

Annual Report 2011

MINNESOTA BOARD ON JUDICIAL STANDARDS

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BOARD ON JUDICIAL STANDARDS
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Judge Members

Honorable Vicki Landwehr
Judge of District Court
St. Cloud, MN

Honorable Dan Mabley
Judge of District Court
Minneapolis, MN

Honorable Shaun Floerke
Judge of District Court
Duluth, MN

Honorable Jill Flaskamp Halbrooks
Court of Appeals
St. Paul, MN

Attorney Members

William Egan
Edina, MN

Jon Hopeman
Minneapolis, MN (*Exp. 6/11*)

William Wernz
Minneapolis, MN (*Eff. 6/11*)

Public Members

Douglas Fuller
Bemidji, MN

Cynthia Jepsen
Marina St. Croix, MN

Patrick Sexton
Edina, MN

Randy Staver
Rochester, MN (*Exp. 6/11*)

Terry Saario
Minneapolis, MN (*Eff. 6/11*)

Staff

David S. Paull
Executive Secretary

Deborah Flanagan
Executive Assistant

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FOREWORD FROM THE CHAIR

The Minnesota Board on Judicial Standards is charged with enforcing the Minnesota Code of Judicial Conduct (“Code”). The 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.

As each member of the Board is well aware, an independent, impartial judiciary is indispensable to our system of justice. The Board has a vision of a judicial system in which every judge not only aspires to meet, but in fact does meet these high aspirations. Equally important is the continuing confidence of the public in the integrity and impartiality of the Minnesota judiciary. Since 1972, in its 40th continuous year of operation, the Board on Judicial Standards continues to make every effort to fulfill its mission – the adherence to those principles which encourage the achievement of these essential goals.

In carrying out its responsibility to oversee and enforce the Code, the Board has two basic functions. First, it processes complaints of judicial misconduct. To that end, the Board receives complaints, investigates and conducts hearings, makes certain limited summary dispositions, issues private disciplines and public reprimands, seeks public disciplines through formal complaints and makes recommendations to the Supreme Court concerning allegations of judicial misconduct, allegations of physical or mental disability of judges, matters of voluntary retirement for disability, and review of a judge’s compliance with the statutory requirement that written motions and matters submitted to a judge be decided within ninety days of submission. Second, the Board has the power to issue advisory opinions on proper judicial conduct under the Code.

In 2011, the Board received 120 written allegations of judicial misconduct. The majority of complaints were dismissed by the Board either because the complaints

were frivolous, did not allege an actual violation of the Code of Judicial Conduct, or the Board, on investigation, concluded that the complaint was without merit.

In 2011, the Board also took four disciplinary actions: one public reprimand (issued in cases of serious misconduct), three private admonitions (issued when the Board finds a Code violation which does not warrant the more drastic and advanced step of a public reprimand or more severe discipline). The Board also issued one letter of caution, addressing the judge's conduct.

The Board also took action to increase the transparency of its policies and procedures. This included a continuation of its efforts to update, clarify and supplement its operating policies and procedures, including its Code of Ethics for Board Members and to post all non-confidential policies on its website in 2012. The Board also adopted a resolution to apply the 2009 amendments to the Code of Judicial Conduct only to conduct occurring after June 30, 2009 and that any allegations of misconduct occurring on or prior to June 30, 2009, would be subject to the version of the Code in effect at that time. In addition, the Board has reviewed its form file closing letters and made certain enhancements; with a view to more clearly indicate the rule on which the disposition is based.

Further, the Board recognized an inconsistency in its procedural rules, between Rule 5(h) and Rule 9, relating to a judge's right to review witness statements and notes of witness interviews. In particular, when Rule 5(h) was added in 2009, there was no corresponding change made to Rule 9(b) relating to discovery after a formal complaint process is initiated by the Board. After consideration, the Board determined that it will regard Rule 5(h) as controlling. The Board would not oppose any amendment to Rule 9(b) consistent with this interpretation.

