STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL STANDARDS

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 12, 1995 at 9:00 a.m., to consider the recommendation of the Supreme Court Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards to amend the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. A copy of the proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before April 7, 1995, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 7, 1995.

Dated: February 8, 1995

BY THE COURT:

A.M. Keith
Chief Justice

THOMAS R. BUTLER
Judge of District Court
Third Judicial District

Freeborn County Courthouse
Albert Lea, Minnesota 56007
(507) 377-5153

April 4, 1995

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Hearing on Code of Judicial Conduct
C4-85-697

Dear Mr. Grittner:

Enclosed herewith for filing in the usual manner is original and twelve copies of my written commentary with respect to the Report of the Supreme Court Advisory Committee to review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. Please distribute appropriately.

I believe there has been correspondence directed to you from Mike Johnson requesting the opportunity for myself and Lawrence M. Redmond to address the Court at the hearing scheduled for April 12.

Very truly yours,

Thomas R. Butler

STATE OF MINNESOTA

IN SUPREME COURT

C4-85-697

In re: Hearing to Consider Proposed Amendments to the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards

****

REPORT TO THE SUPREME COURT
prepared by
Hon. Thomas R. Butler, Chair,
Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board of Judicial Standards

Honorable Chief Justice and Honorable Justices of this Court:

It is my privilege to submit this written report to you on the work completed by the committee you established to review our Minnesota Code of Judicial Conduct and the rules and procedures of the Board of Judicial Standards in light of the 1990 ABA Proposed Code and rules and procedures. I speak as the chairman of this committee; I have the additional perspective of a member of the Board of Judicial Standards. Our committee met 13 times and conducted a public hearing on the proposals before finally

submitting our recommendations. We had input at our several meetings and at the public hearing from various interested persons and organizations.

I would like to take a few minutes to review the various sections of both the Code and the procedural rules. First, however, there are some changes which affect the code throughout its entirety. Two such changes immediately come to mind.

SHOULD - SHALL

There is what we have, within our discussions, described as the SHOULD - SHALL issue. The Code which was adopted many years ago phrased all of the canons in the "should" context. For the most part, the ABA proposal phrases them in the "shall" context. This was an issue which generated much discussion throughout our meetings. The final consensus was that we would use the word "shall" in most areas, and, in a few areas, the "should." It was particularly noted that the members of the Board of Judicial Conduct do consider the obligations in the "shall" context, even though stated in the "should" context. It was also believed that the public perception of the Code is that a judge must follow the canons, rather than should follow them. Further, it was believed that generally judges believed the same. Those persons who were on the Board, either presently or in the past, could remember no instance when the "should-shall" issue was raised by any judge who has been before the Board on any allegations of a violation of the

canons. Thus, the final decision of the committee was to use the word "shall" in most contexts.

COMMENTARY

The other major change which is throughout the Code is the addition of "Commentary." The "Commentary" was added to assist the general public, lawyers and judges in understanding what was meant in the canon. Like in other areas, such as the Rules of Civil Procedure or the Rules of Criminal Procedure, the commentary is intended to assist in the understanding of the provisions of the Code, and would not necessarily be legally binding on the judges.

PREAMBLE AND TERMINOLOGY

The proposal on the Code of Judicial Conduct which we have presented to you for your consideration has two other significant differences. It contains a Preamble and Terminology, which is an extensive list of definitions. Many of these definitions were contained in the existing Code throughout the text of the Code; they are all now gathered together at the beginning, with asterisks throughout where the defined words are used, so one studying the Code can immediately be aware that a "word of art" is being used. Both the Preamble and the Terminology sections are intended to assist all in the understanding and interpretation of what follows.

I will go through the various canons with the intention of pointing out various provisions which are changed or where the

committee believed there should be some clarification. If no comment is made with respect to a provision, it is done because there was no significant change, or that there may have been only cosmetic change.

LETTERS OF RECOMMENDATION

Canon 2(B) also is essentially unchanged. There is some reference in the Commentary on two issues on which there is repeated inquiry to the Board. This is in the area of letters of recommendation and participation in the judicial selection process. The Commentary on these issues should certainly assist judges in these specific areas.

INVIDIOUS DISCRIMINATION

Canon 2(C) provides that a judge "shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin." On the surface, this is a provision which is subject to various interpretations. The Commentary is particularly important in considering what is meant. It was subject to much discussion within the committee and it was ultimately decided that the Commentary, with the cases described there, is sufficient for a judge to determine whether his membership in a particular organization would violate this Canon. It should also be noted that the Committee was of the opinion that membership in any organization engaging in conduct prohibited by law, such as the Minnesota Human Rights Act, would be considered a

violation of this particular section of the Code. This is noted in the Commentary so the judge will understand the thoughts of the Committee.

EX PARTE COMMUNICATIONS

Canon 3(A) is essentially unchanged, except for some provisions in Canon 3(A)(7) for ex parte communications in certain restricted areas, primarily for scheduling and administrative purposes, not dealing with substantive matters. This is probably an area where judges have been having this limited ex parte contact and it is now approved so long as other parties are notified promptly of the contact and are afforded the opportunity to respond, if so desired.

COMMENT - PENDING PROCEEDINGS

Canon 3(A)(8) retains the proscriptions of our existing Code that a judge must refrain from comment on "a pending or impending proceeding in any court." The ABA proposal did allow for some comment, but the committee believed that our existing language was very explicit and understandable and the language of the ABA proposal was open to such varied interpretation as to make it very difficult for the judge to understand or the Board to enforce.

REPORTS OF IMPROPER CONDUCT

In Canon 3(C), the committee recommends the adoption of the present language of our Code, rather than the ABA language. It was

believed that our existing language created a greater obligation on the judge to report improper conduct than does that of the ABA proposal.

CONSOLIDATION - CANON 4

Canon 4 is significantly changed in that there has been a consolidation of existing Canons 4, 5, & 6 into the proposed Canon 4.

