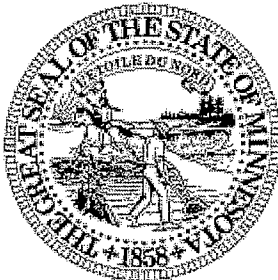


# Minnesota Board on Judicial Standards

05 - 0244

## Annual Report 2004



2025 Centre Pointe Blvd.  
Suite 180  
Mendota Heights, MN 55120  
*VOICE: 651-296-3999*  
*FAX: 651-688-1865*  
[judicial.standards@state.mn.us](mailto:judicial.standards@state.mn.us)  
[www.bjs.state.mn.us](http://www.bjs.state.mn.us)

STATE OF MINNESOTA  
BOARD ON JUDICIAL STANDARDS  
**2004**

**Judge Members**

Honorable James Dehn  
Judge of District Court  
Cambridge, MN

Honorable E. Anne McKinsey  
Judge of District Court  
Minneapolis, MN

Honorable Gary Pagliaccetti  
Judge of District Court  
Virginia, MN

Honorable Bruce Willis  
Court of Appeals  
St. Paul, MN

**Attorney Members**

Martha Holton Dimick  
Shorewood, MN

Robert M.A. Johnson  
Anoka, MN

**Public Members**

Cyndy Brucato  
Edina, MN

Jacqueline Hauser  
St. Louis Park, MN

Elizabeth Hepola  
Hutchinson, MN

Patrick Sexton  
Minneapolis, MN

**Staff**

David S. Paull  
Executive Secretary

Deborah Flanagan  
Administrative Assistant

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## FORWARD FROM THE CHAIR

After eight eventful and demanding years as a public member, it has been my distinct privilege to serve as Board's chairperson for 2004. The experience, both as Chair and as a member of the Board, has been remarkable. My service on the Board has provided me many opportunities to recognize and appreciate the importance of its work. The Board makes a singular and necessary contribution to maintaining the public's confidence in the impartiality and integrity of our system of justice. By functioning as the state's only official forum for resolving allegations of misconduct or disability, the Board advances our collective notions of propriety by processing complaints and educating our citizens.

As documented in previous annual reports, the upward trend in the Board's total volume of work continues. In 2004, the number of inquiries from judges seeking an opportunity to discuss ethical issues increased by over 31%. This is an important statistic that demonstrates the continuing and increasing interest by judges in maintaining propriety and efficacy of our judicial system.

Finally, as my predecessors have noted on previous occasions, the consistent and dedicated efforts of the Board's staff should be recognized. Through their work, the Board's essential goals are promoted.

Cyndy Brucato  
Chairperson

January, 2005

## INTRODUCTION

A society cannot function without a procedure to resolve disputes in a fair and impartial manner. The Minnesota Constitution provides for a justice system for this purpose. The preservation of the rule of law and the continued acceptance of judicial decisions depends on citizens' recognition and respect for the judiciary. The Board exists to ensure the fairness and the integrity of the judiciary in Minnesota.

The Board's responsibilities are two-fold:

- to review and investigate complaints of judges' conduct that may violate the Code of Judicial Conduct and to 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 process recognizes the unique role of elected judges in our state and it conducts its proceedings 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 his 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. Statute 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 monthly 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 Administrative 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 Minnesota Statutes, 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 may not be construed so as to impinge on the essential independence of judges in making judicial decisions.

The Board considers only complaints involving a judge’s professional or personal conduct. Complaints about the merits of a judge’s decision are matters for 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 conducts a confidential investigation.

As amended on January 1, 1996, the rules permit the Board, upon a finding of sufficient cause, to issue a public reprimand and impose conditions on a judge's conduct or to commence a formal complaint for a public hearing. Upon finding insufficient cause to proceed further, the Board may dismiss, issue a private warning, impose conditions on the judge's conduct, or require professional counseling or treatment. A Board 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. A judge under investigation may waive personal confidentiality at any time during the proceeding.

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.

