

STATE OF MINNESOTA
BOARD ON JUDICIAL STANDARDS HEARING PANEL

A12-2118

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**OFFICE OF
APPELLATE COURTS**

Inquiry into the Conduct of The
Honorable George W. Perez

On November 27, 2012, the Board on Judicial Standards filed, under Minn. R. Bd. Jud. Standards 8(a)(4) of the Rules of Board on Judicial Standards, a formal complaint against respondent George W. Perez, Judge of the Minnesota Tax Court, and respondent's written response to the complaint. The Minnesota Supreme Court assigned a three-person panel, consisting of the undersigned Judge of the Minnesota Court of Appeals and presider of the panel, William P. Donohue, and Elizabeth Hepola, to conduct a hearing on the charges contained in the formal complaint. The public hearing took place over three days, February 25, 26, and 27, 2013. Steven E. Wolter of Kelley, Wolter & Scott, P.A., appeared on behalf of the Board. Judge Perez was present throughout the hearing and was represented by Frederick E. Finch of Bassford Remele, P.A. Numerous exhibits were offered and received or excluded as reflected in the exhibit list included with the record. Having duly considered the testimony presented, the exhibits received, and the posthearing submissions solicited from the parties, the unanimous panel submits the following Summary Memorandum, Findings of Fact, Conclusions, and Recommendations for Sanctions.

SUMMARY MEMORANDUM

Consistent with the primary objective of these proceedings to safeguard and protect the public's confidence in the integrity of the judiciary, *In re Miera*, 426 N.W.2d 850, 858 (Minn. 1988), the panel is recommending that Judge Perez be censured and suspended without pay for a period of nine months; and that he be directed, for the remainder of his term on the Minnesota Tax Court, to refrain from serving as Chief Judge, limit his participation in professional organizations, and regularly report the status of his outstanding decisions to the Chief Judge of the Tax Court.

Central to resolution of this case is the proper interpretation and application of Minn. Stat. § 271.20 (2012) to the eleven cases referenced by the Board in the Formal Statement of Complaint. The Board contends that Judge Perez exceeded the three-month period set forth in the statute for disposing of matters submitted to him in eleven cases, and that these failures to timely dispose of matters submitted to him amounted to judicial misconduct (Count IV of the Complaint). The Board further contends that, by certifying compliance with the statute as a regular part of his receiving his salary, Judge Perez committed further misconduct (Count I of the Complaint). The Board further alleges that Judge Perez refused new case assignments in 2011 and “unjustifiably increased the workload of his fellow judges” (Count II of the Complaint), and that he made false representations to the Board in its investigation into this matter (Count III of the Complaint).

Judge Perez denies the Board's claims in their entirety. He contends that his practices, including amendment of the "submission date" of various cases as discussed herein, did not amount to a failure to adhere to the requirements of Minn. Stat. § 271.20. Judge Perez argues, consistent with his position on the claimed violations of Minn. Stat. § 271.20, that his payroll certifications were accurate and consistent with his interpretation of the statute. Judge Perez denies that he refused the assignment of new cases or that he otherwise shirked his judicial responsibilities. He vigorously denies the allegations of noncooperation with and making false statements to the Board.

The Board and Judge Perez fundamentally disagree about the proper interpretation and application of Minn. Stat. § 271.20. Judge Perez admits that he extended the date of submission in all of the cases in question, but contends that his doing so was not in violation of the statute. It is his position that each time a posttrial submission was received or a posttrial conference was held, a new period of three months was properly added to the period within which his decision was due.

Minn. Stat. § 271.20 reads, in relevant part:

All questions of fact and law and all matters submitted to the judges of the Tax Court shall be disposed of and their decision filed with the court administrator of the Tax Court within three months after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties. No part of the salary of any judge of the Tax Court shall be paid unless the voucher therefor be accompanied by the judge's certificate of full compliance with the requirements of this section.

In the panel's view, Judge Perez's interpretation of the statute is incorrect. The statute is not ambiguous. The three-month period for timely decisionmaking under the statute is measured from the date of "such submission." In context, the "submission" clearly refers to the "questions of fact and law . . . submitted to the judge[] of the Tax Court." Under the statute, a Tax Court judge is obligated to decide the "questions of law and fact . . . submitted to" the judge within three months of the submission of those questions, and not within three months of the last event regardless of whether that event involved a new substantive submission.

As set forth more fully in the following Findings of Fact, the *Johnson* case was submitted for decision on March 19, 2009, when posttrial briefing was completed. Judge Perez extended what he claims to have been the submission date 11 times, including seven extensions in response to letters from the taxpayers objecting to the time he was taking to decide the case, pleading that their case be decided, and, in later letters, requesting that Judge Perez be removed from the case. He finally decided the case on March 1, 2010, nearly 16 months after trial.

Similarly, the *Dynamic Digital Design (DDD)* case was submitted for decision on July 29, 2002, when posttrial briefing was completed. On October 25, 2002, four days before his decision was due, Judge Perez had a member of the Tax Court staff call the taxpayer to tell him that Judge Perez needed an extension because of an illness. The taxpayer was not told the length of the extension being requested but, according to the taxpayer's credible testimony, was "given every indication that it was simply once he felt

better in a couple days.” Judge Perez did not issue his decision in the next couple of days, or in the next couple of weeks, or even in the next *year*. He did not issue a decision until January 14, 2004, more than 14 months after the decision was due.

And so it was with eight of the remaining nine cases referenced in the Complaint. To varying degrees, Judge Perez failed in each of those eight cases to comply with the requirements of Minn. Stat. § 271.20. In the eleventh case, we conclude that the posttrial submissions of the parties were sufficiently substantive so as to extend the deadline for Judge Perez’s decision, and that he issued his decision within three months of the last submission of a question of law and fact for decision. Count IV of the Complaint has been proved by clear and convincing evidence as to ten of the referenced cases.

