



# ANNUAL REPORT 2009

## Minnesota Board on Judicial Standards

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Honorable Dan Mabley  
Judge of District Court  
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## FOREWORD FROM THE CHAIR

In this, my last year as chair, I would like to express my appreciation to the Board and to its staff for all of their hard work. The dedication, deep reflection and insight provided by members and staff is amazing.

The Board functions to help maintain the public's confidence and trust in an impartial judiciary by ensuring judges comply with laws, rules and common sense. To do this, we strongly believe in the dual nature of the Board to provide counsel when appropriate and sanction when necessary.

One of the Board's important activities is to communicate directly with citizens and judicial officers. The Board remains engaged in educating court participants and citizens on the elements of proper judicial conduct and its authority.

In 2009, the Board began applying a new Code of Conduct and a newly modified set of operating rules. These were brought about from a recommendation from the Advisory Committee on Rules of the Board on Judicial Standards chaired by the Honorable Gary J. Pagliaccetti, a former Board member of exceptional talent.

In addition to the new Rules, the Board has implemented new policies. A board member may now be assigned to participate when the need arises to communicate directly with a judge via phone call or personal visit. The policy change makes it clear that all corrective activities are a result of Board action. We have developed a new review policy for the Executive Secretary that seeks to provide a more comprehensive performance picture. We have also started a much needed upgrade of the Board's website that we hope will be completed in 2010.

The number of complaints received by the Board has remained relatively stable for the past decade. The Board values each complainant and reviews their information carefully. I find it comforting that the majority of complaints are, after being thoroughly investigated, found to have no merit. We have terrific judges in Minnesota who are dedicated to the law and provide patient, thoughtful jurisprudence.

The Board provides a valuable function because, on occasion, some judicial officers lose sight of their responsibility to ethically serve the public. I am troubled when I see a judge act in a manner not consistent with the serious nature demanded of a courtroom. Most people appearing before a judge probably don't want to be there and are likely to be intimidated by the process, rules, language and procedures. They may fear the loss of children, money, property or even their own freedom. There is nothing funny about that. A judge attempting humor in such situations or, much worse, being abusive is simply wrong and must not be tolerated.

It is an honor to have been a part of the Board's activities.

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 July 1, 2009, the rules permit the Board, upon a finding of reasonable cause, to issue letters of caution, issue private admonitions, propose public reprimands or commence a public hearing. The rules also permit to the Board to defer a disposition, impose conditions on a 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.