SOLICITATION OF FUNDS

Canon 4(C), covering Governmental, Civic or Charitable Activities, retains an absolute proscription which is in our existing Code, but an activity which would be permitted in the ABA proposal in a very limited manner. This is in the area of solicitation of funds. We have had an absolute rule with respect to this issue. No solicitation is permissible. The ABA proposal suggested allowing judges to solicit other judges and to participate in the planning of fund-raising. It was felt by the committee that the existing absolute rule was in the best interests of all concerned.

INVESTMENT DECISIONS - CHARITABLE AND CIVIC

Our recommended Canon 4(C) does make one change, which was contained in the ABA proposal, in that it now permits the judge to assist in making investment decisions for a charitable or civic

organization, so long as it does not conflict with any other provisions of the Code.

BUSINESS INVOLVEMENT

Canon 4(D), covering Financial Activities, is not significantly changed. One particular provision does deserve comment, namely Canon 4(D)(3). Our existing Code prohibits involvement as an "officer, director, manager, advisor or employee of any business." See 5(C)(2). The ABA proposal does permit limited participation in a "closely held" family business. Again, the Board would have the responsibility of interpreting what is a "closely held" family business. Would, for example, Cargill be considered a "closely held" family business. Again, the definite proscription was considered the better alternative. Other considerations were the imposition upon the judge's time when he should be engaging in his primary calling, that is, being a judge; possible conflicts and disqualifications which would impose on the judge's colleagues in any location; and the potential misuse of the prestige of judicial office. All of these came down on the side of retaining the present proscription.

FAMILY MEMBERS - GIFTS

Canon 4(D)(5) covers an issue which would probably be unenforceable as presently stated. Present Canon 5(C)(4) prohibits the judge or any family member from accepting any gifts, except in certain limited circumstances. This kind of absolute prohibition

requires a judge to demand from a spouse and family members living at home that they not accept impermissible gifts. This is a mandate which could be very hard to enforce. The proposed Canon 4(D)(5) requires that a judge "shall urge" such family members to refuse such impermissible gifts. This is a much more logical application because there is not always the control necessary to adhere to the existing mandate.

CONSERVATOR and PERSONAL REPRESENTATIVE

Canon 4(E) is virtually unchanged, except to add some fiduciary names which were not in existence at the time of the adoption of the existing code, such is, conservator and personal representative.

PRACTICE OF LAW

Canon 4(G) is changed in that it does permit certain activities on the part of a judge. It retains the general proscription against the practice of law. It does, however, under the recommended change, permit a judge to advise family members on legal questions, draft and review documents, but the judge may not appear on their behalf in any legal proceeding. This is simply a recognition of what has probably occurred to each of us in our judicial careers. This Canon retains the provision that a judge may continue to act pro se in their own affairs.

Canon 4(I) retains a judge's right to privacy in the judge's own personal financial affairs, except as they may affect the

performance of a judge's duties. The judge must be aware, however, of the obligation to recuse oneself where a potential conflict of interest may arise.

CAMPAIGN COMMENT

Canon 5, dealing with political activity contains some significant changes. The most significant has to do with the issue of "campaign comment" Our existing Code, in Canon 7(B)(1)(c), states that a judge "should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact." Proposed Canon 5(A)(3)(d)(ii) changes the second proscription in the existing code from "announce his or her views on disputed legal or political issues" to "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."

The existing proscription has been a hotly debated issue throughout the country. It has been challenged, and challenged successfully, as a violation of the candidate's First Amendment right of Free Speech. See Buckley vs. Illinois Judicial Inquiry Board, 997 F.2d 224 (7th Cir. 1993); J.C.J.D. vs. R.J.C.R., 803 S.W.2d 953 (Ky. 1991). In each of these cases, the provision being challenged is essentially the same as that we now have in Minnesota. Subsequently, the Kentucky Supreme Court adopted the

language of the ABA proposed code, which we here recommend. This language, too, was challenged, in Ackerson vs. Kentucky Retirement and Removal Commission, 776 F.Supp. 309 (W.D. Kentucky, 1991). In Ackerson, the Court indicated that the new language, limiting the restriction to issues "likely to come before the court," is "sufficiently and closely drawn so as to avoid unnecessary abridgement of a judicial candidate's right of free speech during the campaign."

It should be noted that a case in the Third Circuit has upheld a rule which is almost an identically worded rule to our existing rule by using a very narrow construction of the rule. See Stretton vs. Disciplinary Board, 994 F.2d 137 (3rd Cir. 1991). In Buckley, however, the Court dismissed the reasoning used in Stretton.

There has been considerable debate among our judges since the report was distributed last summer. Many of the questions which have been raised have merit. I believe you will hear from others on this issue at the hearing. I will leave it to them to state their case.

This issue was the subject of much discussion within the committee during our deliberations. We ultimately came down on the side of the ABA proposal for the following reasons:

1. The constitutionality of our present language is still up in the air; it is clear that at some time the issue will be further litigated. It appears that the proposed language is constitutional and is, therefore, to be recommended.

2. Disciplinary proceedings under the proposed language would be rare. A candidate may be able to say what his views are on the various issues so long as he states that, if elected, he would decide the issue based on the law of the land.

3. Difficulty of prosecution must be balanced against the need of the voting public for knowledge of their judicial candidates. The ABA proposal attempts to strike that balance.

4. Disciplinary proceedings for violation of the existing rule could not be completed within the time frames of the elections. A statement, which would be in violation of the existing rule, made in the last days of the campaign could turn the tide of the election and no disciplinary proceeding could even be commenced before election day has passed.

5. In two recent cases here in Minnesota, where it was alleged that the lawyer candidate violated the existing rule, the lawyer's disciplinary board, which is charged to discipline a lawyer candidate for violations of the Code of Judicial Conduct during elections, took no action against the lawyer candidate, citing the Buckley case. This could result in a judge being sanctioned before the Board of Judicial Standards for conduct on which the lawyers' board might take no action. The effect of this is that, unless an accommodation is reached between the two boards, there would be unequal treatment based upon the status of the candidate making the statements.

6. The economic resources of both the lawyers' board and the judges' board are such it would be financially difficult to defend

the current language. The Board of Judicial Standards is an agency of the executive branch; it is believed by members of that Board that an appropriation, either directly from the legislature or in the executive branch budget, to prosecute an appeal on the issue would be hard to come by.