The panel rejects Judge Perez’s defense of his performance in the ten cases in which the panel finds that the Board proved late decisionmaking by clear and convincing evidence. Judge Perez’s claims that he was compliant with the law in those cases are contrary to the plain meaning of the statute. The interpretation he claims should be given to the statute would render it meaningless.

But more than being incorrect, Judge Perez’s interpretation of the statute is, in our collective judgment, neither credible nor sincere. He should have known that he was not in compliance with the statute in all ten of those cases. And at least in the *Johnson* and *DDD* cases, Judge Perez had to have known that he was not complying with the statute. In *Johnson*, he could not possibly have believed that the taxpayers’ pleading for a decision and requesting his removal for failure to decide the case had the legal effect of

extending his deadline for determining the questions of law and fact submitted to him for decision. And he could not possibly have believed, based on a phone call to the taxpayer by Tax Court staff advising that an illness would delay Judge Perez's decision, that the taxpayer in *DDD* was consenting to an open-ended extension of more than one year. We therefore conclude that the Board has also proved Count I of the Complaint. Judge Perez certified in multiple pay periods that all of his cases had been timely decided when the evidence confirms that he knew otherwise.

The panel observes in its findings the relative lack of oversight of the timeliness of the Tax Court's decisions. That Judge Perez was not timely issuing his decisions appears to have been well known over a long period of time by judges and staff of the Tax Court, as well as practitioners before the Tax Court. That the problem persisted over a significant period of time despite this knowledge seems to be attributable to a lack of oversight, both organizationally and technologically. We note that the statute governing the Tax Court provides no mechanism for enforcing the decision deadline. The statute does not give the Chief Judge of the Tax Court any authority in this regard. *See* Minn. Stat. 271.02 (2012) (designating as Chief Judge's only express authorities the powers to "coordinate and make hearing assignments" and appoint employees). Indeed, at least one Chief Judge attempted, without success, to address Judge Perez's timeliness issues. Nor does there appear to be any external oversight of the Tax Court judges' compliance with Minn. Stat. § 271.20. *Cf.* Minn. Stat. § 546.27, subd. 2 (2012) (requiring Board to annually review, and judicial branch staff to report on, district court judges' compliance

with similar statutory deadline). Moreover, as we discuss further in the findings, the Tax Court has employed fairly simplistic technological systems for case tracking. These limitations of the Tax Court do not excuse Judge Perez's misconduct in failing to timely issue his decisions, as compliance with the statute is his sole responsibility, but the lack of appropriate oversight may have facilitated and prolonged Judge Perez's ability to engage in the misconduct.

The panel is perplexed by the Board's repeated emphasis on Judge Perez's use of his vacation days and sick leave. The issue is not whether Judge Perez took vacation and sick leave, because the Board did not prove that Judge Perez claimed any vacation or sick leave to which he was not legally entitled. The issue is whether Judge Perez was making timely decisions. Judge Perez himself proved through the testimony of Judge Krause that timely decisionmaking in the context of the Tax Court was very possible. The problem of late decisionmaking is not that Judge Perez took his permissible vacations, nor that he used his sick leave for genuine illnesses. Neither does the problem with late decisionmaking appear to bear any substantial relationship to Judge Perez having taken sick leave, as the Board did not prove that any of his illnesses were not genuine. Judge Perez missed work and was medically treated for legitimate illnesses. It is not improper to use vacation and sick leave. It is improper to fail to make timely decisions and to falsely certify that these decisions were timely.

We conclude that the Board has failed to prove Counts II or III of the Complaint.

The record fails to reveal that there was any significant period of time during which Judge Perez refused new assignments, as alleged in Count II of the Complaint. What the Board did prove by clear and convincing evidence was that, for a period of time in the fall of 2011, Judge Perez accepted every fifth case instead of every third case, as had been the prior practice. But at the time Judge Perez was the Chief Judge of the Tax Court, with statutory authority to “coordinate and make hearing assignments.” Minn. Stat. § 271.02. The evidence does not clearly and convincingly demonstrate that this modification of the assignment system by Judge Perez was an abuse of that authority. The communication of the changes to the assignment system was imperfect, to the extent that there was communication of the changes; and it is abundantly clear from the record that there were extreme communication problems at the Minnesota Tax Court which long predate the period in 2011 to which the Complaint refers. The 2011 state government shutdown added to the preexisting problems at the court. Considering both the shutdown and Judge Perez’s surgery in the spring of 2011, we are unable to find by clear and convincing evidence that Judge Perez violated the Code of Judicial Conduct by temporarily changing the case-assignment system so as to assign himself fewer cases than were assigned to his colleagues.

The Board also failed to prove by clear and convincing evidence that Judge Perez did not cooperate with the Board’s investigation into his conduct. Although Judge Perez’s response to the Board’s inquiry was somewhat self-serving, he did not make any statements that the Board has proved to be false. The Board’s argument, in fact, at least

overstates and in some instances misstates the exchange between Judge Perez and the Board after this inquiry was commenced. For example, in its Formal Complaint, the Board mischaracterizes its letter to Judge Perez as requesting that he “respond to an allegation that he had engaged in a general pattern of delay in deciding pending and past cases.” But the Board’s letter made no such request. Rather, the Board requested two specific categories of information from Judge Perez: first, the identification of and reasons for any delayed decision in a particular case (the *SMBSC* case, discussed further in the findings herein), and second, a list of any other pending matters that had not been adjudicated within three months from the date that they were “first submitted.” Judge Perez responded directly to these inquiries. Judge Perez was obligated to cooperate with the Board’s investigation. He was not required to project what information the Board might want that it hadn’t actually requested.

