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# Minnesota Board on Judicial Standards

## Annual Report 2006



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STATE OF MINNESOTA  
**BOARD ON JUDICIAL STANDARDS**  
**2 0 0 6**

**Judge Members**

Honorable James Dehn  
Judge of District Court  
Cambridge, MN

Honorable E. Anne McKinsey  
Judge of District Court  
Minneapolis, MN

Honorable Gary Pagliaccetti  
Judge of District Court  
Virginia, MN

Honorable Terri Stoneburner  
Court of Appeals  
St. Paul, MN

**Attorney Members**

Martha Holton Dimick (*Exp. 5/06*)  
Shorewood, MN

Robert M.A. Johnson  
Anoka, MN

William Egan (*Eff. 5/06*)  
Edina, MN

**Public Members**

Douglas Fuller  
Bemidji, MN

Jacqueline Hauser (*Exp. 5/06*)  
St. Louis Park, MN

Elizabeth Hepola  
Hutchinson, MN

Cynthia Jepsen  
Marina St. Croix, MN (*Eff. 5/06*)

Patrick Sexton  
Minneapolis, MN

**Staff**

David S. Paull  
Executive Secretary

Deborah Flanagan  
Executive Assistant

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## FOREWARD FROM THE CHAIR

The Board's job is an important one. Its goals cannot be stated too often. The Board focuses on achieving independence, integrity and impartiality of our judicial system. These important goals are promoted only if our judges and judicial officers conduct themselves in compliance with the Canons of Judicial Ethics.

To function, the public must be convinced that the conduct of judges and judicial officers is consistent with the highest standards. Although it is an independent agency and has no connection with the court system, the Board functions as the "eyes and ears" of the Supreme Court, as it attempts to ensure that the public's confidence in the system is maintained and justified.

Now entering my seventh year as a Board member, I have had an opportunity to attend dozens of meetings and review and consider hundreds of allegations of judicial misconduct or judicial disability. Without exception, I have noted that my fellow Board members are dedicated, hardworking, and compassionate. I have participated in hundreds of serious discussions relating to the merits of cases and how they should be resolved. In this process, each member has an opportunity to express their views. Often the discussions are spirited, as each Board member struggles to reach an appropriate resolution. But, in almost every case, the Board members ultimately find a way to resolve the points of contention, achieve consensus and reach a fair conclusion.

Whether the case is private or public, it is essential that the Board's decisions be communicated to all concerned persons. This is the task of the Executive Secretary, who is the public face of the Board and represents the Board in all matters. The Executive Secretary's position in its present form is essential to the Board's independence, as contemplated by all the branches of state government when the Board was created. Without the ability to speak through the uncompromised voice of the Executive Secretary, the Board's effectiveness would certainly be greatly diminished.

This has been another significant year for the Board's total volume of community contacts. Throughout my tenure, communication with the Board has increased dramatically. This is a very important part of the Board's work. Permit me to cordially invite all interested persons, whether court participants, lawyers or judges, to contact the Board and learn how it goes about its work.

Honorable James Dehn  
Chairperson

January, 2007

## **INTRODUCTION**

A society cannot function without an effective, fair and impartial procedure to resolve disputes. In Minnesota, the constitution and laws provide a system designed to fit these essential criteria. The preservation of the rule of law, as well as the continued acceptance of judicial rulings, must depend on unshakeable public recognition that the judiciary and the court system is worthy of respect and trust. The quality of justice is directly dependent on the personal quality of our judges. It is the Board's mission to guard public confidence in the independence, integrity and impartiality of our judicial system through the observance by our judges and judicial officers of proper conduct.

To accomplish its goal, the Board discharges two general responsibilities:

- to review and investigate complaints of judges' conduct that may violate the Code of Judicial Conduct and to recommend discipline if appropriate.
- to educate the judiciary and the public on the role of the Board on Judicial Standards and on the Code of Judicial Conduct.

The Board's investigation, interpretation and disciplinary process recognizes the unique role of elected judges in our state and it conducts its proceedings to preserve the rights and dignity of the bench, bar and public.

