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2016-17 Governor's Budget, Judicial Standards, Board of

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www.bjs.state.mn.us

AT A GLANCE

The Board on Judicial Standards:

- Investigates complaints of judicial misconduct or disability
- Seeks or imposes discipline on judges when appropriate
- Advises and educates judges on proper conduct
- Has jurisdiction over all Minnesota trial and appellate judges (315 positions), retired judges in active service, referees, and other judicial officers.

PURPOSE

The mission of the Board on Judicial Standards is to maintain public confidence in the integrity and impartiality of the Minnesota judiciary by enforcing the Minnesota Code of Judicial Conduct and by educating and advising judges how to comply with the Code.

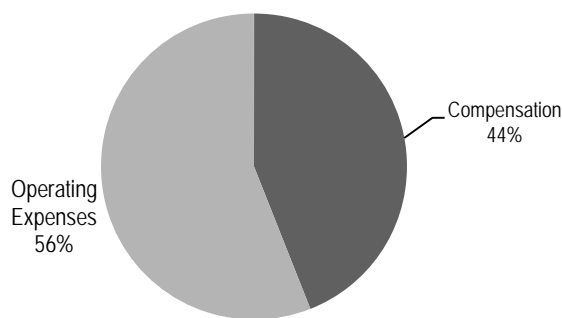
A society cannot function without a fair and effective way to resolve disputes. Acceptance of judicial rulings is based on public recognition that the judiciary and the court system are worthy of respect and trust. Public confidence in our judicial system directly depends on the proper conduct of our judges.

The Minnesota Constitution authorizes the Legislature to provide for the retirement or discipline of any judge who is disabled or guilty of conduct prejudicial to the administration of justice. The Legislature created the Board on Judicial Standards to carry out this task. The Minnesota Supreme Court adopted the Code of Judicial Conduct which sets forth the standards for judges to follow.

The Board has ten members: one judge from the Court of Appeals, three district court judges, two lawyers, and four citizens who are not judges or lawyers. All members are appointed by the Governor and, except for the judges, require confirmation by the Senate. The Board is supported by an Executive Secretary and an Executive Assistant. The Board on Judicial Standards supports the statewide outcome of **efficient and accountable government services**.

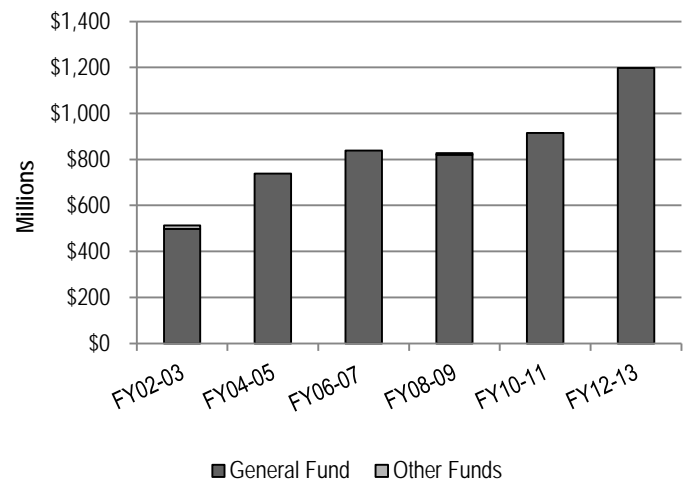
BUDGET

**Spending by Category
FY 13 Actual**



Source: SWIFT

Historical Spending



Source: Consolidated Fund State

The Board is wholly funded by the state general fund. FY 2013 expenditures totaled \$496,000.

STRATEGIES

To accomplish its mission, the Board uses the following strategies:

- The Board promptly reviews complaints alleging judicial misconduct or disability, conducting investigations when necessary.
- The Board uses fair and open procedures that respect the judge's right to due process.
- If the Board finds misconduct, the Board may issue a public reprimand or private discipline if the misconduct is isolated and non-serious.
- In serious cases, the Board files charges against the judge, which can result in a public hearing by a panel and a recommendation to the Minnesota Supreme Court for discipline such as censure, suspension, or removal from office.
- The Board advises and educates judges on the application of the Code of Judicial Conduct.

