired judges subject to assignment, and part-time judges such as conciliation court referees.

(c) Conduct Prior to Assuming Judicial Office. ~~This~~ The board's jurisdiction shall include conduct that occurred prior to a judge assuming judicial office. The board shall have exclusive jurisdiction in matters involving conduct occurring in a judicial capacity. The Office of Lawyers Professional Responsibility Board 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.

(ed) Jurisdiction Over Former Judge. The board shall have jurisdiction over an inquiry, investigation, Formal Complaint, or Formal Statement of Disability Proceeding commenced before a judge left judicial office provided the conduct at issue occurred while the judge was in judicial office and the conduct at issue occurred in the judge's judicial capacity. The board may at any time dismiss a matter involving a former judge if the board determines that pursuing the matter further is not a prudent use of the board's resources. The Office of Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge to consider whether discipline is warranted 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. The board shall notify the Office of Lawyers Professional Responsibility if a judge leaves judicial office while an inquiry, investigation, Formal Complaint, or Formal Statement of Disability Proceeding is pending.

(de) 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~~ reasonable 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~~provide reasonable cause for the board to proceed under Rule 2(~~de~~)(3).

(3) *Subpoenas for Hearing.* At all other stages of the proceeding following a finding of ~~sufficient~~reasonable cause to proceed ~~pursuant to Rule 6(d)~~, and subject to the limitations of Rule 2(~~de~~)(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~~hearing panel pursuant to Rule ~~10(a)8(b)~~, the District Court of Ramsey County shall have jurisdiction over motions arising from Rule 2(~~de~~) 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(~~de~~) 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.

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

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.

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 OR OTHER ACTION

(a) Grounds for Discipline or Other Action 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~~ Pattern of 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;
- (7) Disability.

(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.

ADVISORY COMMITTEE COMMENT--2009 AMENDMENT

Retaliatory behavior by the judge related to a complaint may be grounds for discipline under the Code of Judicial Conduct or Professional Responsibility. See, e.g., Inquiry into the Conduct of Murphy, 737 N.W.2d 355, 360 (Minn. 2007).

RULE 5. CONFIDENTIALITY

(a) Before Formal Complaint and Response. Except as otherwise provided in this rule or Rule 16(f), all proceedings shall be confidential until the Formal Complaint or Formal Statement of Disability Proceeding 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).~~

~~(21) If at any time the board takes action as may be authorized pursuant to Rule 6(d)(1)(ii) issues a public reprimand, such action shall be a matter of public record.~~

~~(32) Any action taken by the board pursuant to Rule 6(f) If the board issues a dismissal with a letter of caution or enters into a deferred disposition agreement, this action 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.~~

~~(43) 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.~~

(b) After Formal Complaint or Formal Statement of Disability Proceeding and Response. Upon the filing of the Formal Complaint or Formal Statement of Disability Proceeding and written response, if any, with the Supreme Court, except as providing in Rule 16(f) the proceedings become public, but the files of the board, other than the Formal Complaint or Formal Statement of Disability Proceeding 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) Notice to Complainant. The board shall promptly notify the complainant, if any, of the board's action and give a brief explanation of the action. The notice shall disclose the names of the board members who did not participate in the action. If the board's action is issuance of a Formal Complaint or Formal Statement of Disability Proceeding, the board shall notify the complainant of the issuance of the Formal Complaint or Formal Statement of Disability Proceeding, the hearing panel's action, and the action, if any, of the Supreme Court.

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

(de) 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. If the inquiry was initiated after the statutory filing period for judicial office has opened, the board may issue a public statement as deemed appropriate pursuant to Rule 6(e).

(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.

(f) Disclosure in Event of Application to the Governor for Retirement. The board may disclose to the governor information about the existence, status, and nature of pending complaints regarding judges who have applied to the governor for disability retirement as provided in Rule 20.

(eg) 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.

(gh) Disclosure to Judge. The judge who is the subject of a complaint shall, upon request, have access to the file relative to the complaint at any stage of the proceedings, including witness statements and notes of witness interviews. Except as provided in the first sentence, the work product of the executive secretary and board counsel, including their notes, and the records of the board's and hearing panel's deliberations shall not be required to be disclosed.

