

Battered Women's Legal Advocacy Project, Inc.

Filing Complaints Against Judges

This technical assistance packet addresses the problem of how and when to file a complaint against a judge. It is meant to help identify judicial misconduct and to explain the complaint process. This packet gives an overview of conduct that may be considered judicial misconduct and the complaint process. It also includes a complaint checklist, the address and phone numbers for the Minnesota Board on Judicial Standards, and important rules from the Rules of Board on Judicial Standards that explain the complaint process.

Attachments include: Checklist of the complaint process and include Rules 4, 6, 7, and 11 of Minnesota Rules of Board on Judicial Standards.

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Complaints Against Judges

I.) Identifying Judicial Misconduct

Judicial misconduct can take many forms. Minnesota judges are held to the standards included in the Minnesota Code of Judicial Conduct that may be found in most libraries in the “Court Rules” volume of the Minnesota Statutes. Advocates can also look online at <http://www.bjs.state.mn.us/canon2.html>, for the court rules. Along with these more general rules for judges, the Rules of Board on Judicial Standards (<http://www.courts.state.mn.us/rules/bjsa.doc>) also includes a list of judicial misconduct that may be disciplined. (See Rule 4 included in this packet). Some types of judicial misconduct that may be disciplined by the Board on Judicial Standards include:

- **Improper courtroom decorum.** This may include:
 - rude, abusive, and otherwise improper treatment of parties, counsel, witnesses, jurors, court staff and others;
 - failing or refusing to promptly dispose of judicial business;
 - improper conduct while on the bench, such as sleeping or intoxication;
 - expressions of bias, discrimination, or harassment based on race, color, creed, religion, national origin, sex, marital status sexual preference, disability or age.
- **Improper influence.** Including:
 - allowing family, social, or political relationships to influence judicial decision-making;
 - conflict of interest;
 - giving or receiving gifts, bribes, loans, or favors.
- **Other improper or illegal activities, including off-bench conduct:**
 - communicating improperly with only one side to a proceeding (called ex parte communication or contact which calls into question a judge’s objectivity in the case);
 - chemical abuse;
 - engaging in improper election campaign activities;
 - ticket-fixing;
 - other criminal behavior.

The Board on Judicial Standards will not direct a judge to make legal decisions, nor can it review a case for judicial error, mistake, or other legal grounds or direct a judge to do so. The Board does not have the authority to remove a judge from a case and filing a complaint will not change the outcome in the case. If a woman disagrees with a court’s ruling or she believes that a judge has made an error in applying the law to her case, then the proper channel is the state appellate courts. If a woman feels that the case should be appealed on any basis, then she should contact an attorney promptly, because there are very strict time limits for filing appeals. If she wants the judge removed or disqualified from her case, then she should speak with an attorney and follow the proper court procedures.

If a woman is thinking about filing a complaint, she should seriously consider the potential negative repercussions of filing the complaint against the judge overseeing her case while the case is on-going. Because the Judicial Board does not have the power to remove a judge from a case, a woman should keep in mind that the same judge that filed a complaint against will be presiding over her case. Her grievance may be better served by waiting until after the judge makes a ruling.

The Board on Judicial Standards does not handle complaints about lawyers or federal judges. Complaints against lawyers should be directed to the Office of Lawyers Professional Responsibility at, (651) 296- 3952. See the Technical Assistance Packet on “Hiring and Working with an Attorney”

II.) The Complaint Process

Any individual, or group may file a complaint, including litigants (parties in the case), attorneys, advocates, jurors, court-watchers, court personnel, prisoners, court administrators, other judges, or anyone who has knowledge of possible judicial misconduct or wrongdoing.

If a judge has committed misconduct, file a complaint with the Board on Judicial Standards. This 10 member Board consists of one judge from the Court of Appeals, three trial judges, two lawyers, and four citizens who are not judges, retired judges, or lawyers. The members are appointed by the Governor of Minnesota and approved by the Minnesota Senate.

A complaint to the Board should be in writing. The complaint should include the name of the judge, specifically describe the judge’s conduct, the names of any witnesses or sources of information, copies of any documents or transcripts that support the allegations, and the complainant’s name and address. The complaint should be sent to the Board on Judicial Standards where it will be reviewed. See the end of this section for address and phone number.