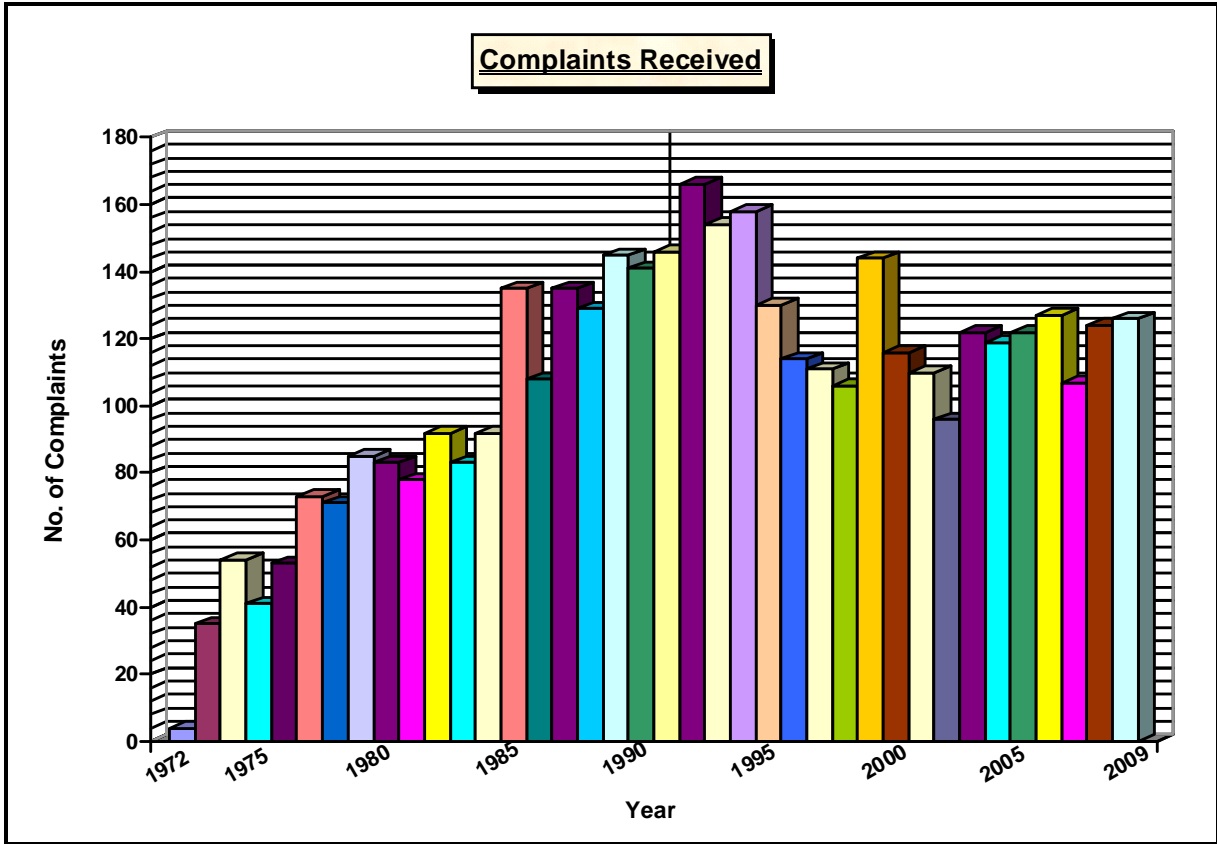
## **JURISDICTION**

The Board's jurisdiction extends to any person exercising judicial powers and performing judicial functions, including judges assigned to administrative duties. During 2009, this included 319 trial court judges; 23 appellate judges; 58 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 26 referees and 72 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).

## 2009 CASE DISPOSITION

During 2009, the Board received 126 written complaints. The number of complaints received annually by the Board since its creation in 1971 is set forth below:



<b><u>SOURCE OF COMPLAINTS - 2009</u></b>	
Litigants	64
<i>Board Motion</i>	17
Attorneys	19
<i>Inmates/Prisoners</i>	14
Citizen	8
<i>Other</i>	4
Judiciary	0
<i>Victim</i>	0
Government Agency	0
<b>TOTAL</b>	<b>126</b>



**ALLEGATIONS REPORTED - 2009**

General demeanor and decorum	60
Bias, discrimination or partiality	49
Delay in handling court business	26
Ex parte communication	18
Conflict of interest	18
Abuse of authority	17
Improper influence, ticket fixing	14
Reputation of judicial office	13
Administrative irregularity	8
Improper decision or ruling	7
Improper conduct on the bench	7
Failure to follow law or procedure	6
Chemical dependency	6
Corruption, bribery	5
Health, physical or mental capacity	5
Failure to perform duties	4
Profanity or temper	4
Financial activities or reporting	4
Loss of temper	3
Practicing law	3
Election or campaign violation	2
Public comment on pending case	2
Incompetence as a judge	1
Willful misconduct in office	1
Disqualification issues	1
Other	1

**JUDGES SUBJECT TO COMPLAINTS - 2009**

District Court Judges	104
Justices - Supreme Court	0
Referees/Judicial Officers	6
Retired - Active Duty	9
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	0
Conciliation Court Judge	1
Disability retirement during pendency	0
No longer a judge	0
Resigned during pendency	1
Deceased	1
<b>TOTAL</b>	<b>126</b>

The Board requested 32 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, 21 complaints required supplemental investigation.

**DISMISSAL REASONS - 2009**

No grounds or frivolous	35
Insufficient evidence	23
No misconduct; no violation	19
Within discretion of judge	16
Legal or appellate issues	14
Complaint withdrawn	6
Corrective action by judge	5
Lack of jurisdiction	3
No issue left to resolve	2
Unsubstantiated after investigation	1
Retired pending board action	1

**DISPOSITIONS - 2009**

Public reprimand	1
Civil Penalty	0
Private warning	6
Admonition	5
Deferred Dispositions	4
Letter of Caution	1
Removal	0
Disability retirement	0
Visit by board delegation	1
Conditions imposed	2
Other minor adjustments	2
Instructions for change	5
Retired pending board action	1

Prior to January 1, 1996, the disposition of cases that resulted in a private reprimand remain confidential. Admonitions, deferred dispositions and letter of cautions were new dispositions under the new *Rules of the Board on Judicial Standards*, effective July 1, 2009.