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

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.

RULE 6. PROCEDURE PRIOR TO SUFFICIENT CAUSE DETERMINATIONS **SCREENING AND INVESTIGATION**

(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) Screening. The executive secretary shall review the complaint or information resulting in the initiation of an inquiry. If the matters alleged in the complaint or information would not constitute misconduct or disability if true, the executive secretary shall dismiss the complaint or end the inquiry, subject to review and approval by a board member as assigned by the chair, or, if appropriate, refer the matter to another agency or court. If the matters alleged in the complaint or information would constitute judicial

misconduct or disability if true, the executive secretary shall conduct a preliminary evaluation.

(bc) Preliminary-Evaluation. ~~Upon receipt of a complaint~~If after screening, the executive secretary determines the complaint raises allegations as to conduct that might constitute grounds for discipline or other action, the executive secretary shall conduct a prompt, discreet and confidential evaluation. The results of all evaluations shall be routinely submitted to the board.

(ed) Investigation; Discretionary Notice.

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

- (i) stay proceedings pending action by another agency or court;
- (ii) dismiss the complaint or end the inquiry; or
- (iii) authorize an investigation.

(2) ~~Notice that~~Within ten (10) business days after an investigation has been authorized by the board, the executive secretary shall give the following notice may be given to the judge whose conduct or physical or mental condition is being investigated;

(i) a specific statement of the allegations and possible violations of the Code of Judicial Conduct being investigated, including notice that the investigation can be expanded if appropriate;

(ii) the judge's duty to respond under to Rule 6(d)(5);

(iii) the judge's opportunity to appear before the board or panel of the board under to Rule 6(d)(6); and

(iv) the name of the complainant, unless the board determines there is good cause to withhold that information.

Except as provided in clause (3), the executive secretary shall not commence a formal investigation until such notice is sent to the judge.

(3) The board may defer notice for specific reasons, but when notice is deferred, the executive secretary shall give notice to the judge before making a recommendation as to discipline.

(4) Notice shall be sent immediately upon request of the judge whose conduct or physical or mental condition is the subject of the inquiry if the inquiry has been made public.

(5) Upon request of the executive secretary, the judge shall file a written response within thirty (30) days after service of the notice under Rule 6(d)(2).

(6) Before the board determines its disposition of the inquiry, either the board or the judge may request that the judge appear before the board or a panel of the board to respond to questions. The appearance shall be granted. If the board requests the judge's appearance, the executive secretary shall give the judge 20 days notice and the testimony shall be sworn.

(e) Investigation of Complaints Filed During an Election. The board may expedite its investigation into a complaint against a judge who is a candidate for judicial office if the complaint was filed after the statutory filing period for judicial office has opened. If after investigation the board determines the complaint has no merit, the board may dismiss the complaint and issue an appropriate public statement under Rule 5(e)(2).

(d) Sufficient Cause Determination**Disposition After Investigation.**

~~(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(e), 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 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.~~

(1) Upon conclusion of an investigation or determination by another agency or court, the executive secretary may recommend disposition to the board.

(2) The board shall review the results of the investigation or determination by another agency or court and the recommendations of the executive secretary and determine whether there is reasonable cause to believe the judge committed misconduct.

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

(4) Upon determination that there is not reasonable cause to believe the judge committed misconduct, the board shall dismiss the complaint or end the inquiry. Upon dismissal or termination of the inquiry, the board may issue a letter of caution that addresses the judge's conduct.

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

(i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion;

(ii) if the misconduct appears to be of an isolated and non-serious nature, issue a private admonition, which may include conditions;

(iii) issue a public reprimand, which may include conditions; or

(iv) issue a Formal Complaint;

(6) Prior to issuance of a private admonition, the board shall serve the judge with a copy of the proposed private admonition and a notice stating that within 20 days after service of the proposed private admonition, the judge may serve the board with either a written demand for a private hearing before the board, or the written comments and criticisms of the judge regarding the proposed admonition. If the judge makes a timely demand for a private hearing, the board shall comply. 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 private admonition as originally prepared.