For these various reasons, and because of the belief that the existing language would be found to be unconstitutional as a violation of the candidate's First Amendment right of free speech, while the ABA language would be found to be constitutional, the committee has come down on the side of the ABA proposed language.

APPOINTMENT TO JUDICIAL OFFICE

Canon 5(B) creates certain obligations on a candidate seeking appointment to judicial office, not previously contained in our existing Code. These were simple restrictions and are self-explanatory, not requiring further comment at this time.

CAMPAIGN COMMITTEES

Canon 5(C) retains the proscription against a candidate for judicial election from personally soliciting funds or personally seeking endorsements. As before, the candidate may establish committees which are permitted to solicit funds and seek endorsements. It is proposed that additional obligations be added, that is, the committees should, and, in this instance, the wording is should, not shall, not disclose the identity of contributors to the candidate. There are further restrictions during which

fund-raising activities are limited to a period of one year prior to elections and to be concluded 90 days after the elections.

RULES - DISCLOSURE

Turning to the proposed Rules of the Board, there are several areas on which I should comment. The first area is the issue of public disclosure of discipline. Under the existing rules, discipline is not disclosed until a filing of the formal complaint with the Supreme Court. Short of that, a disclosure, even to the original complaining party, was virtually impossible, except by agreement with the disciplined judge. Such an agreement has been used occasionally by the Board, but usually under the threat to the offending judge of a filing with the Supreme Court. It was the unanimous belief that such lack of disclosure was indefensible in our world today. All other self-regulating professional groups are disclosing discipline imposed upon members of their profession. Openness is the order of the day. To maintain the present secrecy in the discipline process simply could not be done any longer. Such secrecy failed to promote public confidence in the disciplinary process. Thus, except in limited situations, it is proposed that discipline will be disclosed in the future under the proposed revisions.

It was, however, agreed that when the problem bringing the judge to the attention of the Board is a medical or emotional problem which can be dealt with by some form of counselling that it would be in the best interests of all parties, including the

public, to maintain the possibility of privacy. It was felt on those limited occasions judges would be more cooperative in abiding by conditions if some element of privacy be maintained. It is important to note that if there is a re-occurrence of the same conduct, there can and must be public disclosure of any further discipline.

Other changes provide that conditions imposed upon a judge may be disclosed to the Chief Justice, the judge's chief judge and district administrator in order to assist in monitoring the future conduct of the errant judge.

DISCOVERY and SUBPOENA

Significant changes were made in the area of discovery and subpoena powers. In the area of discovery and subpoena, there was much discussion, surrounding the abuses of these procedures. It was generally agreed by the committee members, that **Discovery** should be limited to that which is generally covered by the Criminal Rules of Procedure, that is, revealing names and addresses of potential witnesses and persons known to have relevant information, exchanges of witness lists, exchange of documents to be offered at hearings, and the exchange of other relevant information. Specifically, the Board must disclose all exculpatory information. Extensive discovery, similar to that permitted under the Civil Rules, would result in delay, excessive costs, and abuse of the entire disciplinary process. The committee believed the limited discovery would hold down costs for all involved, permit

the process to move forward, and yet, afford the judge all of the judge's due process rights.

With respect to the power of **Subpoena**, the committee was aware of the past abuses. Under this proposal, the board may authorize the executive secretary to seek a subpoena, by making application to the Ramsey County District Court for the issuance of a subpoena. There is, therefore, several checks on the subpoena power, i. e., the decision and request of the executive secretary, the resolution of the Board, and the discretion of the Ramsey County court.

AMENDMENTS

Another significant change in the Rules would be the authority in the Board to make substantive amendments in the formal complaint, with the understanding the judge would be granted adequate time to prepare to meet any new charges. Past experience shows that many times additional complaints come forward after there has been some public disclosure of proceedings against a judge. Permitting amendment would allow all parties to have all of the issues on the table at any time during the proceedings, rather than to require the process to start all over again from "square one."

TWO-TIERED BOARD

One last issue which I believe deserves comment. Our committee did consider the so-called two-tiered approach recommended by the ABA committee, that is, a separation of the

investigation and the fact-finding functions. It was believed that the basic system which has been in place in Minnesota for the past twenty some years has worked and has afforded the challenged judge full protection of the judge's rights of due process. Initially, the Board does the investigation and the charging process after there is a determination of probable cause. Thereafter, the matter is referred to the Supreme Court and, thereafter, to a fact-finding panel. Any discipline, short of a formal complaint, permits the judge to request a formal complaint and referral to an independent fact-finding panel. The judge always has the opportunity to have a full hearing before an independent fact-finder.

The committee did consider having the report of the fact-finder go directly to the Supreme Court, cutting out the referral of the fact-finder's report to the Board. It was believed, however, that the Administrative Procedures Act required such review and some formal action by the Board. Thus, that step has been retained by necessity.

CLOSING

These comments generally cover the major and significant changes in both the canons and the rules which have been recommended by the committee. This information has been covered more fully in the Final Report of the committee which was submitted on June 29, 1994, and I would refer you to that report which may answer any questions. I submit this report in writing in order that I could touch on all of the areas where I believe there has

been a significant change in either in the Code or the Rules. I will be presenting an oral statement at the time of the hearing on April 12. I would then welcome any questions which you may have with respect to the recommendations of your committee.

Dated: April 4, 1995

Respectfully Submitted,

Hon. Thomas R. Butler, Chair

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE BRUCE R. DOUGLAS

DISTRICT COUNTIES
WRIGHT — ANOKA
SHERBURNE — CHISAGO
PINE — ISANTI
WASHINGTON — KANABEC

P.O. Box 207
Buffalo, MN 55313
Chambers - Wright County
612-682-3900
Metro 339-6881

C4-85-697

IN RE PROPOSED AMENDMENTS TO CODE OF JUDICIAL CONDUCT AND RULES OF THE BOARD ON JUDICIAL STANDARDS

REQUEST TO MAKE AN ORAL PRESENTATION ON BEHALF OF THE MINNESOTA DISTRICT JUDGES ASSOCIATION REGARDING PROPOSED CANON 5A(3)(d)

I, Bruce R. Douglas, do represent to this Court that I am a district court judge of the Tenth Judicial District and that I have been authorized by the Minnesota District Judges Association, in meeting on December 8, 1994, to speak on behalf of the Association regarding the proposed amendment to present Canon 7B(1)(c), proposed Canon 5A(3)(d) at the Court hearing scheduled on April 12, 1995, and that I have attached written copies of the material to be presented;

WHEREFORE, I pray that this request for oral presentation be granted.