## **AUTHORIZATION**

*Minn. Constitution. Art. 6, Section 9*, authorizes the legislature to “provide for the retirement, removal, or other discipline of any judge who is disabled, incompetent, or guilty of conduct prejudicial to the administration of justice.” The legislature authorized the court to discipline a judge for “incompetence in performing the judge’s duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” The 1971 Legislature created the Board on Judicial Standards to assist in this task and authorized the Supreme Court to make rules to implement judicial discipline. *Minn. Statutes 490A.01, 490A.02 (2006) [M.S.490.15 and 490.16 (1982).]*

## **ORGANIZATION**

The Board has ten members: one judge from the Court of Appeals, three trial court judges, two lawyers who have practiced law in the state for at least 10 years, and four citizens who are not judges, retired judges, or lawyers. All members are appointed by the Governor and, except for the judges, require confirmation by the Senate. Members’ terms are four years and may be extended for an additional four years.

The Board meets at least monthly and more often if necessary. The judge members are not paid but do receive expense reimbursement. Non-judge members may claim standard state per diem, as well as expense reimbursement.

The Board is supported by a two-person staff, the Executive Secretary and the Executive Assistant. At the direction of the Board, the staff is responsible for reviewing and investigating complaints, maintaining records concerning the operation of the office, preparing the budget, administering the Board funds and making regular reports to the Board, the Supreme Court, the legislature and the public.

## **CODE OF JUDICIAL CONDUCT**

In addition to Minnesota Statutes, the Minnesota Supreme Court has adopted the Code of Judicial Conduct to govern judicial ethics. Intrinsic to the Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The Code may not be construed so as to impinge on the essential independence of judges in making judicial decisions.

The Board considers only complaints involving a judge’s professional or personal conduct. Complaints about the merits of a judge’s decision are matters for the appellate process.

## **RULES AND PROCEDURES**

The rules of the Board are issued by the Minnesota Supreme Court. Under its rules, the Board has the power to investigate allegations of judicial misconduct or on its own motion, to make inquiry into the conduct of a judge, as well as his or her physical or mental condition. If a complaint provides information about conduct that might constitute grounds for discipline, the Executive Secretary conducts a confidential investigation.

As amended on January 1, 1996, the rules permit the Board, upon a finding of sufficient cause, to issue a public reprimand and impose conditions on a judge's conduct or to commence a formal complaint for a public hearing. Upon finding insufficient cause to proceed further, the Board may dismiss, issue a private warning, impose conditions on the judge's conduct, or require professional counseling or treatment. A Board recommendation of censure, suspension or removal can be imposed only by the Minnesota Supreme Court.

All proceedings of the Board are confidential until a formal complaint and response have been filed with the Minnesota Supreme Court. A judge under investigation may waive personal confidentiality at any time during the proceeding.

An absolute privilege attaches to any information or related testimony submitted to the Board or its staff and no civil action against an informant, witness, or his or her counsel may be instituted or predicated on such information.