(7) Prior to issuance of a public reprimand, the board shall serve the judge with a copy of the proposed reprimand and a notice stating that within 20 days of service of the proposed reprimand, the judge may serve the board 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 the judge makes a timely demand for a formal hearing, 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.

(8) The board shall notify the judge of its action and shall disclose the names of the board members who did not participate in the action.

(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.~~

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

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~~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.

ADVISORY COMMITTEE COMMENT--2009 AMENDMENT

Rule 6(d)(1)(i) allows the board to stay proceedings pending action by another agency or court. Such proceedings include criminal prosecution, civil litigation, and administrative action by regulatory agencies.

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 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(i)(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~~reasonable cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a ~~formal complaint~~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~~Rule 9 or ~~rule~~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 Supreme Court shall be admissible in any hearing convened ~~pursuant to rule~~under 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.

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~~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~~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~~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, 809-11 (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.

~~RULE 7. PROCEDURE WHERE SUFFICIENT CAUSE FOUND~~

~~(a) Statement of Charges.~~

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

~~ADVISORY COMMITTEE COMMENT—1999 AMENDMENT~~

~~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.~~

RULE 8. FORMAL COMPLAINT OR FORMAL STATEMENT OF DISABILITY PROCEEDING AND NOTICE

(a) Formal Complaint or Formal Statement of Disability Proceeding.

(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 The Formal Complaint or Formal Statement of Disability Proceeding shall 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 or Formal Statement of Disability Proceeding. 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~~ after service of the Formal Complaint or Formal Statement of Disability Proceeding.

(4) ~~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 or Formal Statement of Disability Proceeding and the written response, if any, with the Supreme Court, within 30 days of service of the Formal Complaint or Formal Statement of Disability Proceeding unless the matter is resolved. The filing time may be extended by agreement of the board and the judge.~~

(b) Hearing Panel. The public hearing on the Formal Complaint or Formal Statement of Disability Proceeding shall be conducted before a three-member hearing panel. Members of the panel shall be appointed by the Chief Justice of the Supreme Court within 14 days of the filing of the Formal Complaint or Formal Statement of Disability Proceeding with the Supreme Court. The panel shall consist of one judge or retired judge in good standing, one lawyer, and one member of the public. Whenever possible, the public member shall be a former member of the board. The judge or retired judge member shall be the presider, and shall have the powers of a judge of the district court for these proceedings.

(bc) Notice of Hearing.

~~(1) Upon the filing of Formal Complaint and Response, if any, with the Supreme Court, the board~~The hearing panel 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 or Formal Statement Of Disability Proceeding 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~~hearing panel 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~~hearing 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(~~de~~).

(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.

The presider may authorize service of interrogatories upon request by the board or the judge.

(c) Exculpatory Evidence. Counsel for the board and the executive secretary 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~~shall 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~~hearing 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~~hearing 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~~panel's disposition 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~~PUBLIC 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.~~

(ba) ~~Rules of Evidence and Due Process.~~ ~~In the hearing, all~~All testimony shall be under oath, and the Rules of Evidence shall apply, ~~and the judge shall be accorded due process of law except that affidavits and depositions are admissible in lieu of testimony.~~

(eb) 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~~panel.

(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.

(dc) Amendments. By leave of the presider of the ~~factfinding~~panel for good cause shown or by consent of the judge, the Formal Complaint or Formal Statement of Disability Proceeding 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 FINDINGS, DISPOSITION, AND APPEAL

(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.~~**Findings.** The hearing panel shall make findings of fact and conclusions of law as to whether there is clear and convincing evidence that the judge committed misconduct under the grounds for discipline in Rule 4. If the panel finds there is not clear and convincing evidence, the panel shall dismiss the case. If the panel finds there is clear and convincing evidence, the panel shall impose or recommend sanctions under Rule 11(b).

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

(c) ~~Appeal 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.~~

(db) ~~Recommended Discipline~~Disposition. ~~Based on~~ If the hearing panel finds clear and convincing evidence in the hearing record, the board shall make a recommendation to the Supreme Court of any of the following sanctions: of misconduct, the panel may:

(1) enter into a deferred disposition agreement for a specified period of time upon reasonable conditions, and the agreement may specify the disposition upon completion;

(2) issue a public reprimand; or

(3) recommend any of the following sanctions to the Supreme Court:

- (1i) Removal;
- (2ii) Retirement;
- (3iii) Imposing discipline as an attorney;
- (4iv) Imposing limitations or conditions on the performance of judicial duties;
- (5v) Censure;
- (6vi) Imposing a civil penalty;
- (7vii) Suspension with or without pay; or
- (8viii) Any combination of the above sanctions.

