

MINNESOTA BOARD ON JUDICIAL STANDARDS

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TO: Chief Justice Russell Anderson, Supreme Court
Chief Judge Edward Toussaint, Jr. COA
Sue Dosal, State Court Administrator
John Kostouros, Court Information Office
Rick Slowes, Commissioner, Supreme Court of Minnesota
Minnesota Supreme Court Justices

FROM: David Paull, Executive Secretary

DATE: 6/27/2006

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SUBJECT: **PRESS RELEASE**

RE: Minnesota Supreme Court Justices

Special Instructions: *For Your Information - - -*

MN BOARD ON JUDICIAL STANDARDS

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Press Release

Contact: David Paull, Executive Secretary
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FOR IMMEDIATE RELEASE

In a letter issued today, the Board on Judicial Standards (Board) concluded that there was no reason to proceed further on complaints filed by Rep. Tom Emmer and Greg Wersal. The complaints named all the justices of the Supreme Court and raised questions about whether any improper remarks were made by any Supreme Court justice to Sen. Dean Johnson concerning a state law defining marriage. Specifically, the Board determined that there was no evidence to indicate that any justice had any discussion with Sen. Johnson concerning this or any related issue or that any justice made any comment, promise, commitment or prediction on how the court might rule on such matters in the future.

The complaints were filed after it was reported that Sen. Johnson told persons attending a meeting of the New London–Spicer Ministerial Association that certain justices had privately advised him that the definition of marriage in the State of Minnesota would not be changed by any decision made by the Minnesota Supreme Court.

Sen. Johnson subsequently denied that any Minnesota Supreme Court justice made any “promises or commitments” to him and apologized for his remarks, as well as for any damage “done to the integrity of the court.” The controversy continued, however, because Sen. Johnson, through his lawyer, subsequently told a Minnesota Senate ethics panel that, despite his previous statements, conversations with more than one justice had occurred and that “gay rights was part of these discussions.” The ethics panel was further advised that witnesses “were in those meetings and heard those conversations.”

The Board’s investigation, however, disclosed that Sen. Johnson engaged in no conversations with any Supreme Court justice concerning any issues that relate to the definition of marriage in the State of Minnesota. Each Supreme Court justice independently denied ever having any conversations with Sen. Johnson on any issue relating to the definition of marriage. Sen. Johnson confirmed that no such conversations ever occurred.

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Sen. Johnson told the Board that his comments were based on prior conversations he had participated in with several justices about unrelated issues of court administration and court budget. Despite Sen. Johnson's confirmation that these prior conversations were limited to matters of court administration and budget and did not touch on the issue of definition of marriage, Sen. Johnson told the Board that, based on these exchanges, he "made the assumption they were not interested in making a decision" changing the definition of marriage in Minnesota.

The Board noted in its letter that it is entirely proper, under the code of conduct, for a judge to discuss court administrative and budget issues with a legislator.

The decision further states:

In view of this undisputed evidence, the Board cannot credit assumptions based on conversations which, in the context of the matters pertinent to this inquiry, did not ever take place. Sen. Johnson's mistaken inferences fail to provide any reason for the Board to proceed further in these cases.

Citing to its rules restricting it from considering cases in which it is alleged that a lawyer who is no longer a judge acted improperly while serving as a judge or judicial officer, the Board declined to rule on the complaint naming former chief justice Kathleen Blatz. However, the Board noted that a complaint naming her had previously been dismissed by the Office of Lawyers Professional Responsibility, the agency that has the authority to consider the matter.

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VIA FIRST CLASS MAIL

June 27, 2006

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Re: BJS File No. 06-24 (Hon. Kathleen Blatz) (ret.)
BJS File No. 06-25 (Hon. Russell A. Anderson)
BJS File No. 06-26 (Hon. G. Barry Anderson)
BJS File No. 06-27 (Hon. Paul H. Anderson)
BJS File No. 06-28 (Hon. Russell A. Anderson)
BJS File No. 06-29 (Hon. G. Barry Anderson)
BJS File No. 06-30 (Hon. Paul H. Anderson)
BJS File No. 06-32 (Hon. Lorie S. Gildea)
BJS File No. 06-33 (Hon. Samuel Hanson)
BJS File No. 06-34 (Hon. Helen M. Meyer)
BJS File No. 06-35 (Hon. Alan C. Page)

Dear Rep. Emmer and Mr. Wersal:

Please permit this letter to advise that, on June 22, 2006, the Board on Judicial Standards ("Board") completed consideration of your complaints, received on or about March 31, 2006, naming former chief justice Kathleen Blatz and the current justices of the Minnesota Supreme Court. Based on reports of statements made by Sen. Dean Johnson, your complaints alleged that the justices of the Supreme Court made improper remarks regarding how the court might rule on a state law defining marriage.

