

# **ANNUAL REPORT 2014**

## **MINNESOTA BOARD ON JUDICIAL STANDARDS**

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## **MEMBERS AND STAFF\***

### **Judge Members**

Hon. Jill Flaskamp Halbrooks  
Minnesota Court of Appeals  
St. Paul, Minnesota

Hon. Vicki E. Landwehr  
Seventh Judicial District  
St. Cloud, Minnesota

Hon. David Knutson  
First Judicial District  
Hastings, Minnesota

Hon. Ellen L. Maas  
Tenth Judicial District  
Stillwater, Minnesota

### **Attorney Members**

Cindy K. Telstad  
Winona, Minnesota

William J. Wernz  
Minneapolis, Minnesota

### **Public Members**

Carol Cummins  
Golden Valley, Minnesota

Gerald T. Kaplan, M.A., L.P.  
Wayzata, Minnesota

Timothy Gephart  
Minneapolis, Minnesota

Terry Saario, Ph.D.  
Minneapolis, Minnesota

### **Staff**

Thomas C. Vasaly  
Executive Secretary

Sara Boeshans  
Staff Attorney

John H. Fuller  
Executive Assistant

\* As of June 30, 2015. Brief biographies are appended at the end of this report.

## **FOREWORD FROM THE CHAIR**

The Minnesota Board on Judicial Standards is charged with enforcing the Minnesota Code of Judicial Conduct and with interpreting the Code for the education of judges and others. The Minnesota Legislature created the Board and funds it. The Governor appoints the Board members – four judges, four public members, and two lawyers. The Minnesota Supreme Court adopts procedural rules for the Board and adopts the Code for judges.

The Judicial Code establishes a high standard for judicial conduct in the State of Minnesota. The Preamble to the Code states:

The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all of the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest public confidence in their independence, impartiality, integrity, and competence.

The members of the Board take these principles to heart in carrying out their duties. As it has since its creation in 1972, the Board continues to make every effort to fulfill its mission.

The Board's primary function is to receive, investigate, and evaluate complaints of judicial misconduct. Complaints that do not allege conduct that violates the Code are dismissed. If the Board finds that a judge has violated the Code, the Board issues private discipline or a public reprimand if warranted. In cases involving serious judicial misconduct, the Board seeks public discipline by filing a formal complaint against the judge. After a public hearing, the Board makes a recommendation to the Supreme Court. In addition to cases involving misconduct, the Board has jurisdiction to consider allegations that a judge has a physical or mental disability.

Education is also an important Board function. The Board and its Executive Secretary respond to judges' requests for informal advisory opinions. The Board also issues formal opinions on subjects of importance. The Board's website provides links to the Code, the Board's procedural rules, Board opinions, public discipline cases, annual reports, and other resources.

The Board accomplished the important goals it set for itself in 2014. These include:

- Issue case dispositions that are clear and understandable so that judges and the public can learn from them.
- Issue formal opinions on Judicial Disqualification – Judge’s Financial Relationship with Lawyer (2014-1) and Appointment to Governmental Committees and Boards (2014-2).
- Request applications for position of Board Counsel and select suitable candidates.
- Bring Board into full compliance with expungement requirements in Board Rule 19(c).
- Purchase and install new computers, server, and other office equipment.

Goals for 2015 include the following:

- Seek Legislative funding to create a permanent part-time staff attorney position.
- Develop knowledge management systems so that the Board can retain, organize, and publish rule interpretations, informal opinions, and other work product.
- Identify needed changes in Board rules and petition the Supreme Court to adopt the changes.

## **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, depends on unshakeable public recognition that the judiciary and the court system are worthy of respect and trust. Likewise, the maintenance of justice in our State depends on the proper conduct of our judges. It is the Board’s mission to preserve public confidence in the independence, integrity, and impartiality of our judicial system by enforcing the Judicial Code and by educating judges regarding proper judicial conduct.

