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Minnesota Board on Judicial Standards

Annual Report 2005



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STATE OF MINNESOTA
BOARD ON JUDICIAL STANDARDS
2005

Judge Members

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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 (*Exp. 7/05*)
Court of Appeals
St. Paul, MN

Honorable Terri Stoneburner (*Eff. 7/05*)
Court of Appeals
St. Paul, MN

Attorney Members

Martha Holton Dimick
Shorewood, MN

Robert M.A. Johnson
Anoka, MN

Public Members

Cyndy Brucato (*Exp. 7/05*)
Edina, MN

Jacqueline Hauser
St. Louis Park, MN

Elizabeth Hepola
Hutchinson, MN

Patrick Sexton
Minneapolis, MN

Douglas Fuller (*Eff. 7/05*)
Bemidji, MN

Staff

David S. Paull
Executive Secretary

Deborah Flanagan
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TABLE OF CONTENTS

ANNUAL REPORT 2005

Forward from the Chair	1
Introduction	2
Authorization.....	3
Organization	3
Code of Judicial Conduct.....	3
Rules and Procedures	4
Jurisdiction	4
2005 Case Disposition	5-10
Advisory Opinions - 2005	12

FORWARD FROM THE CHAIR

Since I began to serve as a lawyer Board member in 2002, and continuing through the subsequent invitation to act as Board Chairperson in early 2004, I have been frequently impressed with the dedication and hard work of my fellow Board members and Board staff. I join them as a passionate supporter of the Board's mission, recently described as the "promotion and maintenance of public confidence in the independence, integrity and impartiality of our judicial system through the observance by our judges and judicial officers of proper conduct."

The quality of justice in Minnesota is directly dependent on the personal conduct of our judges and judicial officers. This high standard has traditionally been met through the concern, cooperation and coordination of persons from a wide variety of backgrounds and experiences – not only the many hardworking and thoughtful judges and judicial officers, but lawyers, court participants, the general public, court administration and the legislature.

As the information contained in this annual report indicates, 2004 was another year in which the Board's total volume of contacts increased dramatically. The Board continues to resolve complaints quickly and more efficiently. Although a variety of measures might apply, these statistics are indicative of a state agency that I believe is quite simply doing its job.

The staff effort, combined with the outstanding contributions of the Board members, indicates that the Board will continue discharging its duties efficiently and impartially.

Martha Holton Dimick
Chairperson

January, 2006

INTRODUCTION

A society cannot function without an effective, fair and impartial procedure to resolve disputes. In Minnesota, the constitution and laws provide a system designed to fit these essential criteria. The preservation of the rule of law, as well as the continued acceptance of judicial rulings, must depend on unshakeable public recognition that the judiciary and the court system is worthy of respect and trust. The quality of justice is directly dependent on the personal quality of our judges. It is the Board's mission to guard public confidence in the independence, integrity and impartiality of our judicial system through the observance by our judges and judicial officers of proper conduct.

To accomplish its goal, the Board discharges two general responsibilities:

- to review and investigate complaints of judges' conduct that may violate the Code of Judicial Conduct 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 Executive Assistant. At the direction of the Board, the staff is responsible for reviewing and investigating complaints, maintaining records concerning the operation of the office, preparing the budget, administering the Board funds and making regular reports to the Board, the Supreme Court, the legislature and the public.

CODE OF JUDICIAL CONDUCT

In addition to 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.