The Board also criticizes Judge Perez for not providing information beyond that which the Board requested. The Board dissects Judge Perez’s statements regarding the time that he was away from the office during 2011, pointing out alleged inconsistencies between his statements and the payroll records, and finding fault with Judge Perez’s failure to disclose even more information than the Board requested. The panel is aware that false and misleading statements in correspondence with the Board were a significant basis for the discipline in the supreme court’s most recent judicial-discipline matter, *In re Conduct of Karasov*, 805 N.W.2d 255 (Minn. 2011). This case is distinguishable from *Karasov*, however, because the panel in that case found that Judge Karasov’s letter was

“a carefully worded and calculated attempt to evade further inquiry by the [B]oard,” and that the letter was misleading and omitted material information. *Id.* at 263, 269. The panel makes no such findings in this case.

Simply stated, the Board did not prove Counts II and III.

Having determined that the Board proved Counts I and IV of the Complaint by clear and convincing evidence, we next turn to the appropriate discipline for those violations. We are mindful that we only recommend an appropriate disposition and that the ultimate determination of any discipline is for the Minnesota Supreme Court. Minn. R. Bd. of Jud. Standards 11(a)(3).

We find no prior Minnesota judicial-discipline cases directly analogous to these circumstances. We find Judge Perez, notwithstanding his inability or unwillingness to timely decide some of his cases, to be an intelligent and capable judge. Even recently, the Minnesota Supreme Court has affirmed the decision of Judge Perez in one of the cases at issue in this matter. *See, e.g., Mauer v. Comm’r of Revenue*, -- N.W.2d – (Apr. 17, 2013).

The cases in which the supreme court has removed judges from office typically have involved criminal conduct and/or “numerous incidents of grave professional misconduct.” *In re Blakely*, 772 N.W.2d 516, 523 (Minn. 2009) (summarizing cases in which judges removed); *see In re Ginsberg*, 690 N.W.2d 539, 549 (Minn. 2004) (removing judge based on misconduct including handling cases in manners prejudicial to

prosecuting attorneys and refusing to leave the bench in response to a notice of removal by a prosecuting attorney, assault on two juvenile boys who stole a bicycle belonging to the judge's son, and assault on a woman who took a parking space the judge had anticipated using); *In re Winton*, 350 N.W.2d 337, 341-43 (Minn. 1984) (removing judge based on his pleading guilty to prostitution charges and evidence of extensive course of soliciting and engaging in prostitution with young male prostitutes); *In re Gillard*, 271 N.W.2d 785, 813 (Minn. 1978) (removing judge based on series of professional misconduct committed before he became a judge). This case is distinguishable from those in which the supreme court has removed judges from office. Judge Perez did not engage in any criminal conduct. All of his misconduct had to do with his delay in deciding cases, aggravated by his certifications that he was in compliance with Minn. Stat. § 271.20.

We are also mindful of the Minnesota's Supreme Court's decision in *Karasov*. In that case, the supreme court determined that censure and a six-month suspension without pay was appropriate discipline for a judge's failure, for a period of three months, to live within her judicial district as required by the Minnesota Constitution, and failure to cooperate with the Board's investigation into her residency. 805 N.W.2d at 277. We think that Judge Perez's violations, involving improper conduct over a protracted period of time and involving multiple false certifications, are more severe than those in *Karasov*, and we recommend accordingly.

Judge Perez has engaged in a persistent pattern of noncompliance with the required timelines for deciding cases. He falsely certified his compliance with the law's timeliness requirements, and knew in at least some of the certifications that he was being untruthful. He does not claim any disability or other extenuating condition or circumstances. He knew better.

Judge Perez's failure to decide cases in a timely manner is, in the panel's judgment, more pernicious than the behavior in *Karasov*. It directly affects the integrity and reputation of the courts. Judges cannot be allowed to ignore the requirements of statute or to manipulate those requirements to obfuscate or excuse a delay in doing their work. The egregious pattern in this case needs to be recognized and dealt with in a manner that will promote confidence in the judiciary and deter such behavior in the future.

Minn. Stat. § 271.20 requires that cases be decided within three months of submission. Judge Perez failed to do that in a pattern that existed over many years. He falsely certified his compliance with the statute over those years. These are serious matters, deserving of serious sanction. We therefore recommend that Judge Perez be censured and suspended without pay for a period of nine months and that he be directed, for the remainder of his term on the Minnesota Tax Court, to refrain from serving as Chief Judge, limit his participation in professional organizations, and regularly report the status of his outstanding decisions to the Chief Judge of the Tax Court.

FINDINGS OF FACT

1. Judge Perez was first appointed to the Minnesota Tax Court in December 1997, and reappointed in 1999, 2005, and 2011. In 2001, Perez became Chief Judge of the Tax Court, and he continued to serve in that capacity until December 2012. His current six-year term will expire in 2017.

2. The Tax Court consists of three judges, one of whom is selected by his or her fellow judges as the Chief Judge. Minn. Stat. § 271.02. The only specific powers of the Chief Judge under the statute governing the Tax Court are to “coordinate and make hearing assignments, and appoint employees who shall be in the unclassified service.” *Id.*

3. When Judge Perez was first appointed in 1997, he joined Chief Judge Kathleen Doar and Judge Diane Kroupa on the Tax Court. In 1998, Judge Raymond Krause replaced Judge Doar and Judge Kroupa became Chief Judge, a position that she continued to hold until Judge Perez became Chief Judge in 2001. Judge Kathleen Hvass Sanberg replaced Judge Kroupa in 2001 and served as a Tax Court judge until August 2012. Judge Sheryl Ramstad replaced Judge Krause in 2003 and served until September 2012.¹

¹ During Judge Perez’s tenure on the Tax Court, the relationship between some of the judges has been strained, making communication among the judges difficult. In particular, Judge Ramstad and Judge Sanberg were former sisters-in-law. Judge Ramstad finalized what was characterized in the record as an acrimonious divorce from Judge Sanberg’s brother shortly before Judge Ramstad joined the Tax Court.

