

STATE OF MINNESOTA

IN SUPREME COURT

File No. ADM 04-8001

In re: Proposed Amendments to the
Minnesota Rules of Civil Procedure

**PETITION OF MINNESOTA
BOARD ON JUDICIAL
STANDARDS TO AMEND
CIVIL RULES 63.02 AND 63.03**

To the Honorable Justices of the Minnesota Supreme Court:

Petitioner, the Board on Judicial Standards (“Board”), respectfully requests that the Court amend Rules 63.02 and 63.03 of the Minnesota Rules of Civil Procedure as set forth in Exhibit A hereto. The reasons for the amendments are summarized below.

1. The judicial disqualification standard in the Rules of Civil Procedure is inconsistent with the standard in criminal cases and appellate cases. Civil Rules 63.02 and 63.03 provide that a judge is disqualified from a proceeding if the judge “might be excluded for bias from acting therein as a juror.” In contrast, the criminal rules adopt the standard in the Judicial Code: “A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Minn. R. Crim. P. 26.03, subd. 14(3). Likewise, the Court has held that “an appellate judge should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct.” *Powell v. Anderson*, 660 N.W.2d 107, 114-15 (Minn. 2003).

2. Civil Rules 63.02 and 63.03 do not state the correct standard for disqualifying a judge and have been a source of confusion. The Board believes that the correct standard

is set forth in the Judicial Code, as interpreted by this Court. “The grounds for disqualification . . . are stated broadly, leaving considerable room for interpretation in their application to any given set of circumstances.” *Powell*, 660 N.W.2d at 115.

3. The standard for disqualification under the Judicial Code is set forth in Rule 2.11(A), which provides: “A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.” In addition, Rule 2.11 lists specific circumstances in which disqualification is required, e.g., when the judge or a member of the judge’s family “has more than a de minimis interest that could be substantially affected by the proceeding.” Minn. Code Jud. Conduct 2.11(A)(2)(c).

4. The Board proposes that Civil Rules 63.02 and 63.03 be amended to incorporate the disqualification standard in the Judicial Code. The Board’s proposed amendments would better reflect the standard applied by this Court and provide guidance to judges, lawyers, and the public when disqualification issues arise.

WHEREFORE, the Board respectfully requests that the Court adopt the rule changes proposed by the Board.

Dated: December 13, 2016

MINNESOTA BOARD ON JUDICIAL
STANDARDS

By: *s/Thomas C. Vasaly*
Thomas C. Vasaly
Executive Secretary
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**Board of Judicial Standards' Proposed Amendments
to Rules 63.02 and 63.03 of the Rules of Civil Procedure**

63.02 Interest or Bias

No judge shall sit in any case if ~~that judge is interested in its determination or if that judge might be excluded for bias from acting therein as a juror~~ disqualified under the Code of Judicial Conduct. If there is no other judge of the district who is qualified, or if there is only one judge of the district, such judge shall forthwith notify the Chief Justice of the Minnesota Supreme Court of that judge's disqualification.

63.03 Notice to Remove

Any party or attorney may make and serve on the opposing party and file with the administrator a notice to remove. The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.

No such notice may be filed by a party or party's attorney against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice, or who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer who has presided at a motion or other proceeding or who is assigned by the Chief Justice of the Minnesota Supreme Court may not be removed except upon an affirmative showing ~~of prejudice on the part of that~~ the judge or judicial officer is disqualified under the Code of Judicial Conduct.

After a party has once disqualified a presiding judge or judicial officer as a matter of right, that party may disqualify the substitute judge or judicial officer, but only by making an affirmative showing ~~of prejudice. A showing that the judge or judicial officer might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice~~ that the judge or judicial officer is disqualified under the Code of Judicial Conduct.

Upon the filing of a timely and proper notice to remove or if a litigant makes an affirmative showing ~~of prejudice against that~~ a substitute judge or judicial officer is disqualified under the Code of Judicial Conduct, the chief judge of the judicial district shall assign any other judge of any court within the district, or a judicial officer in the case of a substitute judicial officer, to hear the cause.

Exhibit A