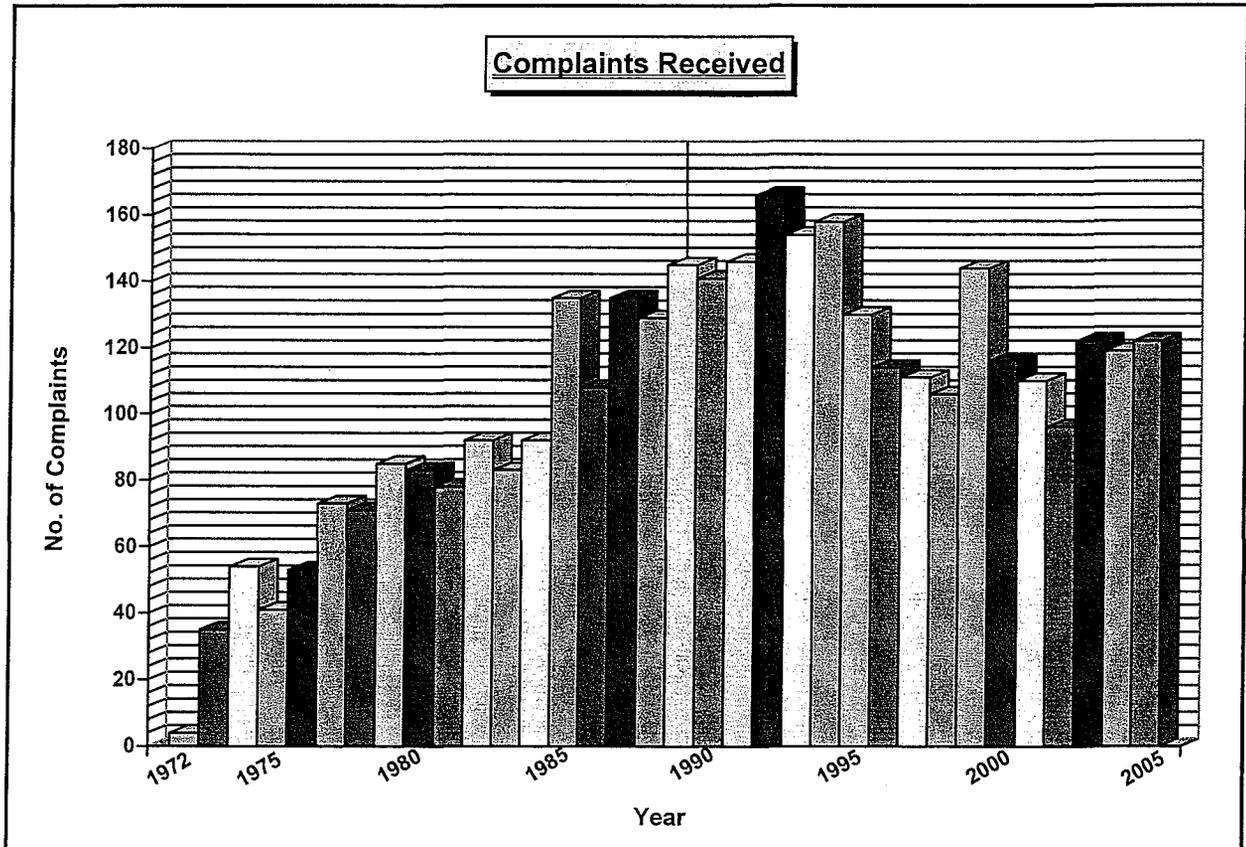
JURISDICTION

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2005, this included 280 trial court judges; 23 appellate judges; 51 retired judges serving on orders from the Supreme Court, either full or part-time; 36 child support magistrates and the chief administrative law judge. The Board's jurisdiction also extends to 21 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).

2005 CASE DISPOSITION

During 2005, the Board received 122 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



SOURCE OF COMPLAINTS - 2005

Litigants	74
Inmates/Prisoners	14
Other	12
Citizens	8
Attorneys	7
Board Motion	4
Judiciary	2
Anonymous	1

TOTAL 122

ALLEGATIONS REPORTED - 2005

Bias, discrimination or partiality	53
General demeanor and decorum	46
Abuse of authority or prestige	25
Conflict of interest	21
Improper decision or ruling	18
Delay in handling court business	16
Improper conduct on the bench	15
Ex parte communication	14
Corruption; bribery	13
Failure to disqualify self	9
Failure to perform duties	8
Criminal behavior	6
Failure to follow law or procedure	6
Improper influence, ticket fixing	5
Administrative Irregularity	5
Chemical dependency	3
Willful misconduct in office	3
Loss of Temper	3
Practicing law; giving legal advice	2
Reputation of judicial office	2
Election/campaign violation	2
Financial activities	2
Profanity or offensive language	2
Sexual misconduct	2
Health; physical or mental capacity	1
Public comment on pending case	1
No specific allegation	1

JUDGES SUBJECT OF COMPLAINTS - 2005

District Court Judges	108
Retired - Active Duty	6
Child Support Magistrates	3
Referees/Judicial Officers	2
Justices - Supreme Court	2
Court of Appeals Judges	1
Judicial Candidates	0
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0

The Board requested 27 judges to respond in writing to the Board for explanation of their alleged misconduct. Two judges appeared before the Board to discuss or address complaints. After initial inquiries, nine complaints required additional investigation. Eight cases required substantial supplemental investigations.