Bruce R. Douglas
Judge of District Court
Tenth Judicial District
Wright County Courthouse
P.O. Box 207
Buffalo, Minnesota 55313

C4-85-697

IN RE PROPOSED AMENDMENTS TO CODE OF JUDICIAL CONDUCT AND RULES OF THE BOARD ON JUDICIAL STANDARDS

RECOMMENDATION OF THE MINNESOTA DISTRICT JUDGES ASSOCIATION REGARDING PROPOSED CANON 5A(3)(d)

The Minnesota District Judges Association respectfully requests that the proposed amendment to the rules, Canon 5A(3)(d), relating to the scope of political speech in the conduct of a judicial election campaign, be tabled for further study and public comment and that the current rule, Canon 7B(1)(c) be continued until such time as a more appropriate rule may be drafted and adopted.

The proposed rule, if adopted, would have serious implications for the manner in which judicial campaigns are conducted in the state of Minnesota and would seriously affect the independence and integrity of the judicial system. It would have the affect of "politicizing" Minnesota's judicial elections, contrary to long-standing legal, social, and historical policy. It is essential, if public confidence in the judiciary is to be maintained, to strike a proper balance between protected First Amendment speech and the state's interest in maintaining the integrity and independence of its judicial system. The proposed rule does not do that.

As the United States Supreme Court noted in United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973), a case involving restrictions on political campaigning by federal employees under the Hatch Act, not only should governmental employees "in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it." *Id.*, at 565, 93 S.Ct. at 2890. (Cited in Stretton v. Disciplinary Board of the Supreme Court of Pennsylvania, 944 F.2d 137 (3rd Cir. 1991).) It is even more critical in the case of judges. The entire Code of Judicial Conduct is directed to protecting the integrity and independence of the judiciary (Canon 1), to avoiding even the appearance of impropriety (Canon 2), and to performing the duties of office impartially (Canon 3). The proposed rule, however, provides little limitation on free expression for judicial candidates and, as a result, places the state's interest **in jeopardy. As the comments to the rule state:**

> Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views.

The significant problems that arise from this rule are found in the two qualifiers used in the Commentary. First, a candidate must avoid statements that "appear" to commit the candidate regarding cases, controversies and issues. Second, the candidate must in some way know that such cases, controversies and issues are "likely" to come before the court. The disingenuous candidate is then invited to avoid any sanctions under the rule by explaining his or her duty to uphold the law regardless of personal views.

As a result of these problems, we have the spectre of judicial candidates squabbling over whether any statement by a competing candidate did or did not appear to make a commitment regarding cases, controversies, or issues, a squabble which the Board as presently constituted is ill-suited to resolve in the two or three months of an active campaign. We have the possibility of a judicial candidate making statements that may, in the public mind, commit them to a particular course of conduct once in office, even though such conduct would violate the oath of office. We have the possibility of a judicial candidate, once elected, of feeling pressured because of statements made, explicit or implicit, to rule in a certain way. We also have the possibility of lawyers objecting to having judges hear certain cases because of positions on general policy, including sentencing guidelines, capital punishment or abortion, taken during a campaign.

The judicial candidate is also placed in the unenviable position of predicting what cases are likely to come before him or her in the future. If the prediction is incorrect, will the board impose sanctions? In a recent Kentucky case, Deters v. Judicial Retirement and Removal Commission, 873 S.W.2d 200 (1994) *cert.den.* 115 S.Ct. 194 (1994) involving the same language as the proposed amendment, a candidate was sanctioned for using the words "Pro-Life Candidate" on his campaign literature. He contended that abortion was not an issue that was likely to come before the court in the area he ran for election, since no abortion-related cases had been filed in that court in over a decade. He was sanctioned by the Kentucky Supreme Court because there were circumstances in which he may have been required to rule on such cases. We are left to wonder what sanctions could be imposed if he had indicated that he was the pro-life candidate but would rule on any abortion cases coming before him as current law provided.

Where then does the proposed rule enhance the independence and integrity of the state judicial system? How does a judicial candidate, in the absence of a "bright line" rule, conduct a campaign that promotes impartiality and the appearance of impartiality? How does the candidate avoid accidental violation of the rule? How is the disingenuous violation ever to be sanctioned? And, ultimately, is this rule enforceable as written?

Minnesota has a long history of non-partisan judicial elections, elections in which the judge runs solely upon his or her qualifications for office, and not upon political affiliations. Such elections protect the integrity of the judicial process and assure that it shall not be held hostage to political forces. Every case in which the constitutionality of the "political speech" provision has been litigated recognizes that the state has a compelling interest in restricting free speech in judicial elections to avoid hampering the judge's ability to make an impartial

decision and to avoid undermining the credibility not merely of the judge but of the judiciary as a whole in the eyes of the public. A judge is unlike a legislator or constitutional officer. A legislator can continue to operate a business or a farm, teach, or practice law or engage in whatever other economic pursuits he or she wishes. A constitutional officer can continue to be active in his or her political party. Upon appointment or election, a judge is expected to surrender his or her economic life and political life. This severing is necessary to protect the independence of the judiciary, in order that judges may not be influenced by interest in the economic or political outcomes of cases brought before the court. It is necessary to the integrity of the judicial system to ensure that the judge's decisions are impartial in the eyes of the community.

A study of the manner in which judges are elected throughout the United States indicates that our present method of judicial selection in Minnesota, which generally consists of an appointment by the governor, with subsequent confirmation by a district-wide non-partisan election and then re-confirmation every six years by non-partisan election, was one of the best methods of electing judges in the nation. It balances both the need for judicial independence and the need for public accountability. It promotes public confidence in the judiciary and provides for removal of judges by contested election. It avoids political favoritism, political opportunism, and political pay-back. It cannot be argued that judges are not contested in elections, as our last election shows. But the elections were contested on the qualifications and fitness of the candidates for office, and not on emotional reaction to factional issues removed from the daily realities of judicial office, and not affiliation with political parties.