(c) Filing and Service. The hearing panel must file its findings of fact, conclusions of law, and disposition with the Supreme Court within 7 days after issuance of the disposition. The panel shall serve copies on the board and respondent judge. Proof of service shall also be filed with the Supreme Court.

(d) Appeal. The board or judge may appeal the disposition of the hearing panel. The appeal shall proceed under Rule 14. The disposition of the panel becomes final if no appeal is taken within 60 days after issuance of the disposition. If the panel determines it is appropriate to issue a public reprimand, the reprimand shall be stayed until the time for appeal has run or any appeal is completed.

(e) 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.~~

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.

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. DISPOSITION BY CONSENT

(a) Agreement. At any time after issuance of the Formal Complaint or Formal Statement of Disability Proceeding and before conclusion of any hearing panel proceedings under Rules 10, 11, and 16, the judge and the board may enter into an agreement in which the judge admits to any or all of the charges or allegations of disability in exchange for a stated disposition. Entry into the agreement shall stay the proceedings of the panel. The agreement shall set forth:

(1) a statement of the facts;

(2) the allegations to which the judge is admitting; and

(3) the agreed-upon disposition.

(b) Disposition. If the agreed-upon disposition is one the board is authorized to impose under Rule 6(f)(4), proceedings before the hearing panel shall terminate, and the board shall impose the disposition. If the agreed-upon disposition is one the Board is not authorized to impose under Rule 6(f)(4), the agreement shall be submitted to the Supreme Court. The Court shall either enter an order implementing or rejecting the agreement. If the stated disposition is rejected by the Supreme Court, the agreement may be withdrawn but the facts admitted to in the agreement can be used against the judge in such further proceedings as the Court may direct.

RULE ~~13~~14. 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.~~

(ba) Prompt Consideration. Upon the filing of a recommendation for discipline or disability retirement, the Court shall promptly docket the matter for expedited consideration, but not sooner than the end of the time allowed for appeal of the panel's disposition by the board or judge. If the board or judge appeals the disposition of the hearing panel, the Court shall consider the recommended disposition under Rule 11(b)(3) or Rule 16(f)(1)(ii) at the same time as any appeal regarding those recommendations.

(eb) 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. Any party seeking to challenge a finding of fact by the panel shall order a transcript.

(dc) 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~~hearing panel with appropriate directions, retaining jurisdiction, and shall stay proceedings pending receipt of the ~~board's~~panel'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.

(ed) 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.

(fe) Decision. When the hearing panel recommends the Supreme Court impose sanctions under Rule 11(b)(3), the Court shall review the record of the proceedings on the law and, giving deference to the facts, and shall file a written opinion and judgment directing such disciplinary discipline or other action as it finds concludes is just

and proper;. If the judge or board has filed an appeal under Rule 11(d), the Court may accept the recommendation of the panel, or-accepting, rejecting or modifying it in whole or in part, the recommendation of the board.

(gf) Consideration of Lawyer Discipline. When the ~~Board on Judicial Standards~~hearing panel 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.

(hg) Charge Against Supreme Court Justice. When any Formal Complaint or Formal Statement of Disability Proceeding has been filed against a member of the Supreme Court, the review under Rule ~~13~~14 shall be ~~heard and submitted to and heard by~~ 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.

(ih) 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~~15. 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.~~

~~(c) 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 1516. SPECIAL PROVISIONS FOR CASES INVOLVING PHYSICAL OR MENTAL DISABILITY.

~~(a) Procedure Proceedings In General.~~ In carrying out its responsibilities regarding physical or mental disabilities, When an inquiry alleges facts that could constitute disability, the board shall follow the same procedures that it employs used with respect to discipline for misconduct, except as modified by this rule.

