

State of Minnesota
BEFORE THE BOARD ON JUDICIAL STANDARDS

Inquiry into the Conduct of The Honorable George W. Perez

BJS File No. 2011-74

FORMAL STATEMENT OF COMPLAINT

The Board on Judicial Standards (Board), having determined that reasonable cause exists to believe that the Honorable George W. Perez committed misconduct in violation of the Minnesota Code of Judicial Conduct, the *Rules of the Board on Judicial Standards (R.Bd.J.Stds.)*, Rule 6(f) and having determined that a Formal Complaint is necessary pursuant to *R.Bd.J.Stds. Rule 6(f)(5)(iv)*, hereby makes the following Formal Complaint against the Honorable George W. Perez. This Formal Complaint is made and served under *R.Bd.J.Stds., Rule 8*.

Notice is hereby given that *R.Bd.J.Stds., Rule 8(a)(3)* requires your written response to this Formal Complaint within twenty (20) days of the date of service.

FACTUAL BACKGROUND

1. Judge Perez is a Minnesota resident who is licensed to practice law in the State of Wisconsin. He was appointed a judge of Minnesota Tax Court in November 1997. Judge Perez was reappointed in 1999, 2005 and 2011. His current term expires in 2017. Judge Perez became Chief Judge of the tax court in January 2001 and continuously has held that position.
2. As a judge of tax court, Judge Perez has been required to comply with all provisions of the Minnesota Code of Judicial Conduct ("Code") throughout his tenure on the tax court. See Minn. Stat. §271.01, subd. 1.
3. At all times relevant hereto, the Code has required judges to follow the law, uphold the integrity of the judiciary and to avoid personal actions that create an appearance of impropriety.

a. From January 1, 1996 through June 30, 2009, Canon 2A of the former Code provided: “A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity . . . of the judiciary.”

b. From July 1, 2009 through the present, Canon 1, Rule 1.1 of the Code has stated: “A judge shall comply with the law, including the Code. . . .” Canon 1, Rule 1.2 further mandates that judges “shall act, at all times, in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Under Comment 5 to Rule 1.2, “actual improprieties include violations of law, court rules, or [Code] provisions.”

4. At all times relevant hereto, the Code has also required judges to promptly and efficiently decide cases on their docket.

a. From January 1, 1996 through June 30, 2009, Canon 3A(1) of the former Code provided that: “A judge shall hear and decide promptly, efficiently and fairly matters assigned to the judge except those in which disqualification is required.” The comment to former Canon 3A(1) instructed: “In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.”

b. From July 1, 2009 through the present, Canon 2, Rule 2.1 has required judges to give precedence to the duties of their office above all else, stating: “The duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.”

Canon 2, Rule 2.5(A) instructs that “A judge shall perform judicial and administrative duties competently and diligently.” Comment 3 to that rule states: “Prompt disposition of the court’s

business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.”

Comment 4 to current Rule 2.5(A) provides that: “In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.”

5. Minnesota law requires tax court judges to decide every case within three calendar months after it is submitted to the court for decision absent lawful justification for further delay. Specifically, Minn. Stat. §271.20 provides that: “All questions of fact and law and all matters submitted to the judges of the Tax Court shall be disposed of and their decision filed with the court administrator of the Tax Court within three months after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties.”

6. In addition, Section 271.20 requires tax court judges to certify their “full compliance” with the statutory deadline for deciding cases on each set of employee time sheets, which are submitted to the State on a bi-weekly basis. The statute provides in pertinent part: “No part of the salary of any judge of the Tax Court shall be paid unless the voucher therefor be accompanied by the judge’s certificate of full compliance with the requirements of this section.” *Id.*

7. Records provided to the Board during its investigation establish that beginning in or before 2002 and continuing through January 2012, Judge Perez engaged in a pattern of delay in which he repeatedly, and without lawful justification, failed to decide cases within the three-month deadline established by Minnesota law. As part of that pattern, Judge Perez routinely initiated post-

trial or post-hearing conferences shortly before decisions were due to ask the parties for more time, to request additional information or take other action designed solely for the purpose of extending the deadline for making his decision. During some of these conferences, Judge Perez misrepresented his existing workload or health condition to solicit the parties' agreement to further delay. On other occasions, he used unsolicited letters sent by a party begging him to decide the party's case to automatically extend the decision deadline by another three months.

8. To conceal his misconduct, Judge Perez falsified court records by drafting decisions and orders that falsely reflected the date on which matters were submitted for his decision. Judge Perez also repeatedly submitted false certifications to the State in which he represented that he was fully compliant with the statutory deadline for deciding cases when, in actuality, he had one or more cases under advisement that had not been timely decided at the time of the certification.

COUNT I - FALSE CERTIFICATIONS

9. Judges of tax court cannot be paid unless they certify "full compliance with the requirements of" Minnesota Statutes §271.20. This includes deciding all cases within three months of the date issues are submitted for determination.

10. From December 6, 2000 through December 14, 2004, Judge Perez submitted written time sheets for each two-week pay period. This was accomplished by noting, in handwriting, all regular, vacation and sick leave time on a preprinted State of Minnesota Employee's Bi-Weekly Time Report. Each form was signed under a certification that stated, "I verify that all information is correct."

11. On the face of each individual time sheet he submitted, Judge Perez or another tax court employee stamped an additional certification, which stated: “This is to certify that I am in compliance with Minn. Stat. Ch. 271.20.”

12. Judge Perez understood that by signing and submitting his written time sheets he was certifying that all cases assigned to him were timely decided in accordance with Minn. Stat. §271.20.

13. At various times during his handling of the *Dynamic Digital*, *D’Amico* and *Pep Boys* cases noted below, Judge Perez falsely certified his compliance with Minn. Stat. §271.20 by filing and submitting written time sheets when, in fact, the statutory deadline for filing his decision had expired without lawful justification.

14. From December 15, 2004 forward, tax court employees, including tax court judges, have submitted their bi-weekly time to the State electronically. After noting their regular time, vacation or holiday time and sick leave, employees click on a box next to message stating, “I verify the entries are correct.”

15. Judge Perez understood that by clicking the box and electronically submitting his time sheets he was certifying that all cases assigned to him were timely decided in accordance with Minn. Stat. §271.20.