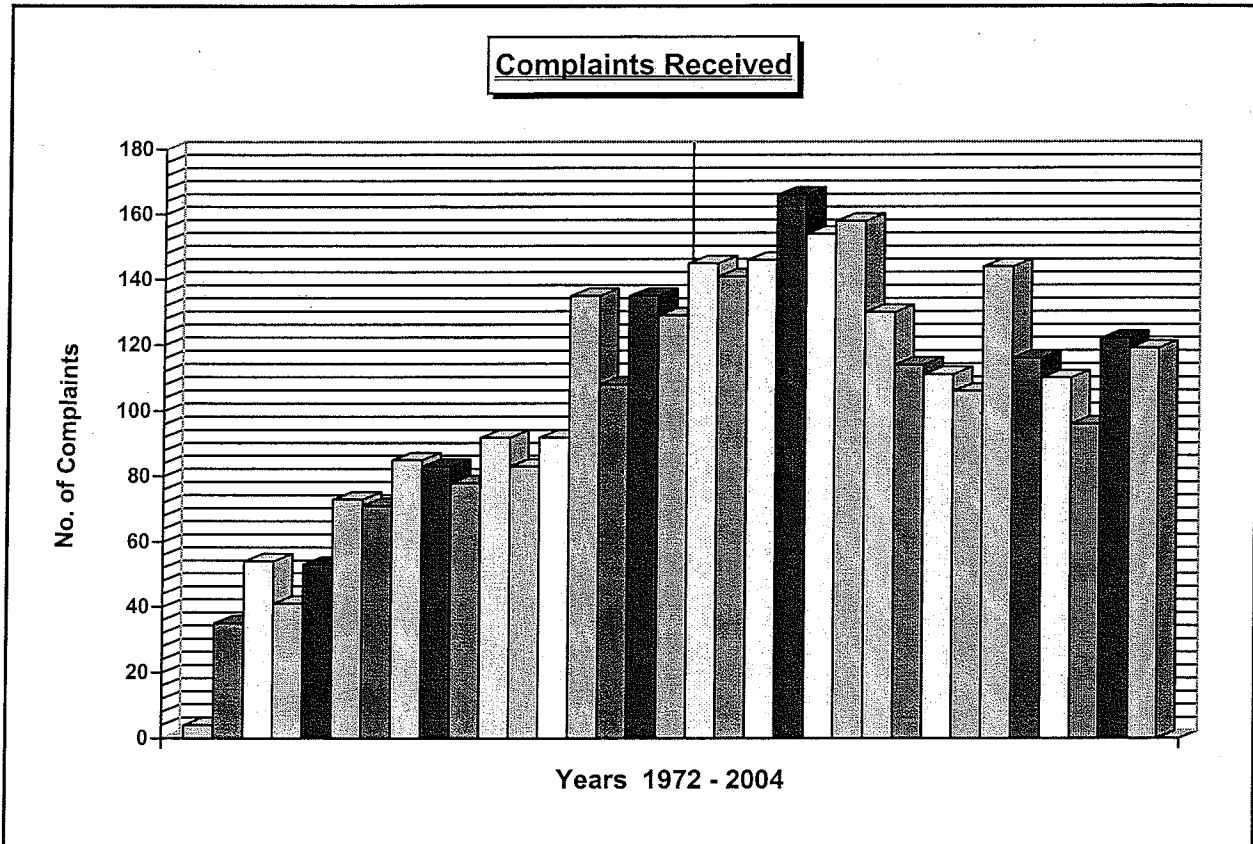
## JURISDICTION

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2004, this included 275 trial court judges; 23 appellate judges; 62 retired judges serving on orders from the Supreme Court, either full or part-time; 40 child support magistrates and the chief administrative law judge. The Board's jurisdiction also extends to 23 referees. The three judges of the Minnesota Tax Court and the five judges of the Workers' Compensation Court of Appeals also come under the authority of the Board.

The Board does not have jurisdiction over court administrators or their employees, court reporters, or probation personnel. Complaints against federal judges are filed with the Eighth Circuit Court of Appeals, as prescribed in 28 USC, Section 372(c).

## 2004 CASE DISPOSITION

During 2004, the Board received 119 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



**SOURCE OF COMPLAINTS - 2004**

Litigants	66
Board Motion	12
Attorneys	11
Citizens	11
Inmates/Prisoners	7
Other	5
Judiciary	4
Victim	1
Media	1
Anonymous	1
<b>TOTAL</b>	<b>119</b>



**ALLEGATIONS REPORTED - 2004**

Bias, discrimination or partiality	41
General demeanor and decorum	36
Delay in handling court business	21
Abuse of authority or prestige	18
Improper conduct on the bench	16
Improper decision or ruling	15
Ex parte communication	15
Conflict of interest	8
Reputation of judicial office	8
Failure to perform duties	8
Administrative Irregularity	7
Public comment on pending case	5
Health; physical or mental capacity	5
Failure to disqualify self	3
Failure to follow law or procedure	3
Corruption; bribery	2
Criminal behavior	2
Practicing law; giving legal advice	2
Financial activities	1
Loss of Temper	1
Political activity	1
Other	1

**JUDGES SUBJECT OF COMPLAINTS - 2004**

District Court Judges	91
Referees/Judicial Officers	12
Judicial Candidates	0
Court of Appeals Judges	3
Child Support Magistrates	3
Retired - Active Duty	7
Justices - Supreme Court	3
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0

The Board requested 20 judges to respond in writing to the Board for explanation of their alleged misconduct. One judge appeared before the Board to discuss or address a complaint. After initial inquiries, twelve complaints required additional investigation. Five cases required substantial supplemental investigations.