The Board also addressed the issues arising under Rule 17 of its Rules. After careful and extensive discussion and consideration, the Board determined that Rule 17, as in effect before July 1, 2009, contemplated expungement of several categories of files that the Board had retained, namely where the Board found a complaint "without sufficient cause." The Board had previously believed that under prior Rule 6(f), it could retain certain records where the complaints were "without sufficient cause" in cases where complaints (a) were dismissed, albeit with an expression of some concern by the Board, (b) were dismissed but only after a meeting between the judge and Board representatives and (c) resulted in warnings, which were issued, "even though the Board does not find sufficient cause..." Rule 6(f). Notwithstanding these reasons to retain the files, after careful consideration of the issue and extensive discussion, the Board concluded that in the end, the law requires expungement. In addition, former Rule 17(a) provided for retention of a file after the normal three year retention period, "in the event of a new complaint involving the same judge within the three years which event shall renew the three year period." In 2011, the Board determined that "the three year period" referred to the single three year period immediately prior.

The Board recognizes that, although its 2011 determinations regarding expungements would result in destruction of certain files in which complaints are found to be “without sufficient cause,” several file retention provisions remain applicable. First, public discipline files will be permanently retained. Second, current Rule 19 provides for permanent retention of private disciplines issued after June 30, 2009. Third, former Rule 17(c) provided for retention of files otherwise eligible for expungement “upon good cause shown” to the chairperson, after notice to the affected judge. In 2012, certain warning files will be reviewed under Rule 17(c).

The Board meets ten times per year to review complaints and monitor investigation and ongoing processing of complaints. The material reviewed by the Board at these meetings is voluminous and often is complex. I continue to be impressed by the high volume of work processed throughout the year by the Board’s two-person staff, Executive Secretary David Paull and his assistant Deborah Flanagan. On behalf of the Board, let me express my appreciation for the diligent and timely work of both of these dedicated public servants.

William J. Egan
Chairperson

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 achievement of justice in our State 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 so to issue or 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 processes recognize the unique role of elected and appointed judges in our State. The Board acts 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 the applicable laws, 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 should not be construed so as to impinge on the essential independence of judges in making judicial decisions.

The Board considers only complaints involving the professional or personal conduct of judges. Complaints about the merits of decisions by judges are considered by 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 first conducts a confidential investigation.

As amended on July 1, 2009, the rules permit the Board, upon a finding of reasonable cause, to issue letters of caution, private admonitions, public reprimands, seek public discipline or commence a public hearing. The rules also permit the Board to defer a disposition, impose conditions on a judge's conduct or require professional counseling or treatment. After a public hearing, a Panel's 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.

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.

