MINNESOTA BOARD ON JUDICIAL STANDARDS

Advisory Opinion 2014–2

Appointment to Governmental Committees and Boards

Issue. Under what circumstances may a judge accept appointment to serve on a governmental committee, board, commission or other similar governmental entity?

Summary.

1. It is appropriate for a judge to accept an appointment by the Minnesota Supreme Court to a governmental committee provided that the appointment does not interfere with the proper performance of the judge's judicial duties.

2. It is inappropriate for a judge to accept an appointment to a governmental committee that does not concern the law, the legal system, or the administration of justice.

3. Although the Judicial Code is not overridden by legislation that mandates the appointment of a judge to serve on a governmental committee, a legislative determination regarding such an appointment is entitled to consideration and respect.

4. In situations other than those addressed in paragraphs 1 and 2, it is necessary to apply a multi-factor analysis to determine whether acceptance of the appointment is proper.

5. Within the limits of what is permitted under the Code, the Board generally wishes to encourage judicial service on governmental entities that are concerned with the law, the legal system, or the administration of justice.

Issues Not Addressed. This opinion does not address judicial participation in non-governmental educational, religious, charitable, fraternal or civic organizations and activities. See Rule 3.7 of the Minnesota Code of Judicial Conduct (hereinafter the "Code"). This opinion also does not address issues involving a judge's appearance before a governmental body or consultation with government officials. See Rule 3.2.

Authorities. The principal authorities for this opinion are Rules 3.1 and 3.4 and related Comments. Other relevant authorities include Canon 3; Rule 2.1; Rule 3.14 and Comments; Minnesota Supreme Court cases; prior Board opinions; and Arthur Garwin et al., *Annotated Model Code of Judicial Conduct* (2d ed. 2011) (hereinafter, "*Annotated Model Code*").

Unless otherwise noted, all references to Rules and Comments are to those in the Code. "Board" refers to the Board on Judicial Standards. "Board Rules" refers to the Rules of the Board on Judicial Standards.

The Comments serve two functions: (1) to provide "guidance regarding the purpose, meaning, and proper application of the Rules" and (2) to identify "aspirational goals for judges." Code, Scope. "The Canons state overarching principles of judicial ethics . . . [and] provide important guidance in interpreting the Rules." *Id.*

Where the Rules or Comments use a permissive term such as "may" or "should," the rule or comment is not mandatory. Rather, "the conduct being addressed is committed to the personal and professional discretion of the judge." *In re Jacobs*, 802 N.W.2d 748, 754 (Minn. 2011) (quoting Code, Scope).

Nonetheless, Board advisory opinions will often advise judges of what they should do, as well as what they must do or not do.

Authority to Issue Advisory Opinions. "The board may issue advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct. . . . The advisory opinion shall not be binding on the hearing panel or the Supreme Court in the exercise of their judicial-discipline responsibilities." Board Rule 2(a)(2).

Terminology, Definitions, and Shorthand References. The terms "independence," "integrity," and "impartiality" are defined in the Terminology section of the Code. "Independence" means a judge's freedom from influence or controls other than those established by law. "Integrity" means probity, fairness, honesty, uprightness, and soundness of character. "Impartiality" means absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

Rule 3.4, which deals with appointments to governmental positions, provides, "A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice." For convenience, this Opinion uses "governmental committee" or "committee" to refer to all such entities. "Law" is sometimes used in this Opinion to refer to "the law, the legal system, or the administration of justice." Rule 3.4. "Impartiality" is sometimes used to refer to "independence, integrity, or impartiality." Rule 3.4(C).

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"Judicial" and "Extrajudicial" Activities. The Code distinguishes between judicial and extrajudicial activities. Rule 2.1 states, "The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities." Comment 2 to Rule 2.1 explains, "Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in

the justice system." Thus, in most instances, a judge who serves on a governmental committee will be regarded as engaging in extrajudicial activities.

Main Code Provisions. Rules 2.1, 3.4 and 3.1, and Canon 3 of the Code contain several principles that are directly relevant to the issue of when a judge may serve on a governmental committee.

First, the basic rule is that "[t]he duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities." Rule 2.1. In a similar vein, Canon 3 states: "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office."

Second, a "judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice." Rule 3.4.

Third, while Rule 3.4 "implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system or the administration of justice[,] [e]ven in such instances, . . a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary." Rule 3.4 cmt. 1. These balancing considerations should be understood and applied in light of the specific prohibitions found in Rule 3.1.