## **AUTHORIZATION**

The 1971 Legislature approved an amendment to the Minnesota Constitution authorizing 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.” Minn. Const. Art. 6, Sec. 9. The 1971 Legislature also created the “Commission” (now “Board”) on Judicial Standards and authorized the Supreme Court to make rules to implement the legislation. Minn. Stat. §§ 490A.01-.03. In 1972, Minnesota voters approved the constitutional amendment, and the Minnesota Supreme Court adopted the Code.

## **ORGANIZATION**

The Board has ten members: one Court of Appeals judge, three district court judges, two lawyers, and four citizens who are not judges or lawyers. The Board 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 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 staff consisting of the Executive Secretary, an executive assistant, and a recently added part-time staff attorney. At the direction of the Board, the staff is responsible for reviewing and investigating complaints, providing informal opinions to judges on the application of the Code, 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**

The Minnesota Supreme Court has adopted the Code 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 Board considers only complaints involving the professional or personal conduct of judges. The Code is not construed so as to impinge on the essential independence of judges in making judicial decisions. Complaints about the merits of decisions by judges may be considered through 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 complaints concerning a judge's conduct or physical or mental condition. If a complaint provides information that furnishes a reasonable basis to believe there might be a disciplinary violation, the Board may direct the Executive Secretary to conduct an investigation.

The rules permit the Board, upon a finding of reasonable cause, to issue a private admonition or public reprimand or to initiate a public hearing. Under the rules, the Board may take several types of actions regarding complaints. It may dismiss a complaint if there is not reasonable cause to believe that the Code was not violated or discipline is not

warranted. A dismissal may be accompanied by a non-disciplinary letter of caution. If the Board finds reasonable cause, it may issue a private admonition, a public reprimand, or a formal complaint. The Board may also defer a disposition or impose conditions on a judge's conduct, such as obtaining professional counseling or treatment.

The Board affords judges a full and fair opportunity to defend against allegations of improper conduct. If the Board issues a formal complaint or a judge appeals a public reprimand, a public hearing will be held. Hearings are conducted by a three-person panel appointed by the Supreme Court. After the hearing, the panel may dismiss the complaint, issue a public reprimand, or recommend that the Supreme Court censure, suspend, or remove the judge from office. Discipline other than a private admonition or public reprimand can be imposed only by the Supreme Court.

All proceedings of the Board are confidential unless a public reprimand is issued or a formal complaint and response have been filed with the Supreme Court. The Board notifies complainants of its actions, including dismissals and private dispositions, and gives brief explanations.

An absolute privilege attaches to any information or testimony submitted to the Board, and no civil action against a complainant, witness, or his or her counsel may be based on such information.

## **AUTHORITY AND JURISDICTION**

The Minnesota Board on Judicial Standards has jurisdiction over complaints concerning the following judicial officials:

- State court judges, including judges of the District Courts, Court of Appeals and Supreme Court. There are 289 district court judge positions and 26 appellate judge positions.
- Approximately 100 retired judges in "senior" status who at times serve as active judges.
- Judicial branch employees who perform judicial functions, including referees, magistrates, and other judicial officers.
- Judges of the Minnesota Tax Court and the Workers' Compensation Court of Appeals and the Chief Judge of the Office of Administrative Hearings.

*See Rule 2, Rules of Board on Judicial Standards; Code of Judicial Conduct, "Application"; Minn. Stat. §§ 14.48, subs. 2 and 3(d), 175A.01, subd. 4, 271.01, subd. 1, 490A.03.*