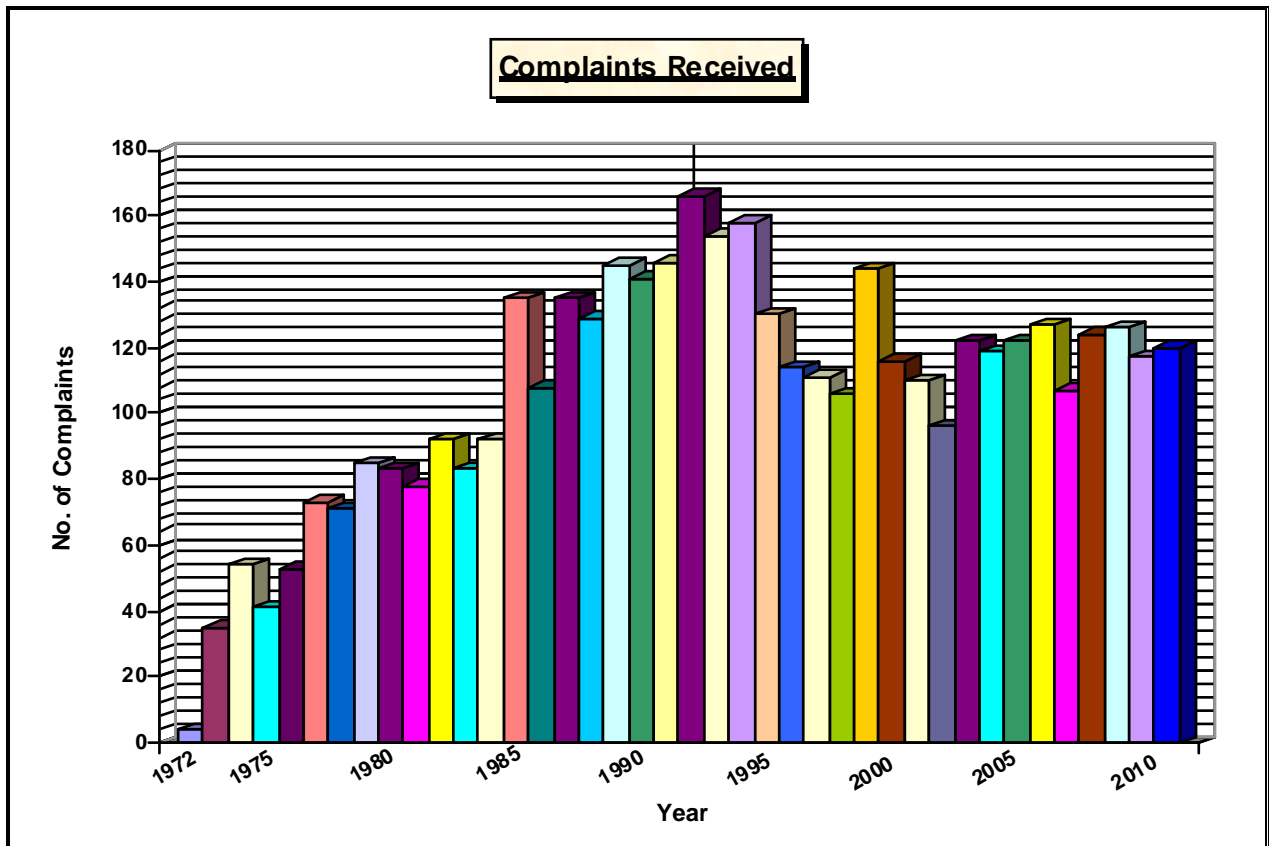
JURISDICTION

The Board's jurisdiction extends to certain persons exercising judicial powers and performing judicial functions, including all judges and judicial officers employed by the judicial branch of government assigned to administrative duties. During 2011, this included 315 trial court judges; 26 appellate judges; 68 retired judges serving on orders from the Supreme Court, and 40 child support magistrates, either full or part-time. The Board's jurisdiction also extends to 14 referees and 64 part-time conciliation court judges. Additionally, the Board's jurisdiction includes the three judges of the Minnesota Tax Court, five judges of the Workers' Compensation Court of Appeals and the Chief Administrative Law Judge.

The Board does not have jurisdiction over court administrators, court administrative personnel, court reporters or law enforcement. The Board has no authority over federal judges. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals, as prescribed in 28 USC, Section 372(c).

2011 CASE DISPOSITION

During 2011, the Board received 120 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



SOURCE OF COMPLAINTS - 2011

Litigants	71
<i>Other</i>	13
Inmates/Prisoners	11
<i>Attorneys</i>	8
Board Motion	6
<i>Citizen</i>	6
Judiciary	2
<i>Anonymous</i>	2
Victim	1
<i>Government Agency</i>	0

TOTAL 120

ALLEGATIONS REPORTED - 2011

Bias, discrimination or partiality	80
General demeanor and decorum	65
Conflict of interest	22
Delay in handling court business	21
Ex parte communication	21
Failure to perform duties	18
Abuse of authority	15
Improper influence, ticket fixing	15
Reputation of judicial office	13
Improper conduct on the bench	10
Failure to follow law or procedure	9
Loss of temper	3
Administrative irregularity	3
Nepotism; improper appointments	3
Corruption, bribery	2
Health, physical or mental capacity	2
Financial activities or reporting	2
Willful misconduct in office	1
Political activity	1
Criminal behavior	1
Practicing law	1
Chemical dependency	0
Election or campaign violation	0
Public comment on pending case	0
Incompetence as a judge	0
Other	1