Fourth, Rule 3.1 generally provides that a "judge may engage in extrajudicial activities, except as prohibited by law or this Code." However, Rule 3.1 also provides that "when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law or Judicial Branch policy.

Subject to the limits of Rules 3.1 and 3.4, comments to these Rules encourage judicial service on governmental committees. "To the extent that time permits, and judicial

independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects." Rule 3.1 cmt. 1. "Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system." Rule 3.1 cmt. 2. "Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system or the administration of justice." Rule 3.4 cmt. 1.

Additional Code and Case Law Provisions.

Three subsidiary principles should also be noted.

(1) In determining whether a judge's participation in an extrajudicial activity appears to undermine a judge's impartiality, the test is whether "an objective, unbiased layperson with full knowledge of the facts and circumstances" would believe that the judge's independence, integrity or impartiality was compromised. *State v. Pratt*, 813 N.W.2d 868, 876 (Minn. 2012).

(2) A judge "may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities," and doing so "does not constitute acceptance of a governmental position." Rule 3.4 cmt. 2.

(3) A judge who serves on a governmental committee "may accept reimbursement of necessary and reasonable expenses for travel, food, lodging or other incidental expenses . . . from sources other than the judge's employing entity," unless doing so is otherwise prohibited by Rule 3.1 and 3.13(A). Rule 3.14(A). Reimbursement for such expenses "shall be limited to the actual costs reasonably incurred by the judge." Rule 3.14(B). Whether acceptance of reimbursement for expenses is "consistent with the requirements of this Code" is also addressed in Comments 2 and 3 to Rule 3.14.

Prior Code and Comments.

Almost all opinions and commentary regarding extrajudicial governmental service are based on the ABA Model Code in its pre-2006 form. The pre-2006 Model Code was the basis for the pre-2009 Minnesota Code. For proper evaluation of opinions and commentary, it is useful to compare and contrast the current Code with its predecessor.

Rule 3.1 is primarily derived from Canon 4A of the 1990 Model Code. However, the list of restrictions is somewhat different, focusing more sharply on the independence, integrity, and impartiality of judges. Rule 3.1(A) is substantially the same as Canon 4A(3). Rule 3.1(B) is a new and more specific instance of the prohibition in Rule 3.1(A). See *Annotated Model Code* 330-31.

Rule 3.1(C) is based on Canon 4A(1) but with expanded coverage and revised language, for enhanced emphasis on judicial independence, integrity and impartiality. *Id.* at 331.

Rule 3.1(D), a new provision, guards against judicial conduct that appears to coerce others into participating in extrajudicial activities favored by the judge. *Id.*

Rule 3.1(E), also new, overlaps with aspects of former Canon 2B. While the Rule generally prohibits the use of court premises, staff, stationery, equipment and other resources for a judge's extrajudicial activities, it also allows for incidental use of those same resources for activities that concern the law, the legal system or the administration of justice. *Id.*

The 2009 Code states, for the first time, that within permissible limits, "judges are encouraged to engage in appropriate extrajudicial activities." Rule 3.1 cmt. 1. Comments 1 through 3 to Rule 3.1 are otherwise derived from the prior Commentary to Canons 4A and 4B. Comment 4 is new and expands on the aim of Rule 3.1(D), which is also new. *Annotated Model Code* at 331.

Rule 3.4 is derived from the first sentence of Canon 4C(2). The word "board" was added to the list of governmental entities and, as throughout the revised Code, the term "improvement in the law," has been changed to "concerns the law," because what constitutes an "improvement" is debatable. *Id.* at 356.

While Comment 1 to Rule 3.4 draws on the Commentary to former Canon 4C(2), it adds that "Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice." The new comment also does not carry forward the warning of the prior comment to Canon 4C(2), about "the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial." However, the new comment does carry forward the reminder that service on governmental bodies should not distract judges from their judicial duties or otherwise compromise their independence, impartiality, or integrity. Comment 2 to Rule 3.4 was moved to the Comments from the text of Canon 4C(2) of the 1990 Code. *Id.*

Additional Foundational and Historical Considerations.

Judges are often appointed to serve on governmental committees by the Minnesota Supreme Court. Appointments are also sometimes made by the Chief Judge of the Court of Appeals, by the chief judge of a judicial district, or by the Judicial Council. The Board's informal advisory opinions do not include any record of questions of compliance with the Code being raised regarding any such appointments. The Board presumes that such appointments comply with the Code, so long as the judge retains sufficient time for judicial duties.