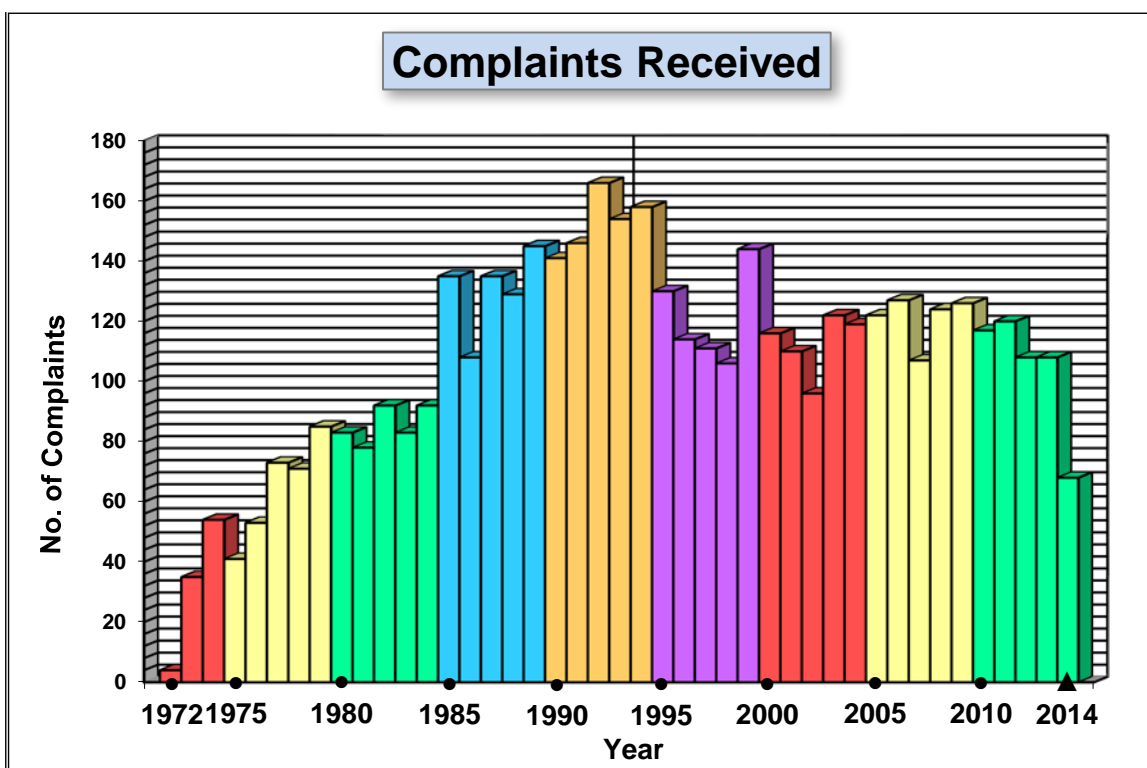
The Board does not have jurisdiction over complaints that concern the following persons:

- Court administrators or personnel, court reporters, or law enforcement personnel and other non-judicial persons.

- Federal judges. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals.
- Lawyers (except, in some circumstances, those who become judges or who were judges). Complaints against lawyers are filed with the Office of Lawyers Professional Responsibility.

## 2014 CASE DISPOSITIONS

During 2014, the Board received 68 written complaints alleging matters within the Board’s jurisdiction. The number of complaints received annually by the Board since 1972 is set forth below:



The above chart does not reflect complaints that were summarily dismissed based on lack of jurisdiction. For example, complaints that merely express dissatisfaction with a judicial decision are summarily dismissed. In 2014, 99 complaints were summarily dismissed.



**SOURCE OF COMPLAINTS – 2014**

Litigants	45
Board	1
Inmates/Prisoners	3
Other	2
Judge	2
Attorneys	5
Citizen	7
Prosecutor	2
Victim	1
<b>TOTAL</b>	<b>68</b>

**ALLEGATIONS REPORTED – 2014**

Failure to follow law or procedure	41
Bias, discrimination or partiality	38
General demeanor and decorum	16
Conflict of interest	6
Ex parte communication	6
Improper conduct on the bench	6
Delay in handling court business	5
Administrative irregularity	1
Chemical dependency	1
Criminal behavior	1
Election or campaign violation	1
Incompetence as a judge	1
Other	4

