



ANNUAL REPORT 2008

Minnesota Board on Judicial Standards

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BOARD ON JUDICIAL STANDARDS
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Honorable James Dehn (*Exp. 5/08*)
Judge of District Court
Cambridge, MN

Honorable E. Anne McKinsey (*Exp. 5/08*)
Judge of District Court
Minneapolis, MN

Honorable Vicki Landwehr (*Eff. 5/08*)
Judge of District Court
St. Cloud, MN

Honorable Dan Mabley (*Eff. 5/08*)
Judge of District Court
Minneapolis, MN

Honorable Gary Pagliaccetti
Judge of District Court
Virginia, MN

Honorable Terri Stoneburner
Court of Appeals
St. Paul, MN

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David S. Paull
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FOREWARD FROM THE CHAIR

This is my first year as chair, my fifth year as a Board member. The Board traditionally approaches the regulation of proper personal judicial standards using several important principles. The first among these is that the judicial office is a public trust, requiring all judges and judicial officers to conduct themselves in such a way so as to maintain and increase the public's confidence in the impartiality and integrity of our legal system. A second principle is judicial independence, a tenet recognizing that the public's trust is best advanced through the observance of rules that also enhance the essential autonomy of judges in making judicial decisions.

In 2008, the Board applied these principles to resolve 124 formal complaints. Through our small staff, the Board directly communicated with a total of almost 1,600 citizens during the year, discussing and answering questions about their concerns for our judicial system. Additionally, interest in the Board's website is steadily increasing. Almost 14,000 visits to our website were recorded in 2008.

The Board's disciplinary actions sometimes make news. However, the Board's most important activity is its efforts to communicate with citizens and judicial officers. The Board is, and remains "open for business," ready to engage callers on any issue relating to the ethical conduct of judges and judicial officers.

The Board has made several policy changes to enhance and update our operations:

- 1. Board members have raised their level of participation in the disciplinary process.**
In order to more clearly demonstrate that it takes responsibility for all final decisions, Board members are more frequently joining with the Executive Secretary to communicate directly with judges and judicial officers.
- 2. The Board has revised its members' disqualification policy.**
The new disqualification policy provides more detailed guidance to Board members considering whether or not they should participate in the resolution of a complaint.
- 3. Our web site is being overhauled.**
In order to better communicate with the public and those we oversee, we are in the process of updating our web site. We will include more information about the Board, our policies, advisories and decisions.

We look forward to serving

Patrick Sexton
Chairperson

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 the judge’s 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. Statutes 490A.01, 490A.02 (2006) [M.S.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 nine times annually 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.