**SAMPLES OF CONDUCT FOUND TO BE IMPROPER**

The purpose of these examples is to educate the public and to assist judicial officers in the avoidance of improper conduct. To maintain confidentiality, the Board requires the elimination of certain details of the individual cases summarized below. 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 2, Rule 2.5 and MS 546.27*]
- Failing to act with courtesy, dignity and respect toward all participants. [*Canons 1 and 2, Rule 2.8*)]

- Habitually failing to begin court proceedings in a timely manner. [*Canon 2, Rule 2.5*]
- Improperly soliciting a campaign contribution by personally requesting that person permit a campaign sign supporting the judge to be placed on their property. [*Canon 4, Rule 4.1(A)(5)*]
- Meeting separately with the parties in an effort to settle a case despite the failure of one of the parties to consent. [*Canon 2, Rule 2.9(A)(4)*]
- Initiating an ex parte communication with a second judge in an attempt to influence judicial activity. [*Canon 2, Rules 2.2, 2.3 and 2.9*]
- Turning the bench chair away from a lawyer making an opening statement until it faces the wall. [*Canons 1 and 2, Rule 2.8*]
- Asking questions of witnesses in a rude manner suggesting advocacy for one side. [*Canons 1 and 2, Rules 2.2 and 2.8*]
- Soliciting the opinion of a court administrator as to the meaning of an appellate decision requiring further district court action. [*Canon 2, Rule 2.9*]
- Inappropriate use of humor in the court that one or more participants would reasonably find offensive. [*Canons 1 and 2, Rules 2.2, 2.3 and 2.8*]
- Issuing a final order without providing both sides an opportunity to be heard. [*Canon 2.9*]

### **JUDGE TIMOTHY BLAKELY**

The Supreme Court issued an Order on September 17, 2009 in the matter entitled *Inquiry into the Conduct of the Honorable Timothy Blakely*. After a public hearing held on November 17 and 18, 2008, the Supreme Court found:

*Censure and suspension from judicial duties for 6 months without pay is warranted for a judge who violated Canons of Judicial Conduct by negotiating and obtaining a substantial legal fee reduction from his personal attorney at the same time he was appointing the attorney to provide mediation or related services in matters pending before him.*

Judge Blakely also received a public reprimand as an attorney who is a judge who engaged in conduct prejudicial to the administration of justice.

Reprimands imposed by the Board after January 1, 1996, are public. In 2009, one public reprimand was issued.

### **JUDGE RICHARD G. SPICER**

In 2009, the Minnesota Board on Judicial Standards (Board) issued a public reprimand to First Judicial District Judge Richard G. Spicer. The Board's action relates to Judge Spicer's conduct on the bench in Dakota County on the morning of September 17, 2008.

During that proceeding, Judge Spicer used disparaging speech in reference to a defendant who was at the time present in court for official business. He then asked the courtroom gallery to weigh in on his own conduct and that of the defendant creating the appearance that he was either delegating his decision-making authority to the gallery or asking the gallery for its opinion on how he should decide an issue placed before the court. His name-calling of the defendant and his informal polling of the gallery was improper and lacked the dignity required of a judge by the Minnesota Code of Judicial Conduct.

Judge Spicer was disciplined on three prior occasions by the Board. In all three cases, Judge Spicer was warned by the Board for making improper public comments on cases or court participants.

Judge Spicer's conduct on the bench on September 17, 2008, was contrary to the *Minnesota Code on Judicial Conduct*, *Canons 1, 2A, 3A(1), 3A(4) and 3A(5)*, as well as the *Rules of the Board on Judicial Standards*, ("*R.Bd.Jud.Std.*"), *Rules 4(a) (2), (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 3A(1)**

*A judge shall hear and decide promptly, efficiently and fairly matters assigned to the judge except those in which disqualification is required.*

## **Canon 3A(2)**

*A judge shall be faithful to the law and maintain professional competence in it. He or she shall be unswayed by partisan interests, public clamor or fear of criticism.*

## **Canon 3A(3)**

*A judge shall required order and decorum in all proceedings before the judge.*

**Canon 3A(4)**

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

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

*(a) Grounds for Discipline Shall Include:*

- (2) A persistent failure to perform judicial duties;*
- (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**

