MINNESOTA BOARD ON
JUDICIAL STANDARDS

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News Release

Contact: Sara P. Boeshans, Executive Secretary
Phone: (651) 296-3999
Date: April 26, 2024

For Immediate Release

JUDICIAL BOARD FILES FORMAL COMPLAINT AGAINST JUDGE JOHN P. DEHEN

On April 26, 2024, the Minnesota Board on Judicial Standards filed a formal complaint against District Court Judge John P. Dehen with the Minnesota Supreme Court. Judge Dehen is a judge of the Tenth Judicial District of the State of Minnesota. His chambers are in Anoka, Minnesota.

In accordance with Rule 8(b), Rules of the Board on Judicial Standards, the Board has asked the Chief Justice of the Supreme Court to appoint a three-person panel to conduct a public hearing concerning the matter. After the hearing, the panel may dismiss the case or may recommend that the Supreme Court issue an order for censure, suspension, or other sanction. *See* Board Rule 11.

Attached are copies of the Board's formal complaint and Judge Dehen's response.

The Board's rules and other information concerning the Board are available at the Board's website, *www.bjs.state.mn.us*.

STATE OF MINNESOTA

IN SUPREME COURT

File No. _____

Inquiry into the Conduct of the Honorable John P. Dehen

FORMAL COMPLAINT OF BOARD ON JUDICIAL STANDARDS

On October 16, 2023 and November 16, 2023, the Board on Judicial Standards ("Board") received information alleging that Judge John P. Dehen engaged in misconduct. The Board conducted an investigation. On March 15, 2024, the Board reviewed the results of the investigation and determined that there is reasonable cause to believe that Judge Dehen committed misconduct as set forth below and that it is necessary to issue a Formal Complaint pursuant to Board Rules 6(f)(5)(iv) and 8.

Board Rule 8(a)(3) requires that Judge Dehen serve a written response to this complaint within 20 days after service of the complaint.

PREVIOUS DISCIPLINE

The Board privately admonished Judge Dehen in 2022 for abusing the prestige of judicial office and improper demeanor when he was a petitioner in a conciliation court matter before a First Judicial District judicial officer.

The Board served a proposed private admonition on Judge Dehen and notified him that he had the right within 14 days to serve the Board with either a written demand for a private hearing before the Board or written comments and criticisms regarding the proposed private admonition. Judge Dehen did not timely respond. Consequently, the contents of the proposed private admonition were conclusively established, and the Board privately admonished Judge Dehen. The Private Admonition is attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

The Board alleges:

1. Judge Dehen was licensed to practice law in Minnesota in 1988. He was elected to the Tenth Judicial District bench in 2010 and has served continuously as a judge since he was sworn in. He is currently chambered in Anoka County.

2. In September 2023, Judge Dehen directed Tenth Judicial District Court Administrator, Sarah Lindahl-Pfieffer, to rehire his court reporter, Lisha Shufelt, who had recently resigned, at the top of the pay range, and later at the midpoint of the pay range, even though

Lindahl-Pfieffer had already communicated to Judge Dehen that there is a HR policy requiring recently separated employees who are hired into the same position be compensated at the same rate they were receiving at the time of separation.

3. Judge Dehen lacked inherent authority to order Shufelt's hiring at any particular rate of pay, as setting compensation for court reporters is done by court administration pursuant to a collective bargaining agreement with the union representing the court reporters. Judge Dehen was advised of these facts in response to his demand.

4. When court administration did not accede to his demand, on September 20, 2023, Judge Dehen initiated a proceeding in district court, *In re the Appointment of Lisha Shufelt, Competent Stenographer*, Court File No. 02-CV-23-5125 and assigned it to himself.

5. On September 20, 2023, Judge Dehen, sua sponte, filed an order appointing Shufelt as his official court reporter in Court File No. 02-CV-23-5125; on the same day, he issued a peremptory writ commanding Lindahl-Pfeiffer to pay Shufelt at salary Step 11. Lindahl-Pfeiffer was given no notice or opportunity to respond to the writ.

6. Lindahl-Pfeiffer immediately sought review of the peremptory writ in the Minnesota Court of Appeals, which stayed the order on September 21, 2023. On October 24, 2023, the Court of Appeals issued a writ of prohibition vacating the order and peremptory writ issued September 20, 2023. *In re Lindahl-Pfeiffer, I*, No. A23-1405, Special Term Order (Minn. Ct. App. Oct. 24, 2023).

7. The Court of Appeals made these determinations in issuing the writ of prohibition:

> Petitioner was not made a party to the underlying proceeding, no judgment was entered, and the file has been closed. An appellate court may issue a writ of prohibition, without requiring an application for relief to be made first in district court, rather than subjecting the parties "to useless delays, fruitless[] proceedings, and avoidable expense," when a writ will "prevent futile and avoidable delay." *State ex rel. Minn. Nat'l Bank of Duluth v. Dist. Ct.*, 202 N.W. 155, 157 (Minn. 1935). Under the circumstances of this case, we conclude that petitioner lacks an ordinary remedy and a writ of prohibition may be available.
>
> . . . .
>
> Judges have statutory authority to "appoint a competent stenographer as reporter of the court, to hold office during the judge's pleasure." Minn. Stat. § 486.01 (2022). By statute, salaries for court reporters are to "be set as provided in judicial branch personnel policies and collective bargaining agreements within the range . . . provided in the judicial branch personnel rules." Minn. Stat. § 486.05, subd. 1 (2022). The personnel rules and collective bargaining agreement reflect the existence of a salary range with multiple steps and the applicable rules limit the ability of hiring authorities to offer starting salaries above the midpoint of the range.