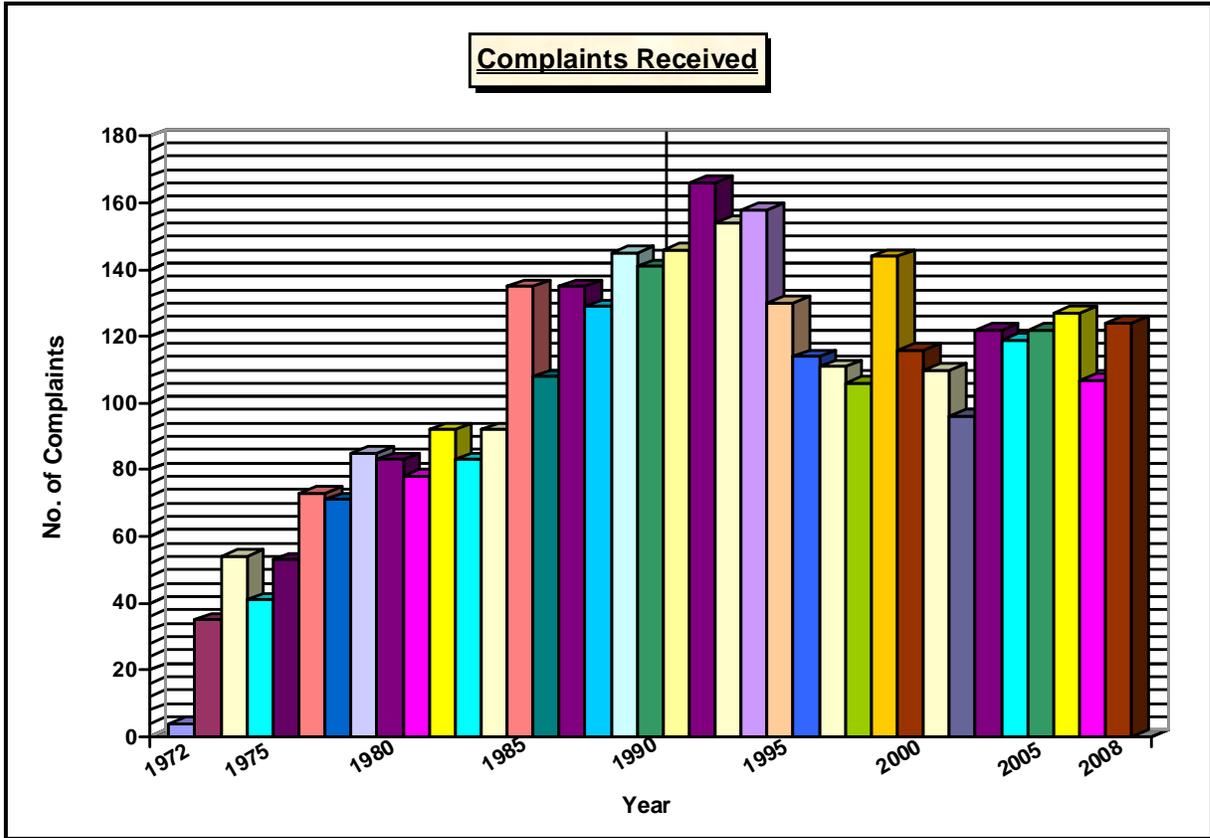
JURISDICTION

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2008, this included 315 trial court judges; 23 appellate judges; 62 retired judges serving on orders from the Supreme Court, either full or part-time; 37 child support magistrates and the chief administrative law judge. The Board's jurisdiction also extends to 18 referees and 70 part-time conciliation court judges. 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).

2008 CASE DISPOSITION

During 2008, the Board received 124 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



<u>SOURCE OF COMPLAINTS - 2008</u>	
Litigants	61
<i>Board Motion</i>	17
Inmates/Prisoners	15
<i>Attorneys</i>	14
Citizen	6
<i>Other</i>	6
Judiciary	2
<i>Victim</i>	2
Government Agency	1
TOTAL	124

ALLEGATIONS REPORTED - 2008

General demeanor and decorum	57
Bias, discrimination or partiality	42
Delay in handling court business	39
Abuse of authority	18
Ex parte communication	18
Disqualification issues	18
Conflict of interest	17
Improper conduct on the bench	14
Failure to perform duties	14
Improper influence, ticket fixing	11
Reputation of judicial office	8
Failure to follow law or procedure	7
Administrative irregularity	7
Improper decision or ruling	6
Corruption, bribery	6
Election or campaign violation	2
Incompetence as a judge	2
Criminal behavior	2
Loss of temper	2
Profanity or temper	1
Health, physical or mental capacity	1
Other	1
Willfull misconduct in office	1
Public comment on pending case	1
Attorney unethical conduct	1
Chemical dependency	1
Political activity	1
Practicing law	1

JUDGES SUBJECT OF COMPLAINTS - 2008

District Court Judges	108
Justices - Supreme Court	1
Referees/Judicial Officers	5
Retired - Active Duty	4
Child Support Magistrates	3
Court of Appeals Judges	1
Judicial Candidates	0
Tax Court Judges	0
Workers Comp-Court of Appeals	0
Chief Administrative Law Judge	0
Part time judge	1
Disability retirement during pendency	1
No longer a judge	0
TOTAL	124

The Board requested 24 judges to respond in writing to the Board for explanation of their alleged misconduct. Three judges appeared before the Board this year. After initial inquiries, four complaints required additional investigation. Five cases required substantial supplemental investigations.

DISMISSAL REASONS - 2008

No grounds or frivolous	34
No misconduct; no violation	31
Within discretion of judge	25
Insufficient evidence	9
Legal or appellate issues	9
Corrective action by judge	4
No issue left to resolve	2
Left bench	1
Lack of jurisdiction	1

DISPOSITIONS - 2008

Public reprimand	1
Civil Penalty	1
Private warning	10
Removal	0
Disability retirement	0
Visit by board delegation	0
Conditions imposed	1
Other minor adjustments	1
Instructions for change	6
Retired pending board action	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*]
- Failing to act with courtesy, dignity and respect toward all participants. [*Canons 1, 2, 3A(4)*]
- Habitually failing to begin court proceedings in a timely manner. [*Canons 2A, 3A(3)*]
- Failure to comply with the rules governing attorney registration, including the failure to pay license fees on a timely basis. [*Canons 1, 2A, 4A*]

- Directing language to the parties in a child support proceeding that could reasonably be construed as abrasive and sarcastic. [*Canons I, 2A, 3A(3), 3A(4)*]
- Addressing the parties and lawyers in a criminal proceeding that could reasonably be construed as abrasive and sarcastic. [*Canons I, 2A, 3A(3), 3A(4)*]

This year, the Board conducted one public hearing. A hearing in a matter entitled *Inquiry into the Conduct of the Honorable Timothy Blakely* occurred beginning on November 17 and 18, 2008. The matter is currently pending before a three member factfinding panel.