**JUDGES SUBJECT TO COMPLAINTS – 2014**

District Court Judges	57
Court of Appeals Judges	0
Supreme Court Justices	0
Referees/Judicial Officers	3
Retired Judges on Active Duty	4
Child Support Magistrates	4
Judicial Candidates	0
Tax Court Judges	0
Workers Comp. Court of Appeals	0
Chief Administrative Law Judge	0
Part-time judge	0
Conciliation Court Judge	0
Disability retirement during pendency	0
No longer a judge	0
Resigned during pendency	0
Pro tem judge	0
Deceased	0
<b>TOTAL</b>	<b>68</b>

The Board requested 13 judges to respond in writing to the Board for explanation of their alleged misconduct. In addition, one judge self-reported a possible Code violation, making a request for a response unnecessary. One judge appeared before the Board in 2014.

The majority of complaints were dismissed. The reasons for dismissal are set forth below. The total exceeds 68 because some complaints were dismissed for more than one reason.

**DISMISSAL REASONS – 2014**

Insufficient evidence	46
No misconduct; no violation	31
Within discretion of judge	22
Legal or appellate issues	16
Frivolous or no grounds	3
Complaint withdrawn	1
Corrective action by judge	1
Retired pending board action	1

As indicated below, in 2014, two matters were resolved with letters of caution and eight matters resulted in discipline.

<b><u>DISPOSITIONS – BY YEAR ISSUED</u></b>					
Year	Letter of Caution	Admonition	Deferred Disposition Agreement	Public Reprimand	Supreme Court Discipline
2009	0	4	2	1	1
2010	1	11	0	2	0
2011	0	2	0	1	1
2012	2	5	0	1	0
2013	4	2	0	1	0
2014	2	5	0	2	1

## **PUBLIC CASES**

In 2014, the Board issued public reprimands to Judges Steven Cahill and Terrence Walters and commenced a public disciplinary proceeding concerning Judge Alan Pendleton, which is now pending. The public reprimands and key documents in Judge Pendleton's case are available on the Board's website, [www.bjs.state.mn.us](http://www.bjs.state.mn.us). In addition, the Supreme Court publicly censured Tax Court Judge George Perez. These four cases are described below.

### **Judge George Perez**

In January 2014, the Supreme Court publicly censured Minnesota Tax Court Judge Perez for falsely certifying on his timesheets that he had no cases pending longer than three months after submission. *In re George Perez*, 843 N.W.2d 562 (Minn. 2014). Since this case was reported in the Board's 2013 Annual Report, the discussion will not be repeated here.

### **Judge Steven Cahill**

The Board reprimanded Seventh District Judge Steven J. Cahill for failing to follow the law in six cases, improperly issuing ex parte orders in four cases, chronic tardiness, and other misconduct. The Board also appointed a mentor for Judge Cahill for a six-month period.

### **Judge Terrence M. Walters**

The Board reprimanded Third District Judge Terrence M. Walters for failing to adequately supervise his law clerk, failing to ensure that the law clerk's timesheets were accurate, refusing to allow a criminal defendant to withdraw a plea after Judge Walters rejected a negotiated plea although the defendant had the right to do so under the plea agreement, trying a defendant in absentia, and implying without evidence that a deaf psychologist might be "agenda-driven" in evaluating a deaf defendant. The Board also appointed a mentor for Judge Walters for a six-month period.

### **Judge Alan F. Pendleton**

In October 2014, the Board filed a formal complaint against Tenth District Judge Alan F. Pendleton. The Complaint alleged that Judge Pendleton failed to reside within his judicial district for more than eight months in violation of the Minnesota Constitution and that Judge Pendleton made a knowingly false statement regarding his residence address in the affidavit of candidacy he filed in connection with his candidacy for reelection in 2014.