**DISMISSAL REASONS - 2004**

No misconduct; no violation	31
Frivolous, no grounds	24
Within discretion of judge	22
Insufficient evidence	11
Legal or appellate issues	11
Unsubstantiated after investigation	2
Corrective action by judges	1
Complaint withdrawn	1

**DISPOSITIONS - 2004**

Removal	1
Disability retirement	1
Public reprimand	0
Warnings	10
Personal appearance	1
Visit by board delegation	5
Conditions imposed	1

Prior to January 1, 1996, the disposition of cases that resulted in a private reprimand remain confidential.

## SAMPLES OF CONDUCT FOUND TO BE IMPROPER

To maintain confidentiality, the Board requires the elimination of certain details of the individual cases summarized below. The purpose of these examples is to educate the public and to assist judicial officers in the avoidance of improper conduct. 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 3A(1) and MS 546.27*]
- Making public comments in response to questions concerning a pending case other than an official explanation of court procedures [*Canons 1, 2 and 3A(8)*]
- Failing to act with courtesy, dignity and respect toward all participants, especially those parties acting *pro se* [*Canons 1, 2 and 3A(4)*]
- Retaliating against a person who has filed a complaint with the Board alleging misconduct or disability [*Canons 1, 2A, 2B, 3A(4), 3A(5), 4A*]
- Providing legal advice to the judge's ex-spouse [*Canons 1, 2A and 4G*]
- Issuing an order in a case when the case had previously been transferred to another district due to a conflict of interest [*Canons 1, 2A, 3D*]
- Appearing before a city council to promote and raise funds for a charitable or civic project that has no relation to the law, the legal system or the administration of justice. [*Canon 1, 2A, 4A, 4C(1) and 4C(3)(b)*]
- Ordering a criminal defendant to pay a fine to a specific charitable organization as a condition of sentence. [*Canons 1, 2A and 2B*]

Reprimands imposed by the Board after January 1, 1996, are public. In 2004, no public reprimands were issued.

### Judge Harvey C. Ginsberg

The Board initiated public disciplinary proceedings concerning Judge Harvey Ginsberg in 2003. A Formal Complaint was filed with the Minnesota Supreme Court alleging Judge Ginsberg's failure to conduct court hearings with appropriate decorum and dignity, ruling in the absence of all parties, retaliation, giving an

inappropriate order to a criminal defendant and pleading guilty to the charge of criminal assault. On January 20, 2004, the Board filed Findings and Recommendations with the Supreme Court recommending the disability retirement of Judge Ginsberg. The Supreme Court remanded the matter to the Board for a public hearing. A felony charge was added to the current proceedings. A public hearing was held on August 8 and 9, 2004 before a factfinding panel appointed by the Minnesota Supreme Court. After review of the factfinding panel's recommendations, the Board filed Findings and Recommendations with the Supreme Court stating:

1. Judge Ginsberg should be removed from office for various violations of the Code of Judicial Conduct as set forth in the Formal Statement of Complaint.
2. Judge Ginsberg should be retired because of a mental disability that interferes with his performance as a judicial officer that will likely be permanent.
3. There is a causal connection between Judge Ginsberg's mental illness and his actions but the connection is not sufficient to excuse his misconduct. Judge Ginsberg does have the ability to differentiate between right and wrong and did act intentionally.

After oral argument before the Supreme Court, on December 27, 2004, the Supreme Court issued an Order that Judge Harvey Ginsberg be:

- 1) removed from his office as district court judge;
- 2) retired from office as district court judge based on disability effective June 15, 2004;
- 3) suspended from the practice of law for a period of one year;
- 4) transferred to disability inactive status as an attorney effective upon the expiration of the one-year suspension;
- 5) eligible for reinstatement to the practice of law only through a reinstatement hearing in accordance with Rule 18, RLPR, and subject to the conditions stated in this opinion.

