

STATE OF MINNESOTA
BEFORE THE BOARD OF JUDICIAL STANDARDS

In Re: The Honorable Stephen C. Aldrich

BJS File Nos.

08-104

08-105

09-110

09-111

RESPONSE TO FORMAL STATEMENT OF COMPLAINT

The Honorable Stephen C. Aldrich makes the following response under R.Bd.J.Stds. 8 (a)(3) to the Statement of Complaint (“Complaint”) dated June 22, 2010:

INTRODUCTION

The Complaint is fundamentally flawed, both procedurally and substantively, for several reasons, including the following:

1. The Board improperly required Judge Aldrich to respond to the Complaints concerning *State v. Lessley* during the time when Judge Aldrich was still assigned as trial judge and could not ethically comment without creating a perception of bias. Although the Board invited Judge Aldrich to supplement his comments after the *Lessley* matter was no longer before him, it inexplicably refused to consider his supplement comments or reconsider the decision the Board had already made without those comments. It further declined Judge Aldrich’s request to appear before the Board to explain his actions.

2. The Board’s decision to charge Judge Aldrich for the comments he made in *State v. Lessley* is contrary to the conclusions independently reached by the Chief Judge of Hennepin County that these comments were appropriately made in context, did not show bias, and reflected “a judge doing his job – asking many questions to understand the nuances of the various pre-trial

motions in order to properly entertain the motions and rule upon them.” See Exhibit 1 attached. The decision of the Chief Judge was affirmed by the Minnesota Supreme Court.

3. The Board’s decision to charge Judge Aldrich for the use of humor in *Houle v. Houle*, which the parties to the case agreed was effective in relieving tension and facilitating the resolution of the pending motion, provides inappropriate support for the *ex parte* pressures used by WATCH to influence the outcome of judicial decisions, which produce a chilling effect on judicial independence. See Exhibits 2 attached for a sampling of attorney/judge comments.

4. The actions of the Board were seriously tainted by the refusal of Judge Daniel Mabley to recuse himself from participation, despite his long association with and support of Complainant WATCH and his wife’s public comments prejudging the merits of these complaints and defending the actions of WATCH in both filing them with the Board and seeking media publicity of them. See Exhibit 3 attached.

SPECIFIC ALLEGATIONS

Addressing the specific allegations of the Complaint, Judge Aldrich alleges as follows:

1. Admits the allegations of paragraphs 1 except that Judge Aldrich began as a Judge in Hennepin County in 1997, not 1996.
2. Admits the allegations of paragraph 2.
3. With respect to paragraphs 3 through 6, admits that the quoted statements were made but alleges that they are incomplete, not shown in context, were reviewed and found to be proper by the Chief Judge, and do not violate any Canon of Judicial Ethics.
4. With respect to paragraph 7, denies that he “ignored” a request to control the gallery.

5. With respect to paragraph 8, denies that he “stridently called out” and alleges he spoke in a normal voice to Attorney Paul Scoggin, asking him to call to continue a previous conversation on an administrative matter.

6. With respect to paragraph 9, denies that he became angry and alleges that he properly redirected counsel’s argument to effectively preside over the hearing.

7. With respect to paragraph 10, denies that the quoted portion was “gratuitous” and alleges that the comment was made to redirect counsel to address important issues that counsel was attempting to evade.

8. With respect to paragraphs 11 through 14, admits the allegations but alleges that they are not in context.

9. With respect to paragraphs 15 through 17, admits the allegations but alleges that the attorney’s decision to issue a press release was not prompted by Judge Aldrich and was done after the court hearing was completed.

10. With respect to paragraphs 18 and 19, admits the allegations but alleges that these are new matters not contained in the underlying complaints, Judge Aldrich has not been given notice of them or opportunity to respond, and the communications were not made during any judicial proceeding and were permissible expressions of rights of free speech.

11. With respect to paragraph 20, alleges that this is a new matter not contained in the underlying complaint, and Judge Aldrich has not been given notice or an opportunity to respond.

12. Admits allegations of paragraph 21.

13. With respect to paragraphs 22 and 23, alleges that the allegations concerning BJS File No. 1999-85 are in violation of R. Bd. J. Stds. 20, cannot be used in this proceeding, and should be stricken.

14. Except as admitted or qualified above, denies the allegations of the Complaint, including specifically, the specification of charges.

15. Alleges that, as to BJS File Nos. 2009-110 and 2009-111, the Formal Statement of Complaint was not served until June 24, 2010, which violates the requirement of R. Bd. J. Stds. 8(a)(2) that it be served promptly after the February 23, 2010 request for a formal hearing and a brief extension to engage Board Counsel. Accordingly, the allegations concerning BJS File Nos. 2009-110 and 2009-111 should be dismissed.

16. Alleges that, as to BJS File Nos. 2008-104 and 2008-105, the Board's Notice of Proposed Public Reprimand was issued without providing a full and fair opportunity to respond to the complaint because (a) at the time Judge Aldrich's response was required, the underlying case of *State v. Lessley* was still pending and assigned to Judge Aldrich, (b) Canon 3.A(8) restricted full comment, and (c) the requirement to make full comment risked creating the appearance of bias that would detrimentally affect the underlying case. Although the Board invited Judge Aldrich to submit a full response after Mr. Lessley had entered a guilty plea (but before the plea became final), the Board specifically refused to consider his response, advising that its decision had already been made before the full response and would not be reconsidered. Further, the Board denied Judge Aldrich's request to appear before the Board to explain his response. Accordingly, the Board denied Judge Aldrich due process and violated its own rules, with the result that BJS File Nos. 2008-104 and 2008-105 should be dismissed.

17. Alleges that the Complaint violates due process because of the participation by Judge Daniel Mabley, whose close association with Complainant WATCH created a conflict of interest and bias that disqualified Judge Mabley and his participation invalidated the action of the Board. Accordingly, the Complaint should be dismissed.

18. Alleges that the Board's Notice of Proposed Public Reprimand was not supported by the evidence and was based on an erroneous interpretation of Judge Aldrich's disciplinary history, giving weight to prior complaints that were dismissed or resulted in only cautionary instructions, without any finding of misconduct. Accordingly, the Complaint should be dismissed.

19. Alleges that the Board's Proposed Public Reprimand contained a condition that Judge Aldrich "refrain from public comments." That condition is not authorized by law and violates Judge Aldrich's free speech rights. Accordingly, that condition should be stricken.

20. Incorporates the responses made in BJS File Nos. 2008-104 and 2008-105 by letters dated February 16, 2009, May 13, 2010, and June 7, 2010, and in BJS File Nos. 2009-110 and 2009-111 by letters dated January 13, 2010 and February 23, 2010.

Dated:

July 12, 2010



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