The Board is not a substitute for appeal. The Board does not review judicial decisions for legal error unless there is fraud, corrupt motive, or bad faith.

Beginning in 2013, the Board has attempted to reduce expenditures for outside counsel by increased use of contract employees for investigations and thorough preparation of cases before seeking public discipline.

The Board continually strives to become more transparent to the judges, the public, and the Legislature. In 2013 the Board created a new website, and greatly revised and supplemented website content, to display more information about the Board's activities and to provide better guidance on ethics issues faced by judges.

RESULTS

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quantity	Formal advisory opinions (published)	0	2	2012-2013
Quantity	Informal advisory opinions to individual judges	80	67	2012-2013
Quantity	Supreme Court discipline	0	0	2012-2013
Quantity	Public reprimands	0	1	2012-2013
Quantity	Private admonitions and letters of caution	7	5	2012-2013
Quantity	Active investigations or litigation involving serious matters	1	5	2012-2013

Performance Measures Notes:

The data shown is for calendar years 2012 (previous) and 2013 (current). The Board's activities in previous years are described in the Board's Annual Reports, available at <http://www.bjs.state.mn.us>.

The Minnesota Constitution authorizes the Legislature to "provide for the retirement, removal, or other discipline of any judge who is disabled, incompetent, or guilty of conduct prejudicial to the administration of justice." Minn. Const. Art. 6, Sec. 9.

The 1971 Legislature created the Board on Judicial Standards to carry out this task. M.S. 490A.01-.03

https://www.revisor.mn.gov/statutes/?id=490A&view=chapter&year=2013&keyword_type=all&keyword=490A.01

The Board operates under the Rules of the Board on Judicial Standards adopted by the Minnesota Supreme Court.

Expenditures By Fund

	Actual		Actual FY14	Estimate FY15	Forecast Base		Governor's Recommendation	
	FY12	FY13			FY16	FY17	FY16	FY17
1000 - General	702	496	516	543	456	456	486	486
Total	702	496	516	543	456	456	486	486
<i>Biennial Change</i>				(139)		(147)		(87)
<i>Biennial % Change</i>				(12)		(14)		(8)
<i>Governor's Change from Base</i>								60
<i>Governor's % Change from Base</i>								7

Expenditures by Program

Program: Judicial Standards Board	702	496	516	543	456	456	486	486
Total	702	496	516	543	456	456	486	486

Expenditures by Category

Compensation	238	216	234	227	227	227	257	257
Operating Expenses	464	280	281	293	218	224	218	224
Other Financial Transactions		0		23	11	5	11	5
Capital Outlay-Real Property				0				
Total	702	496	516	543	456	456	486	486

Full-Time Equivalents

	2.0	1.8	2.0	2.0	2.0	2.0	2.5	2.5
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(Dollars in Thousands)

1000 - General

	Actual		Actual FY 14	Estimate FY15	Forecast Base		Governor's Recommendation	
	FY12	FY 13			FY16	FY17	FY16	FY17
Balance Forward In		44	0	87				
Direct Appropriation	746	456	756	456	456	456	486	486
Cancellations		4	153					
Expenditures	702	496	516	543	456	456	486	486
Balance Forward Out	44	0	87					
<i>Biennial Change in Expenditures</i>				(139)		(147)		(87)
<i>Biennial % Change in Expenditures</i>				(12)		(14)		(8)
<i>Gov's Exp Change from Base</i>								60
<i>Gov's Exp % Change from Base</i>								7
FTEs	2.0	1.8	2.0	2.0	2.0	2.0	2.5	2.5

Board on Judicial Standards

FY16-17 Biennial Budget Change Item

Change Item: Additional Investigative Attorney Resources

Fiscal Impact (\$000s)	FY 2016	FY 2017	FY 2018	FY 2019
General Fund				
Expenditures	30	30	30	30
Revenues	0	0	0	0
Other Funds				
Expenditures	0	0	0	0
Revenues	0	0	0	0
Net Fiscal Impact = (Expenditures – Revenues)	30	30	30	30
FTEs	.5	.5	.5	.5

Recommendation:

The Governor recommends \$30,000 in FY 2016 and \$30,000 in FY 2017 to create a half-time attorney position for investigation of disciplinary cases. The creation and use of this new position is expected to decrease the Board's need to seek special appropriations for future disciplinary cases.