On February 4, 1991, the Board issued an advisory opinion to then Chief Justice of the Minnesota Supreme Court, Honorable A. M. Keith. Exhibit A. The subject matter of the opinion was "the propriety of a district judge occupying the position of a member of the State Board of Public Defense." *Id.* This subject had "received considerable notoriety in the media." *Id.* The opinion concluded that the judge's service comported with a Canon that was the forerunner of Rule 3.4. In explaining its conclusion, the Board wrote:

> The Board gave serious consideration to the fact that the legislature has mandated the presence of a district judge on the State Board of Public Defense, and that the Supreme Court in fulfilling its legislative mandate, has designated a judge to the Board. This Board has determined that when the Supreme Court made such designation it certainly did so with full knowledge of the provisions of the Code of Judicial Conduct and any possible conflict that might have been created thereby.

In issuing Advisory Opinion 2014-2, the Board has in part relied on its 1991 opinion.

Legislative enactments sometimes provide for the appointment of a judge to serve on a government committee. When this occurs, a judgment has been made that the appointment is in the public interest. Considerable weight should be given to the legislative determination that the public interest would be served by providing for the contribution of judicial experience and perspective to the work of a governmental committee. Although these determinations could, in a particular case, be overcome by a determination that service would "undermine the judge's independence, integrity, or impartiality" or otherwise violate the Code, the Board believes such situations would be rare. Rule 3.1(C). Of course, an individual judge might simply be too busy with judicial activities to serve on a committee. Rule 3.1(A).

Legislation that requires that a judge be a member of a governmental committee does not override the Code. *See* Cynthia Gray, *Serving on Governmental Commissions: What Are the Limits?*, 86 Judicature 200, 207-08 (Jan.-Feb. 2003). However, as indicated above, legislative determinations regarding such appointments are entitled to consideration and respect. Rules 3.1 and 3.4 apply to all "extrajudicial activities" and all "governmental positions," including appointments by counties, cities, public schools, etc. Although the judgments of these entities when appointing judges to serve on committees are intended to serve the public interest, the Board accords them substantially less deference than it accords appointments by the courts and Legislature.

Analysis, Discussion.

Application of the principles thus far described in this Opinion begins with Rule 3.4. The first question is whether the governmental entity to which a judge may be appointed is in fact concerned with the law, the legal system, or the administration of justice. If not, the Code does not permit the appointment. If so, do any of the prohibitions in Rule 3.1 (A)-(D) nonetheless prohibit service?

Several main issues, and several subsidiary issues, arise under Rule 3.4 and under Rule 3.1, as it pertains to Rule 3.4.

Rule 3.4 – Nature of the Work and Activities. The first issue is whether the "subject matter" of the work and activities of the governmental committee on which the judge would serve is concerned with the law, the legal system, or the administration of justice. Rule 3.4 cmt. 1. In determining whether a committee's work sufficiently relates to the law, the focus is on

the task, mission, goals and agenda of the committee; on the issues to be addressed by the committee; and on the nature of the duties, functions and responsibilities of the judge.

Some governmental committees, perhaps especially those created through legislative or executive branch action or local governmental initiative, address issues or seek to accomplish goals which may include but go beyond improvement of the law. In determining whether a judge may serve on such committees, some jurisdictions employ a "direct nexus" test and require that "there be a direct link between the government committee's work and how courts go about the business of meeting their statutory or constitutional duties. If the nexus is indirect, incidental, or tangential, or if the permitted subjects are just one aspect of a broader mission or focus, service by a judge is not permitted." *Annotated Model Code* at 358. At a minimum, compliance with Rule 3.4 requires that there be a readily articulable connection between the work and activities of the committee and some identifiable improvement of the law, the legal system, or the administration of justice.

Rule 3.1 Overview – Judicial Impartiality and Other Concerns. Read by itself, Rule 3.4 would permit judges to serve on any governmental committee "that concerns the law, the legal system, or the administration of justice." However, Rules 3.1 and 2.1 also apply to such service. Rule 3.1 applies the principles of Rule 2.1 in several specific ways.

Rule 3.1 provides that "[a] judge may engage in extrajudicial activities," subject to two sets of prohibitions. A judge may not engage in extrajudicial activities that are "prohibited by law or this Code." In addition to this general prohibition, Rule 3.1(A)-(E) provides five more prohibitions.