### JUDGE'S INQUIRIES

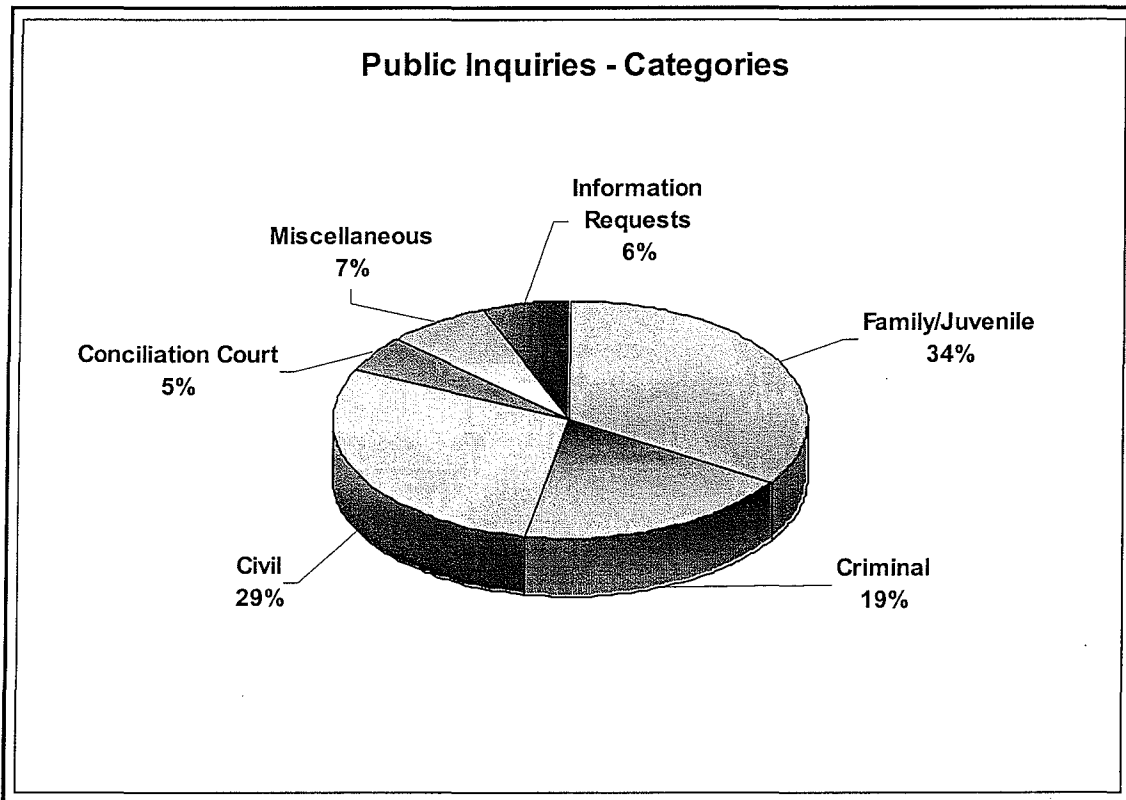
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2004, the Board issued five informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2004, there were 244 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 2004, the staff responded to 976 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.



## **2004 ADVISORY OPINIONS**

Each year, 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 2004 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is not appropriate for judges to advertise their availability to perform wedding ceremonies in the newspaper. However, judges may participate in promotional activities that list groups of available judges, such as a rotating registry maintained by a judicial district. *Canons 1, 2A, 2B, 4A and 4D(1)(a)*.
- It is appropriate for a judicial officer to provide part or full-time referee and child support magistrate services as an independent contractor/employee of a closely held professional corporation where the corporation does no other business nor derives any other income. Minnesota law provides that the use of a professional corporation does “not alter any law applicable to the relationship between a person furnishing professional services and a person receiving professional services.” *Canons 1, 2A, 4A, 4D(3) and M.S. Chapter 319B.06, Subd. 3*.
- Judges are not required to disqualify themselves solely on the grounds that an attorney or a party has filed an ethical complaint against the judge. *Canons 1, 2A, 3A(1), 3A(3), 3A(4) and 3D*.
- Pursuant to the recent revision of *Canon 3A(8)*, it is appropriate for a judge to comment on a settled class action lawsuit over which the judge previously presided and in which the only remaining activity is the processing and satisfaction of claims, where the comments are limited to the procedural aspects of the case and are made within the confines of a continuing legal education presentation.
- It is appropriate for a judge to maintain a current interest in a life insurance policy in a 401(k) plan maintained by his or her former law firm where (a) the plan is separately administered, (b) the value of the policy is not dependent on the financial condition of the law firm, (c) the interest is fully vested, fully funded and requires no communication with or contribution from the law firm, (d) the premiums for the policy are paid by the judge and (e) there is no practical alternative. *Canons 1, 2A 3D(1)(c), 3D(1)(d)(iii)*