JUDGES SUBJECT TO COMPLAINTS - 2011

District Court Judges	95
Justices - Supreme Court	2
Referees/Judicial Officers	10
Retired - Active Duty	3
Child Support Magistrates	3
Court of Appeals Judges	4
Judicial Candidates	0
Tax Court Judges	2
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0
Part time judge	1
Conciliation Court Judge	0
Disability retirement during pendency	0
No longer a judge	0
Resigned during pendency	0
Deceased	0
TOTAL	120

The Board requested 18 judges to respond in writing to the Board for explanation of their alleged misconduct. One judge appeared before the Board this year. On three occasions, a Board delegation visited with the judge. After initial inquiries, 11 complaints required supplemental investigation.

DISMISSAL REASONS - 2011

No misconduct; no violation	39
No grounds or frivolous	36
Within discretion of judge	27
Insufficient evidence	13
Legal or appellate issues	10
Lack of jurisdiction	5
Corrective action by judge	4
Closed-no findings	2
No issue left to resolve	1
Unsubstantiated after investigation	1
Left bench, died or lost election	1
Complaint withdrawn	1

DISPOSITIONS - 2011

Public Censure	1
Suspension without pay	1
Public reprimand	1
Removal	0
Disability retirement	2
Retired pending board action	2
Appeal to Supreme Court	2

Prior to January 1, 1996, the disposition of cases that resulted in a private reprimand remains confidential. Admonitions, deferred dispositions and letter of cautions were new dispositions under the new *Rules of the Board on Judicial Standards*, effective July 1, 2009.

SAMPLES OF CONDUCT FOUND TO BE IMPROPER

The purpose of these examples is to educate the public and to assist judicial officers in the avoidance of improper conduct. To maintain confidentiality, the Board requires the elimination of certain details of the individual cases summarized below. 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 2, Rule 2.5 and M.S. 546.27*]
- Failing to act with courtesy, dignity and respect toward all participants. [*Canons 1 and 2, Rule 2.8*)]

- Habitually failing to begin court proceedings in a timely manner [*Canon 2, Rules 2.5*]
- Inquiring into the sobriety of a court participant because she did not appear to understand the procedures concerning service of process [*Canon 1, Rules 1.1 and Rule 1.2, Canon 2, Rules 2.2, 2.3, and 2.8*]

Reprimands imposed by the Board after January 1, 1996, are public. In 2011, one public reprimand was issued.

PUBLIC CASES

JUDGE PATRICIA KERR KARASOV

A public hearing was held on January 4-6, 2011 before a Factfinding Panel, consisting of Kenneth R. White Esq., Vivian Jenkins Nelsen and Judge Lawrence Collins - Presiding Officer, as a result of the Board filing a Formal Complaint involving Judge Patricia Kerr Karasov, Judge of District Court, Hennepin County. The Board alleged that Judge Karasov violated the Minnesota Constitution and the Rules of the Code of Judicial Conduct by failing to reside within her judicial district and failing to cooperate with its investigation. The Panel agreed and found that Judge Karasov, by clear and convincing evidence, did fail to reside in her judicial district and did not cooperate with the Board's investigation. The Panel recommended that Judge Karasov be censured and suspended without pay for 90 days. Both the Board and Judge Karasov appealed the Panel's decision to the Supreme Court. On November 16, 2011, the Supreme Court issued a decision which provided in part:

“Censured and suspension from judicial duties for 6 months without pay is warranted for a judge who violated the Rules of the Code of Judicial Conduct and the Minnesota Constitution by failing to reside within her judicial district during her continuance in office and by failing to cooperate and be candid and honest with respect to the Board on Judicial Standards’ investigation of her residency status.”