The investigation was conducted over a period of several weeks. Sixteen persons were interviewed during the course of the investigation. Of this number, fourteen persons had pertinent information, including all the justices of the Minnesota

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Supreme Court. The statements of all witnesses who had pertinent information were obtained under oath. Additionally, upon request, the Board received and considered a number of documents.

After full review, the Board concluded that the allegations were not supported by any evidence and that no reason existed to proceed further in the matters. Because reports of the allegations were generally disseminated to the public both before and after the complaints were filed, the Board has elected to provide a brief summary of the reasons for its conclusions in this letter, pursuant to the *Rules of the Board on Judicial Standards (R.Bd.Jud.Stds, Rule 5(d)(2) and (3))*. Additionally, all of the justices named in the complaints have waived confidentiality in accordance with *R.Bd.Jud.Stds., Rule 5(f)*.

Summary of Facts Determined from the Investigation

The investigation disclosed that Sen. Dean Johnson is a resident of Willmar, Minnesota. In addition to his representation of Minnesota Senate District 13, Sen. Johnson serves as a Lutheran pastor and a National Guard chaplain. Now serving his seventh term in the Minnesota Senate, Sen. Johnson was first elected to the Minnesota State House in 1978 and re-elected in 1980. In 1982, he was elected to the Minnesota State Senate. Sen. Johnson was re-elected to the Minnesota Senate in 1986, 1990, 1992, 1996, 2000 and 2002.

On or about January 19, 2006, Sen. Johnson addressed a meeting of the New-London-Spicer Ministerial Association (Ministerial Association) in Spicer, Minnesota. A tape recording was made of Sen. Johnson's remarks without his knowledge or consent. A transcript of Sen. Johnson's remarks was made from this recording and disseminated by an organization named the Minnesota Family Council.

According to this transcript, Sen. Johnson was asked during the meeting whether he could "guarantee that laws regarding marriage, the DOMA law, will not change the definition of marriage the next 5 to 10 years?" The transcript contains the following reply to this question, attributing these statements directly to Sen. Johnson:

Ok, I never guarantee anything in the legislature, but I'll say this: Ok, the Supreme, members of the supreme court, I know all of them, I have had a number of visits with them about, you know, about our law. And all of them, every one of them including the lady who just stepped down, Kathleen Blatz, was my seatmate for 4 years, she was the chief justice, you know what her response was? "Dean, we all stand for election too, every 6 years." she said, "we are not going to touch it." That's what she said to me. I have talked with Justice Anderson and [the] other Justice Anderson, "Dean, we're not going to

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do this, you know, we're not going to do this." So, I can't, you know, I can't guarantee anything, I'm just telling you what . . .

On or about March 15, 2006, Sen. Johnson's comments were published in several Minnesota newspapers and reported over radio and television. After learning about the existence of the tape and the disclosure of his comments, Sen. Johnson made a public statement denying that any justice of the Minnesota Supreme Court had made any "promises or commitments" to him and apologized "if any damage has been done to the integrity of the court resulting from my loosely worded comments to fellow clergy."

Thereafter, the Supreme Court information office issued a public statement denying that any improper interaction with Sen. Johnson had ever occurred. Former chief justice Kathleen Blatz also denied any improper contact with Sen. Johnson in clear and unequivocal terms. In a statement released on March 16, 2006, former chief justice Blatz stated:

Senator Johnson said in this morning's paper that he's never "received any promises or commitments" regarding any potential cases from any member of the state Supreme Court and has apologized if anything he said left that impression. It would have been highly unethical for me as the Chief Justice to comment on a matter that might come before the court, or to give assurances to anyone on how the Court was likely to decide an issue that might come before it. It just never happened.