Facts relating to Count IV

4. In spite of a three-month deadline for issuing decisions, the Tax Court historically has not had a sophisticated system for tracking the deadlines for its decisions. During the timeframe relevant to this matter, case events were recorded on written forms called “blue logs” and in an electronic register of actions. Information was manually entered into the electronic system, and the electronic system did not calculate due dates.

5. The primary method that the court used for tracking due dates was through a spreadsheet called a “case-tracking log” that was created and maintained by Tax Court paralegal Joanne Prillaman. The case-tracking log listed, for each pending case, the assigned judge, the date of the last event in the case, briefing dates, and a due date for the judge’s decision. Prillaman distributed the case-tracking logs to the judges on a periodic basis.

6. Prillaman generally calculated due dates as three months after the last event in the case or the last document filed in the case.

7. The evidence presented at the hearing establishes that, beginning at least as early as 1998, Judge Perez engaged in a pattern of scheduling posttrial telephone conferences for the purpose of seeking extensions from the parties to the three-month deadline for decisions. In cases in which Judge Perez held posttrial telephone conferences, Prillaman would, consistent with Judge Perez’s direction, change the due date to three months after the conference call. Prillaman first adjusted a due date based on a posttrial conference in the *Dynamic Digital Design* case at Judge Perez’s instruction. Prillaman testified that after that case, “it became the practice” to extend due dates

following posttrial telephone conferences. In at least one case, the *Johnson* case, due dates on the log were also extended any time the Tax Court received a submission from the taxpayers, even if that submission was merely a request for a decision.

8. Judge Kroupa became aware of issues regarding the timeliness of Judge Perez's decisions after she became Chief Judge of the Tax Court in 1998. Judge Kroupa testified that she received complaints from practitioners about the time it took Judge Perez to issue decisions. Judge Kroupa also heard from practitioners that they were afraid that if they denied Judge Perez's requests, he would decide their cases against them. Judge Kroupa spoke with Judge Perez on multiple occasions about the timeliness issues, but discovered that, even as Chief Judge, she had little practical ability to control his conduct. Judge Sanberg also discussed timeliness issues with Judge Perez, also to no avail.

9. In late July 2011, at Judge Perez's instruction, Prillaman adjusted the due dates on Judge Perez's pending cases by 41 days—corresponding to the number of days that Judge Perez had taken sick leave, the number of days that the Tax Court had been closed during the state government shutdown that year, and to account for three additional days that Judge Perez claims to have spent preparing for the shutdown.

10. Judge Perez is familiar with Minnesota Statutes § 271.20 and its general requirement that decisions of the Tax Court be issued within three months after a case or issue is submitted.

11. Judge Perez posits that the statutory deadline was extended any time there was an additional event in the case, including posttrial conferences, even if the event involved no additional substantive submission from a party.

12. With respect to the statutory language allowing for extensions with the parties' written consent, Judge Perez posits that his own notations in the blue logs satisfied the requirement of written consent.

13. Judge Perez testified that his understanding of written consent was based on Tax Court practices that predate his joining the court, and there is some evidence to support Judge Perez's testimony in this regard. Although he never had occasion to seek an extension, Judge Krause testified to his understanding that the Tax Court policy was to obtain consent for an extension and make a note in the file. Tax Court administrator Lisa Pister also testified that the practice was to document extensions by making a note in the file rather than obtaining written consent from the parties and further testified that Judge Sandberg in addition to Judge Perez had engaged in this practice. Because this proceeding did not involve any issue of wrongdoing by Judge Sanberg, we have no occasion to examine how Pister went about arriving at her determination. But Judge Sanberg testified to recalling three incidents in which she needed extensions, two for health reasons, which did not require written consent of the parties, and a third case around the time of her father's death in 2012, for which she obtained written consent from the parties. The panel credits Judge Sanberg's testimony that she required extensions in only three cases. The panel does find that several of the judges of the Tax

Court understood that deadlines could be extended upon authorization from the parties but without obtaining written consent from the parties.

14. Based on his understanding of the requirements of Minn. Stat. § 271.20, Judge Perez denies ever violating the statute. But Judge Perez concedes that if his interpretation of the statute is wrong, he has violated the written-consent requirement.

*Clarence & Pauline Johnson v. Commissioner of Revenue*²

15. The *Johnson* case, brought by pro se individual taxpayers, was tried before Judge Perez on November 7, 2008.

16. The final substantive posttrial submission was petitioner's reply brief, which was submitted on March 19, 2009.

17. The *Johnson* case was submitted to the court for decision on March 19, 2009. Judge Perez's decision was due three months later on June 19, 2009.

18. The petitioners in the *Johnson* matter repeatedly requested a prompt decision from Judge Perez. On November 14, 2008, the petitioners submitted a posttrial memorandum seeking the prompt resolution of their appeal so that they could refinance their home. On February 5, 2009, the petitioners sent another letter requesting a prompt decision. Petitioners sent additional letters and/or motions for a decision in their case on June 9, 2009, July 20, 2009, August 18, 2009, October 12, 2009, October 22, 2009, October 30, 2009, and December 1, 2009. Beginning with the August 18, 2009, letter, the petitioners also requested Judge Perez's removal from the matter.

² We discuss the individual cases in descending order from the most serious violations proved by the Board to the least serious, ending with the unproved case.