> The record reflects that the district judge sought to rehire his former court reporter at the top of the pay range, without obtaining approval to do so. The judge identified no authority that clearly required petitioner to implement the judge's decision. . . .
>
> The supreme court has held that judges lack inherent authority to set the salary of court employees by order when there is a statute on the subject and an established procedure to be followed. *Clerk of Ct's Compensation v. Lyon Cnty. Comm'rs.*, 241 N.W.2d 781, 787 (Minn. 1976). Similarly, in this case, there is a statute on court-reporter salaries and that statute incorporates personnel rules and policies and the collective bargaining agreement. None of these establish a clear duty to pay the judge's preferred court reporter at the top of the pay range. Accordingly, the order and writ setting the reporter's salary as an exercise of the court's inherent authority is unauthorized.
>
> The district judge also erred in issuing a peremptory writ. A peremptory writ is limited to rare cases in which the facts are so indisputable that the court can "take judicial notice" of them. *Home Ins. Co. v. Scheffer*, 12 Minn. 382, 383-84, 12 Gil. 261, 266 (1867); see Minn. Stat. § 586.04 (2022) (criteria for peremptory writ). Without indisputable proof being "furnished the court," without "any notice to the appellant of the application for the writ," and without the appellant admitting to "the facts set forth in the petition," it is improper for the court to assume them to be true and to deny the appellant "a right to be heard" and a "peremptory writ should not have been issued in the first instance." *Id.* at 385-86, 12 Gil. At 267. The judge in this case was aware that the court administrator disputed his right to rehire the court reporter at the top of the pay range, there was no notice to the court administrator or opportunity to be heard, and it is clear that a peremptory writ should not have been issued.
>
> Although many of the additional arguments made by petitioner have merit, we need not address them, in light of our conclusion that no writ of mandamus should have been issued in this case.

Id. at *2-4.

8. One week after the Court of Appeals issued its writ of prohibition, on October 31, 2023, Judge Dehen, again sua sponte, issued an Order and Alternative Writ of Mandamus requiring Lindahl-Pfeiffer to respond to the writ of mandamus by November 2, and show cause why Shufelt had not been rehired at salary Step 6, as well as requiring other acts by Lindahl-Pfeiffer. Again, Judge Dehen did not give Lindahl-Pfieffer a meaningful opportunity to be heard. Judge Dehen filed these documents into a closed court file even though the Court of Appeals had vacated his previous decision and did not remand the matter to him.

9. Lindahl-Pfeiffer again sought appellate review. On November 2, 2023, the Court of Appeals stayed the October 31 alternative writ of mandamus, and on November 15, 2023, the Court of Appeals issued a second writ of prohibition vacating the order and writ of mandamus

filed by the district court on October 31, 2023. *In re Lindahl-Pfieffer, II*, No. A23-1655 Special Term Order (Minn. Ct. App. Nov. 15, 2023).

10. The Court of Appeals made these determinations in granting the writ of prohibition and vacating Judge Dehen's second mandamus order:

> The order and writ being challenged here, like the previous order and writ, were issued by the judge sua sponte, directing the court administrator to rehire the judge's former court reporter at a salary higher than she was receiving at the time she voluntarily separated from her employment with the judge in September 2023. The court administrator asserts that the judge's salary orders are inconsistent with applicable personnel policies and the collective bargaining agreement.
>
> The order being challenged "fully adopted" the "Information" filed simultaneously by the judge on October 31, 2023, which included numerous factual allegations and purported to preserve the court reporter's "right to sue the Minnesota Judicial Branch." Finally, the writ also required the court administrator to "provide . . . evidence and testimony" regarding her review of the salary to be paid to the judge's court reporter. The judge scheduled a hearing for November 2, 2023.
>
> The court administrator promptly filed a notice of removal and a request to continue the scheduled hearing, pending (1) reassignment of the matter, (2) ongoing negotiation of the collective bargaining agreement, and (3) filing of a motion to dismiss. The judge denied a continuance and "reserved" any ruling on the notice to remove, indicating that the court administrator could "make her record" on removal at the hearing scheduled for November 2, 2023.
>
> The second petition for prohibition was filed on November 1, 2023, with a request for expedited consideration. On November 2, 2023, this court stayed the second order and writ, to allow for responses to the petition. The judge provided notice in accordance with Minn. R. Civ. App. P. 120.02 that he did not intend to respond to the second petition for prohibition, beyond requesting denial of the petition.
>
> . . . .
>
> This court previously granted a writ of prohibition vacating an earlier order and writ of mandamus that had been issued by the same judge, sua sponte, requiring that the judge's former court reporter be rehired at the top of the pay range. *In re Lindahl-Pfieffer*, No. A23-1405 (Minn. App. Oct. 24, 2023). In that order, we indicated that whether inherent authority exists is a question of law to be determined by an appellate court de novo. *Buckner v. Robichaud*, 992 N.W.2d 686, 689 (Minn. 2023). We cited binding caselaw holding "that judges lack inherent authority to set the salary of court employees by order when there is a statute on the subject and an established procedure to be followed. *Clerk of Ct's Compensation v. Lyon Cnty. Comm'rs.*, 241 N.W.2d 781, 787 (Minn. 1976)." And because the court