Three of the Rule 3.1 specific prohibitions address the situations of individual judges, rather than the issue of whether any judge may serve on a committee. Rule 3.1(A), (D), (E). The first prohibition primarily relates to whether the judge is too busy with existing case handling and administrative responsibilities to serve on a particular committee. Rule 3.1(A). The fourth prohibition, which is concerned with "coercive" conduct, relates to actual or apparent judicial pressure on others to join the judge on a committee or to serve on a committee favored by the judge. Rule 3.1(D). The final prohibition – excessive or impermissible use of court resources – relates more to how the extrajudicial activities are performed, rather than whether the activities are permissible. Rule 3.1(E).

Rule 3.1(C) prohibits a judge from participating in extrajudicial activities that "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 3.1(C) is the most important of the enumerated Rule 3.1 prohibitions. Because Rule 3.1(C) pertains to the nature of the work and activities of the committee, if Rule 3.1(C) prohibits one judge from committee service, it often will prohibit all judges from such service. Moreover, Rule 3.1(C) pertains to a core value of judicial ethics – whether the committee service "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Because governmental committee service will seldom raise questions about a judge's "integrity," the core concern of Rule 3.4(C) is whether service would appear to undermine the judge's "independence . . . or impartiality."

Rule 3.4(C)'s concerns with independence and impartiality dovetail with Rule 3.4(B)'s prohibition against participation in extrajudicial activities that "will lead to frequent disqualification of the judge." Such disqualifications would normally result from apparent partiality. Rule 2.11(A).

In sum, if Rule 3.4 permits committee service, because service is sufficiently law-related, the most important questions remaining for the judge are: (1) Will committee service appear to compromise my impartiality? (2) If not, do I have enough time for this service, or will it compromise performance of my judicial duties?

Rule 3.1(C) – Preserving Independence and Impartiality. A potential concern with judicial service on governmental committees is that a committee position might undermine perceptions about the judge's impartiality. This can occur if the committee appears to be engaging in advocacy, rather than simply making recommendations. The *Annotated Model Code* states that "a judge's participation in a group that engages in advocacy toward the adoption, repeal, or modification of particular substantive laws, or toward the courts' use and application of existing laws in a particular manner, creates a danger that the judge's ability to act impartially may be cast in doubt." *Annotated Model Code* at 341 (citing California Judges Association, Committee on Judicial Ethics, Opinion 46 (1997)). The Board agrees that judges should consider whether advocacy of substantive law change is part of the committee's mission and, if so, whether the particular advocacy is likely to create the danger discerned by the ABA.

Another concern can be the extent to which a committee makes recommendations or performs tasks that are primarily within the province of the legislative or executive branches of government. A distinction is sometimes drawn between the work of a committee that is focused on the general improvement of the law, the legal system or the administration of justice, where judicial participation is permitted, and a focus on review of fact-specific issues or cases, where judicial participation may be prohibited. For example, many states prohibit judicial participation in the work of committees that conduct child fatality reviews or that examine and critique the policies and practices of social service or law enforcement agencies on the handling specific types of cases.

At the same time, however, the Board recognizes that a review of particular cases is sometimes necessary to making good recommendations for changes in the law, the legal system, or the administration of justice. In 1989, the Board approved a judge's service on an ad hoc Task Force to review the disciplinary process of the Board of Medical Examiners. The Task Force reviewed the Board's existing disciplinary procedures, not to determine whether specific cases had been correctly handled, but rather to learn how the rules were applied and how they might be improved. Similarly, judges served on the Supreme Court Advisory Committee on the Rules of the Board on Judicial Standards (2007-08). That Committee reviewed individual files, not to evaluate how specific cases had been handled, but to evaluate the effectiveness of the Board's disciplinary process. Board Rule 21 ("Periodic Review") contemplates similar file review by a future committee, which will no doubt include judges. All things considered, the Board believes that judges generally may serve on committees which review specific files and cases, if the reviews are undertaken to identify ways to improve the law, the legal system or the administration of justice, rather than criticism of responsible parties.

Rule 3.1(A) – Time Commitments and Impact on Discharge of Judicial Duties. Under the Code, whether a judge is too busy to serve on a committee is primarily a question of whether the amount of time spent on the committee's activities will negatively impact "the proper performance of the judge's judicial duties." Rule 3.1(A). A judge is first and foremost obligated to perform "judicial and administrative duties competently and diligently." Rule 2.5(A). Thus, a judge is allowed to serve on a governmental committee only "to the extent that time permits." Rule 3.1 cmt. 1. In deciding whether to accept appointment, a judge should evaluate the judge's other existing "time commitments." Rule 3.4 cmt. 1.