16. At various times during his handling of the *Berends*, *Southern Minnesota Beet Sugar*, *Kmart*, *Northern X-Ray*, *Johnson*, *Larson*, *Mauer* and *Continental Rogers* cases described below, Judge Perez falsely certified his compliance with Minn. Stat. §271.20 by electronically submitting time sheets when, in fact, the statutory deadline for filing his decision(s) had expired without lawful justification.

17. The following chart summarizes pay periods during which Judge Perez falsely certified he had no decisions under advisement for more than three months when, in fact, he had manipulated the due date in one or more cases to postpone his decision.

Case Name	Date Decision Due (per investigation)	Date Decision Actually Filed	Number of Pay Periods Falsely Certified ¹
Dynamic Digital	10/29/02	1/14/04	33
D'Amico	10/21/03	1/20/04	8
Pep Boys	4/15/04	10/26/04	15
Berends, et al.	10/29/05	6/30/06	19
SMBSC	11/4/06	12/22/06	4
Kmart	11/2/06	5/31/07	16
Northern X-Ray	5/27/09	12/8/09	14
Johnson	3/19/09	3/1/10	25
Larson	9/24/11	1/11/12	7+
Mauer	6/30/11	1/20/12	13+
Continental Rogers	3/21/11	1/31/12	20+

18. By falsely certifying his compliance with Minn. Stat. §271.20 when he had failed to timely decide at least one or more cases pending before him, Judge Perez violated Minnesota law and created an appearance of impropriety in violation of Canon 2A of the former Code of Judicial Conduct and Canon 1, Rules 1.1 and 1.2 of the current Code.

¹The Board was not provided with time records for pay periods after mid-December 2011. Additional false certifications may have been made after that time since Judge Perez did not decide the *Larson*, *Mauer* and *Continental Rogers* cases until January 2012.

COUNT II - REFUSING NEW CASE ASSIGNMENTS

19. The tax court administrator assigns new cases filed with the court to one of the three tax court judges using a straight rotation whereby each judge is assigned every third new case.

20. The tax court administrator reports directly to Judge Perez and Judge Perez, in his capacity as Chief Judge, oversees all administrative functions of the court.

21. In the Fall of 2011, Judge Perez instructed tax court staff to remove Judge Perez from the normal rotation for receiving new case assignments.

22. From September 14, 2011 through December 14, 2011, no new cases were assigned to Judge Perez. All new case assignments were split between the other two tax court judges during that time period. Beginning in mid-December 2011, Judge Perez was added to the rotation for new case assignments every other time. In other words, instead of receiving every third case, Judge Perez was assigned every fifth case from that point forward with his fellow tax court judges each receiving two new case assignments for each new case assumed by Judge Perez.

23. Judge Perez instructed tax court personnel not to disclose to the other two tax court judges the fact that Judge Perez had been removed from the normal rotation for new case assignments.

24. One of the other judges eventually found out that Judge Perez was not taking new case assignments like the other judges. When that judge confronted staff about the practice, she was told that Judge Perez had instructed staff that it "was best" if they did not tell the other judges that he was not taking new case assignments in the normal rotation. Fearing retaliation from Judge Perez, tax court staff abided Judge Perez's instruction not to advise the tax court judges that Judge Perez had removed himself from the normal rotation.

25. Canon 2, Rule 2.7 of the Code provides that “A judge shall hear and decide cases assigned to the judge, except when disqualification is required. . . .” Comment 1 to that Rule notes that judges “must be available to decide matters that come before the court.”

26. Canon 2, Rule 2.12(A) states: “A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations” under the Code. Comment 1 to the Rule explains that “A judge may not direct court personnel to engage in conduct on the judge’s behalf . . . when such conduct would violate the Code if undertaken by the Judge.”

27. By refusing to take new case assignments and directing court staff to conceal his removal from the regular rotation in which tax court judges are assigned cases, Judge Perez violated Canon 2, Rules 2.7 and 2.12(A) of the Code, and unjustifiably increased the workload of his fellow judges, an action that was detrimental to the public interest.

COUNT III - FALSE REPRESENTATIONS TO THE BOARD

28. After receiving a complaint from a confidential informant, the Minnesota Board on Judicial Standards sent a letter to Judge Perez on December 30, 2011. The letter requested, among other things, that Judge Perez respond to an allegation that he had engaged in a general pattern of delay in deciding pending and past cases. The Board’s letter asked Judge Perez to discuss the timing of his October 2011 decision in *The Southern Minnesota Beet Sugar Cooperative v. County of Renville*. The Board also asked Judge Perez to identify all cases pending before him upon receipt of the Board’s letter in which no decision had been filed within three months after the respective matter was first submitted to him for decision.

29. Judge Perez sent a written reply to the Board on January 31, 2012.

30. In addition to the *Beet Sugar Cooperative* matter, Judge Perez identified three additional cases in which decisions had been delayed. These matters included the *Mauer*, *Larson* and *Continental Rogers* cases described below.

31. Judge Perez stated that his decision in each of the cases was delayed, in part, because of a medical condition requiring 5 days of leave in May 2011 and his subsequent absence from work for eleven working days between June 13 and June 28, 2011 because of a personal surgery and subsequent recovery period.

32. Judge Perez told the Board that his decisions were also delayed as a result of the state government shutdown, during which the tax court was closed from July 1 through 20, 2011.

33. Judge Perez said that he was forced to spend three days between June 27 and 30, 2011 preparing for the impending shutdown “and additional time after the shutdown dealing with getting the court back on schedule.”

34. His letter continued:

. . . The Court shutdown was an unprecedented event that required a great deal [of] planning, and re-scheduling, among other work. In addition to the Court shutdown, the judges and staff of the Tax Court were required to take an additional two weeks [of] voluntary leave without pay. We have only three judges and three staff and – it took all of us working together to recover from the Court shutdown. Moreover, I was still recovering from my June surgery and I was unable to maintain a full-time schedule for several weeks after my return to work on July 21.

Following the resumption of work on July 21, the Court’s calendar was in complete disarray. All trials and hearings that had been scheduled during the shutdown had to be rescheduled. That, in turn, required that other matters set for trial or hearing in July, August, September, and October had be rescheduled. The result was that I was required to spend an inordinate amount of time on administrative duties and was not able to work on my cases under advisement.