The Board will notify the complainant that it has received the complaint and will inform the complainant of any outcome. Typically the Board will notify the judge about the complaint. The complainant name will probably not be made public unless the Board decides to issue a public reprimand or formal criminal charges are filed against the judge. However, the Board cannot promise to keep the identity of the complainant confidential, unless there is an overriding reason to do so.

Upon receiving the complaint the Board will initiate a preliminary evaluation under Rule 6(b) of the Rules of Board on Judicial Standards.¹ The evaluation’s findings will be presented to the Board to determine if a full investigation is warranted. If they determine that a full investigation is warranted they will proceed with the investigation to determine if sufficient cause exists to proceed with charges and a formal complaint against the judge. If sufficient cause to proceed is found, the Board may issue a public reprimand at this point, or it may continue the disciplinary process to the next level when a formal statement of charges will be written and served on the judge. If insufficient cause to proceed is found, the file will be closed and the judge, if notified of the complaint, will be notified that the file has been closed. However, even if there is insufficient cause to proceed and the file is closed, the Board may give the judge a warning, impose reasonable conditions on their conduct, or order professional counseling, treatment, or assistance for the judge.

If sufficient cause was found and a formal statement of charges was served on the judge, then the judge will have 20 days to respond to the allegations in person, by writing, or both. The Board may terminate the proceeding and dismiss the statement of charges after hearing the

¹ MN ST J STDS BD Rule 6(b). (Attached)

judge's response. If the complaint continues, the Board will issue a formal complaint and notice and the case will proceed to a formal hearing before a separate fact finding body. Once all the evidence has been heard by the fact finder in the formal hearing, the fact finder will make a recommendation and report its findings to the Board. The Board will review this information and then make a recommendation to the Minnesota Supreme Court about the appropriate discipline

The Board can recommend a variety of sanctions to the Minnesota Supreme Court for the judge. The Minnesota Supreme Court may sanction the judge by:

- Removal
- Forced Retirement
- Imposing discipline on them in their capacity as an attorney
- Imposing limitations/conditions on their judicial duties
- Reprimand or censure
- Imposing a civil penalty
- Suspension with or without pay
- Or any combination of the above sanctions

Once a sanction has been imposed or at the close of the case, the Board will inform you of the outcome. You should receive a letter describing the action taken.

Checklist for Filing a Complaint

- 1) Identify the judicial misconduct that was experienced. Look at the Code of Judicial Conduct or Rule 4(a) of the Rules of the Board on Judicial Standards;
- 2) Write a letter describing the judge's conduct that was improper. Include the name of the judge and your name and address;
- 3) Attach copies, not the originals, of any documentation or transcripts that support the allegations. Include a list of any witnesses or people who have knowledge that will support the allegations;
- 4) For an anonymous complaint, explain the reasons for requesting anonymity. However, The Board cannot guarantee that the name will remain anonymous throughout the proceedings.
- 5) Send the complaint, with attachments, to the Minnesota Board on Judicial Standards at:
Minnesota Board on Judicial Standards
2025 Centre Pointe Blvd. Ste 180
Mendota Heights, MN 55120

For more information and to request a copy of their brochure, call the Board at:

(651) 296-3999 or 1-800-627-3529.

Fax: (651) 688-1865

TTY: 1-800-627-3529

Or visit the website: <http://www.bjs.state.mn.us>

Minnesota Rules of Board Judicial Standards

Rule 4. Grounds for Discipline

(a) Grounds for Discipline Shall Include:

- (1) Conviction of a crime punishable as a felony under state or federal law or any crime involving moral turpitude;
- (2) A persistent failure to perform judicial duties;
- (3) Incompetence in the performance of judicial duties;
- (4) Habitual intemperance;
- (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute, including, but not limited to, discrimination against or harassment of persons on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, disability or age.
- (6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.

(b) Disposition of Criminal Charges. A conviction, acquittal or other disposition of any criminal charge filed against a judge shall not preclude action by the board with respect to the conduct upon which the charge was based.

(c) Proceedings Not Substitute for Appeal. In the absence of fraud, corrupt motive or bad faith, the board shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as understood by the judge. Claims of error shall be left to the appellate process.

Rule 6. Procedure Prior to Sufficient Cause Determination

(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.

(b) Preliminary Evaluation. Upon receipt of a complaint as to conduct that might constitute grounds for discipline, the executive secretary shall conduct a prompt, discreet and confidential evaluation. The results of all evaluations shall be routinely submitted to the board.