In analyzing the time commitment question, the judge should consider the frequency and location of committee meetings; the amount of time required for travel to and from those meetings; time for possible service on sub-committees, etc. Judges in counties where no other judge is chambered should ensure adequate coverage. In some instances, before deciding whether to accept appointment to serve on a committee, it may be helpful to consult with a chief judge or with other members of the court on which the judge serves.

Appearance of Impropriety. Appearances and public perception should also be considered. Even if a judge objectively determines that the judge can participate in the work of a governmental committee without adversely affecting judicial duties, the judge's frequent absence from the courthouse, or publicity regarding the judge's service on the committee, may create a public impression that the judge is devoting too much time to, or placing too much importance on, extrajudicial duties. Rule 1.2.

Size of Jurisdiction. Among relevant subsidiary issues are the sizes of both the jurisdiction likely to be affected by the work of the committee and the jurisdiction from which committee members are drawn. Judicial service on a committee whose work affects only a local governmental unit – a single county or municipality, for example – may enhance risk that the judge's participation will lead to frequent disqualification, contrary to Rule 3.1(B). Similarly, if all committee members come from a small jurisdiction, individuals may feel coerced into serving on a committee that appears to be favored by the local judge. Rule 3.1(D). Concerns of these types could be more acute if local lawyers, probation or law enforcement officers, social workers, or other individuals who frequently appear in court serve on the same committee. The Board's past informal advisory opinions, discussed below, generally correlate with the "size of jurisdiction" criteria. All informal opinions approving service on particular entities involve state-wide entities. All informal opinions disapproving service, except one, involve local entities. However, there are some local governmental committees on which judges may appropriately serve. The most obvious example would be a committee of a local district court.

Factor-Based Analysis. Many jurisdictions have employed a multi-factor approach to determine whether a judge may serve on a governmental committee. Factors commonly considered include: (1) whether membership tends to represent only one point of view, or whether membership is diverse and balanced; (2) whether the group will discuss controversial legal issues likely to come before the courts, or whether the focus of the group's activities will

primarily be on administrative and procedural issues;[1] (3) whether the group will be viewed by the public as a political or advocacy group, or a mainly administrative group; (4) whether the group will take public policy positions that are more appropriately left to the other two branches of government. *Annotated Model Code* at 360 (citing Alaska Commission on Judicial Conduct Advisory Opinion 2000-1 (2000)).

Cynthia Gray has listed factors that make judicial service more likely to be appropriate if the committee: (a) is directly and primarily connected to how the courts function to deliver unbiased, effective justice; (b) takes policy positions clearly central to the legal system and relating to matters arising in and directly affecting the judicial branch; (c) serves the interests of those who use the legal system; (d) relates to matters a judge, by virtue of judicial experience, is uniquely qualified to address; (e) has a diverse membership that represents more than one point of view; (f) recommends legislation that benefits the law and legal system itself, rather than any particular cause or group; (g) has a structure that will enable the judge to limit involvement to only those matters dealing with improvement of the law, the legal system, or the administration of justice.[2]

Conversely, Gray notes that service by a judge on a governmental committee is less likely to be appropriate if the committee: (a) merely utilizes the law or the legal system as a means to achieve a social, political or civic objective; (b) comprises members who reflect one point of view; (c) comprises members who will appear as witnesses before the judge; (d) advocates the rights of specific participants in the justice system in specific cases; (f) reviews judicial decisions in a court watch program; (g) provides services, guidance or support for victims, law enforcement, the prosecution or defense in connection with court cases; (h) adopts protocols that bind judges to exercise their judicial responsibilities in a certain way; (i) establishes protocols that direct the conduct of non-judicial officials such as police and prosecutors; (j) reviews fatalities or requests for clemency; (k) recommends legislation making currently legal acts illegal, and/or increasing penalties for existing criminal acts.

It is unnecessary to use a multi-factor analysis in situations where acceptance of any appointment is obviously appropriate, such as Supreme Court appointments, or obviously inappropriate, such as committees whose main concern is not with the law. In other situations, however, multi-factor analyses are useful.