The provisions of present Canon 7B(1)(c) play an integral role in ensuring the public confidence in the impartiality and independence of its judiciary. Although the prohibition is broad, we would contend that it is not overbroad. Judges remain free to discuss their qualifications for office, including educational background and legal experience and expertise (See proposed Canon 5A(3)(d)(iii), present Canon 7B(1)(c)). They may discuss in general terms the legal system and improvements to the administration of justice (See proposed Canon 4B). They may not allow political relationships to influence judicial conduct or judgement (See proposed Canon 2B). They must act "in a manner consistent with the integrity and independence of the judiciary" (See proposed Canon 5A(3)(a)). In short, the Canons, read *in pari materia*, do provide a sufficient breadth of speech to allow the voters to be informed as to judicial qualifications without being so broad as to destroy the integrity and independence of the judiciary of the state of Minnesota. Such a position supported a finding of constitutionality in the case of Stretton v. Disciplinary Board of the Supreme Court of Pennsylvania, op. cit.

Given the constitutional history of Canon 7B(1)(c), the Court may wish to further define the limits of free speech as provided by that Canon. We would suggest that it has until July, 1996, to do so, when filings for judicial elections next occur. However, in the interests of maintaining the independence and integrity of the judiciary and of the public it serves it should not adopt the amendment proposed by the Advisory Committee.

The Minnesota District Judges Association continues to be concerned about inequity in the treatment of judicial and non-judicial candidates in contested judicial elections. As the rule-making body for both the Lawyers' Professional Responsibility Board and the Board on Judicial Standards, this Court has both the authority and the responsibility to see that judicial election campaigns are conducted on a level playing field. It must be clear to non-judicial candidates that real and meaningful sanctions do exist for their violation of the Code of Judicial Conduct in the conduct of a campaign. We would refer you to the recent South Dakota case In the Matter of Hopewell, 507 N.W.2d 911 (S.D. 1993), in which the non-judicial candidate engaged in egregious behavior during the campaign. In imposing sanctions, the South Dakota court stated that campaigns are not "verbal free fire zones, with no rules or laws, save only the law of the jungle" and that "[a]ny candidate for judicial office, incumbent or challenger, who engages in this type of conduct may find their judicial career involuntarily concluded and their attorney's license in jeopardy." Id. at 917. As a general case on what can happen when speech is unrestricted in judicial campaigns, this case may also provide valuable insight.

Dated:

MINNESOTA DISTRICT JUDGES ASSOCIATION

By _____
Hon. Bruce Douglas

Prepared by:

Stephen E. Forestell, Esq.
Attorney No. 30892
1190 Benton Way
Arden Hills, MN 55112

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

STEPHEN L. MUEHLBERG
JUDGE OF DISTRICT COURT

CHAMBERS
ANOKA COUNTY COURTHOUSE
ANOKA, MINNESOTA 55303
(612) 422-7440

March 31, 1995

Mr. Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

RE: April 12, 1995, Hearing to Consider Proposed Amendments to the Code of Judicial Conduct and the Minnesota Board of Judicial Standards
Court File No. C4-85-697

Dear Mr. Grittner:

This is an original and twelve copies of my written presentation to the court concerning the proposed amendments to the Code of Judicial Conduct.

I will be unable to be present to make an oral presentation because of prior scheduling commitments and will be out of the state until April 17, 1995.

MAY IT PLEASE THE COURT:

In my opinion, and I believe in the opinion of the judges of Minnesota, political speech is the most important issue raised by the proposed code. The proposed language was recommended because:

(1) the existing language has been held unconstitutional in several cases;
(2) the proposed language has been held constitutional in two jurisdictions; and
(3) the office of the Attorney General of Minnesota believes that it cannot successfully defend the constitutionality of the existing provision, but that the proposed language will survive a constitutional challenge.

If the proposed language is adopted, it is widely believed that there will be more contested judicial elections where the challengers take positions which essentially promise how they would decide certain issues. See Deters v. Judicial Retirement and Removal Commission, 873 S.W.2d 200 (Ky. 1994), *cert. den.* 115 S.Ct. 194 (October 3, 1994).

But, if the proposed language is not adopted and the existing language is retained, there will be a double standard. The Judicial Standards Board will be asked to enforce the present rule which prohibits judges from discussing their views "on disputed legal or political issues." Meanwhile, challengers campaigning against judges will be able to speak out on such topics because (after the Advisory Committee's report) the Attorney General apparently advised the Lawyers Professional Responsibility Board that the existing provision is unconstitutional and unenforceable. The Attorney General's office also apparently advised the Lawyer's Board not to take action where such campaign speech was used by a lawyer candidate. This double standard is, of course, unacceptable.

Thus, if the proposed language is to be adopted there must be clarification of its intent. Perhaps the Supreme Court should, in a comment, adopt language similar to that from a recent South Dakota case. I respectfully refer to In the Matter of Hopewell, 507 N.W.2d 911 (S.D. 1993). The Hopewell court states:

> Judicial campaigns are not verbal free fire zones, with no rules or laws, save only the law of the jungle. Any candidate for judicial office, incumbent or challenger, who engages in this type of conduct may find their judicial career involuntarily concluded and their attorney's license in jeopardy.

Id. at 917.

Another problem arises. As the Court is well aware, sanctions may be imposed for attempting to enforce an unconstitutional rule. Thus, moving the disciplinary jurisdiction for judicial candidates from the Lawyer's Board to the Judicial Standards Board, as some may have suggested, might not solve the problem.

In conclusion, in order to ensure orderly judicial elections, the solution may be to ask the legislature to amend our judicial election statutes. A process similar to the Missouri plan, where judges run on their records against themselves for retention, rather than the present system which appears to be moving toward an undesirable political election process, may be the answer.

I respectfully urge the Court to make an early decision so the 1996 judicial election process may be as orderly and professional as possible.