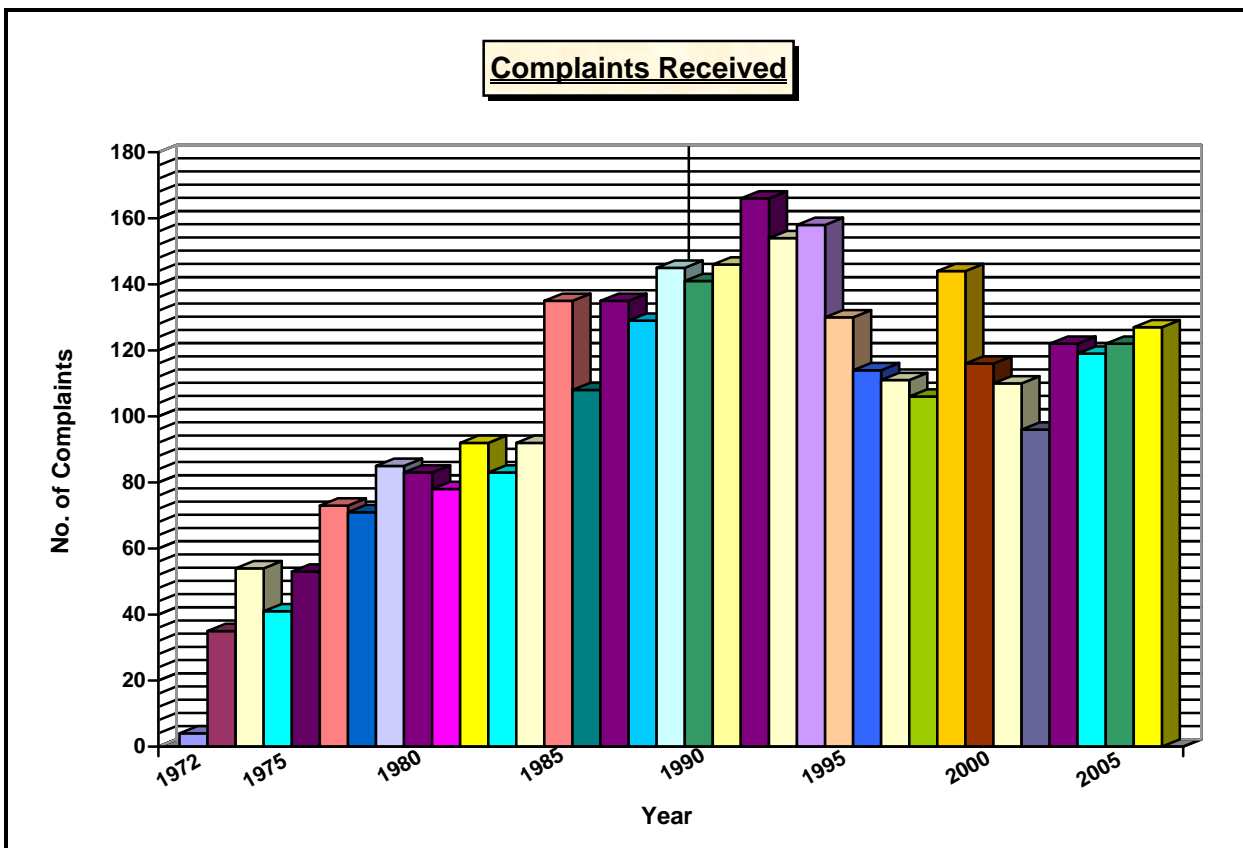
## **JURISDICTION**

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2006, this included 281 trial court judges; 23 appellate judges; 59 retired judges serving on orders from the Supreme Court, either full or part-time; 34 child support magistrates and the chief administrative law judge. The Board's jurisdiction also extends to 21 referees. The three judges of the Minnesota Tax Court and the five judges of the Workers' Compensation Court of Appeals also come under the authority of the Board.

The Board does not have jurisdiction over court administrators or their employees, court reporters, or probation personnel. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals, as prescribed in 28 USC, Section 372(c).

## 2006 CASE DISPOSITION

During 2006, the Board received 127 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



### SOURCE OF COMPLAINTS - 2006

Litigants	64
Attorneys	21
Inmates/Prisoners	10
Board Motion	7
Legislators	7
Other	6
Judiciary	4
Citizens	3
Government Agency	2
Law Enforcement	2
Prosecutor	1

**TOTAL** 127



**ALLEGATIONS REPORTED - 2006**

Bias, discrimination or partiality	45
General demeanor and decorum	45
Failure to disqualify self	24
Conflict of interest	21
Ex parte communication	20
Delay in handling court business	18
Abuse of authority or prestige	14
Public comment on pending case	14
Improper decision or ruling	13
Improper influence or ticket fixing	11
Improper conduct on the bench	10
Reputation of judicial office	9
Corruption; bribery	8
Failure to perform duties	8
Criminal behavior	6
Administrative Irregularity	5
Failure to follow law or procedure	3
Atty unethical conduct/prior to office	3
Other	3
Loss of Temper	2
Practicing law; giving legal advice	2
Nepotism; improper appointments	2
Health; physical or mental capacity	2
Election/campaign violation	1
Profanity or offensive language	1
Sexual misconduct	1
Willful misconduct in office	1

**JUDGES SUBJECT OF COMPLAINTS - 2006**

District Court Judges	104
Justices - Supreme Court	11
Referees/Judicial Officers	6
Retired - Active Duty	4
Child Support Magistrates	1
Court of Appeals Judges	0
Judicial Candidates	0
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0
No longer a judge	1

The Board requested 35 judges to respond in writing to the Board for explanation of their alleged misconduct. One judge appeared before the Board to address 3 complaints. After initial inquiries, fourteen complaints required additional investigation. Fourteen cases required substantial supplemental investigations.