35. In his response to the Board, Judge Perez also stated that his responsibility for “court administration, budget[ing, and], intergovernmental relations” in capacity as Chief Judge for the tax

court “take a material portion of my working hours and sometimes prevent me from devoting as much time to deciding cases as I would like.” He further said: “I am a hard-working judge who devotes more than full time to the duties of my office. I am diligent.”

36. Judge Perez’s response to the Board was misleading in several respects. For example, although he claims an inability to work full-time for several weeks after July 21 due to lingering effects from his June 13 surgery, Judge Perez’s calendars and time sheets show that he took no sick leave between June 28 and December 20, 2011.² Similarly, Judge Perez’s statement that he was “required to take an additional two weeks voluntary leave without pay” on top of the state shut down is simply false. Records provided by the tax court administrator show that the only voluntary time off taken by Judge Perez in 2011 were six days on May 6, 12, 13, 16 and 31 and June 13, 2011. Judge Perez specifically notes each of these days in his response to the Board as voluntary time off due to illness. He did not take “an additional two weeks” of voluntary leave thereafter.

37. Likewise, Judge Perez failed to disclose that less than two weeks after returning from the shutdown he took a five-day trip to Toronto, Canada, missing work from August 2 through 5, 2011, to attend an American Bar Association conference. The proximity of his trip to the recent government shutdown was not lost on others who attended the conference, one of whom joked to Judge Perez in an July 28, 2011 e-mail message:

Wait a minute! You’ve been off work for about 3 weeks with the government shut down and now you’re leaving town to go to Toronto? Just kidding. Look forward to seeing you next week.

38. Despite stating that he was forced to spend an “inordinate amount of time” to fulfill administrative duties following the shutdown in lieu of deciding his cases, Judge Perez also failed

²The Board received no records of Judge Perez’s time after December 20, 2011.

to disclose other extensive absences from work due to other conferences and annual leave. Specifically, Judge Perez took annual leave from Tuesday, August 30, 2011 through Friday, September 2, 2011. The following Monday, September 5 was the Labor Day holiday. He took additional annual leave from Tuesday, September 6, 2011 through Thursday, September 8, 2011. Judge Perez took a floating personal holiday on Friday, September 9, 2011. He was out on annual leave the entire following week, from Monday, September 12 through Friday, September 16, 2011. Judge Perez worked two days, on September 19 and 20, 2011, before another three-day absence from September 21 through 23, 2011, when he attended a tax judges' conference in Boston, Massachusetts. In all, Judge Perez failed to disclose that he worked, at most, just nine calendar days in all of September 2011.

39. In making his response, Judge Perez did not inform the Board that he was repeatedly absent from work attending and/or making presentations at conferences throughout the country. Judge Perez recorded nearly all of his time for traveling to and from and attending those conferences as “regular” time on his employee time sheets.

40. The following chart, based on time records and calendars provided by the tax court, summarizes Judge Perez’s time and attendance from 2001 through 2011:

Year	Regular time hours	Vacation hours	Sick leave hours	State Holiday hours	Floating Holiday /LSS	Confer-ence hours	Hours away from office	Days away from office	% days out ³
2001	1732	128	132	96	8	136	500	63	24%
2002	1733	160	107	72	8	155.5	502.5	63	24%

³The percentage of days out or gone from work is calculated based on 260 work days per year (52 weeks times 5 work days per week).

2003	1785	184	91	88	8	128.5	499.5	62	23%
2004	1668	165	155	72	8	165	565	71	29%
2005	1728	240	88	88	16	196	628	79	30%
2006	1730	154	108	80	8	210.5	560.5	70	27%
2007	1721	174	97	80	8	203.5	562.5	70	27%
2008	1673	236	83	80	8	153	560	70	27%
2009	1725	182	85	80	8	171	526	66	25%
2010	1636	222	114	96	92	221	745	93	35%
2011	1642	28	106	56	168	153.5	511	64	25%

41. Under Canon 2, Rule 2.16 of the Code, “A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.” By omitting material information and making false representations in his response to the Board and its investigators, Judge Perez violated Canon 2, Rule 2.16 of the Code.

42. Under the Rules 4(a)(5) and (6) of the Rules of Board on Judicial Standards, grounds for disciplining judges also include “conduct prejudicial to the administration of justice that brings the judicial office into disrepute” and conduct that violates the Code.

COUNT IV - PATTERN OF DELAY IN DECIDING CASES

43. Minnesota law requires a tax court judge to decide a case within three calendar months after it is submitted to the court for decision. Generally, a matter is deemed submitted when the last brief or other substantive response requested from the parties by the presiding judge is filed with the court.

44. Judge Perez’s practice of failing to make timely decisions began shortly after his appointment to the tax court in November 1997. A fellow tax court judge approached Judge Perez

in late 1998 or early 1999 to discuss the problem. The other judge expressed concern that Judge Perez's failure to render timely decisions and his manipulation of the dates on which cases were being submitted for decision was reflecting poorly on the court as a whole. Judge Perez responded with words to the effect, "that's for me to worry about." Judge Perez also told the other judge to leave him alone and accused the judge of picking on him because of his ethnicity.

45. Judge Perez frequently opined to other tax court judges and court personnel that the quality of his judicial decisions took precedence over meeting any deadline for deciding a case. He and a different tax court judge discussed his delay in deciding cases on several occasions. During those conversations, Judge Perez expressed his belief that it was more important to make a good decision than to comply with the statutory deadline. On yet another occasion, Judge Perez remarked to tax court staff in the employee lunch room that the time taken for making a decision does not matter, but instead it is the quality of decisions that is important.

46. Due to the passage of time, records are not presently available from the tax court regarding specific cases in which decisions were delayed by Judge Perez prior to 2002. Available records that were provided by the tax court confirm that beginning no later than 2002 and continuing through January 2012, Judge Perez engaged in a pattern of delay whereby numerous cases assigned to him were not timely decided within the three-month deadline established by Minn. Stat. §271.20. Representative examples of cases that were improperly delayed are set forth below.