Rationale/Background:

The mission of the Board on Judicial Standards is to maintain public confidence in the integrity and impartiality of the Minnesota judiciary. The Board enforces the Minnesota Code of Judicial Conduct and educates judges on how to comply with the Code. The Board has jurisdiction over all Minnesota trial and appellate judges (315 positions), retired judges in active service, referees, and other judicial officers.

The Board promptly reviews complaints alleging judicial misconduct or disability, conducting investigations when necessary. If the Board finds misconduct, the Board seeks to discipline the judge. In serious cases, the Board files charges against the judge. Unless the case is settled, the case is litigated. Litigation involves a public hearing by a panel, followed by proceedings in the Minnesota Supreme Court. The Court has the authority to censure, suspend, or remove the judge from office.

The size of the Board's staff has remained the same since the Board was created in 1974. The staff consists of the Executive Secretary and an assistant. Consequently, in order to prosecute a case against a judge, it is necessary for the Board to retain outside counsel. The Board is unable to predict whether in a coming year it will receive evidence that a judge has committed serious misconduct or whether a case will be settled or litigated. The fees for outside counsel to investigate and litigate a major case are substantial. For most of the Board's history, the Board's operating budget was not sufficient to pay the fees of outside counsel, and the fees were paid by special appropriations. In 2007, in order to reduce reliance on special appropriations, the Legislature created a major case fund with a \$125,000 annual appropriation. Even after the creation of this fund, however, the Board was required to periodically seek special appropriations to prosecute disciplinary cases. For example, in 2011, the Legislature approved a special appropriation of \$290,000 to fund several major cases. In 2013, the Legislature approved a special appropriation of \$300,000 to fund the *Perez* case and a disability case.

The Board has explored ways to further reduce the need for special appropriations. The Board has found that one of the most important ways is to devote more in-house resources to investigating cases before the Board hires outside counsel. In-house investigation has a number of benefits. First, the expenses of investigation by office staff are much less than fees for investigation by a law firm. Second, in-house investigation results in a thorough understanding of the factual and legal grounds of a matter at an earlier stage. This gives the Board the information it needs when it decides whether to seek discipline and what level of discipline is appropriate. This approach promotes early settlement of cases. It is less likely that a judge will contest discipline if the Board is able to show the judge that it has solid evidence for the Board's allegations and is seeking a discipline that is solidly grounded on the facts and the law. Settlement at an early stage of the proceedings significantly reduces the funds necessary to resolve a case.

The Board presently has a small office budget for contract legal services. It has been using this budget to pay for the services of a retired judge for initial investigation and analysis of complaints and legal research. In addition, the Board has implemented low cost methods of reducing litigation costs. It gives judges a full and fair opportunity to present all facts they believe the Board should

consider before the Board decides whether the judge has committed misconduct. The Board's charges against a judge are clear, detailed, and documented. The Board posts disciplines on its website so that other judges can learn from them.

The Board's current approach appears to be reflected in a reduction of fees spent on litigation. The Board did not request a special appropriation in FY 2014 or FY 2015. The two public matters brought by the Board in 2014 were not contested by the affected judges. The Board anticipates that there will be at least one contested public matter in FY 2015, but it anticipates that the major case fund will be sufficient to pay the expenses of the case without the need for a special appropriation. The Board cautions, however, that it is not able to predict future litigation expenses. The Board has an overriding duty to the public, and the Board cannot dismiss a case simply to avoid the cost of litigation.

The Board has experienced some salary savings as a result of hiring a new executive assistant at a lower salary than his predecessor. As a result it is possible to fund an additional half-time position with the addition of only \$30,000 to the base budget.

Proposal:

This recommendation would create a half-time attorney position for investigation and analysis of complaints and legal research. The position would be created August 3, 2015. It is intended to reduce the need for special appropriations.

Results:

The measure will be the whether the special appropriations sought by the Board in the future are smaller than the amount of the proposed budget increase.

<i>Type of Measure</i>	<i>Name of Measure</i>	<i>Previous</i>	<i>Current</i>	<i>Dates</i>
Quantity	Special Appropriations for Major Cases	\$300,000	0	2013-2014

Statutory Change(s):

Not applicable.