Over the next several days, Sen. Johnson made additional public statements that appeared to contradict and recant his initial remarks to the Ministerial Association. On one occasion, Sen. Johnson described his remarks to the Ministerial Association as an embellishment. On another occasion, Sen. Johnson stated that he had "sanded off" the truth. On Friday, March 17, 2006, Sen. Johnson, in another public statement, again apologized for what he described as a "mistake." However, he did not categorically deny that at least one or more conversations with one or more justices did occur, leaving open that question as well as what, if anything, had been discussed.

In a statement to the media on Monday, March 20, 2006, Chief Justice Russell A. Anderson unconditionally denied that any discussions occurred between Sen. Johnson and any current or former Supreme Court justice. "I have talked with every member of my court including the former chief justice," Chief Justice Anderson told reporters, "and we have not had conversations with Sen. Johnson about DOMA or how we might decide any matter relating to it. This just never happened." Chief Justice Anderson further stated that:

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I have been a judge for 23 years and I have never been approached by a legislator, county commission, mayor, township officer, member of a city council or anyone, school board, asking me for a commitment or even a conversation about a matter that is before the court or that might come before the court.

On or about Wednesday, March 22, 2006, an ethics complaint against Sen. Johnson was filed by Senators Mike McGinn and Claire Robling. The matter was heard by a legislative ethics panel on March 24, 2006.

At a closed session of the Senate panel, Sen. Johnson's lawyer, Ellen Sampson, declared that conversations between Sen. Johnson and more than one justice had indeed occurred. Ms. Sampson did not provide the Senate panel with any details of any of these conversations. However, she did tell the panel that if "the committee tells us to name them, we will name them and we will call the witnesses who were in those meetings and heard those conversations . . . the issue of gay rights was part of these discussions."

The panel never issued any public findings or conclusions. Rather, a written settlement was reached requiring Sen. Johnson to make a public apology to his constituents and to the Senate. The settlement agreement further required Sen. Johnson to write a letter of apology to the clergy who attended the January meeting in Spicer. Sen. Johnson complied with the conditions of this settlement.

The Investigation

In your complaints, both of you noted the factual conflicts as reported by the media and the Senate proceedings and suggested that several canons of ethics might have been violated.

During the Board's investigation, Sen. Johnson was asked to provide the particulars of any and all conversations or discussions he had with any current or former justice of the Minnesota Supreme Court concerning the issues raised in his remarks to the Ministerial Association.

Sen. Johnson recalled in detail three conversations with former chief justice Kathleen Blatz, all occurring in connection with separate visits to his Senate office. Several witnesses, including Sen. Johnson, recalled that the first visit occurred in approximately February 4, 2004. An office calendar indicated that a second conversation occurred on February 3, 2005. The third visit occurred on December 6, 2005.

Sue Dosal, the State Court Administrator, accompanied former chief justice Blatz on all three of these occasions. The meeting of February 4, 2004, was also attended by

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Cristine Almeida, in her capacity as Sen. Johnson's chief of staff. Ms. Almeida was also present at the meeting of February 3, 2005, together with John Kavanagh, Sen. Johnson's executive assistant. In addition to former chief Justice Blatz, Ms. Dosal and Sen. Johnson, the third meeting was also attended by John Kavanagh.

The reports of all the participants and witnesses to these various visits and conversations were strikingly similar. In each instance, the main topics of conversation were the subjects of court administration and court budget issues. Sen. Johnson specifically recalled that none of the issues referred to in his comments to the Ministerial Association were "specifically discussed" by any person who attended any of those meetings. "In regard to the issue of the Defense of Marriage and the probability that the Supreme Court would have to rule," Sen. Johnson told the Board, "We didn't discuss that."

In response to a specific question, Sen. Johnson informed the Board that former chief justice Kathleen Blatz did not tell him that, with respect to the Defense of Marriage Act, "we are not going to touch it" because "we all stand for election too, every 6 years." Sen. Johnson added that former chief justice Blatz had never made any prediction on how the Minnesota Supreme Court might rule on any issue raised by his comments to the Ministerial Association. Sen. Johnson further denied that former chief justice Blatz had indirectly communicated a comparable or similar message to him.