Dynamic Digital Design, Inc. v. Commissioner of Revenue (No. 7380-R)

47. This case involved a corporate taxpayer's appeal from an assessment of sales and use taxes, penalties and interest totaling \$21,131.63.

48. The matter was tried to Judge Perez on June 3, 2002. At the end of the hearing, Judge Perez ordered the parties to file initial post-trial briefs on June 28, 2002 and reply briefs on July 26, 2002.

49. The Court's Register of Actions confirms that the last reply brief was filed July 29, 2002. Under the three-month rule established by Minn. Stat. §271.20, Judge Perez's decision was therefore due on October 29, 2002.

50. According to the Register of Actions, a post-trial conference was held on October 25, 2002 (four days before the decision was due). Except for the Register, the court files contain no bench logs or other records pertaining to the call. Judge Perez recalls telling the parties that his decision would take a little longer, without discussing a specific timetable. The pro se taxpayer remembers Judge Perez saying that he did not feel well and understood Judge Perez was asking for a couple more days in which to decide the case.

51. Judge Perez decided the case and filed his findings of fact, conclusions of law and order for judgment on January 14, 2004.

52. His decision states that the matter was submitted for decision on October 25, 2002 and that "[a]ll parties consented to an extension of the three month period for decision." The tax court records contain no written consent from the parties to extend the decision deadline as required by Minn. Stat. §271.20.

53. Nothing in either the court file or Judge Perez's decision provides further explanation for the more than eighteen-month delay between the end of the trial and the filing of the decision.

D'Amico Catering, Inc. v. Commissioner of Revenue (Nos. 7488-89)

54. This matter involved a corporate caterer's appeal of a sales tax assessment totaling \$107,023.

55. The parties filed stipulated facts on March 17, 2003 and the D'Amico case came before Judge Perez for hearing on cross motions for summary judgment on May 13, 2003.

56. Since the appeal involved constitutional issues, the parties jointly moved that the case be transferred to Minnesota District Court and remanded back to tax court for decision on all issues. This procedure, often referred to as an "Erie shuffle" was completed on June 5, 2003 when the case was transferred back to the tax court.

57. A transcript from the summary judgment hearing was filed with the tax court on July 21, 2003. A note on Judge Perez's calendar indicated that the decision in the case was due three months later, on October 21, 2003.

58. On October 15, 2003, less than a week before the decision deadline, Judge Perez held a post-hearing conference call with counsel for the parties. During the call, Judge Perez told the lawyers that he had surgery coming up and that he needed until November 18, 2003 to issue his opinion.

59. No written consent to extend the statutory deadline was obtained from the parties. Moreover, Judge Perez's calendar reflects no surgery between October 15 and November 18, 2003. Instead, the only medically related appointments during that time were a one and one-half hour doctor's appointment on October 15, 2003, a dental appointment on October 20, 2003, and a flu shot on October 27, 2003. According to Judge Perez's time sheets, he took no sick leave whatsoever during any time period between October 8, 2003 and January 27, 2004.

60. On November 17, 2003, one day before the rescheduled decision deadline, Judge Perez held another post-hearing conference call. He told the parties that the case would remain under advisement until December 15, 2003. No written consent was obtained from the parties for the extension as was required by Minn. Stat. §271.20.

61. On December 9, 2003, Judge Perez conducted another post-hearing conference call. A bench log from the call notes its purpose to “firm up decision due date.” Notes taken by one of the attorneys during the hearing reflect Judge Perez’s statement that he needed additional time to render his decision. No written consent was sought nor obtained from the parties to extend the statutory deadline.

62. On January 20, 2004, Judge Perez filed his order granting summary judgment for the taxpayer. The order falsely stated that “[t]he matter was submitted to the Court for decision on December 9, 2003.” Nothing in the court file or the Register of Actions reflects anything being filed in the case after the hearing transcript was filed on July 21, 2003.

63. More than eight months passed between the summary judgment hearing and the filing of Judge Perez’s decision in the *D’Amico* case.

The Pep Boys v. County of Anoka (Case Nos. C2-01-2780, C3-02-2877 & C5-02-8549)

64. This case involved a commercial taxpayer’s appeal from property taxes payable in 2001, 2002 and 2003 by an automotive parts retail store.

65. The matter was tried before Judge Perez from November 4 through 7, 2003.

66. All post-trial briefs were filed with the tax court by January 15, 2004. Absent a permissible extension of time under Minn. Stat. §271.20, a decision was required no later than April 15, 2004.

67. On or about April 14, 2004, Judge Perez, without prompting from either party, asked counsel for the county to provide additional expert testimony responding to opinions offered by the taxpayer's expert during trial on November 5, 2003.

68. The county filed a supplemental response from its expert on May 24, 2004 and the taxpayer filed its reply on July 26, 2004.

69. Judge Perez deemed the matter submitted on July 26, 2004 and filed his written findings of fact, conclusions of law and order for judgment exactly three months later, on October 26, 2004. His decision reduced the estimated market value of the property and the taxes due for each of the three tax years on appeal.

70. More than eight months passed between the end of the trial and filing of the decision in the *Pep Boys* matter.

***Alvin & Carol Berends v. County of Chippewa (No. C5-04-195),
Dean Dambrotten v. County of Chippewa (No. C3-04-194) and
Richard & Elaine Fagen v. County of Chippewa (No. C7-04-196)***

71. These matters involved separate property tax valuation appeals brought by three different farm families that were consolidated for hearing. The issue in each case was whether Conservation Reserve Program (CRP) payments were properly considered in determining property values for purposes of assessing real estate taxes.

72. The cases were jointly tried before Judge Perez on June 7 and 8, 2005.

73. A bench log from the trial established a briefing schedule with reply briefs due to the court by July 29, 2005.

74. The parties timely filed their briefs in accordance with the court's schedule. Absent a permissible continuance under Minn. Stat. §271.20, a decision was therefore due by October 29, 2005.

75. On October 26, 2005, Judge Perez held a post-trial conference call during which he informed the parties that he had ordered transcripts of the trial.

76. After the transcripts were filed with the tax court on November 14, 2005, the court's master case status tracking log was updated to add three additional months and make the decision due on February 14, 2006.