(c) Investigation; Discretionary Notice.

- (1) Upon review of the preliminary evaluation, or on its own motion, the board may, by resolution, authorize an investigation.
- (2) Notice that an investigation has been authorized may be given to the judge whose conduct or physical or mental condition is being investigated.

(d) Sufficient Cause Determination.

- (1) The board shall promptly consider the results of the investigation. If the board determines that there is sufficient cause to proceed; it shall either;
- (i) comply with Rule 7, or where authorized under Rule 6Z(c), proceed directly to Rule 8; or
 - (ii) if the judge's conduct was unacceptable under one of the grounds for judicial discipline that does not merit formal proceedings or further discipline by the Supreme Court, issue a public reprimand. Prior to the issuance of a public reprimand pursuant to the Rule 6(d)(1)(ii), the judge shall be served with a copy of the proposed reprimand and a notice setting forth the time within which these rules require the judge to either submit comments and criticisms or to demand a formal hearing as provided in Rule 8. Within 20 days of service of the proposed reprimand, the board shall be served with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticism of the judge regarding the proposed reprimand. If a timely demand for a formal hearing is made, the board shall comply with Rule 8. If not 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.
- (2) A finding of sufficient cause shall require the concurrence of a majority of the full board.

(e) Insufficient Cause to Proceed.

- (1) Upon determination that there is sufficient cause to proceed, the board shall promptly comply with Rule 5(a)(1). If informed of the proceeding, the judge shall also be promptly notified of its termination and the file shall be closed.
- (2) A closed file may not be referred to by the board in subsequent proceedings unless the board has proceeded according to Rule 6(d) or (f) or Rule 7.

(f) Dispositions in Lieu of Further Proceedings. Even though the board does not find sufficient cause to proceed pursuant to Rule 7, it may make any of the following dispositions, unless the underlying conduct is part of a pattern involving the same or similar conduct;

- (1) The board may warn the judge that the conduct may be cause for discipline.
- (2) the board may impose reasonable conditions on a judge's conduct.
- (3) The board may direct professional counseling, treatment or assistance for the judge.

(g) Objection to Dispositions. Any judge objecting to disposition of a complaint pursuant to Rule 6(f) may demand a full hearing before a fact finder as provided in Rule 8.

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

Rule 7. Procedure Where Sufficient Cause Found

(a) Statement of Charges.

- (1) If no reprimand is issued under Rule 6(d)(1)(ii) after a finding of sufficient cause to proceed, the executive secretary shall prepare a Statement of Charges against the judge setting forth 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 Statement of Charges. 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 of service of the Statement of Charges. A personal appearance before the board shall be permitted in lieu of or in addition to a written response. In the event that the judge elects to appear personally, a verbatim record of the proceedings shall be made.

(b) Termination after Response. The board may terminate the proceeding and dismiss the Statement of Charges following the response by the judge, or at any time thereafter, and shall in that event comply with Rule 5(a)(1) and give notice to the judge that it has found insufficient cause to proceed.

(c) Quorum. If the board elects to proceed as authorized in Rule 8, such action must be by concurrence of a majority of the full board.

Rule 11. Procedure Following Formal Hearing

(a) Submission by Factfinder. The factfinder shall submit its findings and recommendations, along with the record and transcript of testimony, to the board for review. The same materials shall also be provided to the judge under investigation.

(b) Objections to Findings. Counsel for the judge and board may submit written objections to the findings and recommendations.

(c) Review by the Board. The findings and recommendations and the hearing record shall be promptly reviewed by the board. The board may substitute its judgment for that of the factfinder.

(d) Recommended Discipline. Based on clear and convincing evidence in the hearing record, the board shall make a recommendation to the Supreme Court of any of the following sanctions:

- (1) Removal;
- (2) Retirement
- (3) Imposing discipline as an attorney;
- (4) Imposing limitations or conditions on the performance of judicial duties;
- (5) Censure;
- (6) Imposing a civil penalty;
- (7) Suspension with or without pay;
- (8) Any combination of the above sanctions.

(e) Quorum; Dissent; Dismissal.

(1) A recommendation for discipline shall be reported to the Supreme Court only if concurred in by a majority of the full board.

(2) If a majority of the full board fail to concur in a recommendation for discipline, the matter shall be dismissed.

(3) Any dissenting opinion shall be transmitted to the Supreme Court with the majority decision.