



ANNUAL REPORT 2007

Minnesota Board on Judicial Standards

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FOREWARD FROM THE CHAIR

As I write this message, I must regretfully acknowledge that my two terms as a member of the Board on Judicial Standards are drawing to a close. The Governor has already begun the process that will result in the appointing of my replacement. My hope is that the judge who takes this position will find his or her work on the Board to be as meaningful and gratifying as I have.

I have learned much during my tenure on the Board. Prior to my service, the canons of ethics were just another list of rules. Now I see them as philosophical statements, designed to build the trust in the judicial system by providing guidance to judges and judicial officers, as well as to provide a structure for regulation. My respect for the disciplinary system has also grown, as I have witnessed the Board's consistent struggle with serious and difficult questions to reach an appropriate resolution.

I am particularly proud that, during my eight years as a Board member, we have increased our outreach to judicial officers and the citizens of our state. Through its education and advice efforts, the Board now directly serves twice as many people as it did when my term began.

Finally, I want to express my appreciation to my fellow Board members and Board staff for their committed and consistent efforts to promote in our state, the public's trust and confidence in the integrity, impartiality and independence of the judicial system.

Honorable James Dehn
Chairperson

January, 2008

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 nine times annually 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.

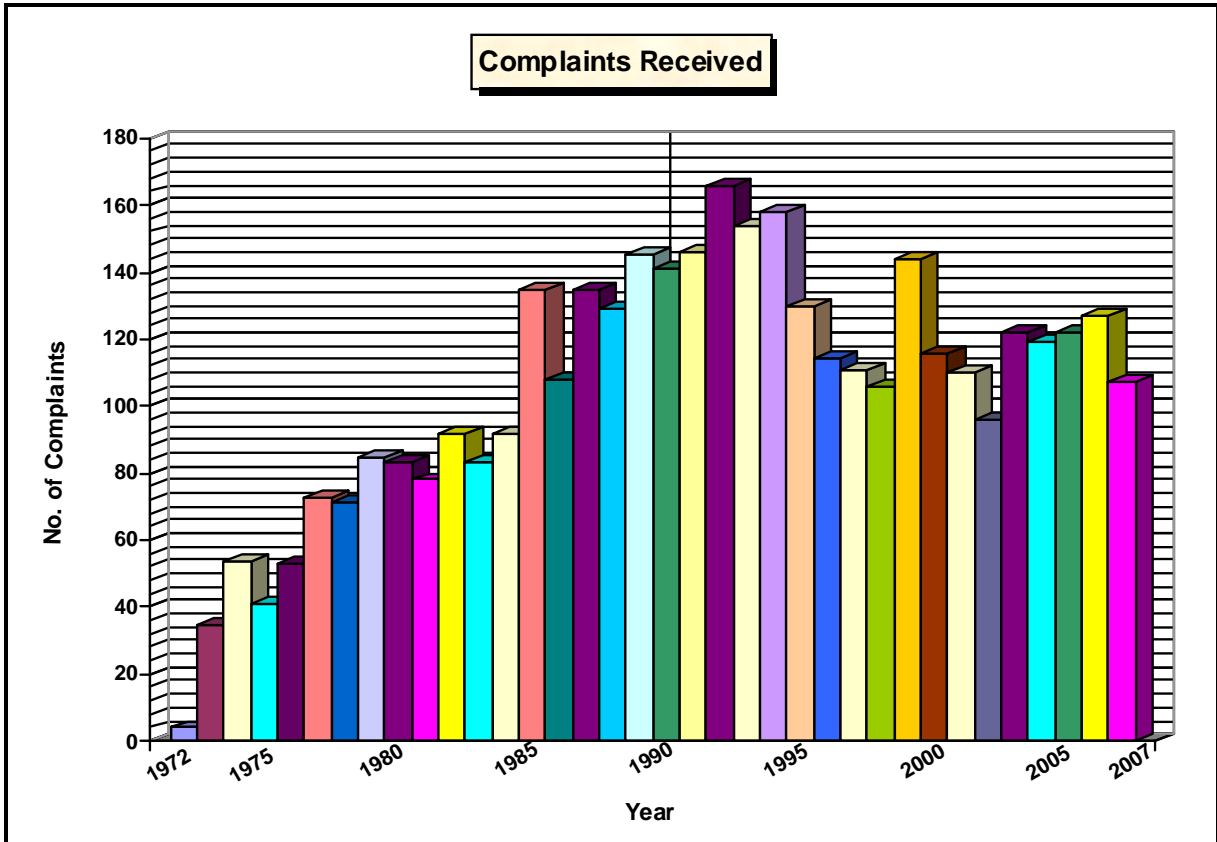
JURISDICTION

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2007, this included 281 trial court judges; 23 appellate judges; 57 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).