As to the current justices of the Supreme Court, Sen. Johnson recalled the following meetings:

- A scheduled meeting with Chief Justice Russell A. Anderson prior to March 15, 2006, regarding court administrative and budget issues.
- An informal random meeting with Associate Justice Paul Anderson in the state capitol.
- An informal random meeting with Associate Justice Alan C. Page at a charity football game.
- An appearance on a local access television program hosted by Associate Justice G. Barry Anderson.

In the context of these recollections, the Board actively sought an explanation for the comments of Sen. Johnson indicating that at least some conversations regarding DOMA or related issues occurred with certain unnamed justices of the Minnesota Supreme Court. In his answers to direct questions, Sen. Johnson did not recall any conversation with any current or former justice that related to any of the issues raised by his remarks to the Ministerial Association. Rather, Sen. Johnson referred to all of the conversations he had with justices over the years, even conversations he

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himself admitted did not concern such issues. "Based upon the general discussions that we had in my office," Sen. Johnson responded, "I made the *assumption* they were not interested in making a decision about DOMA."

Sen. Johnson confirmed that the subject of how the Minnesota Supreme Court, or any justice thereof, might rule on any issue that was the subject of his remarks to the Ministerial Association was never raised or discussed by any of these justices.

Associate Justices Gildea, Hanson and Meyer denied ever having any conversations with Sen. Johnson. There is no evidence indicating otherwise. The recollections of these justices were entirely consistent with Sen. Johnson's statements in this regard.

Board Procedure

For your further information and for the benefit of the public, the Board takes this opportunity to describe some of the rules that apply to its duties and actions in these cases.

The Board is an agency with limited powers. The Board has only the authority to consider allegations that a judge or judicial officer engaged in personal judicial misconduct or is disabled physically or mentally. *Rule 2(a), R.Bd.Jud.Stds.* Except under very rare circumstances, judicial action based upon the alleged finding of incorrect facts or the improper application of procedures or laws does not constitute personal judicial misconduct. The Board has no legal authority to correct factual or legal mistakes in a court decision. The Board may not direct a judge to take, or refrain from taking any specific legal action. *Rule 4(c), R.Bd.Jud.Stds.*

Once a complaint is received, the Board's executive secretary makes a "preliminary evaluation" to determine whether the complaint raises any allegations the Board is authorized to consider. *Rule 1(a), R.Bd.Jud.Stds.* When the preliminary evaluation is completed and it is determined that the Board can consider one or more allegations, a "prompt, discreet and confidential evaluation" is conducted. *Rule 6(b), R.Bd.Jud.Stds.* Upon review of the preliminary evaluation, the Board may request a more formal investigation. Such an investigation may be conducted by the executive secretary or the executive secretary may employ, with the Board's approval, a "special counsel, private investigator or other experts as necessary to investigate and process matters before the board and the Supreme Court. *Rule 1(d)(1), Rule 6(c), R.Bd.Jud.Stds.*

Upon review and consideration of the investigation, the Board must determine whether or not "there is sufficient cause to proceed" to a public hearing in the case. If, in the Board's opinion, there is sufficient cause in the matter, it may proceed as follows:

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- Propose a public reprimand to the judge or judicial officer who is the subject of the investigation, *Rule 6(d)(1)(ii), R.Bd.Jud.Stds*;
- Prepare a Statement of Charges “setting forth the factual allegations and the time within which these rules require the judge to serve a written response,” *Rule 7, R.Bd.Jud.Stds*;
- Proceed directly to a Formal Complaint pursuant to *Rule 8, R.Bd.Jud.Stds*.

Even in cases where it does not conclude there is sufficient cause to proceed, the Board may still propose private discipline pursuant to *Rule 6(f), R.Bd.Jud.Stds*.

Regardless of whether the discipline proposed by the Board is private or public, the judge or judicial officer who is subject to the investigation has the absolute right to demand a full public hearing before a factfinding panel. *Rule 8, R.Bd.Jud.Stds*.

After a public hearing is conducted, the Board again considers its proposed discipline in the context of a recommendation provided by a fact finding panel. The Board has the power to consider a wide array of discipline including removal, retirement, imposing discipline as an attorney, imposing limitation or conditions, censure, civil penalty, suspension with or without pay or any combination of these sanctions. *Rule 11(d), R.Bd.Jud.Stds*.