77. On February 3, 2006, Judge Perez held another post-trial conference call to notify the parties he would hold an in-person post-trial conference at the Chippewa County Courthouse in Montevideo, Minnesota on February 22, 2006.

78. After the February 22, 2006 post-trial conference the tax court's master case status tracking log was changed to again postpone the decision due date and establish a new decision deadline of May 26, 2006.

79. On May 16, 2006, Judge Perez convened yet another telephone conference call during which he informed counsel for the parties that he would issue his opinion by June 30, 2006.

80. Judge Perez filed his written findings of fact, conclusions of law and order for judgment in each case on June 30, 2006. His orders falsely stated that the matters were submitted for decision on May 16, 2006 (the date of the last post-trial conference call).

81. Judge Perez held that CRP payments could be considered in determining property values but directed the county assessor to apply a 40% discount to all tillable land enrolled by the taxpayers in the program.

82. More than twelve months elapsed between the end of the trial and the filing of Judge Perez's decision in these cases.

Southern MN Beet Sugar Coop v. County of Renville (Nos. C5-04-286 & CV-05-100)

83. This commercial property tax assessment appeal was tried before Judge Perez between May 16 and 25, 2006.

84. All post-trial briefs were filed by August 4, 2006, making Judge Perez's decision due by November 4, 2006. The tax court's master case status tracking log dated August 3, 2006 confirmed the November 4, 2006 decision deadline.

85. Judge Perez initiated a post-trial conference call with counsel for the parties on October 30, 2006. During the call, Judge Perez told the attorneys that he had a lot of cases under advisement and asked them to agree to move the "issuance date" for making his decision "a few weeks out."

86. Based on Judge Perez's representation, counsel for the parties orally agreed to a brief extension. In so agreeing, however, counsel for the respondent specifically asked Judge Perez to decide the case no later than the first week of December.

87. Judge Perez's handwritten notes from the post-trial conference noted his agreement to decide the case by December 8, 2006. The tax court's master case status tracking log dated November 6, 2006 also confirmed the amended decision deadline of December 8, 2006.

88. No written consent was obtained from the parties for the extension as was required by Minn. Stat. §271.20.

89. Judge Perez's representation to counsel regarding his pending workload was misleading. According to case management master logs maintained by the tax court at the time of

the conference call on October 30, 2006, Judge Perez had eight other cases with decisions due by the end of 2006. Only two of his cases required decisions by year end and the other six had decision deadlines in 2007. One case involved a post-trial cost motion that he decided on November 6, 2006. The other case involved a decision on a motion in limine that was originally due on December 18, 2006 but which was ultimately not decided until May 16, 2007.

90. Judge Perez filed his written findings of fact, conclusions of law and order for judgment in the case on December 22, 2006. His order made no mention of any agreed-upon extension of the statutory decision deadline and falsely stated that the matter was submitted for decision on October 30, 2006 (the date of the last post-trial conference call).

91. Nearly seven months elapsed between the end of the trial and the filing of Judge Perez's decision in the *Beet Sugar* case.

***Kmart v. County of Mower* (Nos. C1-01-467, C3-00489 & C4-02-540)**

92. This matter involved a commercial property tax valuation appeal challenging real estate taxes assessed against a retail store in Austin, Minnesota that were payable in 2000, 2001 and 2002.

93. Judge Perez heard arguments on the county's motion to dismiss on July 27, 2006.

94. After a transcript of the motion hearing was filed with the tax court on August 2, 2006, the court's master case status tracking logs repeatedly reflected a decision due date of November 2, 2006.

95. On October 2, 2006, the United States Supreme Court denied certiorari and refused to hear an appeal in a different Kmart case arising from a similar property tax dispute in Stearns

County. See *Kmart Corporation v. County of Stearns*, 710 N.W.2d 761 (Minn. 2006), *cert. denied*, (October 2, 2006)).

96. The denial of certiorari was noted on the tax court's bench log from the previous hearing in the Mower County case. The tax court's master case status tracking log was also revised to reflect a new decision deadline of January 2, 2007.

97. No decision was issued by January 2, 2007. Instead, a tax court employee called counsel for the parties at Judge Perez's direction on December 27, 2006 and left voice-mail messages informing them that the decision deadline was being extended.

98. Judge Perez held a conference call with counsel for the parties on January 12, 2007. His handwritten notes on the hearing bench log stated that the appeals from taxes payable in 2000 through 2002 were taken "under advisement start[ing] today." The tax court's master case status tracking log was amended to reflect the January 12, 2007 conference call and a new decision deadline of April 12, 2007.

99. No decision was issued by the April 12, 2007 deadline. Instead, Judge Perez convened another conference call with counsel for the parties on April 16, 2007. According to his handwritten notes on the bench log for the conference, Judge Perez told the lawyers that he would issue a decision within 45 days "due to illness." Judge Perez later directed the tax court administrator to also add the words "parties [sic] agreement" to the bench log notes. The court's master case tracking log was amended to reflect the April 16 conference call and a new decision deadline of May 31, 2007 was established.

100. Judge Perez filed his order granting the county's motion to dismiss on May 31, 2007. The order falsely stated that the matter had been submitted for decision on April 16, 2007 (the date

of the last post-hearing conference call). The order falsely stated that during the January 12, 2007 conference call “the parties asked the Court to stay its ruling because they were involved in settlement talks.”

101. Judge Perez’s decision made no mention of any medical issue despite his statements to counsel during the April 16, 2007 conference call to the effect that he needed more time on account of his health. For the six month period between January 10, 2007 and June 12, 2007, Judge Perez took just 5.75 days of sick leave, including full days off on March 19 and March 26 through 29, 2007. If Judge Perez extended the statutory decision deadline due to illness, he should have noted the extension in his written opinion.

102. More than eight months passed between the hearing on the dismissal motion and the filing of Judge Perez’s order in the *Kmart* case.

***Northern X-Ray Co. v. Commissioner of Revenue* (No. 7945 R)**

103. This matter involved a commercial taxpayer’s appeal from \$854,405.05 in sales and use taxes assessed by the state against the petitioner for tax periods March 1, 2003 through June 30, 2006.

