



# BOARD POLICIES

## MINNESOTA BOARD ON JUDICIAL STANDARDS

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## I. BOARD

**A. Code of Ethics.** The responsibilities of the Board on Judicial Standards require that each member of the Board observe high standards of ethical conduct in the performance of their responsibilities. The Code of Ethics (“Code”) describes the ethical standards expected of a Board member. This Code does not confer any substantive or procedural due process rights, or create a separate basis for civil liability or criminal prosecution. For purposes of this Code, the judge who is the subject of a complaint to the Board, an investigation by the Board, or formal proceedings before the Board shall be referred to as the “judge,” which also includes judicial officers.

### 1. Avoiding Impropriety and the Appearance of Impropriety.

- a. **Appearance of Impropriety.** A Board member shall avoid impropriety and the appearance of impropriety in all of the Board member’s Board activities.
- b. **Promoting Public Confidence.** A Board member shall refrain from conduct that would impair public confidence in the integrity and impartiality of the Board.
- c. **Improper Relationship Influence.** In discharging their responsibilities, Board members shall not allow their family, social, professional, business, or other relationships to influence the Board member’s conduct or judgment.
- d. **Use of Prestige of Membership.** A Board member shall not lend the prestige of Board membership to advance their private interests or the interests of others. A Board member may, however, include their membership on the Board as part of their curriculum vitae or biographical information.
- e. **Positions of Influence.** A Board member shall not convey or permit others to convey the impression that they are in a special position to influence the Board or the judiciary.
- f. **Improper External Influences.** A Board member shall not be swayed by partisan interests, public clamor, or fear of criticism with respect to the conduct of Board business.
- g. **Bias or Prejudice.** In conducting Board business, a Board member shall refrain from manifesting by word or action bias or prejudice, or the appearance of bias or prejudice, for or against a judge, complainant, witness, counsel, or others, based on race, color, creed, religion, national origin, ethnicity, citizenship, sex, gender, sexual orientation, marital status, disability, age, socioeconomic status, or political affiliation.
- h. **Candidacy for Office.** A Board member who is involved in any political campaign for judicial or non-judicial office may list their appointment and length of service on the Board as a qualification for office. The Board member shall not state or imply that the Board endorses or supports their candidacy.

### 2. Confidentiality.

Subject to the exceptions for Board disclosure in Rule 5, each Board member commits to the following confidentiality guidelines.

- a. **General Rule.** All proceedings before the Board are deemed confidential unless and until some public action is taken by the Board pursuant to the Rules of the

- Board. This includes the fact that a complaint has been made about a judge, a statement has been given, and all papers and matters submitted to the Board, together with the investigation and initial proceedings conducted pursuant to the Rules. In the event that certain information regarding Board proceedings or complaints becomes public, that information which is not public shall remain confidential.
- b. **Consent to Disclosure.** Board members and Board staff are prohibited from disclosing confidential information without discussing the matter at a Board meeting and without the consent of the Board.
  - c. **Applicability to Member's Family and Staff.** Each Board member shall instruct their family members, personal assistants, and administrative staff who have access to or who gain knowledge of confidential information about the requirement of confidentiality.
  - d. **Confidential Documents.** Board members shall ensure that all confidential documents in their possession are secured and shall either return those materials to Board staff or destroy those materials by shredding or use of other physical destruction process within a reasonable time following the closing of a matter. Documents received electronically shall be permanently deleted.
  - e. **Confidential Communications.** All communications regarding confidential matters should be undertaken and stored, if at all, in a secure manner.
3. **Media or Public Contact.**
- a. **Board's Authorized Spokesperson.** Only the Executive Secretary, the Chair, or the Board's designee shall be authorized to speak on behalf of the Board. Procedural questions or inquiries about a specific case will be referred to the Executive Secretary where feasible.
  - b. **Media Inquiries.** If a Board member other than the Chair or the Board's designee or a staff member other than the Executive Secretary is contacted by the media or the public about a new, pending, or closed matter that has not been the subject of a Board press release or a public order by the Supreme Court, the member shall inform the media or public that such matters are confidential, and refer the media or public contact to the Executive Secretary. As to those matters that have been the subject of a Board press release or a public order by the Supreme Court, the member may read the content of the press release or the Supreme Court order, without elaboration or individual comment, and/or refer the individual to the Executive Secretary for further comment.
  - c. **Non-case Related Inquiries.** If a Board member or staff member is contacted about general, non-confidential matters concerning the Board, such as its purpose, history, procedures, or compensation, that individual may respond to the extent of the individual's knowledge or refer the inquiry to the Executive Secretary or the Chair.
4. **Recusal Policy.**
- a. **Circumstances Requiring Recusal.** A Board member shall recuse if:

- i. The Board member or a member of their family is the subject of the investigation;
  - ii. The Board member or the Board member's law firm served as a lawyer in any proceedings that are the subject of the investigation;
  - iii. The Board member or, to the Board member's knowledge, the Board member's law firm has a case pending before the judge either as a litigant or in the member's or their law firm's capacity as an attorney;
  - iv. The Board member or a lawyer with whom a lawyer Board member practices is involved in the complaint as a complainant or a material witness;
  - v. A Board member has a current or past professional, business, social, civic, or other relationship with the judge that would cause a reasonable person aware of the relationship to entertain a serious doubt that the Board member could be impartial with respect to the complaint or investigation;
  - vi. The Board member has a bias or prejudice for or against the judge;
  - vii. The Board member does not think that they are able to act fairly or impartially in a matter for any reason;
  - viii. The Board member has publicly supported or opposed the judge in a judicial campaign, including campaign contributions to the judge's re-election committee, within five years of the date of the proceedings before the Board;
  - ix. The Board member is a lawyer member and the matter before the Board is one in which the complainant is their client or former client.
- b. **Procedure.** If a Board member determines to recuse:
- i. The Board member shall recuse promptly;
  - ii. The recused Board member may, but is not required to, state the reason(s) for their recusal;
  - iii. The recused Board member shall not comment further or otherwise participate in the Board's consideration of the matter from which the Board member is recused, and shall not be present if the Board engages in any discussions regarding the matter;
  - iv. The recused Board member shall not receive any further confidential information on the matter from which the Board member is recused, and if the Board member does accidentally receive such written materials, they shall promptly destroy them;
  - v. If the recused Board member believes that to avoid the appearance of impropriety on behalf of the Board member and/or the judge, either the judge or the complainant or both should be notified of the recusal, the recused Board member shall notify the Executive Secretary of this belief, and the Executive Secretary shall notify the judge, the complainant, or both, as the case may be;
  - vi. If a Board member should fail to recuse, the Board shall make the determination of the propriety of recusal by a vote of a majority of the members present;

- vii. If and when the reason for the Board member's recusal ceases to exist, the Board member may participate in the matter.
- c. **Complaints against Board Members.** If a complaint is filed against a Board member who is a judge, the Executive Secretary shall review the complaint pursuant to Board Rule 6(b) and (c). If the complaint is not dismissed in accordance with Rule 6(b), the complaint shall be presented to the Board. A Board member is not required to recuse solely on the ground that the complaint is against another member of the Board. The Board member against whom the complaint is filed shall recuse and shall not be present during the Board's consideration of the matter. The Board may retain special counsel regarding complaints against a Board member.

## **B. Meeting Agenda.**

1. **Old and New Business.** For each meeting of the Board, the staff shall provide an agenda clearly distinguishing old matters from new business. All unresolved matters shall remain on the agenda, including matters that have been tabled. During the time period a deferred disposition agreement is in effect, the matter shall appear on the Board agenda when there is something to report to the Board.
2. **Categorization of Complaints.** New complaints presented to the Board at each meeting will be reviewed by the Executive Secretary and designated into one of three categories. The categories are as follows:
  - **Category 1:** No reason for further investigation or inquiry – no reasonable cause;
  - **Category 2:** Possible reason for further investigation or inquiry; and
  - **Category 3:** Definite indication that further investigation or inquiry should be made.
3. **Review of Category 1 Complaints.** If a Board member has *any* questions or believes there should be discussion on any complaint in Category 1, they may state their request at the Board meeting. The complaint will then be reviewed and discussed by the full Board.

