

RESPONDING TO A NOTICE OF INVESTIGATION

The following information is meant to be instructive and helpful to judges in responding to complaints. Additional information is available on the Board's website.

AUTHORIZATION

The Minnesota Constitution 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." Minn. Const. Art. 6, Sec. 9. The Legislature authorized the Minnesota Supreme Court to discipline a judge for "persistent failure to perform the judge's duties, incompetence in performing the judge's duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Minn. Stat. § 490A.02, subd. 2. The 1971 Legislature created the Board on Judicial Standards to assist in this task and authorized the Supreme Court to make rules to implement the legislation. Minn. Stat. §§ 490A.01-.03. The Court has adopted the Code of Judicial Conduct and the Rules of the Board on Judicial Standards.

BOARD, JURISDICTION, POWERS

"Jurisdiction and Powers of [the] Board" are specified in Rule 2, Board Rules. Among the Board's powers are "to receive complaints, investigate conduct hearings, make certain summary dispositions, and make recommendations to the Supreme Court" on allegations of judicial misconduct, disability, retirement, etc.

The Board has ten members: one judge from the Court of Appeals, three district court judges, two lawyers, and four citizens who are not judges or lawyers. All members are appointed by the Governor.

The Board's jurisdiction regarding different groups of state court judges is specified in several sources. Rule 2, Rules of Board on Judicial Standards; Code of Judicial Conduct, "Application" section; and Minn. Stat. §§ 14.48, subd. 2, 175A.01, subd. 4, 271.01, subd. 1, and 490A.03.

COMPLAINTS - SCREENING, EVALUATION INVESTIGATION, RESPONSE, DISPOSITION

Board Rule 6 governs screening, investigation and disposition of complaints. Upon review, complaints whose allegations "would not constitute misconduct or disability if true," are dismissed without notifying the judge or requesting a response. Rule 6(b). Complaints whose allegations "might

constitute grounds for discipline or other action” are evaluated by the Board’s Executive Secretary and submitted to the Board. Board Rule 6(c).

The Board may authorize an investigation, dismiss the complaint or stay the inquiry. Rule 6(d). “[T]he Board has the authority to proceed with a preliminary investigation when, on the information before it, the Board has a reasonable basis to believe there might be a disciplinary violation.” *In re Agerter*, 353 N.W. 2d 908 (Minn. 1984). The Court has also stated, “Even the baseless complaint-an occupational hazard of judges, unfortunately-may deserve inquiry, if only to vindicate the judge by its dismissal and to ensure public confidence in the judicial system.” *Id.* at 913. The Court has encouraged judges to communicate with the Board regarding any disagreement or objection they may have regarding investigations. *Id.* at 915. Such communications are usually through the Executive Secretary.

When the Board authorizes investigation, its Executive Secretary notifies the judge of allegations and possible violations, and that the investigation can be expanded if appropriate. Rule 6(d)(2). The notice also advises the judge of the duty to cooperate and of the judge’s opportunity to appear before the Board. Judges have duties of cooperation, candor and honesty in responding to Board inquiries. Code, Rule 2.16. Failures to meet these duties, including “omitting material facts,” can be grounds for discipline. *In re Karasov*, 805 N.W.2d 255, 269 (Minn. 2011).

Dispositions after investigation are governed by Board Rule 6(f). The Board’s Annual Reports (under “Board” on this website) include information regarding dispositions, such as the frequency of different types of dispositions, and the subject matters of letters of caution, admonitions, and public reprimands.

CONFIDENTIALITY, EXPUNGEMENT

The confidentiality of Board matters, and exceptions to confidentiality, are stated in Board Rule 5. Regarding complaints against judges, “The board shall promptly notify the complainant, if any, of the board’s action and give a brief explanation of the action.” Board Rule 5(c). A judge who is the subject of a complaint may have access to the Board’s file, except for work product and board deliberations. Board Rule 5(h).

Expungement of dismissals and certain other files is governed by Board Rule 19.