In May 2015, a hearing panel appointed by the Supreme Court found that "Judge Pendleton intentionally disregarded his constitutional obligation to remain a resident of his judicial district during his continuance in office." (Panel Decision, ¶ 42.) The panel found that he was not a resident of his judicial district from January 15 to June 2, 2014 and that he voluntarily lived in Minnetonka during that period. The panel also found that Judge Pendleton knowingly made a false statement, with intent to deceive, in the affidavit of candidacy. (Panel Decision, ¶ 44.)

The panel recommended that Judge Pendleton be censured and suspended without pay from his position as judge of district court for a period of at least six months. The matter is now pending before the Supreme Court.

## **PRIVATE CASES**

The Board issued five private admonitions and two letters of caution in 2014.

### **EXAMPLES OF CONDUCT FOUND TO BE IMPROPER**

The purpose of these examples of private admonitions is to educate the public and to assist judicial officers in the avoidance of improper conduct. To maintain confidentiality, the Board has eliminated the details of the individual cases summarized below. References are to rules in the Minnesota Code of Judicial Conduct.

- Ordering judgment in favor of a landlord in an eviction case without receiving any evidence and without affording a trial to the tenants who contested the eviction, in violation of Rules 1.2, 2.5(A), and 2.6(A).

- Engaging in a pattern of disparaging comments about other judges, attorneys, parties, and court staff that served no legitimate purpose and reasonably appeared to the targeted attorneys and parties to be close-minded about their cases in violation of Rules 2.2, 2.5(A), 2.6(A), and 2.8(B).
- A mother (“M”) filed a petition for an order for protection regarding the father of her children. M did not present evidence sufficiently supporting the petition. At the hearing on the petition, the judge stated to M, “You need counseling badly, because your kids are suffering. Not because of [their father]. Because of you. . . . I don’t believe your children are afraid of their father. I think they’re afraid of you.” The record did not support the statements that the children were afraid of M or were suffering because of M. The Board found violations of Rules 1.2, 2.2, and 2.8(B) and entered into a deferred disposition agreement with the judge. If the Board does not learn of any further violations within two years, the judge will receive an admonition for the judge’s conduct in the M case. If the Board learns of further violations within two years, the Board may seek public discipline.
- A judge’s interest in a local controversy was personal and unrelated to judicial duties. The judge sent communications regarding the controversy to persons potentially interested in the matter. One communication connected the private controversy with an earlier official act by the judge. The judge received an admonition for violating Rule 1.3. The admonition memorandum cited *Matter of Mosley*, 102 P.3d 555 (Nev. 2004) (disciplining a judge who, among other things, used judicial letterhead to write a letter on family members’ behalf).

## **PUBLIC INQUIRIES**

The staff receives frequent inquiries about judges’ conduct or that request information. The inquiries are often from parties involved in court proceedings. Callers are told how to file a complaint or are given appropriate referrals to other resources.

The staff often receives complaints that concern persons over whom the Board has no jurisdiction or that do not allege judicial misconduct. These persons are given appropriate referrals when other resources are available.

## **ADVISORY OPINIONS**

The Board is authorized to issue advisory opinions on proper judicial conduct with respect to the provisions of the Code. The Board encourages judges who have ethical questions to seek its guidance. In 2013, the Board began issuing formal opinions on issues

that frequently arise. The formal opinions also update, summarize, and often supersede informal opinions on the same general subjects. The Board issued two formal opinions in 2014:

Judicial Disqualification – Judge's Financial Relationship with Lawyer  
(2014-1)

Appointment to Governmental Committees and Boards (2014-2)

Formal opinions are sent to the chief judges of the Minnesota courts and are posted on the Board's website, [www.bjs.state.mn.us](http://www.bjs.state.mn.us).

Judges regularly contact the Board office for informal opinions on questions involving the Code of Judicial Conduct, such as permissible extrajudicial activities and disqualification standards. These requests are handled by the Executive Secretary, often in consultation with the Board Chair or other Board member.