## **C. Board Manual.** Board staff shall create and maintain a manual or manuals for Board members containing the following items:

- Board policies
- Applicable laws
- The Code of Judicial Conduct
- The Rules of the Board on Judicial Standards
- Samples of letters sent to complainants and judges
- The schedule of meeting dates
- The Board's brochure
- Any other items approved by the Board

## **D. Performance Guidelines.** To assist in improving its performance and overall effectiveness, the Board may establish written goals. The activity of the Board will be

reviewed periodically. The Board may seek the comments of key stakeholders to evaluate its compliance with the goals.

**E. Executive Committee.** The Board hereby establishes an Executive Committee to carry out the policies and decisions of the Board requiring action that cannot be delayed until the next regular or special meeting. The Executive Committee shall be appointed by the Board after the election of Board officers. The Executive Committee shall consist of a judge member, a lawyer member and a public member and shall include the Chair and the Vice-Chair. In the event one of the members of the Executive Committee is not available, that member may be temporarily replaced by a member of the same category. The Executive Secretary shall be present at all Executive Committee meetings and assist in resolving the issues raised. Actions taken by the Executive Committee shall be reported to the full Board at the next regular meeting.

**F. Conference Calls.** The Board or the Executive Committee may authorize Board members to participate in a Board meeting by telephone conference call or video conference call if appearance in person is impractical or if the Board is holding a special meeting. Members who participate by conference call are counted as present for all purposes, including retaining membership under Minn. Stat. § 15.0575, subd. 4, calculating a quorum under Board Rule 1(f)(1), and voting. Members will be compensated for conference calls in accordance with Board Policy V.D.1.

## II. CONFIDENTIALITY AND COMMUNICATIONS

**A. Referrals to Lawyers Concerned For Lawyers.** In the event the Board determines there is reasonable cause to believe that a judge is misusing drugs or alcohol or suffering from another condition for which a referral would be appropriate, it may refer the matter to Lawyers Concerned for Lawyers as part of its resolution, provided that disclosure is permitted under the Board Rules.

### **B. News Releases.**

- 1. Authorization and Preparation.** A news release shall be issued when a Formal Complaint is filed, when public discipline is imposed, and when a judge is temporarily suspended. A news release may be issued on other occasions on approval by the Board or, if consideration by the Board is not feasible, the Executive Committee. News releases shall be prepared by the Executive Secretary, the Chair, or the Board's legal representative. The Board members shall be individually notified when a news release has been provided to the media.
- 2. Distribution and Maintenance.** Board staff shall distribute the news release to pertinent media including radio stations, television stations, news publications and news services. The news release will be posted on the Board's website.

3. **Contents.** News releases shall consist of a short statement of fact and procedures except as otherwise directed by the Chair of the Board. The primary communication shall be the relevant document, which shall be attached to the news release.
4. **Answering Inquiries.** Inquiries by news media shall be answered as follows:
  - a. The official spokesperson for the Board shall be the Chair, Executive Secretary, or Board designee.
  - b. Inquiries of the media shall be directed to the Chair or Executive Secretary.
  - c. The Chair or Executive Secretary shall answer inquiries of a procedural nature. The Board generally does not comment on the merits of the case or on the judge's response. In special circumstances, the Executive Committee may authorize the Chair or the Executive Secretary to make a limited comment.
  - d. The Chair or Executive Secretary may provide copies of public documents to media representatives.

**C. Review of Miscellaneous Correspondence.** Copies of the Executive Secretary's responses to letters failing to allege a matter within the Board's authority pursuant to Rule 6(b) shall, together with all other miscellaneous correspondence sent or received, be periodically reviewed by a Board member appointed by the Chair at each meeting. The Board member shall report to the full Board at the next meeting.

**D. Public Statements by Disciplined Judges.** Unless the Board determines otherwise, the Board shall include in any public discipline by settlement or consent, a provision in which the judge agrees to refrain from making any public statement that tends to justify, excuse, or contradict the facts, conclusion, or determinations of the Board that relate to the discipline.

**E. Unsolicited Communications.** Any case-related written communication received by a Board member shall be delivered to the Executive Secretary. The Executive Secretary or the Chair shall formulate an appropriate acknowledgment and response, if necessary. The Executive Secretary shall inform all Board members as to the action taken and make all acknowledgments and/or responses available to the Board for review. All case-related communications and related correspondence shall be filed with that matter.

**F. Notice of Complaint Disposition.** Unless the Board determines otherwise, a copy of the Board's notice to the complainant pursuant to Rule 5(c) of the disposition of a complaint shall be sent to the judge named in the complaint if the judge has responded to a Board inquiry or the judge has knowledge of the complaint.