Expense Reimbursement. Unless prohibited by Rules 3.1 and 3.13(A) or other law, when the source for reimbursement is "other than the judge's employing entity," a judge may accept "reimbursement of necessary and reasonable expenses for travel, food, lodging or other incidental expenses, ..." Rule 3.14(A). However, judges must assure themselves in all cases – not just governmental committees – that "acceptance of reimbursement . . . would not appear to a

[1] As noted above, the 2009 Code did not carry forward the prior Code commentary concern for "the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial."

[2] Gray is the long-time Director, Center for Judicial Ethics, of the American Judicature Society. The factors cited by Gray are found in Cynthia Gray, *Serving on Governmental Commissions: What Are the Limits for Judges?*, 86 Judicature 200, 209 (Jan.-Feb. 2003).

reasonable person to undermine the judge's independence, integrity or impartiality." Rule 3.14 cmt. 3. Eight factors are to be considered when making this determination. *Id.*

Board's Prior Informal Advisory Opinions.

Through April 30 2014, the Board had issued twelve informal advisory opinions in response to inquiries from judges about governmental committee service. Eleven of these opinions were issued under the pre-2009 Code. These informal opinions often only stated the issue and the conclusion, without providing reasoning or citing authority, other than a single governing rule.

Service was found appropriate (sometimes with conditions or limitations) in several instances. Among these were the 1991 opinion regarding the State Board of Public Defense, and the 1989 opinion approving service on the Board of Medical Examiners Task Force. In 1993, the Board approved a judge's service on a statewide "family violence council" that was being formed. In March 2014, the Board approved service on the Minnesota Children's Justice Act Task Force.

Service was found not appropriate on three entities which appeared to have little to do with the law: (1) a state university Campus-Community Coalition on Student Use of Alcohol (2002); (2) proposed continued service, after judicial appointment, as an elected school board member (1993); and (3) the Metropolitan Airport Commission (MAC) (1989). The Board could also found have MAC service inappropriate due to frequency of litigation, time commitments, political involvements, etc.

Two other opinions, issued in 1989, found that service would be inappropriate because of the judges' expectations that their services would be mainly as fundraisers. See Rule 3.7(A)(2). Two other findings of inappropriate service, also issued in 1989, were based, at least in part, on expectations that the service might well involve controversy and political activity. Because the pre-2009 Code concern about avoiding "extra-judicial matters that may prove to be controversial" has been dropped in the current version of the Code, these two 1989 opinions have been withdrawn.

One opinion which found service inappropriate is limited to its unusual facts – proposed service by a Workers' Compensation appeals judge as a non-voting public member on the Workers' Compensation Advisory Council (1983).

Concluding Observations.

Within the limits of what is permitted under the Code, the Board generally wishes to encourage judicial service on governmental entities that are concerned with the law, the legal system, or the administration of justice. The Board hopes that this opinion provides some helpful general guidance to judges who are asked to consider such service.

MINNESOTA BOARD ON JUDICIAL STANDARDS

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February 4, 1991

Honorable A.M. Keith
Chief Justice, Supreme Court
424 Minnesota Judicial Center
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Dear Chief Justice Keith:

The attention of the Board has been called to the question of the propriety of a district judge occupying the position of a member of the State Board of Public Defense. As you know, this matter has received considerable notoriety in the media.

The Board has reviewed the matter in the light of the Code of Judicial Conduct. The Board has also considered the applicable Statute M.S. §611.21 which specifically requires the appointment of a district court judge to the State Board of Public Defense. Also, M.S. §622.37 requires two additional judges when the State Board of Public Defense designates district public defenders.

After reviewing the Code of Judicial Conduct and the applicable Statutes, the Board is of the opinion that a district court judge may be a member of the State Board of Public Defense and that such extra-judicial appointment is permitted pursuant to Canon 5G which states:

> "**Extra-Judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal

EXHIBIT A

> system, judicial administration, or the administration of justice. A judge, however, may represent the judge's country, state or locality on ceremonial occasions or in connection with historical, educational, and cultural activities."

The Board gave serious consideration to the fact that the legislature has mandated the presence of a district judge on the State Board of Public Defense, and that the Supreme Court in fulfilling its legislative mandate, has designated a judge to the Board. This Board has determined that when the Supreme Court made such designation it certainly did so with full knowledge of the provisions of the Code of Judicial Conduct and any possible conflict that might have been created thereby.

Very truly yours,

Lawrence Redmond
Chairperson

LR:df