

4-16-87

The Board's inquiry of judges concerning cases in which orders have not been issued within the ninety day period as required by Minnesota Statute 546.27 has caused an awareness among judges as to the necessity of compliance with this Statute. This Statute was amended in 1981 to include appellate as well as trial matters. Based on information, received by the Board, it appears that some judges do have a problem in issuing orders within the ninety days.

The Board took action in two disciplinary matters which are public proceedings during the years.

*File* → Honorable Jack Fena

Tax Court Judge

Complaint No. 80-4

In a four count complaint, the Board on Judicial Standards charged that Jack Fena, Minnesota Tax Court Judge, that he practiced law after being appointed tax judge; that after being appointed to the tax court on July 1, 1977, he retained interests in contingent fee matters upon agreements to split fees recovered in the matters equally with other attorneys, without regard to work done or responsibility assumed and continued to maintain such interest in the practice of law and/or litigated matters after

his appointment to the tax court and that he delinquently filed, as required by law, "Judges Report of Compensation Received for Quasi-Judicial and Extra-Judicial Activities" for three years and failed to report compensation. Respondent was further charged with failure to properly report income and claimed improper deductions for business and personal expenses on his state and federal income tax returns for 1977, 1978 and 1979.

Tax court judges are appointed by the governor and serve for a term of six years. The terms of the judges shall be staggered. Judge Fena's term expired January 5, 1981. In November 1980, he informed the governor by letter that he wished to be considered for reappointment. After he was served with a formal statement of allegations, he informed Governor Al Quie that he is withdrawing his name for consideration for reappointment to the Minnesota Tax Court. Judge Fena continued to hold office because no successor had been appointed until January 31, 1981. Governor Quie filled the tax court judge vacancy effective February 2, 1981. The Rules of the Board on Judicial Standards provide that the Lawyers Professional Responsibility Board shall have jurisdiction over a lawyer who is no longer a judge with reference to allegedly unethical conduct that occurred during or

prior to the time when the lawyer held judicial office, provided that such conduct has not been the subject of judicial disciplinary proceedings as to which a final determination has been made by the Supreme Court. Judge Bruce C. Stone, who was appointed referee by the Supreme Court to hear the Judge Fena matter, heard the jurisdictional matter. The parties through counsel in open court stipulated and agreed that the proceedings be transferred to and considered by the Lawyers Professional Responsibility Board and that the proceedings before the Board on Judicial Standards be dismissed without prejudice. Chief Justice Robert J. Sheran in his Order of March 17, 1981 ordered and directed that the proceeding before the Board on Judicial Standards be dismissed without prejudice upon the ground and for the reason that the jurisdiction of the Board on Judicial Standards terminated on February 2, 1981 when his successor as a judge of the Minnesota Tax Court was appointed and qualified. While the Lawyers Professional Responsibility Board does have jurisdiction over this case, the extent, if any, to which the Lawyers Professional Responsibility Board will exercise this jurisdiction is a matter for initial determination by it.