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JUDICIAL STANDARDS

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News Release

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For Immediate Release

PUBLIC REPRIMAND ISSUED TO SEVENTH JUDICIAL DISTRICT COURT JUDGE STEVEN J. CAHILL

The Minnesota Board on Judicial Standards has issued a Public Reprimand and Conditions to Seventh Judicial District Judge Steven J. Cahill. A copy of the Public Reprimand and Conditions is attached. Since Judge Cahill has waived his right to a formal hearing, this Public Reprimand is the final action in the matter.

The Board on Judicial Standards' website, *www.bjs.state.mn.us*, includes information such as prior public judicial disciplines, the Board's Annual Reports, the Code of Judicial Conduct, and the Board's procedural rules.

Extracts from Minnesota Code of Judicial Conduct

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for 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.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

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CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

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Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

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Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

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Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and

impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

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Rule 2.8 Decorum, Demeanor, and Communication with Jurors

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(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

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Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9 Ex Parte Communications

A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives advance notice to the parties of the

person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the communication should be noted as received and returned to the sender without review by the judge. If a judge inadvertently reviews an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to notify the parties promptly of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

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Rule 2.12 Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Extracts from the Rules of the Board on Judicial Standards

DEFINITIONS

"Censure" is a formal public sanction by the Supreme Court based on a finding that the judge has committed serious misconduct.

"Complaint" is any communication, oral or written, made by judges, lawyers, court personnel or any member of the general public regarding the conduct of a judge.

"Deferred Disposition Agreement" is an agreement between the judge and the board or hearing panel for the judge to undergo treatment, participate in education programs, or take other corrective action, based upon misconduct or disability that can be addressed through treatment or a rehabilitation program.

"Disability" is a physical or mental condition of a judge that seriously interferes with the capacity of the judge to perform judicial duties, including, but not limited to, impairment due in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances. A disability may be permanent or temporary.

"Evaluation" is a prompt and discreet inquiry by the executive secretary into the facts and circumstances of any complaint or information that alleges conduct listed in Rule 4(a).

"Formal Complaint" is a complaint upon which the board has determined to conduct a public hearing.

"Formal Statement of Disability Proceeding" is a statement that the board has determined to conduct a public hearing to determine the appropriate action with regard to a judge alleged to have a disability.

"Investigation" is a full inquiry by the executive secretary, with the authorization of the board, into the facts and circumstances of any complaint or information that alleges conduct listed in Rule 4(a).

"Judge" is any judge, including full-time, part-time, and retired judges, judicial officer, referee, magistrate, or other hearing officer employed in the judicial branch of the state of Minnesota, any judge of the Minnesota Tax Court or any judge of the Workers' Compensation Court of Appeals.

"Letter of Caution" is a nondisciplinary letter that advises the judge regarding future conduct.

"Private Admonition" is a nonpublic sanction imposed by the board for misconduct of an isolated and non-serious nature.

"Public Reprimand" is a public sanction imposed by the board or hearing panel based on a finding that the judge has committed serious misconduct.

"Reasonable Cause" is a reasonable belief in the existence of facts warranting discipline or a finding of disability.

(Amended effective January 1, 1996; amended effective July 1, 2009.)

Rule 1. Organization of Board

(a) Appointment of Members. The Board on Judicial Standards shall consist of one judge of the Court of Appeals, three judges of district court, two lawyers who have practiced law in the state for at least ten years and four resident citizens of Minnesota who are not judges, retired judges or lawyers. The executive secretary, who shall be an attorney licensed to practice law in Minnesota, with a minimum of fifteen years' experience in the practice of law, including any service as a judge, shall be appointed by the board. All members shall be appointed by the governor with the advice and consent of the senate except that senate confirmation shall not be required for judicial members.

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Rule 6. Screening and Investigation

(a) Initiation of Inquiry. An inquiry may be initiated as follows:

(1) An inquiry relating to conduct of a judge may be initiated upon a complaint.

(2) The board may on its own motion make an inquiry into the conduct or physical or mental condition of a judge.

(3) Upon request of the Chief Justice of the Supreme Court, the board shall make an inquiry into the conduct or physical or mental condition of a judge.

(4)

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(b) Disposition After Investigation.

(1) Upon conclusion of an investigation or determination by another agency or court, the executive secretary may recommend disposition to the board.

(2) The board shall review the results of the investigation or determination by another agency or court and the recommendations of the executive secretary and determine whether there is reasonable cause to believe the judge committed misconduct.

(3) A finding of reasonable cause shall require the concurrence of a majority of the full board.