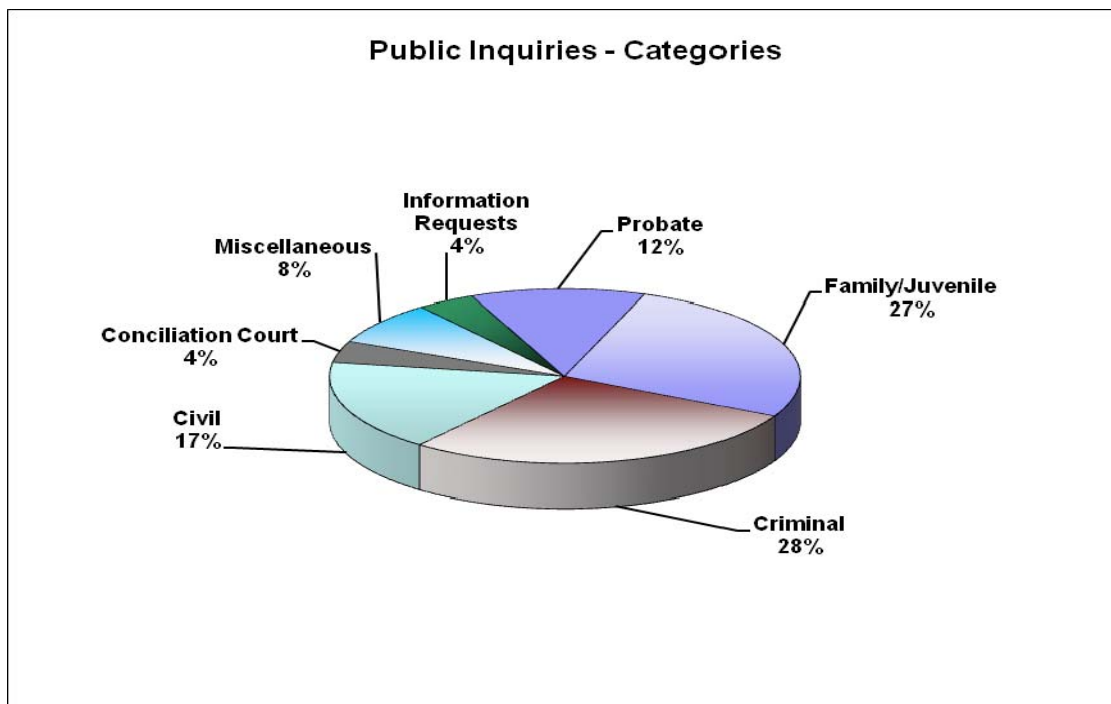
The Board encourages judges who have ethical questions to seek its guidance. The Board will issue a formal advisory opinion to any judge. In 2009, the Board issued five informal opinions.

Judges regularly contact the Board's staff for information and material on various questions involving the Code of Judicial Conduct. During 2009, there were 306 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 2009, the staff responded to 1,228 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.



During the calendar year, the Board's website received 19,372 visits. The website serves as an information service to both the judges and the public. Public discipline issued to judicial officers during the year is published on the site. This report and previous annual reports, the *Code of Judicial Conduct* and recent news events are available on the website.



## **2009 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 2009 is provided below. References are to the rules of ethics contained in the *Code of Judicial Conduct*, as revised.

- It is not appropriate for a judge or judicial officer to serve as a member of the board of directors of an organization that engages in “advocating” for the benefit of its members. [*Canon 1, Canon 2A, Canon 2B, Canon 4A, Canon 4C(3), Canon 4C(3)(a)*]
- A previous advisory, indicating it is not appropriate for a judge or judicial officer to serve on the board of any organization that “advocates” on behalf of its members, should not be withdrawn due to changes in the *Code*. The prior rules prohibited such service in any organization which engaged in activity “for the economic or political advantage of its members.” This concept was carried over to the revised *Code*, which now prohibits the abuse of office, including any action that “advance[s] the personal or economic interests of the judge or others. [*Canon 1, Rules 1.1, 1.2, and 1.3, Canon 3, Rule 3.1*]
- It is appropriate for a judge or judicial officer to serve as an on-call part time municipal firefighter where (1) the judge or judicial officer will make judicial duties a first priority, (2) the activity will not impede or distract the judge or judicial officer from discharging judicial duties, (3) the activity will not occur during judicial working hours, (4) the activity will not involve the use of court resources, (5) litigation involving the agency is extremely rare and (6) the judge will regularly reexamine the activity and the organization to determine if it is proper to continue the affiliation. [*Canon 1, Canon 2A, Canon 4A, Canon 4B and Canon 4C(3)*]
- It is not appropriate for a judge or judicial officer to issue an order in a contested case based, in whole or in part, on a proposal by one side, without first providing the opposing side an opportunity to be heard. [*Canon 1, Rule 1.2, Canon 2, Rules 2.2, 2.3, 2.6(A) and 2.9*]
- The *Code* does not create any duty, on the part of a judge or judicial officer, to report criminal activity disclosed in court proceedings. Rather, the decision to report is addressed to the sound discretion of the judge or judicial officer as his or her “judgment and conscience dictate.” In making the decision, the judge or judicial officer may wish to consider the following questions:
  - Is the alleged offense of a serious nature?
  - Is the evidentiary basis for the report sufficient?

- Is there a danger to the community or is a public trust involved, i.e. would the report serve a public interest?
- Is it likely that the wrongful conduct would come to light absent a report?
- Are there other persons or entities aware of the wrongful conduct?
- Did the crime have an individual victim and, if so, was the victim's ability to report the matter interfered with in any way?
- Was a lawyer representing an appropriate governmental or law enforcement authority present?
- Would the report positively or adversely affect the appearance of the judge's impartiality or promote the public's confidence in the judicial system?

*[Canon 1, Canon 2A, Canon 3A(5), Canon 3A(12), Canon 3D(1) and Canon 4A]*