Reprimands imposed by the Board after January 1, 1996, are public. In 2008, one public reprimand was issued and a civil penalty was imposed.

JUDGE MICHAEL V. SOVIS

In 2008, the Minnesota Board on Judicial Standards (Board) has issued a public reprimand and a \$1000.00 civil penalty to First Judicial District Judge Michael V. Sovis. The Board's action relates to Judge Sovis' conduct in the case of *State v. Gerald Louis McDonald* (Dakota County).

The Board reported that in 2005 and again in 2007, Judge Sovis determined Mr. McDonald to be in civil contempt of his court and issued a restraining order against him. On May 16, 2005, Judge Sovis sentenced Mr. McDonald to two days in jail, with credit for time served, suspending further action on the contempt matter on the condition that Mr. McDonald have no contact with Judge Sovis or a Dakota County resident with whom Mr. McDonald had a dispute. On May 21, 2007, Judge Sovis sentenced Mr. McDonald to two 90 day terms in the Dakota County jail and ordered him to pay \$1,000 in law enforcement reimburse costs. The second 90 day jail term was suspended after two days were served on condition that Mr. McDonald never again contact the resident or any member of his family. Judge Sovis further ordered Mr. McDonald to submit to chemical dependency and psychological evaluations.

Judge Sovis presided in Mr. McDonald's cases although his wife is a best friend of the wife of the resident and Judge Sovis is a friend of the resident and his family. Judge Sovis initiated both the 2005 and 2007 proceedings against Mr. McDonald without providing the prosecuting authority an opportunity to be heard or providing Mr. McDonald an opportunity to show why the orders should not be entered against him. Judge Sovis further failed to advise Mr. McDonald that he had a right to a trial, the right to consult a lawyer or that he had certain other basic constitutional and statutory rights.

Prior to Judge Sovis entering the orders dated May 16, 2005 and May 21, 2007, Judge Sovis personally ordered the arrest of Mr. McDonald based solely on several

private and informal conversations Judge Sovis had with the resident, as well as several telephone conversations Judge Sovis had with Mr. McDonald. Over the past several years, Judge Sovis had private phone conversations with Mr. McDonald concerning the resident and his family on several occasions. During these telephone conversations, Judge Sovis threatened Mr. McDonald with further court proceedings and exchanged profane and improper words with Mr. McDonald.

On May 21, 2007, Mr. McDonald retained a lawyer. On May 30, 2007, Mr. McDonald's lawyer filed a motion seeking to vacate Judge Sovis' 2007 orders on the basis that they were contrary to law and void. The motion further requested that Judge Sovis disqualify himself from the matter. On May 30, 2007, Judge Sovis granted the motion made by Mr. McDonald's lawyer, including the request that he disqualify himself in the case.

Judge Sovis has been disciplined on two prior occasions by the Board. In 1996 and again in 2005, Judge Sovis was issued private warnings by the Board for dismissing traffic or misdemeanor citations without observing the proper procedures or notifying the appropriate prosecuting authority. The 2005 citation was dismissed by Judge Sovis on behalf of his stepson.

The Board concluded that Judge Sovis' actions were contrary to the *Minnesota Code on Judicial Conduct*, Canons 1, 2A, 2B, 3A(4) 3A(5), 3A(7), 3A(9),3D(1) and Canon 4A, 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.*

B. A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 3

A Judge Shall Perform the Duties of the Office Impartially and Diligently

Canon 3A(4)

A judge shall be patient, dignified and courteous to litigants . . . and others dealt with in an official capacity . . .

Canon 3A(5)

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit court personnel and others subject to the judge's direction and control to do so.

Canon 3A(7)

A judge shall accord to every person who has a legal interest in a proceeding, or person's lawyer, the right to be heard according to law. 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 concerning a pending or impending proceeding [exceptions listed].

Canon 3A(9)

A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges or promises that are inconsistent with the impartial performance of the adjudicative duties of the office.