(4) Upon determination that there is not reasonable cause to believe the judge committed misconduct, the board shall dismiss the complaint or end the inquiry. Upon dismissal or termination of the inquiry, the board may issue a letter of caution that addresses the judge's conduct.

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

(i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion;

(ii) if the misconduct appears to be of an isolated and non-serious nature, issue a private admonition, which may include conditions;

(iii) issue a public reprimand, which may include conditions; or

(iv) issue a Formal Complaint.

(6) Prior to issuance of a private admonition, the board shall serve the judge with a copy of the proposed private admonition and a notice stating that within 20 days after service of the proposed private admonition, the judge may serve the board with either a written demand

for a private hearing before the board, or the written comments and criticisms of the judge regarding the proposed admonition. If the judge makes a timely demand for a private hearing, the board shall comply. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the private admonition as originally prepared.

(7) Prior to issuance of a public reprimand, the board shall serve the judge with a copy of the proposed reprimand and a notice stating that within 20 days of service of the proposed reprimand, the judge may serve the board with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If the judge makes a timely demand for a formal hearing, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the reprimand as originally prepared.

(8) The board shall notify the judge of its action and shall disclose the names of the board members who did not participate in the action.

(c) Representation by Counsel. A judge may be represented by counsel, at the judge's expense, at any stage of the proceedings under these rules.

(Amended effective January 1, 1996; amended effective March 30, 1999; amended effective July 1, 2009.)

Advisory Committee Comment - 1999 Amendment

The change in Rule 6(d)(1)(i) recognizes that the Board on Judicial Standards may proceed directly to issuance of a formal complaint under Rule 8 when there has been a related public proceeding before the Lawyers Professional Responsibility Board involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under Rule 7 may only serve to delay the disciplinary process.

Modifications to Rule 6(d)(1)(ii) allow the board to submit a proposed public reprimand to the judge for conduct that is unacceptable but not so serious as to warrant further discipline, e.g., a censure, by the Supreme Court. Disciplinary bodies in other jurisdictions have similar authority. See, e.g., Rule 6(g)(1), Rules of Procedure for the Arizona Commission on Judicial Conduct; Rules of the Georgia Judicial Qualifications Commission, Definition (c). The change is intended to provide the board with guidance regarding when it is appropriate to proceed directly to a proposed reprimand (which is subject to a judge's right to demand a formal hearing before the reprimand is made public) in lieu of formal charges under Rules 7 and 8.

Advisory Committee Comment - 2009 Amendment

Rule 6(d)(1)(i) allows the board to stay proceedings pending action by another agency or court. Such proceedings include criminal prosecution, civil litigation, and administrative action by regulatory agencies.

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Rule 8. Formal Complaint or Formal Statement of Disability Proceeding and Notice

(a) Formal Complaint or Formal Statement of Disability Proceeding.

(1) The Formal Complaint or Formal Statement of Disability Proceeding shall set forth the charges against the judge, the factual allegations and the time within which these rules require the judge to serve a written response. Where more than one act of misconduct is alleged, each shall be clearly set forth.

(2) The judge shall be served promptly with a copy of the Formal Complaint or Formal Statement of Disability Proceeding. Service shall be accomplished in accordance with the Rules of Civil Procedure.

(3) The judge shall serve a written response on the board within 20 days after service of the Formal Complaint or Formal Statement of Disability Proceeding.

(4) The executive secretary shall file the Formal Complaint or Formal Statement of Disability Proceeding and the written response, if any, with the Supreme Court, within 30 days of service of the Formal Complaint or Formal Statement of Disability Proceeding unless the matter is resolved. The filing time may be extended by agreement of the board and the judge.

(b) Hearing Panel. The public hearing on the Formal Complaint or Formal Statement of Disability Proceeding shall be conducted before a three-member hearing panel. Members of the panel shall be appointed by the Chief Justice of the Supreme Court within 14 days of the filing of the Formal Complaint or Formal Statement of Disability Proceeding with the Supreme Court. The panel shall consist of one judge or retired judge in good standing, one lawyer, and one member of the public. Whenever possible, the public member shall be a former member of the board. The judge or retired judge member shall be the presider, and shall have the powers of a judge of the district court for these proceedings.

(c) Notice of Hearing.

(1) The hearing panel shall schedule a public hearing. The date shall be selected to afford the judge ample time to prepare for the hearing, but shall not be later than 90 days after the filing of the Formal Complaint or Formal Statement of Disability Proceeding with the Supreme Court. The judge and all counsel shall be notified of the time and place of the hearing.

(2) In extraordinary circumstances, the hearing panel shall have the authority to extend the hearing date as it deems proper.

(Amended effective January 1, 1996; amended effective July 1, 2009.)