(b) Initiation of Proceedings. The board may initiate an inquiry into a case involving disability:

(1) upon receiving a complaint alleging a disability;

(2) when an investigation indicates the alleged conduct may be due to disability;

or

(3) when the judge asserts inability to defend in a disciplinary proceeding due to a disability.

(c) Evaluation. Upon initiation of an inquiry into a case involving disability, the executive secretary shall conduct an evaluation pursuant to Rule 6(c).

(ed) Investigation; Notice; Medical Privilege.

(1) If upon review of the preliminary evaluation, or on its own motion, the board authorizes an investigation under Rule 6(d), the board shall give notice pursuant to Rule 6(d)(2) to the judge alleged to have a disability. The notice shall instruct the judge that when providing a written response under Rule 6(d)(5), the judge shall admit or deny the disability.

(2) The purpose of an investigation conducted under this rule is to determine whether there is reasonable cause to believe the judge has a disability.

(13) 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. If the judge admits to a disability or provides affirmative evidence of a disability as a defense in a disciplinary

proceeding, the admission or provision of evidence shall constitute reasonable cause to believe the judge has a disability and waiver of medical privilege as to records relevant to the alleged disability.

If the judge denies the disability, the board shall determine whether there is credible evidence of a disability. The board may consult with a qualified professional in the area of the alleged disability to determine whether the evidence before the board constitutes credible evidence. If there is credible evidence of a disability, the denial constitutes a waiver of medical privilege as to records relevant to the alleged disability. If there is not credible evidence of a disability, the judge does not waive medical privilege, and the board shall continue the investigation under Rule 6 as a disciplinary proceeding.

(4) If medical privilege is waived, the board may require the judge to provide medical records relevant to the alleged disability. Disputes concerning the relevancy of medical records shall be determined by the Supreme Court or its designee.

(25) If medical privilege is waived, the judge is deemed to have board may request that the judge consented to a physical or mental examination by a qualified medical practitioner designated by the board. The purpose of the examination is to assist the board in determining whether there is reasonable cause to believe the judge has a disability. The report of the medical practitioner shall be furnished to the board and the judge. If the judge fails or refuses to submit to a medical examination, the judge may not present as evidence the results of any medical examinations done on the judge's behalf, and the board may consider the judge's refusal or failure as evidence that the judge has a disability.

The judge has the right to an additional independent medical examination provided by experts other than those designated by the board, but the examination shall be at the sole expense of the judge, and written reports of any examination shall be provided to the board as soon as medically feasible.

(e) Disposition After Investigation.

(1) If the board determines there is not reasonable cause to believe the judge has a disability, the board shall determine whether a disciplinary disposition under Rule 6(f) is appropriate.

(2) If the board determines there is reasonable cause to believe the judge has a disability, the board may:

- (i) enter into a deferred disposition agreement as provided in Rule 6(f)(5)(i); or
- (ii) issue a Formal Statement of Disability Proceeding.

(f) Hearing. Upon issuance of a Formal Statement of Disability Proceeding, a hearing shall be held under Rules 10 and 11 to determine whether there is clear and convincing evidence the judge has a disability. If the board has also filed a Formal Complaint, the hearing panel shall determine whether there is clear and convincing evidence that the judge committed misconduct and whether the misconduct was related to a disability. The panel may exclude the public from portions of the proceedings to hear evidence on psychological or medical materials or other evidence that would not be accessible to the public.

(1) If the hearing panel finds clear and convincing evidence of a disability, the panel may:

(i) enter into a deferred disposition agreement as provided in Rule 11(b)(1); or

(ii) recommend any of the following actions to the Supreme Court:

(A) Removal;

(B) Disability retirement if the disability is or is likely to become permanent;

(C) Imposition of limitations or conditions on the performance of judicial duties;

(D) Suspension with or without pay; or

(E) Any combination of the above actions.

(2) The hearing panel may also impose or recommend a disciplinary disposition with regard to misconduct, if applicable, pursuant to Rule 11(b).

(3) Any disposition of the hearing panel is public.

(4) The board or judge may appeal the decision of the hearing panel as provided in Rule 11(d).

(g) Petition for Reinstatement After Disability Suspension.

(1) A judge suspended by the Supreme Court due to disability may petition the board for reinstatement. Reinstatement may only be effected by order of the Supreme Court.