DISMISSAL REASONS - 2005

No grounds or frivolous	41
No misconduct; no violation	25
Insufficient evidence	13
Legal or appellate issues	9
Within discretion of judge	8
Lack of jurisdiction	3
No issue to resolved	2
Unsubstantiated after investigation	1
Corrective action by judges	1
Complaint withdrawn	1
Retired pending board action	1

DISPOSITIONS - 2005

Public reprimand	1
Warnings	12
Removal	0
Disability retirement	0
Personal appearance	2
Visit by board delegation	4
Conditions imposed	2
Other minor adjustments	4
Counseling	6
Mental or physical exam ordered	6

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*]
- Failing to act with courtesy, dignity and respect toward all participants [*Canons 1, 2 and 3A(4)*]
- Publicly commenting on the professional competence of a defendant in a pending case [*Canons 1, 2 and 3A(8)*]

- Making off the bench comments on a bail ruling [*Canons 1, 2, and 3A(8)*]
- Presiding in a marriage ceremony in which the bride or the groom is related to a party in a case that is before the court [*Canons 1, 2, 3A(2), 3A(3), 3A(5) and 3A(7)*]
- Appearing to express a bias or favoritism by overriding standard case assignment procedures to preside in a matter in which a former law partner is representing one of the parties [*Canon 1, Canon 2A, Canon 3A(5) and Canon 3D*]
- Failing to wear judicial robes while in the courtroom [*Canon 1, 2A, 3A(3) and 3A(4)*]
- Celebrating a juror's birthday during a break in an ongoing case [*Canon 1, 2A, 3A(3) and 3A(4)*]

Reprimands imposed by the Board after January 1, 1996, are public. In 2005, one public reprimand was issued.

Judge Regina Chu

The Minnesota Board on Judicial Standards (Board) issued a public reprimand to Fourth Judicial District Judge Regina M. Chu. The public reprimand was issued to Judge Chu after she admitted to driving an automobile with a blood alcohol concentration greater than the legal limit. The Board concluded that these actions were contrary to the *Minnesota Code on Judicial Conduct, Canons 1 and 2A*, as well as the *Rules of the Board on Judicial Standards, ("R.Bd.Jud.Std.")*, *Rules 4(a) (5) and (6)*, as set forth below:

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the judiciary. The provisions of this Code should be construed and applied to further that objective.

Canon 2***A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities***

- A. *A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.*

***Rule 4, Rules of the Board on Judicial Standards
Grounds for Discipline***

(a) Grounds for Discipline Shall Include:

- (5) Conduct prejudicial to the administration of justice that brings the judicial office in to disrepute. . .*
- (6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.*