After considering the investigation and/or the recommendations of a factfinding panel, the Board submits its recommendations to the Supreme Court. The Supreme Court considers the matter and files “a written opinion and judgment directing such disciplinary actions as it finds just and proper, accepting or rejecting or modifying in whole or in part, the recommendation of the board.” *Rule 13(f), R.Bd.Jud.Stds*. Where a complaint names a justice of the Supreme Court, the Court of Appeals makes the final decision. *Rule 13(h), R.Bd.Jud.Stds*.

Reasons for the Board's Decision

In making its determination in this matter, the Board considered the following provisions of the *Code of Judicial Conduct (Code)*:

Canon 1: Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing standards of conduct, and personally observe those standards in order to preserve the integrity and independence of the judiciary. The

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provisions of this Code should be construed and applied to further that objective.

Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 3: A Judge Shall Perform the Duties of the Office Impartially and Diligently

A(9): A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges or promises that are inconsistent with the impartial performance of the adjudicative duties of the office.

The investigation disclosed no evidence indicating that any justice had any discussion with Sen. Johnson or any other person concerning how any court might rule on any issue relating to the Defense of Marriage Act or any of the issues raised in Sen. Johnson's remarks to the Ministerial Association meeting. There is no evidence that any promises, commitments or predictions were made to anyone by any justice of the Minnesota Supreme Court concerning how any court might rule on any issue relating to the Defense of Marriage Act or any of the issues raised in Sen. Johnson's remarks to the Ministerial Association meeting. There is no evidence that any justice ever expressed any opinion regarding the legality or constitutionality of the Defense of Marriage Act or any issue raised by Sen. Johnson's remarks to the Ministerial Association meeting. The investigation failed to disclose any evidence giving rise to any other issue of judicial ethical concern.

According to his statements, Sen. Johnson believes that, despite his stated recollections, there is some connection between his discussions with various justices over the years and his remarks at the Ministerial Association meeting. This connection was "assumed" by Sen. Johnson on the basis of these admittedly unrelated conversations.

The evidence establishes that these discussions concerned only court administration and court budget issues. Sen. Johnson denied that any of the issues raised by his

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comments to the Ministerial Association were ever discussed by him with any justice of the Minnesota Supreme Court. The statements of the others present, including all justices who participated in those meetings, confirm that no such conversations occurred. It is entirely proper, under the *Code*, for a judge or judicial officer to discuss court administrative and budget issues with a legislator. *See, Canon 4C (1)*.

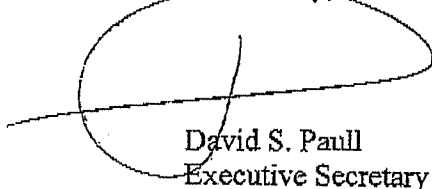
In view of this undisputed evidence, the Board cannot credit assumptions based on conversations which, in the context of the matters pertinent to this inquiry, did not ever take place. Sen. Johnson's mistaken inferences fail to provide any reason for the Board to proceed further in these cases.

The complaint filed naming former chief justice Kathleen Blatz was dismissed by the Board by letter of April 17, 2006. Pursuant to the *Rules of the Board on Judicial Standards (R.Bd.Jud.Stds, Rule 2(c))* the Board is without power to consider cases in which it is alleged that a lawyer who is no longer a judge acted improperly while serving as a judge or judicial officer. The Board notes that a complaint naming former chief justice Blatz was filed with the Office of Lawyers Professional Responsibility (Lawyers Board) on March 31, 2006. On April 7, 2006, the Lawyers Board concluded that the complaint had no merit. Because the authority of the Board ceased after her retirement, former chief justice Blatz participated in the investigation only in her capacity as a witness.

By letter dated May 4, 2006, Rep. Emmer requested that the Board appoint a "special prosecutor" to conduct the investigation. The Board considered this request and concluded that such action was not required in this case.

The Board appreciates your inquiry and thanks you both for your interest in the impartiality and integrity of our judicial system.

Yours truly,



David S. Paull
Executive Secretary

cc. Justices, Minnesota Supreme Court