**G. Board Website Posting of Public Disciplines of Judges.** The Board's website shall post public disciplines of judges as follows. In addition to documents identified below, additional documents related to public discipline proceedings may be posted, in the Board's discretion, where such posting is not prohibited by confidentiality rules and will serve educational purposes. Posting may be by link to documents or by posting of documents themselves.

- a. All Minnesota Supreme Court opinions imposing discipline on judges will be permanently posted.

- b. All public reprimands by hearing panels, under Rule 11(b)(1) and (2), will be permanently posted.
- c. All public reprimands issued by the Board under former Rule 6(d)(1)(ii) (eff. Jan. 1, 1996, amended Mar. 30, 1999) or current Rule 6(f)(5)(iii) (eff. July 1, 2009), or news releases concerning such public reprimands, will be permanently posted. The respondent judge shall be notified of this policy when the Board serves a proposed reprimand.

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### III. INVESTIGATIONS

#### A. Screening and Evaluation of Complaints.

1. **Complaints Alleging Delay.** The Executive Secretary may summarily dismiss a complaint alleging that a judge has failed to make a timely decision unless it appears that more than 120 days have elapsed since the matter was submitted to the judge for a decision or that the particular circumstances of the matter required a decision within a shorter period of time. If a complaint alleging delay is dismissed, the complainant may be referred to the chief judge of the district court. *See* Minn. Stat. § 546.27, subd. 2.
2. **Evaluation of Complaints.** In evaluating a complaint under Rule 6(c), an inquiry by the Executive Secretary shall be discreet and limited. Subject to Rule 6(d)(3), it is the Board's policy to use methods, consistent with the Board's mission, that enhance the likelihood that the judge who is the subject of a complaint will first learn of the Board's involvement from the Board itself and not as a result of the Executive Secretary's evaluative inquiry or the Board's investigation.

#### B. Requests to Appear.

1. **Appearances.** All judges appearing before the Board pursuant to Rule 6(d)(6) shall be notified in writing of:
  - The date of the appearance,
  - The option to appear with a lawyer,
  - All applicable procedures as stated in this policy.
2. **Procedure upon Appearance.** Judges appearing pursuant to Rule 6(d)(6) will have the opportunity to address and ask questions of the Board. The Board members shall thereafter have an opportunity to ask questions or address any other pertinent issue. An audio recording shall be made of each proceeding.
3. **Witness Requests.** In the event the judge desires to present a witness, the Board shall be notified at least one week in advance of the appearance. The notice shall advise the Board of the identity of the witness and provide a brief summary of the matters or facts the witness is expected to convey. The Executive Committee will consider all such requests. Thereafter, the judge will be notified whether or not the request will be granted.
4. **Discretionary Requests to Appear.** Except when required by Rule 6(d)(6), all requests by a judge, judicial officer, complainant or other interested participant to personally appear shall be addressed to the sound discretion of the Board. If the request cannot be presented to the full Board within a reasonable time, the request may be considered by the Executive Committee. The decision to grant or refuse the request shall be made on a case-by-case basis and shall be guided by whether or not the Board's ability to discharge its duties and responsibilities would be improved by the proposed appearance.

### C. Multiple Incidents of Misconduct.

1. **Notice of Prior Discipline.** When considering any current complaint, the Board should be advised of any prior discipline issued to the judge.
2. **Use of Prior Discipline.** During the process of complaint evaluation, the Board may review all previous discipline issued to the judge permitted by the rules in order to determine whether or not the misconduct is:
  - isolated and non-serious pursuant to Rule 6(f)(5)(ii),
  - appropriate for the issuance of a subsequent Formal Complaint pursuant to Rule 20(b),
  - a persistent failure to perform judicial duties pursuant to Rule 4(a)(2),
  - a pattern of incompetence in the performance of judicial duties pursuant to Rule 4(a)(3), or
  - a result of habitual intemperance pursuant to Rule 4(a)(4).