(2) The judge shall provide to the board the name of each qualified medical, psychological, or other expert, or qualified program or referral by whom or in which the judge has been examined or treated relevant to the disability since suspension. The judge shall furnish to the board written consent to the release of information and records from these sources.

(3) Upon the filing of a petition for reinstatement, the board may take or direct whatever action it deems necessary to determine whether the disability has been removed, including requesting the judge to consent to a physical or mental examination by a qualified professional in the area of the disability designated by the board.

(4) If the board determines, after conducting a review under paragraph (3), the judge has been restored to capacity to perform judicial duties, the board shall recommend to the Supreme Court that the judge be reinstated. If the board determines that the judge continues to have a disability, it shall notify the judge of its determination. The judge shall have 20 days after service of the notice to either accept the determination of the board or request a formal hearing on the petition. If the judge accepts the determination of the board, there will be no further proceedings on the petition. If the judge requests a formal hearing, proceedings will continue under Rule 16(f), but the petition shall replace the Formal Statement of Disability Proceeding.

(bh) Representation by Counsel. ~~If the judge in a matter relating to physical or mental disability~~any proceeding under this rule is not represented by counsel, the board or, if a ~~factfinding~~hearing panel has been appointed, the presider of the ~~factfinding~~ panel, shall appoint an attorney to represent the judge at public expense.

RULE 17. 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 18. APPLICATION TO THE GOVERNOR FOR DISABILITY RETIREMENT

If a judge applies to the Governor for disability retirement, the Governor may make a written request that the board provide the Governor with information about the existence, status, and nature of any pending complaints or investigations relating to the judge. The board must promptly provide the information to the Governor. Upon receipt of a written waiver by the judge, the board may also provide the Governor with any of the board's documents related to the complaint, investigation, or the judge. The Governor may further disclose the information for the purpose of consulting with a qualified professional in the area of the alleged disability.

RULE 1719. EXPUNGEMENT

The executive secretary shall expunge records as follows:

(a) **Dismissals.** All records or evidence of a complaint found ~~without sufficient~~where the board did not find reasonable cause to believe the judge committed misconduct or where the board did not find reasonable cause to believe the judge has a disability shall be destroyed three years after the ~~complaint is received by the board receives the complaint~~ or the board authorizes an investigation, whichever occurs first, ~~except in the event of.~~ If the board receives a new complaint involving the same judge within the three years ~~which event,~~ the new complaint 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~~chair 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~~chair may deem appropriate.

RULE 20. USE OF ALLEGATIONS FROM DISMISSED INQUIRIES.

(a) **Use of Allegations in General.** Allegations from an inquiry that was dismissed shall not be referred to by the board in any subsequent proceedings or used for any purpose in any judicial or lawyer disciplinary proceeding against the judge, except as provided in this rule.

Allegations from a dismissed inquiry may be reinvestigated with permission of the board if, within three years after dismissal, additional information becomes known to the board regarding the inquiry.

(b) **Use of Allegations From Dismissal with Letter of Caution.** Allegations from an inquiry dismissed with a letter of caution may be used within three years after dismissal in subsequent proceedings only as follows:

(i) The fact that the inquiry was dismissed with a letter of caution may not be used to establish the misconduct alleged in a subsequent proceeding. However, the underlying conduct described in the letter of caution may be charged in a subsequent Formal Complaint, and evidence in support thereof may be presented to the hearing panel at the public hearing under Rule 10.

(ii) If the underlying conduct described in the letter of caution is charged in a subsequent Formal Complaint, and the hearing panel finds the judge committed misconduct with respect to the facts underlying the dismissal with letter of caution, the letter of caution may be considered by the panel in determining an appropriate sanction.

RULE 21. PERIODIC REVIEW

The Supreme Court may periodically appoint a committee to review the records and proceedings of the board for the purpose of evaluating the effectiveness of the disciplinary process. The records and proceedings reviewed by the committee shall be maintained as confidential except for records and proceedings that have already been made public. The final written and oral report of the committee may present information about the board as long as it contains no specific information that would easily identify a judge, witness, or complainant.

RULE 1822. 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.