2007 CASE DISPOSITION

During 2007, the Board received 107 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



<u>SOURCE OF COMPLAINTS - 2007</u>	
Litigants	58
<i>Inmates/Prisoners</i>	14
Board Motion	11
<i>Attorneys</i>	10
Other	7
<i>Judiciary</i>	4
Government Agency	1
<i>News Report</i>	1
Victim	1
TOTAL	107

ALLEGATIONS REPORTED - 2007

General demeanor and decorum	47
Bias, discrimination or partiality	39
Delay in handling court business	31
Abuse of authority	20
Ex parte communication	18
Improper conduct on the bench	17
Conflict of interest	14
Failure to disqualify self	12
Improper influence, ticket fixing	12
Failure to follow law or procedure	8
Improper decision or ruling	8
Failure to perform duties	5
Administrative irregularity	4
Corruption, bribery	4
Criminal behavior	4
Health, physical or mental capacity	3
Loss of temper	2
Profanity or temper	2
Reputation of judicial office	2
Sexual misconduct	2
Other	2
Willfull misconduct in office	1
Public comment on pending case	1
Financial activities or reporting	1

JUDGES SUBJECT OF COMPLAINTS - 2007

District Court Judges	89
Justices - Supreme Court	0
Referees/Judicial Officers	9
Retired - Active Duty	7
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	1
No longer a judge	0

The Board requested 25 judges to respond in writing to the Board for explanation of their alleged misconduct. A judge did not appear before the Board this year. After initial inquiries, nine complaints required additional investigation. Four cases required substantial supplemental investigations.

DISMISSAL REASONS - 2007

No misconduct; no violation	27
No grounds or frivolous	24
Within discretion of judge	19
Insufficient evidence	13
Legal or appellate issues	5
Retired pending board action	1
Lack of jurisdiction	1
Corrective action by judge	1
Unsubstantiated after investigation	1

DISPOSITIONS - 2007

Public reprimand	4
Civil penalty	1
Private warning	6
Removal	0
Disability retirement	0
Visit by board delegation	4
Conditions imposed	2
Other minor adjustments	1
Instructions for change	3
Retired pending board action	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, 3A(4)*]
- Habitually failing to begin court proceedings in a timely manner. [*Canons 2A, 3A(3)*]
- Failure to comply with the rules governing attorney registration, including the failure to pay license fees on a timely basis. [*Canons 1, 2A, 4A*]
- Opening, receiving, reviewing or sending email on the bench computer, displaying improper images on courtroom computer screens, inadvertently displaying improper material to courtroom observers and participants. [*Canons 1, 2, 3A (1), 3A (3), 3A (4)*]
- Publicly commenting on the assault on a lawyer by a criminal defendant during a court proceeding, including how the attack might affect the competency of the defendant to participate in future court proceedings. [*Canons 1, 2, 3A (8)*]
- Asking a defendant in a criminal proceeding to permit the filming of a reenactment of his guilty plea proceeding. [*Canons 1, 2, 3A(1), 3A(5)*]
- Concluding that jurors who failed to appear for jury duty were in contempt of court without first complying with the published procedures established by their county of residence. [*Canons 1, 2A, 3A(1), 3A(2), 3A(7)*]
- Directing language to the parties in a child support proceeding that could reasonably be construed as abrasive and sarcastic. [*Canons 1, 2, 3A(4)*]

Reprimands imposed by the Board after January 1, 1996, are public. In 2007, four public reprimands were issued and a civil penalty was imposed.

JUDGE WILLIAM F. THUET

The Minnesota Board on Judicial Standards (Board) issued a public reprimand and a \$3,500 civil penalty to First Judicial District Judge William F. Thuet. The Board's action related to Judge Thuet's conduct in two cases, *State v. J.A.D.*, (Dakota County T8-04-12337) and *State v. J.A.D.*, (Dakota County K2-06-3184).

On or about December 23, 2004, J.A.D. was arrested for 4th degree driving while impaired in Dakota County. Judge Thuet was acquainted with J.A.D. She lived next door to him and his family from approximately 1980 until 1991 and is a friend of his daughter's.

After J.A.D. contacted him and indicated her wish to plead guilty to the offense, Judge Thuet obtained the file, removed the matter from the arraignment calendar, rescheduled J.A.D.'s appearance to another date and accepted J.A.D.'s plea, all without giving notice to the Dakota County Attorney.

J.A.D. was arrested again at approximately 12:25 a.m. on October 18, 2006 and was charged with 2nd degree driving while impaired in Dakota County. She was detained in the Dakota County jail pending a bail hearing.