Canon 3D(1)

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings; (c) . . . the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, significant other, parent or child wherever residing . . . has any other interest that could be substantially affected by the proceeding; (d) the judge's spouse or significant other or a person within the third degree of relationship to any of them, or the spouse of such a person: (i) is a party to the proceedings . . . [or] (iii) is known by the judge to have an interest that could be substantially affected by the proceeding [or] (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Canon 4

A Judge Shall Conduct All Extra-Judicial Activities so as to Minimize the Risk of Conflict With Judicial Obligations

Canon 4A

A. Extra Judicial Activities In General. *A judge shall conduct all extra-judicial activities so that they do not:*

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge*
- (2) demean the judicial office; or*
- (3) interfere with the improper performance of judicial duties.*

***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 into disrepute. . .*
- (6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.*

JUDGE'S INQUIRIES

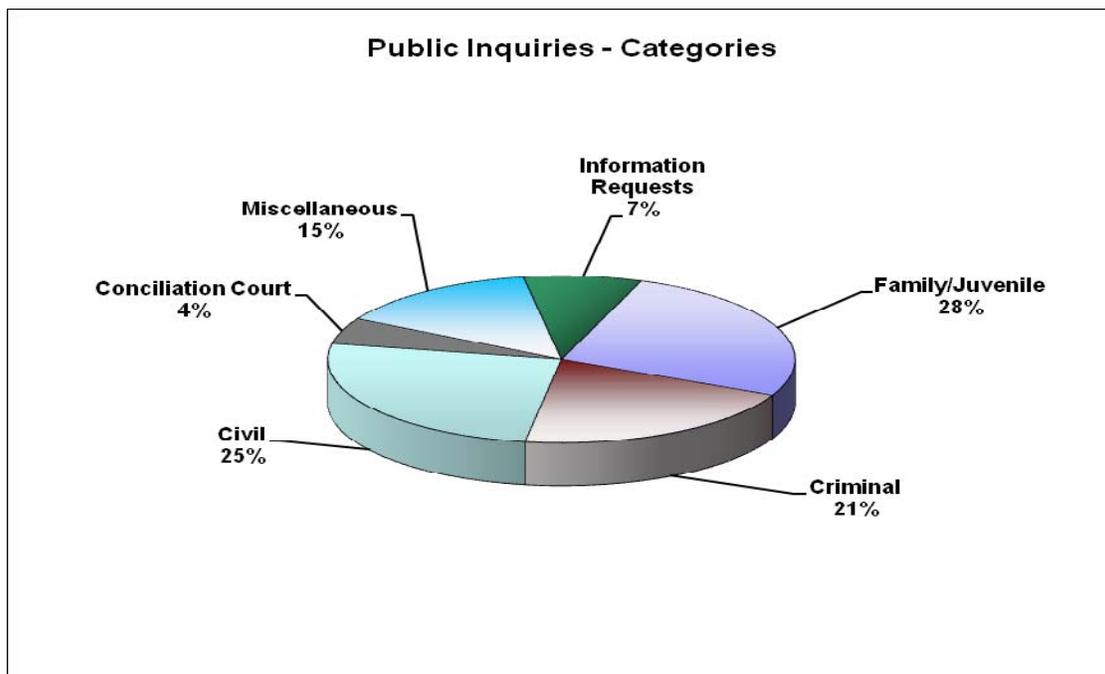
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2008, the Board issued four informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2008, there were 278 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 2008, the staff responded to 1053 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.



2008 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 2008 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- Except when assigned as a part of regular judicial duties and expressly permitted by law, it is improper for a judge to perform any type of dispute resolution services, including mediation and arbitration, whether or not for economic gain. [*Canons 1, 2A, 2B, 4A, 4C(3) and 4F.*]
- It is not proper for a judge or judicial officer to use official judicial stationery for a recommendation letter containing information not obtained in the ordinary course of judicial or official court activities, such as personal data. [*Canons 1, 2A, 2B, 4A and 4C(3).*]
- It is not proper for a judge or judicial officer to address a permitted letter of recommendation in such a way as to facilitate its use by recipients that are unintended or unknown at the time of writing, such as “To whom it may concern” letter. [*Canons 1, 2A, 2B, 4A and 4C(3).*]
- Based on personal knowledge of his or her legal abilities, it is proper for a judge or judicial officer to submit a recommendation letter on behalf of a public defender for employment as a prosecutor. [*Canons 1, 2A, 2B, 4A and 4C(3).*]