**DISMISSAL REASONS - 2006**

No grounds or frivolous	30
No misconduct; no violation	26
Within discretion of judge	12
Unsubstantiated after investigation	10
Insufficient evidence	6
Legal or appellate issues	5
Retired pending board action	3
Lack of jurisdiction	2
Corrective action by judge	1

**DISPOSITIONS - 2006**

Public reprimand	0
Warnings	9
Removal	0
Disability retirement	0
Visit by board delegation	3
Conditions imposed	6
Other minor adjustments	4
Instructions for change	6
Suggest resignation/retirement	2
Counseling	0
Mental or physical exam ordered	1

Prior to January 1, 1996, the disposition of cases that resulted in a private reprimand remain confidential.

**SAMPLES OF CONDUCT FOUND TO BE IMPROPER**

To maintain confidentiality, the Board requires the elimination of certain details of the individual cases summarized below. The purpose of these examples is to educate the public and to assist judicial officers in the avoidance of improper conduct. Rather than omit them completely, the Board believes it is better to provide these abridged versions. References are to the *Minnesota Code of Judicial Conduct*, as revised.

- Delaying decisions in submitted cases for an unreasonable time or failing to issue an order in a submitted case within the statutory 90-day period [*Canon 3A(1) and MS 546.27*]
- Failing to act with courtesy, dignity and respect toward all participants [*Canons 1, 2 and 3A(4)*]
- Habitually failing to begin court proceedings in a timely manner [*Canon 2A and 3A (3)*].

- Gratuitously complaining about or objecting to the contents of state statutes or determinative case law from the bench [*Canons 1, 2 and 3A (3) and (4)*].
- Permitting a formal or informal memorandum of law to be distributed to a party or group other than authorized personnel [*Canons 1, 2A, 2B, 3A (9), 4A and 4G*].
- Failing to disclose the existence of a lawyer-client relationship between the judge and a lawyer or law firm currently appearing before the judge in another case [*Canons 1, 2A and 3D*].
- Failing to disclose a family connection between the judge and the corporate employer of a party [*Canons 1, 2A and 3D (1)*].
- Sleeping, or failing to pay attention to proceedings while on the bench [*Canons 1, 2A, 3A (1), 3A (3) and 3a (4)*].
- Failing to make reasonable efforts to assure that persons giving victim impact statements address only the court and do not repeatedly make improper remarks [*Canons 1, 2A, 3A (3) and 3A (4)*].
- Failing to timely pay attorney registration fees [*Canons 1, 2A, and 4A*].

Reprimands imposed by the Board after January 1, 1996, are public. In 2006, no public reprimand was issued.

This year, the Board conducted two public hearings. A hearing in a matter entitled *Inquiry into the Conduct of the Honorable Thomas M. Murphy* occurred beginning on April 26, 2006. A hearing in a matter entitled *Inquiry into the Conduct of the Honorable Rex D. Stacey* occurred beginning on May 8, 2006. Both matters are currently pending before the Minnesota Supreme Court.