104. The case was tried before Judge Perez on December 22, 2008. At the conclusion of the hearing, Judge Perez established a briefing schedule under which post-trial briefing was to be concluded by February 27, 2009.

105. All briefs were timely filed in accordance with the scheduling order and the court’s master case status log reflected a May 27, 2009 decision deadline.

106. On May 26, 2009, Judge Perez held a telephone conference call with counsel for the parties and requested letter briefs from both parties addressing a series of narrow questions to be filed by June 15, 2009.

107. The requested briefs were timely filed and the court's master case status logs were amended to reflect a new decision deadline of September 15, 2009.

108. On September 8, 2009, Judge Perez held another telephone conference call with counsel for the parties. Judge Perez's notes on the bench log from the call indicate that he promised a decision the "week of the [sic] Oct. 5." Nothing in the court file reflects the parties' written consent to a further extension in accordance with Minn. Stat. §271.20.

109. On September 30, 2009, Judge Perez directed a tax court employee to add a note to the bench log for the September 8, 2009 call indicating that the decision would be filed during the week of October 5 "if possible."

110. Judge Perez filed his findings of fact, conclusions of law and order for judgment on December 8, 2009. His written order falsely stated that the matter had been submitted for decision on September 8, 2009 (the date of the final post-trial conference call). The decision offered no explanation for the delay between the trial and Judge Perez's order. Judge Perez ruled in the taxpayer's favor and reversed the Commissioner of Revenue's imposition of additional sales and use taxes in its entirety.

111. Nearly a full year passed between the conclusion of the trial and the filing of Judge Perez's decision in the *Northern X-Ray* case.

Clarence & Pauline Johnson v. Commissioner of Revenue (No. 7995 R)

112. This matter involved an income tax appeal brought by pro se taxpayers challenging a taxable gain they received when they deeded property to their lender in lieu of foreclosure.

113. The case was tried before Judge Perez on November 7, 2008. At the end of the trial, Judge Perez did not establish a post-trial briefing schedule. Instead, he encouraged the parties to discuss settlement and scheduled a post-trial conference on January 28, 2009 to determine if the case had been settled.

114. One week later, on November 14, 2008, the tax court's master case status tracking log was updated to note the upcoming January 28, 2009 post-trial conference and establish a decision deadline of April 28, 2009, three calendar months after that conference and more than five months in the future.

115. Also on November 14, 2008, the tax court received an unsolicited post-trial memo from the petitioners. The taxpayers informed Judge Perez that they needed to refinance their home but could not do so because of the existing state tax lien filed against their property. They included a motion that Judge Perez rule on the matter within 30 days.

116. The court provided no response to the taxpayers' request for an immediate ruling. Instead, Judge Perez held a post-trial conference call with the parties on January 29, 2009 to determine whether the case had settled. After learning that no settlement had occurred, Judge Perez directed the Commissioner of Revenue to call Mr. Johnson by February 13, 2009. Judge Perez further directed the Commissioner to call the tax court administrator by February 18, 2009 to inform the court respecting any settlement. Following the January 29, 2009 conference, the tax court's master case management tracking log was amended to reflect a decision deadline of April 28, 2009.

117. On February 5, 2009, the tax court received another letter from the taxpayers requesting a decision. They wrote: “we are requesting this case be resolved, by the Judge, Requesting by way of a MOTION, this be done in 15 days, as we stated, we must refinance our home.”

118. On or about February 17, 2009, the Commissioner informed the tax court that the case had not settled. One of the tax court staff made a note on the bench log from the earlier conference that the matter was “not settled.” The log further noted that the case was “under advisement 2-17-09.”

119. Judge Perez held another post-trial conference on February 20, 2009. He established a post-trial briefing schedule with final briefs due by April 3, 2009. After the hearing, the tax court’s master case status tracking log was revised to reflect the new briefing schedule and a July 6, 2009 decision deadline.

120. The taxpayers served and filed their reply brief several weeks early, filing it with the tax court on March 19, 2009.

121. On June 9, 2009, the taxpayers filed another motion asking for removal of the tax lien on their residence and requesting “that this case be ruled on in 30 days.”

122. Judge Perez held another post-trial conference call on June 22, 2009. During the hearing, Judge Perez inquired whether the taxpayers were eligible under a federal law provision that allows individuals to exclude up to \$250,000 of gain from the sale of their primary residence, if certain conditions are met. In hearing notes on the bench log, Judge Perez noted, “TBD - if P[etitioner] meets IRS Pub. 523 at [pages] 11-12.” Judge Perez also wrote “7-14-09 call Comish” in the hearing notes section of the bench log.

123. The tax court's master case status tracking log was updated after the hearing to reflect the conference call and the July 14, 2009 date for contacting the Commissioner of Revenue. The log established a new decision due date of October 14, 2009.

124. On July 20, 2009, the taxpayers filed another letter with the tax court in which they accused the state of "stalling" and stated, "we are making a motion, requesting that this case be ruled on in 15 days or less."

125. On July 23, 2009, Judge Perez held another post-trial conference call with the parties. His hearing notes indicated that he was waiting for a letter brief from the Commissioner of Revenue. Separate handwriting on the bench log from the hearing states that the case was taken "under advisement." Consistent with that note, the tax court's master case status tracking log was revised to reflect an October 23, 2009 decision deadline.

126. On August 18, 2009, the taxpayers filed a motion to remove Judge Perez from the case.

127. On October 12, 2009 and October 22, 2009, the tax court received unsolicited letters from the taxpayers. After each of the latter two letters were filed, the tax court's master case status tracking log was amended to establish a new decision deadline three months from receipt of the letter.

128. On October 30, 2009, the taxpayers again moved to have the State's tax lien removed from their home within thirty days. Following receipt of that letter, the tax court's master case status tracking log was revised to establish a January 30, 2010 deadline for deciding the case.

129. On December 1, 2009, the taxpayers again wrote to the tax court. Their letter stated in part:

We are Clarence and Pauline Johnson, On 8/18/09 we wrote you filing a MOTION to have Judge Perez removed from the case, it has been over 2 years and NO ruling, YOU have NOT RESPONDED, WE ARE DEMANDING A RESPOND [sic] . . . WE ARE DEMANDING THIS JUDGE BE REMOVED, IF NOT WHY NOT?