Respectfully Submitted,

Stephen L. Muehlberg
Judge of District Court
Tenth Judicial District

STATE OF MINNESOTA

IN SUPREME COURT

RE: PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL STANDARDS

REQUEST FOR AN ORAL PRESENTATION

File No. C4-85-697

TO: THE SUPREME COURT,

LAUREN K. MAKER, hereby requests an opportunity to make an Oral Presentation to the Supreme Court on the proposed amendments to the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards.

Dated: April 7, 1995

Lauren K. Maker
Attorney at Law
1025 West Broadway
Minneapolis, MN 55411
(612) 521-6980
Attorney Reg. No. 126329

STATE OF MINNESOTA

IN SUPREME COURT

RE: PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL STANDARDS

ORAL PRESENTION OF LAUREN K. MAKER

File No. C4-85-697

TO: THE SUPREME COURT,

I urge the Court to adopt the proposed Canon 5 on judicial elections. While the changes suggested are a very modest departure from the current Canon 7, I believe their adoption will signal an important and necessary change in attitude toward judicial elections.

The intent of the restrictions on free speech in current Canon 7 is to bring a sense of judicial decorum to contested judicial elections, hopefully to prevent those races from turning into the mudslinging, name calling free-for-alls that are increasingly common in electoral politics. Canon 7 has served that end well.

Unfortunately, Canon 7 has also had the side effect of chilling all free speech rights associated with judicial elections. The press gives little or no coverage to these races, because, as one reporter told me, all the candidates can say is that they are qualified and they will be fair. Even the League of Women Voters was hesitant to hold a candidates' forum for judicial races, because it was perceived that Canon 7 prevented them from asking about any issues of substance from the candidates.

While there is actually a fairly wide latitude of public discussion that can occur in judicial races, the perception of Canon 7 prevents that from occurring. Proposed Canon 5 retains the current

safeguards on "unjudicious" comments by candidates, while opening the door to a frank public discussion of pertinent issues in judicial campaigns.

The cornerstone to a true democracy is the free exercise of universal franchise by an educated and informed electorate. Without information, voters are blindly voting for or against incumbent judges, probably based on name recognition and surname ethnicity. There is no merit to maintaining a system of questionable constitutionality that serves only to stiffle free speech and public debate. Proposed Canon 5 would be a step in the right direction of informing the electorate while preserving judicial demeanor. I urge the Court to adopt this change.

Respectfully submitted,

Dated: April 7, 1995

Lauren K. Maker
Attorney at Law
1025 West Broadway
Minneapolis, MN 55411
(612) 521-6980
Attorney Reg. No. 126329

MINNESOTA BOARD ON JUDICIAL STANDARDS

2025 CENTRE POINTE BOULEVARD
SUITE 420
MENDOTA HEIGHTS, MINNESOTA 55120

DePAUL WILLETTE
EXECUTIVE SECRETARY

DEBORAH K. FLANAGAN
ADMINISTRATIVE ASSISTANT

612-296-3999
FAX NO. ON REQUEST

April 4, 1995

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: HEARING ON PROPOSED CHANGES TO CODE OF JUDICIAL CONDUCT AND RULES OF THE BOARD ON JUDICIAL STANDARDS; #C4-85-697

Dear Mr. Grittner:

The Board on Judicial Standards hereby requests an opportunity to make an oral presentation, through its chair Robert Johnson, to the Minnesota Supreme Court at the April 12, 1995, hearing regarding the proposed changes to the Minnesota Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. A total of twelve copies of this correspondence is enclosed.

Two board members and a staff person were actively involved in the work of the Committee. The Board did review and comment on the changes proposed by the Committee during its deliberations. The final draft was reviewed by the Board before its submission to the Court.

The Board on Judicial Standards unanimously supports the Report of the Committee. The Board believes the use of "shall" rather than "should" in the Code and the addition of the "commentary" will make the Code stronger and will increase its understanding by both the judiciary and the public. It strongly supports the changes requiring public disclosure of discipline issued by the Board while preserving the confidentiality of a warning. The Board supports authorizing a citizen, who not a judge, retired judge or lawyer, to sit as a factfinder during the public hearing stage of a proceeding against a judge. The Board specifically requested the authority to seek a subpoena during the investigative stage, only

after Board approval and application to Ramsey County District Court. Many agencies, both public and private, refuse to furnish information unless they are served with a subpoena.

Finally, the Board supports the language modification on judicial election speech. This is a change that does concern the Board but in view of other states and federal court rulings which have addressed the issue, the outcome seems inevitable. Neither the Board nor, in the case of a lawyer, the Lawyers Professional Responsibility Board have the resources to defend the current restrictive language of Canon 7.

Mr. Johnson's statements will be brief and will include a general statement of support for the Advisory Committee's recommendations and a summary of the Board's participation in the Advisory Committee's efforts.

Sincerely,

DePaul Willette
Executive Secretary

DW:df

FILE NO. C4-85-697

STATE OF MINNESOTA

IN SUPREME COURT

In Re: Hearing to Consider
Proposed Amendments to the
Code of Judicial Conduct and
The Rules of the Minnesota
Board on Judicial Standards

ORAL PRESENTATION

INTRODUCTION

After the Minnesota Supreme Court's Advisory Committee filed its June 29, 1994, report with the Court recommending certain amendments to the Code of Judicial Conduct and to the Rules of the Minnesota Board on Judicial Standards, the Court Rules and Administration Committee of the Minnesota State Bar Association (MSBA) reviewed the report. Upon the recommendation of that committee, the MSBA's Board of Governors and House of Delegates, at their midyear meetings in January 1995, voted to support the adoption by the Court of all amendments proposed in the report, with one exception. On behalf of the MSBA, this recommendation and oral presentation are therefore made to the Court.

RECOMMENDATION

The Minnesota State Bar Association recommends adoption by the Court of the proposed changes to the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards as set forth in the June 29, 1994, report of the Advisory Committee, except for the proposed amendments to Canon 7(B)(1)(c), Code of Judicial Conduct, concerning permissible political speech during judicial elections (proposed Canon 5(A)(3)(d)).