19. Judge Perez held posttrial conferences in the *Johnson* matter on January 29, 2009, February 20, 2009, June 22, 2009, and July 23, 2009. There was no additional evidence or argument submitted to Judge Perez during the posttrial conferences. Neither was there any written consent of the parties to extend the deadline for decision.

20. The panel accepts Judge Perez's testimony that he was trying to find a resolution of the issues that would be beneficial to the taxpayers. However, under the plain meaning of Minn. Stat. § 271.20, this exploration of possible alternatives did not change the date of submission nor did those efforts change the due date for Judge Perez's decision.

21. Judge Perez issued his decision in the *Johnson* case on March 1, 2010, more than eight months after the decision was due. Judge Perez falsely stated in his decision that the case had been submitted for decision on December 1, 2009.

Dynamic Digital Design, Inc. v. Commissioner of Revenue

22. The *Dynamic Digital Design (DDD)* case was tried before Judge Perez on June 3, 2002

23. The final substantive posttrial submission was petitioner's reply brief, which was submitted on July 29, 2002.

24. The *DDD* case was submitted to the court for decision on July 29, 2002. Judge Perez's decision was due three months later, on October 29, 2002.

25. On October 25, 2002, four days before the decision due date, a representative of the Tax Court telephoned the taxpayer to advise him that Judge Perez had not been feeling well and needed additional time to render his decision. The taxpayer

testified that the Tax Court staff did not inform him how long an extension Judge Perez needed, but that he was “given every indication that it was simply once he felt better in a couple days.” Written consent to the extension was neither sought nor obtained.

26. The record contains no evidence of a continuing or significant sickness or casualty that would reasonably have interfered with the timely issuance of the decision.

27. Judge Perez issued his decision in the *DDD* case on January 14, 2004, more than 14 months after the decision was due.

Continental Rogers v. County of Hennepin

28. The *Continental Rogers* case was tried before Judge Perez between October 19 and 22, 2010.

29. The final substantive submission was respondent’s reply brief, which was filed on December 20, 2010.

30. The *Continental Rogers* case was submitted on December 20, 2010. Judge Perez’s decision was due three months later on March 20, 2011.

31. On March 17, 2011, three days before the decision due date, Judge Perez held a conference call with counsel for the parties and told them that he needed more time to decide the case. Judge Perez did not provide a specific date for release of the decision.

32. On June 15, 2011, the Tax Court administrator sent an email to counsel for the parties stating that Judge Perez was “requesting an extension for medical reasons.”

33. In September and October 2011, counsel for the taxpayer called the Tax Court to ask when the decision would be issued and was told that the case was under advisement.

34. On December 21, 2011, Judge Perez held another conference call with counsel for the parties to tell them that he needed another extension. The taxpayer's counsel expressed his client's frustration and asked for a definite date that the decision would be released. Judge Perez declined to commit to a date.

35. There was no additional evidence or argument submitted to Judge Perez during any of these posttrial conferences, and Judge Perez did not obtain the parties' written consent for any of these extensions.

36. Judge Perez issued his decision in the *Continental Rogers* case on January 31, 2012, more than 10 months after the decision due date.

37. Judge Perez's decision was already months overdue by the time of his sick leave in May and June 2011, and the state government shutdown in July 2011, and thus these intervening events did not extend the deadline for issuance of the decision.

Kmart v. County of Mower

38. In the *Kmart* case, Judge Perez heard arguments on the county's motion to dismiss on July 27, 2006. A transcript was filed on August 2, 2006.

39. The motion to dismiss in the *Kmart* case was submitted for decision no later than August 2, 2006. Judge Perez's decision was due no later than November 2, 2006.

40. On October 2, 2006, the United States Supreme Court denied certiorari in a related property-tax dispute. The Tax Court's internal case-tracking log thereafter reflected a revised decision deadline of January 2, 2007. On December 27, 2006, a Tax Court employee called counsel for the parties and left voicemail messages informing them that the decision deadline was being extended. Judge Perez held a conference call with counsel for the parties on January 12, 2007 and told the parties that he was taking the matter under advisement. Judge Perez held a second conference call with counsel for the parties on April 16, 2007, advising them that he would issue a decision within 45 days due to illness.

41. There was no additional evidence or argument submitted to Judge Perez during the any of the posttrial conferences, and Judge Perez did not obtain the parties' written consent for any of the extensions.

42. Judge Perez issued his decision in the *Kmart* case on May 31, 2007, nearly 7 months after the decision was due. Judge Perez falsely stated in his order that the matter was submitted for decision on April 16, 2007, the date of the final conference call. The order also falsely states that, during the January 12, 2007 conference call the parties had asked Judge Perez to stay his decision to allow for settlement discussions.

Alvin & Carol Berends v. County of Chippewa and related cases

43. These cases were tried before Judge Perez on June 7 and 8, 2005.

44. The final posttrial brief was filed on August 1, 2005, making the decision due three months later on November 1, 2005. On October 26, 2005, just days before his decision was due, Judge Perez ordered transcripts, which were filed on November 14,

2005. The Board has not proved by clear and convincing evidence that the transcripts were unnecessary to Judge Perez's decision.

45. The cases were submitted for decision no later than November 14, 2005, the date of filing of the transcripts. Judge Perez's decision was due no later than February 14, 2006.

46. Judge Perez held posttrial conferences in the cases on February 22, 2006, and May 16, 2006 to obtain the parties' consent to extensions of the opinion deadlines. There was no additional evidence or argument submitted to Judge Perez during the conferences. Judge Perez did not obtain written consent from the parties for these extensions.

47. Judge Perez issued his decisions in these cases on June 30, 2006, more than three months later than the latest possible due date (computing from November 14, 2005) and nearly eight months after the final substantive submission from a party.