JUDGE THOMAS G. ARMSTRONG

In December, 2010, the Board filed a Formal Statement of Complaint upon Judge Thomas G. Armstrong, Judge of District Court, Tenth Judicial District. A hearing panel was appointed by the Supreme Court of Professor Paul O'Loughlin, David T. Schultz, Esq. and Judge Paul A. Nelson, Presiding Officer. The hearing was held on June 8, 9 and 10, 2011. The Hearing Panel Findings' issued on October 31, 2011 concluded that:

“1. By providing nonpublic information acquired in his judicial capacity to Senator Betzold for personal purposes unrelated to his judicial duties, Judge Armstrong has violated both former *Code of Judicial Conduct Canon 3(A)(12)* and *Canon 3, Rule 3.5* of the current Code.

2. By providing inside information of his impending decision to withdraw from the election for his judicial seat to his law clerk and then withdrawing after she filed for the office and the filing period for other candidates had expired, thus leaving the clerk to run unopposed and taking no action whatsoever to mitigate the negative perception such actions caused, Judge Armstrong violated *Canon 1, Rules 1.2 of the Code* (requiring the avoidance of any appearance of impropriety).

Pursuant to *R.Bd.Jud.Std. 11(b)(2)*, the Panel hereby issues a public reprimand against Judge Armstrong for the misconduct described above. Furthermore, in light of his misconduct and abiding failure to acknowledge or appreciate its effect on the public's faith and confidence in the integrity of the Judiciary, the Panel respectfully requests that the Supreme Court impose a limitation, pursuant to *R.Bd.Jud.Std. 11(b)(3)(iv)*, precluding Judge Armstrong from being accorded senior judge status.”

No appeal was taken from the Panel's public reprimand and it became final.

JUDGE GREGORY J. GALLER

The Board proposed a Public Reprimand to Judge Gregory Galler, Judge of District Court, Tenth Judicial District, on September 21, 2010, for his alleged inappropriate courtroom demeanor in ordering a criminal defense attorney to write a letter of apology to a police officer for impugning his integrity as an officer. The Judge disagreed with the Board's proposal and demanded a public hearing from the Board.

Judge Gordon Schumaker, Court of Appeals, Thomas J. LaVelle, Esq., Timothy Gephart were appointed as a Panel for the hearing. On April 11, 2011, the Panel dismissed the matter stating the Board did not prove by clear and convincing evidence that Judge Galler violated the Code of Judicial Conduct. The Board appealed the Findings of the Panel to the Supreme Court. The Supreme Court concurred with the Panel's findings on November 9, 2011.

JUDGE JACK NORDBY

The Board proposed the issuance of a public reprimand to Judge Jack Nordby, Judge of District Court, Fourth Judicial District, for his alleged inappropriate and disparaging statement during a court proceeding against observers representing a non-profit organization. The Board alleged that Judge Nordby used the courtroom bench for his own personal interests and delayed the proceedings. The Judge demanded a public hearing. Judge Thomas Kalitowski -Presiding Officer, Charles B. Bateman, and Suzanne White, Factfinding Panel, heard the matter on January 18 and 19, 2011. The Panel issued its findings on May 11, 2011 and found the Board did not prove by clear and convincing evidence that Judge Jack Nordby acted in bad faith and for his personal interests. No appeal was taken from the Panel's dismissal and it became final.