### D. Requests for Transcripts and Audio Recordings.

1. **Board May Request Transcripts and Audio Recordings.** To obtain additional information or otherwise assist in the decision-making process, the Board may obtain a transcript and/or audio recording of any proceeding for which the Board reasonably believes there is a need to review the record. The Board may obtain the transcript by requesting the judge order the transcript. *See* Minn. Stat. § 486.06. The Board may obtain the audio recording by requesting the judge to obtain it from the custodian of the recording. *See* Board Rule 6(h).
2. **Failure to Provide Transcript or Audio Recording.** If the judge refuses the Board's request for a transcript or audio recording, the Board will consider whether the refusal constitutes noncooperation in violation of Rule 2.16(A) of the Code of Judicial Conduct and warrants action by the Board.

## IV. CASE DISPOSITIONS

**A. Guidelines for Discipline.** In deciding whether to discipline and/or the level of appropriate discipline the Board will consider the following factors:

- Nature of the misconduct
- Nature of any prior disciplinary record
- Existence of improper motive (dishonesty, advancing a self-interest)
- Whether the offense is isolated or constitutes a pattern of misconduct
- Whether the investigation of a complaint discloses additional offenses
- Degree of cooperation with the investigation or compliance with the requests of the Board
- Whether there is evidence of deception, such as the submission of false evidence or misleading statements to the Board
- Whether the misconduct was acknowledged by the judge

- Vulnerability of persons affected by misconduct
- Amount of judicial experience of the judge
- Failure or reluctance to make restitution where appropriate
- Existence of personal or emotional problems
- Existence of physical or mental disability or impairment
- Efforts to change or modify the conduct determined to be improper
- Degree of notoriety and effect of the misconduct on the public's confidence in the integrity, impartiality, and independence of the judicial system
- Effect of the misconduct on the proper administration of justice
- Whether the conduct was self-reported by the judge on his or her own initiative
- Any other factor that may be noted by the Supreme Court in mitigation or aggravation

## **B. Disciplinary Communications.**

1. **Board Member Participation.** Whenever, in the process of resolving a complaint, the Board directs the Executive Secretary to make a remedial telephone call or to meet with a judge, at least one Board member will participate in the call or meeting, unless such participation cannot be arranged in a timely manner.
2. **Closing Letters.** Closing letters shall specify the precise disposition of the case, cite the specific Board Rules under which the Board is acting, and state whether or not the Board found reasonable cause to believe the judge committed misconduct.

*(Former Section IV.C., 90-day Rule Guidelines, deleted January 9, 2015)*

**C. Applicable Code.** Allegations of judicial misconduct shall be evaluated and determined by the Code of Judicial Conduct in force at the time of the alleged violation. In cases where former Rule 17(a) of the Rules of the Board on Judicial Standards (1996) applies, there shall be expungement in all cases in which the Board found "insufficient cause to proceed" as evidenced in a closing letter or the Board's Minutes, except as provided in Rule 19(c) (2016).

*(Former Section IV.D., Disclosure to Judge, deleted August 4, 2017)*

## **V. FINANCIAL**

**A. Preparation of Budget.** The Executive Secretary and the Chair are authorized to establish a budget for each biennium ending June 30. Copies of each budget will be sent to each member of the Board.

**B. Payment Authorization.** The Executive Secretary is authorized to approve the expenses of the agency and to authorize and to order the payment thereof. Any expense exceeding \$5,000 shall be approved by the Board.

**C. Special Expenditures.** Subject to State reimbursement policies, Board member and staff expenses that are incurred in connection with official Board business shall be paid as follows:

- Full cost of a meal when incurred for an educational conference, workshop, seminar or other meeting authorized by the Board.
- Registration and tuition fees under \$750 for educational events. For educational events requiring registration and tuition fees in excess of \$750, prior Board approval will be required, except as provided in Part VI.A.2, below.
- The Executive Secretary's and Staff Attorney's professional licensing fees. The Executive Secretary may authorize payment of organizational membership fees including attorney registration, membership in the Minnesota State Bar Association, American Bar Association, Center for Judicial Ethics, Association of Judicial Disciplinary Counsel, Minnesota Trial Lawyers Association and similar organizations.
- Board staff shall be reimbursed for travel and meal expenses incurred in attending all regular and special Board meetings.
- Expenses shall be paid only for the following items:
  - The reasonable cost of a certificate or other recognition of individual service or achievement.
  - Full meal reimbursement for the person being recognized.
  - Other expenses authorized by the Board.
- Board staff shall furnish an accounting of the expenses paid for special expenditures at the close of each fiscal year.