Northern X-Ray Co. v. Commissioner of Revenue

48. The *Northern X-Ray* case was tried before Judge Perez on December 22, 2008. Posttrial briefing was completed on February 27, 2009, making the decision due on May 27, 2009.

49. On May 26, 2009, one day before the decision deadline, Judge Perez held a conference call with the parties and requested additional briefing. Letter briefs were filed on June 12, 2009 and June 15, 2009. The panel is convinced that these posttrial submissions did amount to submissions of new questions of fact, extending the decision deadline to three months after receipt of the second letter brief.

50. The *Northern X-Ray* case was submitted for decision on June 15, 2009. Judge Perez's decision was due three months later on September 15, 2009.

51. On September 8, 2009, Judge Perez held another conference call with counsel for the parties, during which he promised a decision the week of October 5. No additional substantive submission or any question of fact or law were made during or after that conference call. No written consent was obtained for any extension to the decision due date.

52. Judge Perez issued his decision in the *Northern X-Ray* matter on December 8, 2009, nearly three months after the decision due date. Judge Perez's decision falsely states that the case had been submitted for decision on September 8, 2009, the date of the final conference call.

D'Amico Catering, Inc. v. Commissioner of Revenue

53. Judge Perez heard cross-motions for summary judgment on stipulated facts in the *D'Amico* case on May 13, 2003. A transcript of the hearing was filed on July 21, 2003.

54. The summary-judgment motions in the *D'Amico* case were submitted for decision no later than July 21, 2003. Judge Perez's decision was due no later than October 21, 2003.

55. On October 15, 2003, Judge Perez held a conference call with counsel for the parties, during which he told them he needed more time to the decide the case. Judge Perez held additional conference calls on November 17, 2003, and December 9, 2003, to seek additional extensions.

56. There was no additional evidence or argument submitted to Judge Perez during any of the posttrial conferences, and Judge Perez did not obtain written consent from the parties for any of the extensions.

57. Judge Perez issued his decision in the *D'Amico* case on January 20, 2004, nearly three months after his decision was due. Judge Perez's decision falsely states that the case has been submitted for decision on December 9, 2003, the date of the last conference call.

Kenneth B. Mauer v. Commissioner of Revenue

58. The *Mauer* case was tried before Judge Perez on stipulated facts on January 12 and 13, 2011.

59. Posttrial briefing was completed by March 29, 2011. The case was submitted on March 29, 2011. Judge Perez's decision was due three months later on June 29, 2011.

60. Judge Perez missed five days of work due to illness between May 6 and May 31, 2011. He underwent surgery for a medical condition on June 13, 2011, and he was on medical leave from June 13 through June 24 and again on June 28, 2011.

61. The Tax Court was closed from July 1, 2011, through July 20, 2011, due to the state government shutdown that year.

62. Judge Perez issued his decision in the *Mauer* case on January 20, 2012, nearly seven months after the decision was due. Prillaman added 41 days to the deadline for this case in the case-tracking log to account for Judge Perez's sick leave and the state government shutdown. That panel need not determine whether the 41-day extension was

correctly computed because, even with that generous extension, Judge Perez's decision was still more than five months late.

Southern Minnesota Beet Sugar Coop v. County of Renville (SMBSC)

63. The *SMBSC* case was tried before Judge Perez between May 16 and 25, 2006.

64. The final substantive submission was a posttrial brief filed on August 4, 2006.

65. The *SMBSC* case was submitted to the court for decision on August 4, 2006. Judge Perez's decision was due three months later on November 4, 2006.

66. Judge Perez initiated a posttrial conference call on October 30, 2006, to seek an extension to the decision due date. There was no additional evidence or argument submitted to Judge Perez during this conference. Counsel for the taxpayer orally agreed to the extension but specifically conditioned that consent on receiving a decision by the end of the first week in December. Judge Perez did not obtain written consent from the parties for this extension. He made a note in the blue log for the posttrial conference call, but Judge Perez's note in the file is not "written consent of the parties" under Minn. Stat. § 271.20.

67. Judge Perez issued his decision in the *SMBSC* case on December 22, 2006, more than a month after the decision due date. Judge Perez's decision falsely states that the case had been submitted for decision on October 30, 2006.

68. The Minnesota Supreme Court issued a decision on August 23, 2007, affirming in part, reversing in part and remanding Judge Perez's decision in the *SMBSC* matter. *Southern Minnesota Beet Sugar Coop v. County of Renville*, 737 N.W.2d 545 (Minn. 2007). Following remand, the matter was referred to district court and back to the Tax Court so that the Tax Court would have jurisdiction over constitutional issues raised. See *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261, 264 (Minn. 1984) (explaining procedure for Tax Court to acquire jurisdiction over constitutional issues). Judge Perez issued a second decision in the *SMBSC* case on October 18, 2011. The Board does not challenge the timing of the second *SMBSC* decision.

William Larson v. Commissioner of Revenue

69. The *Larson* case was tried before Judge Perez on April 6 and 7, 2011. A transcript was filed on April 14, 2011. Posttrial briefing was completed on June 24, 2011.

70. There were disputes regarding the accuracy of the transcript that were not resolved until December 13, 2011. Judge Perez testified, however, that the transcript was not necessary to his decision.

71. The *Larson* case was submitted for decision on June 24, 2011. Judge Perez's decision was due three months later on September 24, 2011, absent illness or casualty. Judge Perez did suffer a period of illness and disability reasonably extending the due date for his decision. The state government shutdown also intervened. Prillaman added 41 days to the deadline for this case in the case-tracking log to account for Judge

Perez's sick leave and the state government shutdown, extending the deadline to November 4, 2011.