COMMENT

The Advisory Committee's report and recommendations were distributed to several groups for review before the formal hearing and comment period. Two of the groups which studied the report are the District Judges Association and the Conference of Chief Judges. Both judges' groups endorsed the proposed amendments to both the procedural rules and the Code, with the exception of the Code change that would allow "political speech" during a judicial election. Both groups have recommended further study of this change before it is made. The Court Rules and Administration Committee of the MSBA voted to support the judges in this regard and accordingly, recommended that the MSBA likewise support the adoption by the Court of the June 29, 1994, report and recommendations, with the one exception.

Presently, the Minnesota Code of Judicial Conduct, Canon 7(B)(1)(c), provides that a candidate, including an incumbent judge for judicial office:

> Should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position, or other fact.

Under the Advisory Committee's report and recommendations this blanket prohibition against announcing views on disputed legal or political issues would be replaced by a prohibition that would not allow the candidate to:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualification, present position or other fact concerning the candidate or an opponent;

Proposed Canon 5(A)(3)(d).

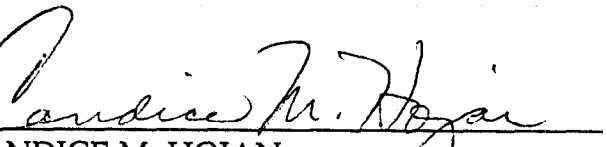
In explanation, the Advisory Committee notes that code provisions identical to the present Minnesota provision quoted above, have been successfully challenged in three of four cases as unconstitutionally vague and overbroad, while the ABA version has survived such a constitutional challenge. Further, "the Committee felt that the present Minnesota provision would clearly be challenged, and that the expense involved could be spared by adopted [sic] a less restrictive approach." Footnote 6, Advisory Committee's June 29, 1994, report.

The qualified endorsement by the District Judges Association and the Conference of Chief Judges reflects their concern that the change would politicize judicial elections and make them more expensive. No state has an extensive history under the proposed rule and there has not been any study of the possible impact on judicial elections in Minnesota if the rule is changed.

For these reasons, the MSBA recommends that the Minnesota Supreme Court adopt the amendments proposed in the June 29, 1994, report of the Advisory Committee, except for the proposed amendments to Canon 7(B)(1)(c), concerning permissible political speech during elections. It is further recommended that additional study be undertaken concerning the possible effects of changing the political speech provisions of the Code of Judicial Conduct before such a change is made.

Dated: March 31, 1995.

MINNESOTA STATE BAR ASSOCIATION

By 

CANDICE M. HOJAN
COURT RULES AND ADMINISTRATION COMMITTEE
Attorney No. 125982
Designee of the MSBA
514 Nicollet Mall, Suite 300
Minneapolis, MN 55402

MINNESOTA CONFERENCE OF CHIEF JUDGES

Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Hon. Kevin S. Burke
Chair, Conference of Chief Judges
Reply to (612) 348-4389
FAX (612) 348-5374

March 17, 1995

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

RE: Hearing to Consider Proposed Amendments to the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards

Dear Mr. Grittner:

On March 17, 1995, the Conference of Chief Judges again considered the Final Report of the Supreme Court Advisory Committee to Review the ABA Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. The Conference commended the advisory committee for its extensive efforts and endorsed the recommendations in the report with one exception. The Conference recommends that the Supreme Court give further study to the issue of judicial campaign speech before adopting any changes to Canon 7B(1)(c).

The issue of the potential impact of the proposed change to Canon 7B(1)(c) and the effect that change may have on how judicial campaigns are conducted (or not conducted) is extremely unsettling for many of the trial court judges. Clearly the issue of canon revision must be resolved before the 1996 election. However, the Conference firmly believes that more discussion by the judiciary and members of the bar will ensure that whatever decision the Minnesota Supreme Court ultimately makes will have far greater acceptance.

I respectfully request that this letter be made a part of the record for the above referenced hearing scheduled for April 12, 1995. A total of twelve copies are enclosed. Thank you.

Respectfully submitted,

Kevin S. Burke

Kevin S. Burke
Chair, Conference of Chief Judges

KSB:sjr

Enc.

State of Minnesota

HON. ELIZABETH A. HAYDEN
JUDGE OF DISTRICT COURT

SEVENTH JUDICIAL DISTRICT

STEARNS COUNTY COURTHOUSE
ST. CLOUD, MINNESOTA 56303
TELEPHONE (612) 656-3660

April 6, 1995

Frederick K. Grittner
245 Minnesota Judicial Center
25 Constitution Ave
St. Paul, MN 55155

FACSIMILE & TO FOLLOW BY MAIL

Dear Fred:

The enclosed materials are being filed on behalf of the Minnesota District Judges Association. MDJA has authorized The Honorable Bruce Douglas to serve as our representation and spokesperson. Additional information is being filed by Judge Douglas and Steve Forestell, staff person to MDJA.

Sincerely,

Elizabeth A. Hayden
President, MDJA

C4-85-697

IN RE PROPOSED AMENDMENTS TO CODE OF JUDICIAL CONDUCT AND RULES OF THE BOARD ON JUDICIAL STANDARDS

RECOMMENDATIONS OF THE MINNESOTA DISTRICT JUDGES ASSOCIATION REGARDING THE PROPOSED AMENDMENTS

The Minnesota District Judges, in meeting on December 8, 1994, upon recommendation of its Board of Directors, voted to support the adoption of the recommendations of the Minnesota Supreme Court Advisory Committee, except for the proposed amendment to present Canon 7B(1)(c), proposed Canon 5A(3)(d). The written basis for our objection to the proposed amendment are attached herewith. Judge Bruce Douglas, Tenth Judicial District, has been authorized to speak for the Association on this issue. On behalf of the Minnesota District Judges Association, these recommendations are therefore made to the Court.

Elizabeth A. Hayden

By: Hon. Elizabeth A. Hayden
President
Minnesota District Judges Association
Stearns County Courthouse
St. Cloud, MN 56303

WATCH

April 7, 1995

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Dear Mr. Grittner:

Please accept this as my request to make an oral presentation at the Hearing to Consider Proposed Amendments to the Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. I will be speaking on behalf of WATCH, a nonprofit court monitoring organization. I expect that my remarks will take 10-15 minutes.