#### **D. Reimbursement and Compensation to Board Members.**

1. **Compensation for Meetings.** As provided in Minn. Stat. § 15.075, subd. 3, and subject to the limitations in that subdivision, Board members shall be compensated at the statutory rate for attendance at meetings of the Board and its committees, and at meetings and conferences at which attendance has been authorized by the Board or the Executive Committee. Preparation for a meeting is not separately compensated. Board members are entitled to compensation for participating by telephone in a meeting of the full Board but are not entitled to compensation for participating by telephone in other meetings. Only one per diem may be paid for any one day. Judges do not receive per diems because they attend under the Judicial Branch "official judicial business" policy without loss of pay.
2. **General Reimbursement.** Board members shall be reimbursed for their expenses in the manner and in the amount stated in the Commissioner's Plan adopted pursuant to Minn. Stat. § 43A.18, subd. 2. *See* Minn. Stat. § 15.0575, subd. 3(a).
3. **Special Reimbursement for Child Care Expenses.** As provided in Minn. Stat. § 15.0575, subd. 3(b), Board members who are not full-time state employees or full-time employees of a state political subdivision shall be reimbursed for child care expenses incurred as a result of attending a regular or special Board meeting. Board members who are full-time state employees or full-time employees of a state political subdivision may be reimbursed for child care expenses incurred due to Board activities occurring outside their normal hours of work.

## VI. ADMINISTRATIVE

### A. Continuing Education.

1. **Attendance Encouraged.** Board Members, the Executive Secretary, and staff are encouraged to attend appropriate educational, seminar, or workshop events or programs relating to judicial ethics.
2. **Center for Judicial Ethics Conferences.** The Board shall maintain membership in the Center for Judicial Ethics of the National Center for State Courts. Each member shall be encouraged to attend at least one conference during their term of office. The Board may authorize any number of members to attend a particular conference. The Executive Secretary is authorized to attend each conference and may authorize the Board's staff attorney to attend.
3. **Association of Judicial Disciplinary Counsel.** The Board shall maintain membership in the Association of Judicial Disciplinary Counsel (AJDC). The Executive Secretary is authorized to attend the annual conference sponsored by the AJDC and may authorize the Board's Staff Attorney to attend.
4. **Expenses.** Board members, Executive Secretary and staff shall be reimbursed for expenses for continuing education authorized by the Board pursuant to Part V above.

**B. Personnel Plan.** To the extent consistent with the laws, rules, policies, and structure under which the Board operates and subject to the Board's determination of the Board's mission, the Board adopts Minnesota Judicial Branch (MJB) Human Resources Rules and policies for Board staff. The Office Policy and Procedures Manual referenced in paragraph VI.D. below shall include information on applicable MJB rules and policies and shall specify MJB job classifications and pay bands for the Executive Assistant and Staff Attorney positions.

**C. Performance Guidelines for Staff.** Pursuant to Rule 1(e), the Board will conduct a review of the Executive Secretary's work performance on an annual basis. To assist in the process, the Board and the Executive Secretary will create an evaluation process in which all Board members may participate.

1. **Process.**
  - a. The Executive Secretary, in conjunction with the Board, will establish written annual goals consistent with the position description.
  - b. Progress against these goals will be reviewed by the Executive Secretary with the Board on a periodic basis, but at least once per calendar year.
  - c. On or before January 31 of each calendar year, members of the Board shall complete and submit to the Board's designee an evaluation of the Executive Secretary's performance during the immediately preceding year.
  - d. On or before March 1 of each calendar year, the Board or its designee will prepare a written evaluation of the Executive Secretary's performance based upon a compilation of the evaluations submitted by the Board members.

- e. On or before April 1 of each calendar year, the Board or its designee will meet with the Executive Secretary to review and discuss the results of the evaluation.
2. **Compensation.** Any compensation decisions shall reflect the Executive Secretary's accountabilities, performance, salary cap, and budget monies available.
3. **Other Staff.** The Executive Secretary will ensure and manage a like process for the Executive Assistant and any other staff members.

**D. Office Policy and Procedures Manual.** The Executive Secretary shall create and maintain an Office Policy and Procedures Manual consistent with Board Policies and Minnesota law.