72. Judge Perez issued his decision in the *Larson* case on January 11, 2012.

73. Calculating a deadline for the *Larson* decision is difficult because of the intervening events. Even assuming that the deadline was appropriately extended by 41 days, however, the decision was still almost two months late under Minn. Stat. § 271.20.

The Pep Boys v. Count of Anoka

74. The *Pep Boys* case was tried to Judge Perez November 4-7, 2003.

75. Posttrial briefing was completed in the *Pep Boys* case on January 15, 2004, making a decision due by April 14, 2004. On April 14, 2004, Judge Perez requested additional expert testimony from the county. The county filed the requested information on May 21, 2004, and the taxpayer filed a response on July 26, 2004.

76. The *Pep Boys* case was submitted for decision no later than July 26, 2004. Judge Perez's decision was due no later than October 26, 2004.

77. Judge Perez issued his decision on October 26, 2004, within three months of the taxpayer's response to the county's supplemental expert testimony.

Facts relating to Count I

78. From the beginning of his tenure with the Tax Court, Judge Perez has submitted biweekly timesheets. Judge Perez completed the timesheets by hand until December 15, 2004, when the Tax Court started using an electronic form to record time.

The electronic recording and certification of time continued through the date of the hearing.

79. The booklet for handwritten entries was stamped with the statement: “This is to certify I am in compliance with Minn. Stat. § 271.20.”

80. Judge Perez testified that he understood that by signing his handwritten timesheet and by submitting his electronic timesheet, he was certifying that he was in compliance with Minn. Stat. § 271.20.

81. Judge Perez continued to submit biweekly timesheets during the time periods when his decisions were overdue without lawful justification, thereby falsely certifying his compliance with Minn. Stat. § 271.20.

82. With respect to all of the false certifications, the panel finds that Judge Perez should have known that his certifications were inaccurate at the time that he submitted them.

83. With respect to a number of the cases, including *Johnson*, *DDD*, *Continental Rogers*, *Kmart*, and *Berends*, the panel finds that Judge Perez knew his certifications were false at the time that he submitted them.

84. The Board alleges a specific number of pay periods, ranging between four and 33, for each of the cases in which it asserts that Judge Perez did not timely issue his decisions. These numbers of violation overlap; in other words, a falsely certified pay period attributed by the Board to a particular case may also be attributed by the Board to one or more other cases. It is difficult to determine with precision the total number of false certifications that Judge Perez made, and the panel does not deem it necessary to

make a specific finding in this regard. The panel does find that Judge Perez made a substantial number of false certifications over an extended period of time.

Facts relating to Count II

85. Tax Court cases traditionally have been assigned on a regular rotation to each of the judges. Thus, with three judges on the court, a Tax Court judge typically would receive every third case.

86. For a period of approximately four years, if a judge was removed by a party, that case would be reassigned to Judge Perez. Judge Sanberg and Tax Court administrator Lisa Pister testified that Judge Ramstad was removed more often than other judges.

87. Sometime in 2011, Judge Perez discussed with Pister the possibility of adjusting the case rotation to decrease his caseload. For a number of months in later 2011 and/or early 2012, Judge Perez received every fifth case instead of every third case.

88. The Board alleges that Judge Perez was completely taken out of the rotation from September 14, 2011 through December 14, 2011. Former Tax Court office manager Alayne Svec testified to being advised by Pister that Judge Perez was being removed from the rotation. Prillaman also testified that she removed Judge Perez from the rotation at Pister's instruction. But Pister denied telling Svec to remove Judge Perez from the rotation, and she denied that Judge Perez was ever completely removed from the rotation. Judge Perez also denied ever being completely removed from the rotation. Absent any documentation or other clear evidence that Judge Perez was completely removed from

the rotation, the panel finds that the Board has not proved this allegation by clear and convincing evidence.

89. The Board has also not proved that Judge Perez's administrative decision to temporarily change the rotation for assignments was an inappropriate exercise of his authority as Chief Judge of the Tax Court. *See* Minn. Stat. § 271.20 (directing Chief Judge to "coordinate and make hearing assignments"). Judge Perez changed the rotation from that which had been historically employed by the Tax Court, and his communication of that change (or lack thereof) left much to be desired, but there is no evidence that Judge Perez exceeded his authority or otherwise acted inappropriately in adjusting the rotation.

90. Despite its repeated reference to Judge Perez's use of vacation and sick time, and his attendance at professional conferences, the Board has not alleged or proved that Judge Perez made inappropriate use of vacation or sick time or that his attendance at professional conferences was not warranted. Although there may have been times when it would have been prudent for Judge Perez to forego attending professional conferences in order to complete his outstanding work, Judge Perez's improvident use of his time in this regard does not establish that he was unavailable to decide the cases assigned to him.³

³ Of particular note is September 2011, during which Judge Perez attended two conferences and took a personal vacation. There were, during that month, three cases (*Larson*, *Mauer*, and *Continental Rogers*) that were past due under Minn. Stat. § 271.20. These decisions were already late when Judge Perez left for his conferences and vacation and thus the conferences and vacation did not *cause* Judge Perez's tardiness. But Judge

91. The Board has not proved by clear and convincing evidence that Judge Perez was unavailable to decide cases assigned to him or coming before the Tax Court.

Facts relating to Count III

92. On December 30, 2011, the Board sent Judge Perez a letter to advise him that an investigation into his conduct had been authorized, and that there were “two aspects of the investigation”: (1) “the alleged failure to issue a timely decision in *Southern Minnesota Beet Sugar Coop v. County of Renville*” and (2) an alleged “general pattern of delay with regard to currently pending and past cases.”

93. In its letter, the Board requested that Judge Perez advise “[w]ith regard to the [SMBSC] matter . . . if any ruling in this case was delayed, and, if so, the reason for the delay.” The Board also requested “a list of all pending matters that are assigned to you and which have not been adjudicated within 3 months from the dates *first* submitted” and certain information with respect to each such case. (Emphasis in original.)