JUDGE'S INQUIRIES

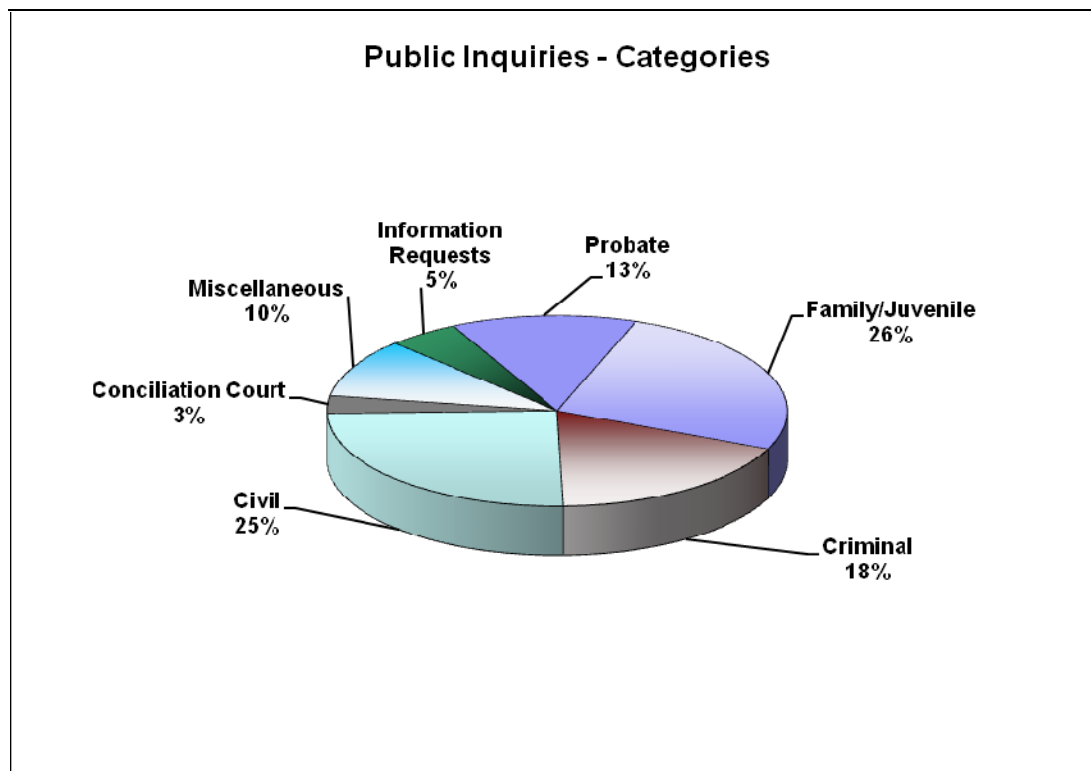
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2011, the Board issued two informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2011, there were 217 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 2011, the staff responded to 1,279 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.



During the calendar year, the Board's website received 20,993 (57 per day) visits. The website serves as an information service to both the judges and the public. Public discipline issued to judicial officers during the year is published on the site. This report and previous annual reports, the *Code of Judicial Conduct* and recent news events are available on the website.

This year, the Board staff compiled and posted on the Board's website a Summary Index to the Board Advisory Opinions that have been summarized over the years in the Board's Annual Reports. This index provides over 40 pages of references.

2011 ADVISORY OPINIONS

Upon request, 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 2011 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is proper for a judge to review non-public court files, as well as any available private information existing in public files, for the express purpose of assessing the risk that a court participant may constitute a danger to the judge or the family of a judge. The information obtained in such a review is limited to private safety evaluation, and may be disclosed to law enforcement or other persons or entities having a duty to protect citizens from safety threats. If the judge is called upon to preside in future proceedings involving the participant, the judge should consider disclosure of the review and reevaluate his or her qualifications of the judge to preside in an impartial manner [*Canon 1, Rule 1.2, Canon 2, Rules 2.2, 2.4, 2.6(A), 2.9(A), 2.9(C), 2.11(a)(1), as well as Canon 3, Rules 3.1 and 3.5*]
- A judge may violate the “appearance of impropriety” provisions of *Canon 1, Rule 1.2*, even if there is no intent on the part of the judge to do so. The test for the existence of an appearance of impropriety is “whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament or fitness to serve as a judge.” [*Canon 1, Rule 1.1 and 1.2*]