### JUDGE'S INQUIRIES

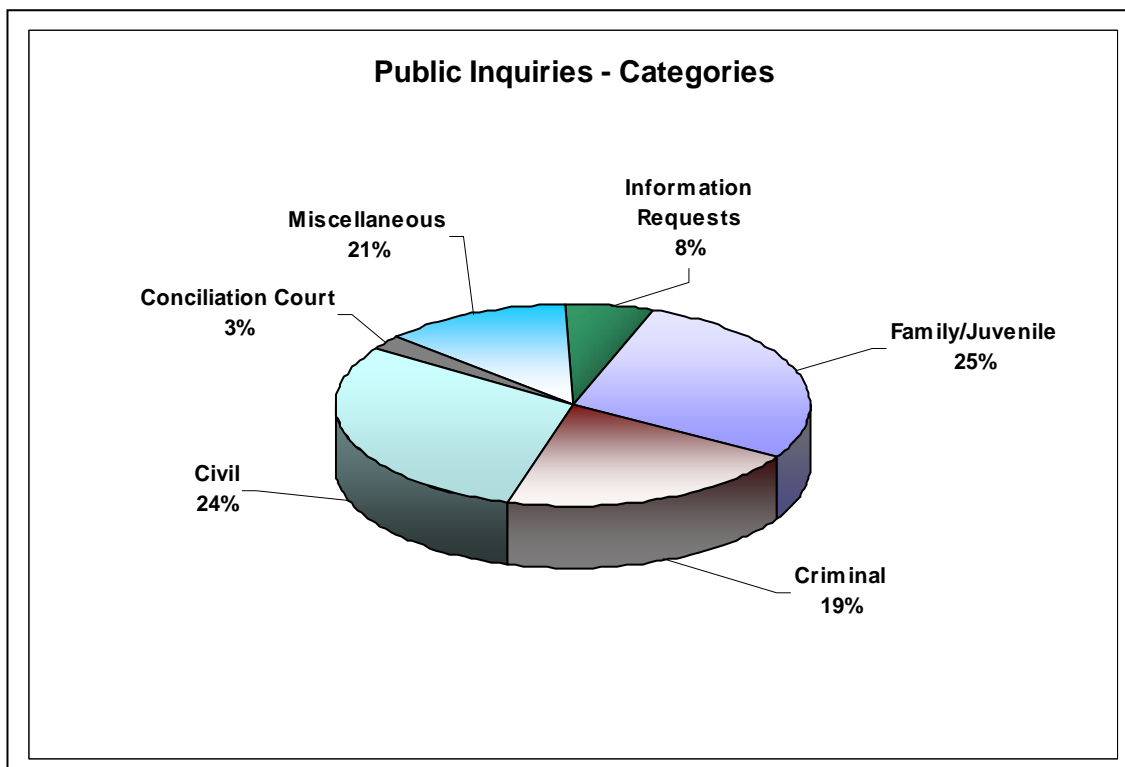
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2006, the Board issued five informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2006, there were 308 judge inquiries to the staff.

## PUBLIC INQUIRIES

The staff often receives complaints that concern persons over whom the Board has no jurisdiction or that do not allege judicial misconduct.

Staff maintains a daily telephone log of callers who complain about judges or request information. In 2006, the staff responded to 1096 such calls. The calls are generally from parties involved in a court proceeding and are coded by category; a tabulation of the categories is set out below.



## **2006 ADVISORY OPINIONS**

Each year, the Board issues advisory opinions applying the *Code of Judicial Conduct* to various specific questions submitted by judges. A synopsis of each advisory opinion issued by the Board in 2006 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is not appropriate for a judge to accept a gift of membership dues offered by a lawyers bar organization that specializes in representing or promoting the interests of specific parties or issues because the acceptance of such a gift might create an improper appearance and adversely affect the appearance of impartiality. *Canons 1, 2A, 2B and 4A.*
- It is appropriate for a judge to serve as an officer, director, trustee or non-legal advisor of an organization that recruits minority lawyers for employment in the Twin City metropolitan area, so long as the organization's activities are not limited to lawyers representing or promoting the interests of specific categories of parties or issues and the judge is mindful about giving the impression that a recruited lawyer or hiring law firm has any extraordinary influence over judicial activities. *Canons 1, 2A, 2B, 2C, 4A and 4C.*
- It is not appropriate for a judge to write a recommendation letter to the Board of Law Examiners on behalf of a person previously prosecuted by the judge prior to judicial service. *Canons 1, 2A and 2B.*
- It is appropriate for a former judge to support a candidate for election to office, act as a special assistant public defender and volunteer to an organization that provides legal services to persons in need, where the former judge was retired on the basis of disability and was not eligible to serve as an active/retired judicial officer. *Canons 4 and 5.*
- It is appropriate for a judge to testify to facts within the judge's personal knowledge concerning a lawyer practicing in the judge's court. However, a subpoena is required before the judge can be asked to provide testimony regarding the lawyer's character. *Canons 1, 2A, 2B, 2c and 4A.*