After speaking with J.A.D.'s husband, Judge Thuet called the Dakota County jail at approximately 7:40 a.m. on October 18, 2006, and ordered the jailer to release J.A.D. to the custody of her husband. No conditions were placed on J.A.D.'s release by Judge Thuet and the Dakota County Attorney's Office was not contacted for input regarding bail or conditions of release.

The failure of Judge Thuet to notify the County Attorney of J.A.D.'s cases violated Canon 3A(7) of the Code of Judicial Conduct (Code), which requires judges to "accord every person who has a legal right in a proceeding, or the person's lawyer, the right to be heard."

Under Canon 2 of the Code, a judge must avoid the appearance of impropriety in all of the judge's activities and always act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. By affording J.A.D.'s cases private handling rather than a public disposition in open court, Judge Thuet created an "appearance of impropriety" contrary to the intent of Canon 2B of the Code, which calls on judges not to allow family relationships to "influence judicial conduct."

Board Rule 4(a)(5) subjects a judge to discipline for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Judge Thuet

created an appearance of impropriety in violation of Rule 4(a)(5) and acted with bias in favor of J.A.D by handling her cases privately without notice to the County Attorney.

The Board concluded that Judge Thuet's actions were contrary to the *Minnesota Code on Judicial Conduct, Canons 2 and 3A(7)*, as well as the *Rules of the Board on Judicial Standards, ("R.Bd.Jud.Std.")*, Rule 4(a)(5), as set forth below:

Canon 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 3A(7)

A judge shall accord to every person who has a legal interest in a proceeding, or person's lawyer, the right to be heard according to law. A judge shall not initiate, permit or consider ex parte communication, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding [exceptions listed].

Rule 4, Rules of the Board on Judicial Standards Grounds for Discipline

(a) Grounds for Discipline Shall Include:

(5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

April, 2007

JUDGE JOHN M. ROUE

The Minnesota Board on Judicial Standards (Board) issued a public reprimand to Ninth Judicial District Judge John M. Roue. The public reprimand was issued because the case of *State v. Schnichels*, a case assigned to Judge Roue, was not decided within the period of time permitted by law. *M.S. 546.27* requires case decisions of this type to be issued within 90 days of the date submitted. *Canon 3A (1)* requires judges to hear and decide cases “promptly” and “efficiently.” The Board concluded that these actions were contrary to the *Minnesota Code on Judicial Conduct*, *Canons 1*, *Canon 2A* and *Canon 3A(1)*, as well as the *Rules of the Board on Judicial Standards*, (“*R.Bd.Jud.Std.*”), *Rules 4(a) (5) and (6)*, as set forth below:

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

Canon 2

A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3 A (1)

A Judge Shall Perform the Duties of the Office Impartially and Diligently.

A. Adjudicative Responsibilities.

(1) A judge shall hear and decide promptly, efficiently and fairly matters assigned to the judge except those in which disqualification is required.

**Rule 4, Rules of the Board on Judicial Standards
Grounds for Discipline**

(b) *Grounds for Discipline Shall Include:*

- (5) *Conduct prejudicial to the administration of justice that brings the judicial office in to disrepute. . .*
- (6) *Conduct that constitutes a violation of the Code of Judicial Conduct of Professional Responsibility.*

October, 2007

This year, two matters were completed that included oral arguments before the Minnesota Supreme Court. Both determinations by the Supreme Court were released on August 23, 2007.

JUDGE THOMAS M. MURPHY

On August 23, 2007, the Supreme Court issued its decision in the *Inquiry into the Conduct of the Honorable Thomas M. Murphy*, Case No. A06-0306. The Court ruled that the Code of Judicial Conduct was violated where the Board on Judicial Standards established, by clear and convincing evidence, that Judge Murphy continued for dismissal a traffic ticket issued to the son of a court employee, where the disposition was not unusual but the judge knew, or should have known, that the employee sought relief for her son in violation of a county policy. The Court also ruled that Judge Murphy violated the Code of Judicial Conduct by personally contacting a potential witness in an investigation into this conduct for the purpose of a discussing that investigation.

JUDGE REX D. STACEY

On August 23, 2007, the Supreme Court issued its decision in the *Inquiry into the Conduct of the Honorable Rex D. Stacey*, Case No. A06-0306. The Court ruled that the Code of Judicial Conduct was violated where the Board on Judicial Standards established, by clear and convincing evidence, that Judge Stacey continued for dismissal a traffic ticket issued to the husband of a court employee, where the disposition was not unusual but the judge knew, or should have known, that the employee sought relief for her husband in violation of county policy.