Sincerely,

Jacquelyn Hauser

Jacquelyn J. Hauser
Executive Director

Suite 1001 Northstar East 608 Second Avenue South
Minneapolis, Minnesota 55402
612-341-2747

STATE OF MINNESOTA
IN SUPREME COURT

PROPOSED Amendment To
Rules of Board on Judicial
Standards
Petition of WATCH

WATCH responds to the Petition of the Supreme Court Advisory Committee to Review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards and Petitions this Court as follows:

Rule 6. Procedure Prior to Sufficient Cause Determination

Dispositions in Lieu of Further Proceedings.

The Rules of Board on Judicial Standards should be amended to state that a judge may receive one private warning during his or her tenure. Consequently, Rule 6(f) should be amended to read: Even though the board does not find sufficient cause to proceed pursuant to Rule 7, it may make any of the following dispositions. Except that the dispositions available under 6(f) are limited to one during a judge's tenure on the bench. Judges who have previously received a more serious sanction(s) are not entitled to a disposition under 6(f).

The reasons supporting this proposal are as follows:

1) Permitting judges to have one private warning provides them with an adequate opportunity to improve their performance. It acknowledges that even the best judges can make mistakes, particularly if they have not received adequate training.

2) Judges are elected officials and as such the public has a right to know their disciplinary record. A one warning rule is actually more lenient than the laws governing the release of all information about disciplinary matters involving most public employees. It takes into consideration that many judges become the focal point for complaints from disgruntled legal combatants.

3) A one warning rule establishes clear expectations and holds judges to a high standard of performance. Under such a rule judges would be held publicly accountable for their actions. Accountability breeds responsibility.

4) A one warning rule would establish a more open disciplinary process and consequently would enhance the public's trust in the system.

Rule 5. Confidentiality

Before Formal Complaint and Response

The Rules of Board on Judicial Standards should be amended to state that the complainant should be informed of all decisions made in response to a complaint including those which direct medical treatment, psychiatric counseling, psychological counseling, chemical dependency treatment or counseling or other forms of assistance for the judge. (The proposed rules are silent on the release of information to the complainant when medical or psychological issues are involved.) The last sentence in Rule 5(a)(1) should therefore be amended to read: The complainant shall also be promptly notified of any disposition pursuant to Rule 6(f).

The reasons supporting this proposal is as follows:

1) Judges have the authority to dramatically affect the lives of thousands of people through their decisions. Those individuals, whose cases (and lives) have been adversely affected because a judge is experiencing personal problems, should be entitled to know what the problem is and what is being done to correct it.

2) In many cases, it requires a great deal of courage and time commitment to file a complaint. It is only fair to provide the person complaining, with information about the action taken.

Public Statements by Board

The board should be required to release information on subject matter that becomes public through independent sources or through a waiver of confidentiality and should be required to release information when the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record. (The language in the proposed rule gives the board discretion as to the release of such information.) Rule 5(d)(1) should be amended in the first sentence to read: . . .the board shall issue statements in order to confirm the pendency of the investigation. . . Rule 5(d)(2) should be amended to read . . .lack of cause to proceed shall be released by the board.

The reason supporting this proposal is as follows:

1) When matters are already public, little purpose is served by the board not commenting on them. Failure to comment prompts the public to become suspicious and distrustful.

Dated: April 7, 1995

WATCH

By Jacquelyn Hauser

Jacquelyn Hauser
Executive Director

TO: Frederick Grittner

Clerk of Appellate Court

FROM: Teresa M. Graham, MSW, LICSW

DATE: April 5, 1995

RE: REQUEST TO MAKE AN ORAL PRESENTATION AT THE STATE OF MINNESOTA SUPREME COURT HEARING SCHEDULED FOR APRIL 12, 1995 TO CONSIDER PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL

C4-85-697

Pursuant to an order filed February 9, 1995, by Chief Justice Keith in the above referenced matter, I am requesting the opportunity to address the court on April 12, 1995.

Teresa M. Graham, MSW, LICSW
4837 Ewing Avenue South
Minneapolis, Minnesota 55410
927-9841

Teresa M. Graham
April 5, 1995

Attachments: 12 copies

TO: Frederick Grittner

Clerk of Appellate Court

FROM: Teresa M. Graham, MSW, LICSW

DATE: April 5, 1995

RE: MATERIAL TO BE PRESENTED IN ORAL PRESENTATION AT April 12, MINNESOTA SUPREME COURT HEARING TO CONSIDER PROPOSED PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT AND THE RULES OF THE MINNESOTA BOARD ON JUDICIAL STANDARDS

C4-85-697

Pursuant to an order filed February 9, 1995 by Chief Justice A.M. Keith in the above referenced matter, I would anticipate the scope of my testimony would touch on the following topics:

-Public access
-The Code of Judicial Conduct, including comments on proposed changes
-The Rules of the Board on Judicial Standards, including comments on proposed changes
-Conflict of interest
-Protection for complainants
-Disclosure to complainants
-Standards of conduct for judges
-Abuse of judicial authority
-Public oversight of the judiciary
-Judicial immunity

Attachments: 12 copies

April 5, 1995

Teresa M. Graham

Teresa M. Graham, MSW,LICSW
4837 Ewing Avenue South
Minneapolis, Minnesota 55410
927-9841

MSBA

**Minnesota
State Bar
Association**

514 Nicollet Mall
Suite 300
Minneapolis, MN 55402

Telephone
612-333-1183
In-state
1-800-882-MSBA
Facsimile
612-333-4927

April 4, 1995

Frederick K. Grittner
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Dear Mr. Grittner:

Please consider this a request for an oral presentation at the April 12 hearing on the recommendations of the Supreme Court Advisory Committee to review the American Bar Association Model Code of Judicial Conduct and the Rules of the Minnesota Board on Judicial Standards. Appearing on behalf of the Minnesota State Bar Association will be Candice Hojan, a member of the Minnesota State Bar Association Court Rules and Administration Committee, who will present substantive remarks representing the Association's position.

Enclosed are 12 copies of the Association's statement on the amendments to the Model Code and the Rules.

Sincerely,

Tim Groshens
Executive Director

TG:JG
Enclosures

c: Michael Galvin Jr.
Candice Hojan
Eric Magnuson