## **FURTHER INFORMATION**

For additional information regarding the Board on Judicial Standards, please feel free to contact the Executive Secretary at (651) 296-3999.

Respectfully submitted,

*/s/ William J. Wernz*

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William J. Wernz  
Chair, Minnesota Board on Judicial  
Standards

*/s/ Thomas C. Vasaly*

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Thomas C. Vasaly  
Executive Secretary, Minnesota  
Board on Judicial Standards

## **BOARD AND STAFF BIOGRAPHIES**

### **Carol Cummins**

Public member. Owner of Brookridge Consulting LLC, which provides consulting services to law firms in practice management and strategic planning. Ms. Cummins has an MBA in finance from the University of Minnesota and has over 35 years of experience in law firm management. She was a member of the Lawyers Professional Responsibility Board from 2009 to 2015. Appointed to the Board on Judicial Standards in 2015.

### **Timothy Gephart**

Public member. Vice President of Claims at Minnesota Lawyers Mutual Insurance Company since 1985. Mr. Gephart is an adjunct professor at the University of St. Thomas School of Law, where he teaches a course on legal malpractice. He previously served on the Minnesota Lawyers Professional Responsibility Board and the Minnesota Board of Legal Certification. Appointed to the Board on Judicial Standards in 2012.

### **Honorable Jill Flaskamp Halbrooks**

Appointed to the Minnesota Court of Appeals in 1998. Private practice of law from 1985 to 1998. Appointed to the Board on Judicial Standards in 2009.

### **Gerald T. Kaplan, M.A., L.P.**

Public member. Licensed psychologist since 1977. Mr. Kaplan is the Executive Director of Alpha Human Services and Alpha Service Industries, which offer inpatient and outpatient programs for sex offenders. He is also a member of the Board of Medical Practice. Previously he served on the Board of Psychology, including two years as Board Chair. Appointed to the Board on Judicial Standards in 2013.

### **Honorable David Knutson**

Judge of District Court (First District). Appointed to the bench in 2004. Private practice of law from 1986 to 2004. Minnesota State Senator for twelve years serving Apple Valley, Burnsville, Lakeville, and Rosemount, MN. Appointed to the Board on Judicial Standards in 2012.

### **Honorable Vicki E. Landwehr**

Judge of District Court (Seventh District). Appointed to the bench in 1993. Private practice of law from 1979 to 1993. Appointed to the Board on Judicial Standards in 2008.

### **Honorable Ellen L. Maas**

Judge of District Court (Tenth District). Appointed to the bench in 1995. Law clerk for Minnesota Supreme Court Justice Glenn E. Kelley 1981-1982. Private practice of law from 1982 to 1995. Appointed to the Board on Judicial Standards in 2013.

### **Terry Saario, Ph.D.**

Public member. Former foundation executive and community volunteer. Dr. Saario has more than 26 years of philanthropic experience and extensive nonprofit and corporate board experience. Appointed to the Board on Judicial Standards in 2011.

**Cindy K. Telstad**

Attorney member. Private practice of law in Winona since 1987, primarily in the areas of real estate law, employment law, probate and trust administration, estate planning, and business law. Appointed to the Board on Judicial Standards in 2014.

**William J. Wernz**

Attorney member. Former partner, Dorsey & Whitney. Director of the Minnesota Office of Lawyers Professional Responsibility from 1985-1992 and author of *Minnesota Legal Ethics: A Treatise*. Appointed to the Board on Judicial Standards in 2011.

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**Thomas C. Vasaly**

Executive Secretary. Admitted to practice in 1974. Mr. Vasaly has worked in legal services programs, the Office of Lawyers Professional Responsibility, and the Minnesota Attorney General's Office.

**Sara P. Boeshans**

Staff Attorney. Admitted to practice in 2007. Ms. Boeshans clerked for Judge Marybeth Dorn, Second Judicial District, after which she was employed as an Assistant Attorney General in the public safety and health licensing divisions of the Minnesota Attorney General's Office.