JUDGE'S INQUIRIES

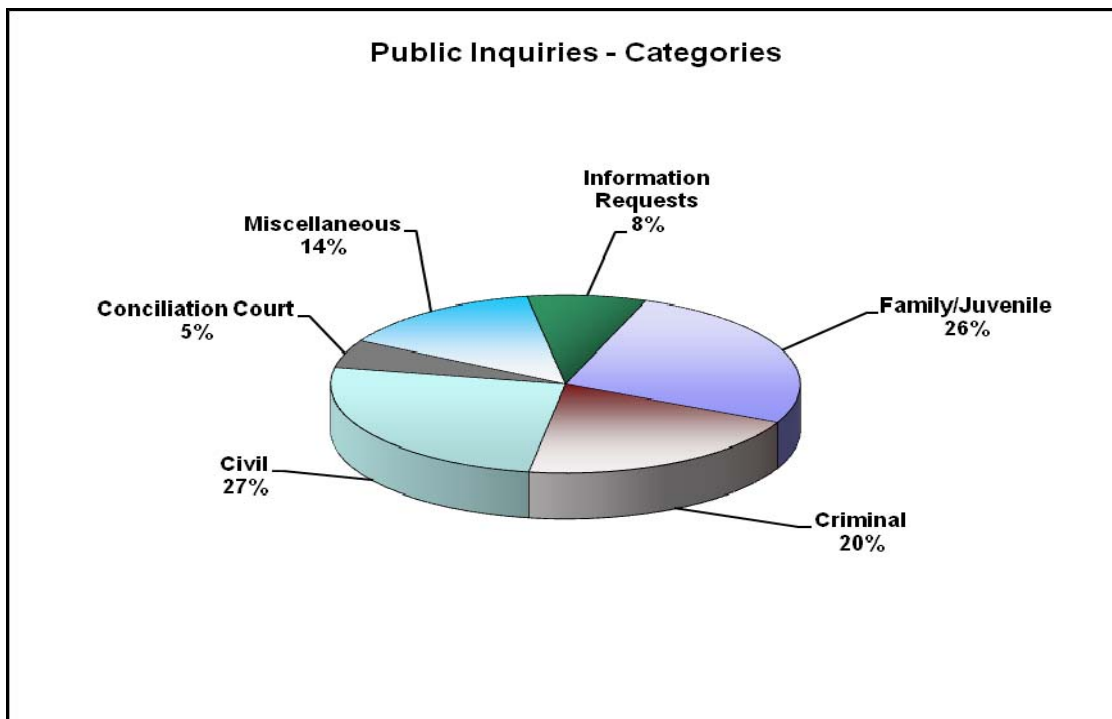
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2007, the Board issued six informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2007, there were 259 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 2007, the staff responded to 1049 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.



2007 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 2007 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is appropriate for a judge to serve as the chairperson of an organization that describes its purpose as promoting efforts to apply “progressive spiritual principles to the needs in our community and nation . . . our families, work places, communities, and political lives,” so long as the judge avoids fundraising activities, public speaking or writing that implies commitment to a cause or causes that may come before the court for adjudication and makes reasonable efforts to protect the judicial office from association with the extra-judicial activity. [*Canons 1, 2A, 2B, 3A (9), 3D(1), 4, 4C(3), 5A, 5C*]
- It is not appropriate for a judge to permit a religious group to announce his speaking engagement in a writing that includes a solicitation for funds. [*Canons 1, 2A, 2B, 4C(3)(b)*]
- It is not appropriate for a retired judge, who by law is not permitted to practice law, to publicly advertise or announce his or her availability as an arbitrator or mediator during a period of any judicial assignment. [*Canons 1, 2A, 2B, 4F, Application (Section B)*]
- It is not appropriate for a retired judge, who by law is not permitted to practice law, to publicly advertise or announce his or her availability to provide services as an arbitrator or mediator utilizing a photograph that depicts the judge in a judicial robe. [*Canons 1, 2A, 2B*]
- It is appropriate for a judge or judicial officer, on the occasion of a death in his or her family and on behalf of the family, to request interested persons to make contributions to charity or education “in lieu of flowers,” so long as the judge or judicial officer does not designate a specific charitable or educational institution. [*Canons 1, 2A, 2B, 4A, 4C(3), 4C(3)(b), 4D(5)(d) 4D(5)(h)*]
- It is appropriate for a judge to answer questions from a prospective contributor about the activities of a charitable, religious, civic or educational organization, as long as there is no solicitation for contributions. [*Canons 1, 2A, 2B, 4A, 4C(3)(b)*]