JUDGE'S INQUIRIES

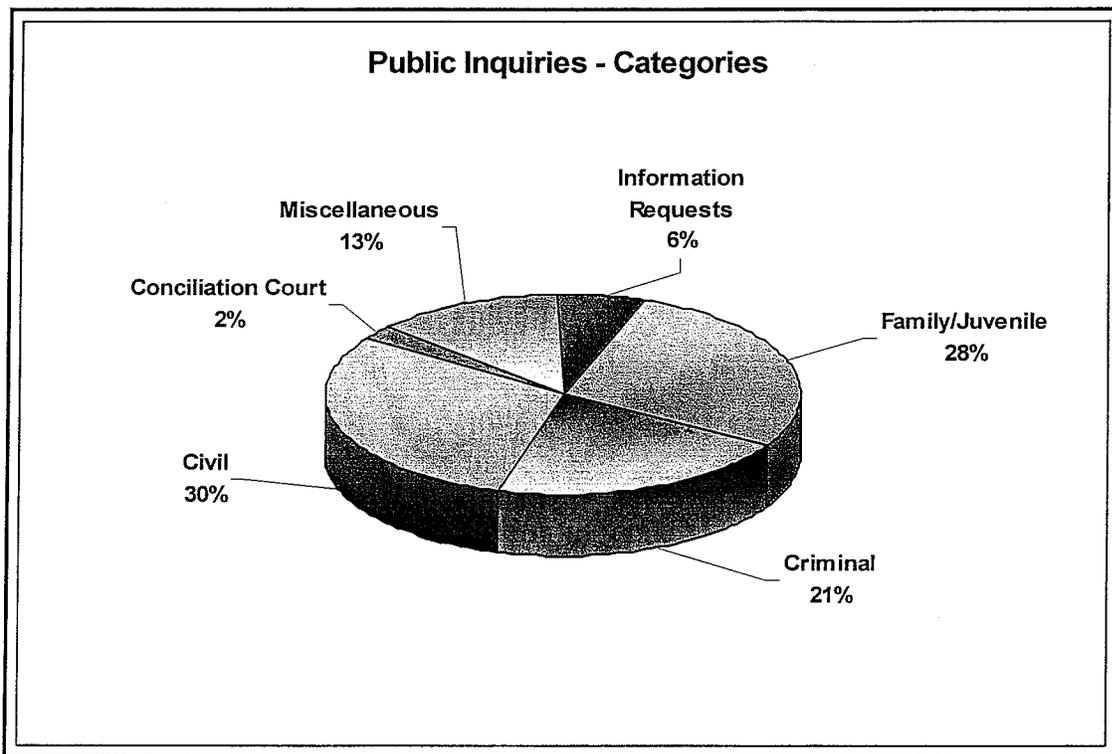
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2005, the Board issued seven informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2005, there were 246 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 2005, the staff responded to 1,193 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.



2005 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 2005 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- Consistent with the Board's 1988 advisory, it is inappropriate for a judicial candidate to permit his or her campaign committee to pay the standard filing fee or to reimburse the candidate for the expense [*Canon 1, Canon 2A and Canon 5B(2)*]
- It is improper for a judge to write a "forward" for a book about the treatment of juveniles in court when the book adopts controversial theories that could come before the court [*Canon 2A, Canon 4A and Canon 4B*]
- It is proper for a judge to serve on the board of directors of a non-profit corporation that promotes the recruitment and hiring of minority lawyers in the Minneapolis/St. Paul metropolitan area and speak in support of the organization, so long as the judge does not act to give the impression that any lawyer or law firm supporting the purposes of the non-profit corporation are in a position to influence rulings. Because of the likelihood that the purpose of the organization could change in the future, it is improper for a judge to act as an incorporator of the non-profit corporation. It is further improper for the judge to participate in the actual recruiting or hiring process.
- It is improper for a retired active judge, who by law cannot practice law in Minnesota due to judicial activity, to practice law in any other state while in an active status. [*Canon 4G, M.S. 2.274, Subd. 3.*]
- It is proper for a judge to become a candidate for or serve as the president of the MSBA so long as (1) the time commitment does not interfere with the judge's ability to perform his or her judicial duties, (2) the judge does not personally solicit election support, (3) the judge does not seek to identify lawyers who may or may not support his or her candidacy, (4) the judge strictly avoids the appearance that certain lawyers may or may not be entitled to special treatment or advantage in proceedings before the judge, (5) the judge refrains from publicly discussing or debating issues the MSBA favors or disfavors and (6) the judge endorses or speaks only on behalf of proposed legislation that concerns the law, the legal system or the administration of justice and refrains from endorsing or speaking on behalf of any legislation that seeks to achieve any underlying social, political or civic objective.

- It is proper for judges to engage in recruiting and training *pro bono* attorneys and to participate in the education of attorneys and the public regarding the need for *pro bono* services. However, all communications by judges in furtherance of this goal should avoid the use of aggressive or forceful language and refrain from using words or activities that place undue pressure on lawyers to serve. [*Canon 1, 2A, Canon 2B, Canon 4B and Canon 4C(1) and Canon 4C(3)(b)*]

- Even where it is otherwise proper for a judge to serve, it is improper for a judge to engage in fiduciary activities if it is likely that the judge will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust conservator, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction. [*Canon 4E*]