94. Judge Perez responded to the Board’s letter with his own letter dated January 31, 2012. Judge Perez discussed the SMBSC matter, and particularly the reasons he had been delayed in issuing the October 18, 2011 decision in that matter. He mentioned but did not discuss the timing of the December 22, 2006, decision on which the Board has focused in these proceedings.

95. Judge Perez also provided a list of three pending cases—*Mauer*, *Larson*, and *Continental Rogers*—in which his decisions had not been issued within three months

Perez exercised poor judgment in leaving the office for the conferences and vacation with the decisions outstanding, thereby exacerbating his tardiness.

of first submission, although he disputed the Board's characterization that cases were submitted for decision under § 271.20 on the date of "first submission."

96. Also in his responsive letter, Judge Perez discussed generally the caseload of the Tax Court and his own caseload as Chief Judge. He identified as factors affecting the timeliness of decisions the sick time and medical leave that he had taken in May and June of 2011 and the July 1-20, 2011 state government shutdown. He asserted that, in addition to the actual dates of the shutdown, he spent June 27, 29, and 30 preparing for the shutdown. And he explained that, in addition to the shutdown, "the judges and staff of the Tax Court were required to take an additional two weeks voluntary leave without pay."

97. Relying on the statements in Judge Perez's January 31, 2012 letter, the Board alleges that Judge Perez failed to be fully cooperative, candid and honest with the Board or its investigators during the course of the investigation into his conduct. The Board has not proved this allegation by clear and convincing evidence.

98. The Board alleges that Judge Perez's letter was misleading because in addition to listing his specific days of leave in 2011, he stated, in discussing the state government shutdown, that Tax Court judges and staff were required to take an additional two weeks of voluntary leave during 2011. Judge Perez admitted at the hearing that he took only six days of voluntary leave during 2011 and that the letter may have been confusing. The panel finds that this statement in the letter, although it could have been written more clearly, does not clearly and convincingly reflect a lack of candor, dishonesty, or a failure to cooperate with the Board.

99. The Board also relies on Judge Perez's failure to disclose other dates that he was absent from the office, for both personal and professional reasons. The Board's letter, however, did not request Judge Perez to account for all days out of the office. The panel finds that Judge Perez's failure to include this information in his responsive letter does not reflect a lack of candor, dishonesty, or a failure to cooperate with the Board.

CONCLUSIONS

1. By failing to timely issue decisions, Judge Perez violated Minn. Stat. § 271.20, Minn. Code Jud. Conduct Canon 1, Rules 1.1 and 1.2, and Canons 2A and 3A(1) of the former Code of Judicial Conduct.
2. By falsely certifying his compliance with Minn. Stat. § 271.20, Judge Perez violated Minn. Code Jud. Conduct Canon 1, Rules 1.1 and 1.2, and Canons 2A of the former Code of Judicial Conduct.
3. The Board has not proved by clear and convincing evidence that Judge Perez violated Minn. Code Jud. Conduct Canon 2, Rules 2.1, 2.5(A), 2.7, 2.12(A) or 2.16.

RECCOMENDATIONS

Based on all of the foregoing, the panel respectfully recommends:

1. That Judge Perez be censured for his violations of Minnesota law, the Code of Judicial Conduct, and the former Code of Judicial Conduct.
2. That Judge Perez be suspended without pay from his position as judge of the Tax Court for a period of nine months;

3. That, for the balance of his current term of office, Judge Perez be prohibited from serving as Chief Judge, and be directed to limit his participation in professional organizations to the extent necessary to ensure the timely performance of his duties as Judge of the Tax Court; and

4. That Judge Perez be directed to submit monthly reports advising on the status of each case pending before him—specifically including the date that each case was submitted for decision, under a proper application of Minn. Stat. § 271.20—to the Chief Judge of the Tax Court, and that Judge Perez be directed to immediately advise the Chief Judge of the Tax Court when an extension to the statutory deadline is sought in any case, and the basis for that extension.⁴

⁴ The panel is cognizant of the special considerations raised in this case by virtue of the fact that the Tax Court is an executive-branch court not subject to the supreme court’s supervisory authority in the same manner as are the courts of the judicial branch. *Compare* Minn. Stat. § 480.051 (2012) (authorizing supreme court to “regulate the pleadings, practice, procedure, and the forms thereof in civil actions in all courts of this state”) and *In re Child of B.J.-M. and H.W.*, 744 N.W.2d 669, 673 (Minn. 2008) (“The authority to regulate the procedures governing judicial proceedings is an inherent judicial power.”) with Minn. Stat. § 271.01, subd. 1 (2012) (creating Tax Court as “independent agency of the executive branch of the government”) and *State v. Sanders*, 775 N.W.2d 883, 891 n. 1 (Minn. 2009) (Page, J., dissenting) (noting that supreme court “has no supervisory power over law enforcement officials in the executive branch of the Minnesota state government”). It is clear, however, that Judge Perez is subject to the supervisory authority of both the Board and the supreme court. *See* Minn. Stat. § 271.01, subd. 1 (explaining that judges of Tax Court are subject to jurisdiction of the Board and provisions of Code of Judicial Conduct); Minn. R. Bd. Jud. Standards 14 (providing for supreme court review of Board decisions). Accordingly, we recommend imposition upon Judge Perez of an individual obligation to report certain information to the Chief Judge of the Tax Court. We make no recommendations regarding the practices of the Tax Court as it is an agency of the executive branch.

BY THE PANEL:

Dated: May 10, 2013

/s/
Honorable John R. Rodenberg

/s/
William P. Donohue

/s/
Elizabeth Hepola