

**Rule 6Z. Complaints Involving Judges**

**(a) Jurisdiction.** The Lawyers Professional Responsibility Board has jurisdiction to consider whether discipline as a lawyer is warranted in matters involving conduct of any judge occurring prior to the assumption of judicial office and conduct of a part-time judge, including referees of conciliation court, not occurring in a judicial capacity. The Board on Judicial Standards may also exercise jurisdiction to consider whether judicial discipline is warranted in such matters.

**(b) Procedure for Conduct Occurring Prior to Assumption of Judicial Office.**

**(1) Complaint; Notice.** If either the executive secretary or the Office of Lawyers Professional Responsibility makes an inquiry or investigation, or receives a complaint, concerning the conduct of a judge occurring prior to assumption of judicial office, it shall so notify the other. Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumes judicial office.

**(2) Investigation.** Complaints of a judge's unprofessional conduct occurring prior to the judge assuming judicial office shall be investigated by the Office of Lawyers Professional Responsibility and processed pursuant to the Rules on Lawyers Professional Responsibility. The Board on Judicial Standards may suspend a related inquiry pending the outcome of the investigation and/or proceedings.

**(3) Authority of Board on Judicial Standards to Proceed Directly to Public Charges.** If probable cause has been determined under Rule 9(j)(ii) of the Rules on Lawyers Professional Responsibility or proceedings before a referee or the Supreme Court have been commenced under those rules, the Board on Judicial Standards may, after finding sufficient cause under Rule 6 of the Rules of the Board on Judicial Standards, proceed directly to the issuance of a formal complaint under Rule 8 of those rules.

**(4) Record of Lawyer Discipline Admissible in Judicial Disciplinary Proceeding.** If there is a hearing under Rule 9 or Rule 14 of the Rules on Lawyers Professional Responsibility, the record of the hearing, including the transcript, and the findings and conclusions of the panel, referee, and/or the Court shall be admissible in any hearing convened pursuant to Rule 10 of the Rules of the Board on Judicial Standards. Counsel for the judge and the Board on Judicial Standards may be permitted to introduce additional evidence, relevant to violations of the Code of Judicial Conduct, at the hearing under Rule 10.

(Added effective March 30, 1999.)

***Advisory Committee Comment - 1999 Amendment***

*Rule 6Z outlines the process for handling complaints concerning conduct by a judge before assuming judicial office. Rule 6Z(a) grants the Lawyers Professional Responsibility Board jurisdiction to consider whether such conduct warrants lawyer discipline, while the Board on Judicial Standards retains jurisdiction to consider whether the same conduct warrants judicial discipline. R.Bd.Jud.Std. 2.*

*The procedural provisions of Rule 6Z(b)(1)-(4) are identical to those in R.Bd.Jud.Stds. 6Z(a)-(d). The committee felt that repetition of the significant procedural provisions was more convenient and appropriate than a cross-reference.*

*Rule 6Z(b)(1) is identical to R.Bd.Jud.Std. 6Z(a) and requires the staff of the Lawyers Professional Responsibility Board and the Judicial Standards Board to notify each other about complaints concerning conduct by a judge occurring before the judge assumed judicial office.*

*Notice is not required if all proceedings relating to the inquiry, investigation or complaint have been resolved before the judge assumed judicial office.*

*Rule 6Z(b)(1) neither increases nor decreases the authority of the executive secretary or Office of Lawyers Professional Responsibility to investigate or act on any matter. That authority is governed by other rules. Rule 6Z(b)(1) merely establishes a mutual duty to provide notice about complaints or inquiries concerning conduct of a judge occurring before the judge assumed judicial office.*

*Although a fair number of complaints received by the executive secretary and the Office of Professional Responsibility are frivolous, there have been relatively few complaints concerning conduct occurring prior to a judge assuming judicial office. Thus, the committee believes that this procedure will not result in a needless duplication of efforts.*

*Under Rule 6Z(b)(2) and its counterpart R.Bd.Jud.Std. 6Z(b), it is contemplated that complaints about the conduct of a judge occurring prior to the judge assuming judicial office will be investigated in the first instance by the Office of Lawyers Professional Responsibility, and the results would be disclosed to the Board on Judicial Standards. R.Bd.Jud.Std. 5(a)(4); R.L.Prof.Resp. 20(a)(10). This allows for efficient and effective use of investigative resources by both disciplinary boards.*

*Rule 6Z(b)(3) is identical to R.Bd.Jud.Std. 6Z(c) and authorizes the Board on Judicial Standards to proceed directly to issuance of a formal complaint under R.Bd.Jud.Std. 8 when there has been a related public proceeding under the Rules on Lawyers Professional Responsibility involving conduct of a judge that occurred prior to the judge assuming judicial office. In these circumstances the procedure under R.Bd.Jud.Std. 7 may only serve to delay the judicial disciplinary process.*

*Rule 6Z(b)(3) does not prohibit the Board on Judicial Standards from proceeding to public disciplinary proceedings in cases in which only private discipline (e.g., an admonition) has been imposed under the Rules on Lawyers Professional Responsibility for conduct of a judge occurring prior to the judge assuming judicial office. In these cases, the Board on Judicial Standards would be required to follow R.Bd.Jud.Std. 7 (unless, of course, the matter is resolved earlier, for example, by dismissal or public reprimand).*

*Rule 6Z(b)(4) is identical to R.Bd.Jud.Std. 6Z(d) and authorizes the use of the hearing record and the findings and recommendations of the lawyer disciplinary process in the judicial disciplinary process. This is intended to streamline the judicial disciplinary hearing when there has already been a formal fact finding hearing in the lawyer disciplinary process, and permits the Supreme Court to rule on both disciplinary matters as quickly as possible.*

*Under Rule 6Z(b)(4) it is contemplated that the hearing record and the findings and conclusions of the lawyer disciplinary process will be the first evidence introduced in the judicial disciplinary hearing. Counsel for the Board on Judicial Standards and the judge may be permitted to introduce additional evidence relevant to alleged Code of Judicial Conduct violations at the judicial disciplinary hearing. Counsel must be aware that there may be situations in which the introduction of additional evidence will not be permitted. See, e.g., *In re Gillard*, 260 N.W.2d 562, 564 (Minn. 1977) (after review of hearing record and findings and conclusions from lawyer disciplinary process, Supreme Court ruled that findings would not be subject to collateral attack in the related judicial disciplinary proceeding and that additional evidence may be introduced only as a result of a stipulation or order of the fact finder); *In re Gillard*, 271 N.W.2d 785, 809 (Minn. 1978) (upholding removal and disbarment where Board on Judicial Standards as fact finder refused to consider additional testimony but allowed filing of deposition and exhibits and made alternative findings based on those filings). Although the Rules of the Board on Judicial Standards do not expressly provide for a pre-hearing conference, it is contemplated that admissibility issues will be resolved*

*by the presider of the fact finding panel sufficiently in advance of the hearing to allow the parties adequate time to prepare for the hearing.*