



# BOARD UPDATE

March 2017

## RECENT FORMAL OPINIONS

### Fund-Raising Events

Judges generally may not appear at fund-raisers in such prominent roles as speaking, receiving an award, or being featured on the program. Judicial Code, Rule 3.7. Last year, however, the Supreme Court adopted the Judicial Board's proposed exception allowing a judge to appear at fund-raising events that benefit the law, the legal system, or the administration of justice, e.g., events that benefit legal aid or pro bono activities.

Rule 3.7 does not prohibit a judge from merely attending a fund-raiser or serving in a minor role, such as usher, food server, and food preparer. The "no hot dog" rule was abolished in 2009. For more information, see the Board's [formal opinion 2016-1](#) on civic and charitable activities.

### MNCIS Searches

Judges may need to check records of other cases in a number of situations – when setting bail, sentencing, or considering whether to issue an OFP. If a judge complies with the judicial notice requirements in case law and, in civil cases, with Rule 201 of the Rules of Evidence, the judge ordinarily will be in compliance with the Judicial Code rule on judicial notice, Rule 2.9(C). In general, the parties must be given notice and the opportunity to be heard. In response to requests for guidance, the Board has issued [formal opinion 2016-2](#) on judicial notice of electronic court records in OFP proceedings.

## INFORMAL ADVISORY OPINIONS

In need of an informal advisory opinion on a judicial ethics issue? This confidential service has been well-received and increasingly used by Minnesota judges. To obtain an advisory opinion, contact the Board's Executive Secretary, Tom Vasaly, at 651-297-4101 or [thomas.vasaly@state.mn.us](mailto:thomas.vasaly@state.mn.us).

## BOARD ELECTS OFFICERS FOR 2017-18

The Judicial Board elected the following officers to two-year terms beginning January 1, 2017:

Chair: Timothy Gephart (public member, Minneapolis)

Vice-Chair: Judge David L. Knutson (First Judicial District, Hastings)

Executive Committee member: Cindy K. Telstad (attorney, Winona)

Brief bios of the Board members are available [here](#).

## DISCLOSURE AND DISQUALIFICATION

When analyzing disclosure and disqualification issues, two scenarios must be distinguished:

- If a judge's impartiality may reasonably be questioned, the judge must recuse unless the judge discloses the basis for disqualification to the parties and obtains a waiver on the record in accordance with Rule 2.11(C).
- If a judge decides that his or her impartiality may *not* be reasonably questioned, the judge is strongly encouraged to "disclose on the record information the judge believes the parties might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Rule 2.11 cmt. 5.

See Wm. J. Wernz, [Judicial Disqualification in Minnesota](#). The Board has recently proposed that the Supreme Court clarify the disqualification standards in the Rules of Civil Procedure. More information is available [here](#).

### Checked out the Board's website lately?



The Board has posted a great deal of useful information on its website, [www.bjs.state.mn.us](http://www.bjs.state.mn.us), including:

- Board news
- Advisory opinions
- Discipline decisions
- Annual reports

### Judicial conduct in other states



Minnesota has good reason to be proud of its judges. Only a tiny minority of them have engaged in serious misconduct. This is not the case in many other states. To learn about judicial conduct in other states, read the [Judicial Conduct Reporter](#).

The Reporter also has informative articles on judicial ethics issues.



**The 90-day rule.** Judges are well-aware of the 90-day rule, Minn. Stat. § 546.27. But sometimes a case can fall through the cracks. Keeping track of post-conviction petitions can be a particular problem. Judges are encouraged not to rely exclusively on MNCIS to alert them when a case is nearing the 90-day deadline and to have their own back-up systems.

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**Feedback:** Was this Update helpful? Please send suggestions and comments to [judicialstandards@state.mn.us](mailto:judicialstandards@state.mn.us).