At the same time, the taxpayers filed a separate written motion requesting “that this case be ruled on in 30 days.”

130. On March 1, 2010, Judge Perez issued his written findings of fact, conclusions of law and order for judgment in which he affirmed the determination of the Minnesota Commissioner of Revenue that the taxpayers recognized a \$146,889 capital gain from debt forgiveness associated with their deed in lieu of foreclosure.

131. Judge Perez stated that the matter was heard on November 8, 2008 (the date of the trial) and February 20, 2009 (one of the post-trial conferences). Except for the reference to the February 20, 2009 conference, no mention was made of the numerous other post-trial conferences held in the case. Judge Perez falsely stated that the matter had been submitted for decision on December 1, 2009 (the date of the taxpayers’ last letter demanding a decision). He noted in a footnote to his decision each date upon which the tax court had received memoranda, briefs or other “documents in support of their arguments” from the taxpayers. Nothing in the footnote acknowledged the taxpayers’ repeated requests and motions asking for a decision in the case or Judge Perez’s routine addition of another three months to the decision deadline after receiving each of the taxpayer’s letters.

132. Nearly sixteen months elapsed between the end of the trial and the filing of Judge Perez’s decision in the *Johnson* case.

William D. Larson v. Commissioner of Revenue (No. 8125 R)

133. This case involved an appeal by an individual taxpayer challenging a determination by the Minnesota Commissioner of Revenue that the petitioner was a Minnesota resident for purposes of state income taxation.

134. The case was tried to Judge Perez on stipulated facts on April 6 and 7, 2011. At the conclusion of the trial, Judge Perez established a briefing schedule under which the final reply brief was due on or before June 24, 2011. The tax court's master case tracking log dated April 27, 2011 established a decision deadline of September 24, 2011 (three months after the final brief was due).

135. A transcript of the trial was prepared and filed on April 14, 2011.

136. On April 29, 2011, the taxpayer's counsel wrote a letter to the court reporter stating, "[d]uring our review of the trial transcript, we noticed several errors requiring correction, some of which are significant (for example, transposed numbers on one of the dates) and some of which are for the accuracy and clarity of the record." The attorney asked the court reporter to review the audio recording from the trial to verify and/or correct the transcript. A copy of the letter was received by the tax court and filed on May 2, 2011.

137. Judge Perez took five days of voluntary time off (unpaid leave) due to illness between May 6 and May 31, 2011. He underwent surgery for a medical condition on June 13, 2011 and was on medical leave from June 13 through June 24 and again on June 28, 2011. Available court records show that after returning to work on June 28, 2011, Judge Perez took no further sick leave during the remainder of 2011.

138. Notwithstanding Judge Perez's illness, the tax court's master case tracking logs prepared between May 9, 2011 and June 28, 2011 continued to reflect a September 24, 2011 due date for deciding the Larson case.

139. As the result of a state government shutdown, the tax court was closed from July 1, 2011 through July 20, 2011.

140. When the tax court reopened after the state shutdown, Judge Perez directed the employee responsible for updating the court's master case status tracking log to add up to 20 additional days to individual case due dates because of the shutdown on "as needed" basis.

141. Sometime thereafter, the deadline for deciding the Larson case was thereafter extended by 41 days. The new decision due date of November 4, 2011 was reflected on the tax court's master case status tracking log dated September 16, 2011.

142. Judge Perez did not issue a decision by the November 4, 2011 deadline. Instead, on or about November 18, 2011 he directed a tax court employee to have the court reporter who transcribed the trial to "verify . . . print and send a new trial tr[anscript]." At Judge Perez's direction, the employee faxed another copy of the April 29, 2011 letter that the taxpayer's counsel had previously sent to the court reporter.

143. The manager for the court reporting agency responded by letter faxed to the tax court on November 21, 2011. She apologized for any inconvenience caused by the errors and assured the court that she had "expressed the importance of accuracy with all of our reporters."

144. Judge Perez held a post-trial conference call with counsel for the parties the next day. During the call, he directed the taxpayer's attorney to follow up with the court reporting agency to

obtain verification of the accuracy of changes to the transcript requested in counsel's prior letter of April 29, 2011.

145. On December 13, 2011, the court reporting agency responded with its explanations and corrections to the transcript, which noted mostly spelling and other minor errors. The letter was filed with the tax court on December 14, 2011.

146. On January 11, 2012, Judge Perez filed his findings of fact, conclusions of law and order for judgment, affirming the Commissioner's finding that the taxpayer was a Minnesota resident. The decision neither noted a specific date on which the case was submitted for determination nor acknowledged that Judge Perez had failed to decide the case by his amended deadline. It contained nothing evidencing excusable delay due to illness or consent of the parties. Instead, the decision falsely stated that "[t]he matter was submitted to the Court for decision pursuant to Minn. Stat. §271.20."

147. More than nine months elapsed between the end of the trial and the filing of Judge Perez's decision in the *Larson* case.

Kenneth B. Mauer v. Commissioner of Revenue (No. 8117 R)

148. This case involved another individual taxpayer's challenge to a determination by the Commissioner of Revenue that the taxpayer was a Minnesota resident for purposes of state income taxation.

149. The matter was tried before Judge Perez on stipulated facts on January 12 and 13, 2011. At the conclusion of the hearing, Judge Perez established a briefing schedule under which the final reply briefs were due on March 28, 2011. According to the tax court's register of actions, all reply briefs were filed with the court by March 29, 2011.

150. Master case status tracking logs maintained by the tax court between January 14, 2011 and June 13, 2011, consistently reflected a decision due of either June 28 or June 30, 2011.

151. As noted above, Judge Perez missed five days of work due to illness between May 6 and May 31, 2011. He underwent surgery for a medical condition on June 13, 2011 and was on medical leave from June 13 through June 24 and again on June 28, 2011.

152. According to Judge Perez the parties were notified in writing on June 13, 2011 that the decision would be delayed because of his medical leave. Nothing in the tax court records reflects this notice. The court's master case status tracking log dated June 28, 2011 contains a reference to June 15, 2011 in the "notes" column with a decision due date of September 15, 2011 based on that entry.

153. The tax court was closed from July 1, 2011 through July 20, 2011 due to the state government shutdown.

154. Some time in or about mid-August 2011, Judge Perez met with an employee of the tax court to discuss an additional extension of the decision deadline. The employee made notes from their discussion in the post-hearing notes section of the court's bench log from the trial. She wrote: "Adj due date shut down & medical leave."

155. The tax court's master case status tracking log dated September 6, 2011 was thereafter revised to move the due date out 41 additional days and establish a new decision deadline of October 26, 2011 for the Mauer case.

156. Judge Perez did not issue a decision by the October 26, 2011 deadline.

157. Instead, Judge Perez filed his findings of fact, conclusions of law and order for judgment on January 20, 2012, affirming the Commissioner's finding that the taxpayer was a

Minnesota resident. The decision did not note a specific date on which the case was submitted for determination. Nor did it contain any representation regarding excusable delay due to illness or consent of the parties. Instead, the decision falsely stated that “[t]he matter was submitted to the Court for decision pursuant to Minn. Stat. §271.20.”

158. More than twelve months elapsed between the end of the trial and the filing of Judge Perez’s decision in the *Mauer* case.

Continental Rogers v. County of Hennepin (Nos. 27-CV-08-09499, et al.)

159. This case involved a property valuation appeal regarding four multi-purpose commercial buildings owned by a single taxpayer.

160. The case was tried before Judge Perez on October 19 through 22, 2010. After the trial, Judge Perez ordered post-trial briefing with all reply briefs due by December 17, 2010.

161. Master case status tracking logs maintained by the tax court between November 5, 2010 and February 28, 2011, consistently reflected a decision due of March 17, 2011, three months after the final brief was due. The last brief was actually filed with the tax court on December 20, 2010. Accordingly, the tax court’s master case status tracking log dated March 7, 2011 was changed to indicate the brief filing on that date, thereby making the decision due on March 21, 2011.

162. On March 17, 2011, Judge Perez held a post-trial conference call with counsel for the parties. Notes from the hearing made by a tax court employee indicated that the case was under advisement and that the parties orally agreed to an extension of the decision deadline. Afterwards, the tax court’s master case status tracking log was amended to reflect both the conference call and another three-month extension with a new decision due date of June 17, 2011, three months after the call.

163. Master case status logs prepared by the court from March 30, 2011 through June 13, 2011 consistently showed a June 17, 2011 deadline for deciding the Continental Rogers case.

164. As noted above, Judge Perez underwent surgery for a medical condition on June 13, 2011 and was on medical leave from June 13 through June 24 and again on June 28, 2011.

165. On June 15, 2011, the tax court administrator sent an e-mail to counsel for the parties stating that Judge Perez was “requesting an extension for medical reasons” on the Continental Rogers appeals “under Statute 271.20.”

166. The parties voiced no objection and an adjustment was entered on the tax court’s master case status tracking log dated June 28, 2011, postponing the decision deadline three more months and making a decision due on September 17, 2011.

167. The tax court was closed from July 1, 2011 through July 20, 2011 due to the state government shutdown.

168. At Judge Perez’s direction, the tax court’s master case status tracking log dated September 6, 2011 was thereafter revised to move the due date out 41 additional days and establish a new decision deadline of October 28, 2011 for the case.

169. Judge Perez did not issue a decision or obtain the parties’ written consent to a further extension before the October 28, 2011 deadline.

170. Instead, Judge Perez held another post-trial conference call on December 21, 2011. During the call, Judge Perez told the parties that his decision had been delayed by his illness, the state government shut down and the complexity of the issues in the case.

171. The tax court’s master case status tracking log dated January 26, 2012 noted the December 21, 2011 call but left the decision due date blank.

172. Judge Perez filed his findings of fact, conclusions of law and order for judgment on January 31, 2012. He ordered the county to adjust the assessed value for two of the parcels upward and to reduce the assessed value on the other two parcels for each of the three tax years in dispute. The decision did not note a specific date on which the case was submitted for determination. Nor did it contain any representation regarding excusable delay due to illness or consent of the parties. Instead, the decision falsely stated that “[t]he matter was submitted to the Court for decision pursuant to Minn. Stat. §271.20.”

173. More than fourteen months elapsed between the end of the trial and the filing of Judge Perez’s decision in the *Continental Rogers* matter.

174. By failing to decide the foregoing cases within three months of the date of submission without lawful justification or excuse, Judge Perez displayed a pattern of noncompliance with Minn. Stat. §271.20.

175. Judge Perez’s actions violated Minnesota law and created an appearance of impropriety in violation of Canon 2A of the former Code of Judicial Conduct and Canon 1, Rules 1.1 and 1.2 of the current Code.

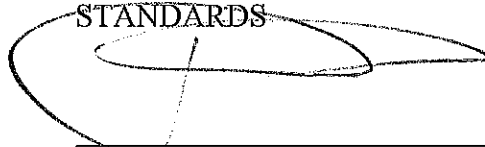
176. Judge Perez’s failure to promptly and efficiently decide the foregoing cases also violated Canon 3A(1) of the former Code and Canon 2, Rules 2.1 and 2.5(A) of the current Code.

SPECIFICATION OF CHARGES

177. Judge Perez violated Canons 2A and 3A(1) of the former Code and Canon 1, Rules 1.1 and 1.2; Canon 2, Rules 2.1, 2.5(A), 2.7, 2.12(A) and 2.16 of the current Code, along with Rules 4(a)(5) and 4(a)(6) of the Rules of the Board on Judicial Standards by: (1) falsely certifying in time records submitted to the State of Minnesota that he was in compliance with the time limits

established by Minn. Stat. §271.20 for deciding cases at times when decisions in his cases were overdue, (2) refusing to accept new case assignments and directing court personnel to keep his refusal to take new cases secret from his fellow tax court judges, (3) failing to be fully cooperative, candid and honest with the Board or its investigators during the course of the investigation into his misconduct, and (4) engaging in a lengthy pattern of failing to promptly decide cases submitted for his decision within the three-month deadline established by Minnesota law without lawful justification for his delays. .

THE MINNESOTA BOARD ON JUDICIAL
STANDARDS



Dated: November 2, 2012

David S. Paull, Executive Secretary
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