administrator had no clear duty under the applicable personnel rules and policies or under the collective bargaining agreement to pay the judge's preferred reporter at the salary determined by the judge, we held that "the order and writ setting the reporter's salary as an exercise of the court's inherent authority [was] unauthorized." The legal issue of the judge's authority to unilaterally set the court reporter's salary by order was squarely addressed.

Decisions of this court that do not include a precedential opinion may have preclusive effect "as law of the case, res judicata, or collateral estoppel." See Minn. R. Civ. App. P. 136.01, subd. 1 (c) (referring to nonprecedential and order opinions). The law-of-the-case doctrine ordinarily precludes reconsideration of a legal issue after an appellate court has ruled on it, even if there are additional proceedings in the lower court. *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). In this case, there was no remand for additional proceedings in the district court, and the district court lacked discretion to reconsider the existence of inherent authority to set the court reporter's salary. Although the terms of the district court's second order and writ differ slightly, the dispositive legal issue was previously decided by this court and the order granting a writ of prohibition in the previous file establishes the law of the case.

The judge's characterization of this court's previous order granting a writ of prohibition as resting "on narrow procedural grounds" is incorrect. The order indicated that "[t]he district judge also erred in issuing a peremptory writ," because there was a dispute over the judge's claimed authority to set the court reporter's salary and "there was no notice to the court administrator or opportunity to be heard." But that was an additional basis for this court's conclusion "that no writ of mandamus should have been issued in this case," not the sole basis.

The district judge's second order and writ of mandamus are similarly unauthorized. Petitioner communicated the existence of a policy that limits recently separated employees who are rehired into the same position to the salary that was being paid at the time of separation. The collective bargaining agreement acknowledges the existence of that policy in two different provisions (section 10.5 and Appendix D) and is not inconsistent with that policy. The supreme court has specifically held that an order setting the salary of a court employee in a manner not authorized by the applicable statute and procedures is "not a proper exercise of inherent power." *Lyon Cnty. Comm'rs.*, 241 N.W.2d at 787. When a judge issues successive orders directing the payment of a specific salary to a court employee, a writ of prohibition is appropriate. *In re Beltrami Cnty. Probation Officer*, 249 N.W.2d 178, 180 (Minn. 1976). The second order and writ of mandamus are unauthorized and must be vacated.

We also share the concerns expressed by the supreme court in the cited cases about judges issuing salary-setting orders to benefit employees with whom they work, without "an independent judicial proceeding," and the development of a

record "in an adversary context before an impartial and disinterested district court." *Lyon Cnty. Comm'rs.*, 241 N.W.2d at 786 & n. 16 (referring to appointment of "judge from outside the judicial district"). A judge's "dual participation as a party litigant and a judicial body" is improper. *Beltrami Cnty. Probation Officer*, 249 N.W.2d at 180; see also *Minn. Jud. Branch v. Teamsters Local 329*, 971 N.W.2d 82, 86 n.3 (Minn. App. 2022) (noting assignment of "senior judge who did not appoint or supervise a court reporter," rather than sitting district judge, to "avoid a conflict of interest").

The record establishes that the judge in this case (a) initiated a proceeding in district court and assigned it to himself; (b) filed additional documents in a closed file after this court vacated the judge's decision and did not remand; (c) filed an "information" containing numerous factual allegations and then adopted those allegations as the court's findings of fact in a matter known to be contested; and (d) twice filed orders and writs setting the salary of the court reporter he has directly supervised for years. It was a conflict for the judge to initiate a proceeding involving the salary of his own court reporter and to decide it.

The district court lacked inherent authority to set the court reporter's salary by order; this court previously decided that legal issue and that determination became the law of the case. Prohibition is also appropriate because the judge acted improperly by circumventing consideration of the matter in an adversary proceeding before an impartial and disinterested court.

Id. at *1-6.

11. No petition for further review of either order of the Court of Appeals was filed with the Minnesota Supreme Court, and they are both final and law of the case.

12. In addition to the complete lack of procedural and substantive authority for Judge Dehen to issue the writs, as noted by the Court of Appeals, Judge Dehen had a clear disqualifying conflict of interest in the cases involving Shufelt because he both initiated the proceedings, and decided the matters. Judge Dehen failed to recuse even though he acknowledged he was beneficially interested in the outcome.

13. On or about November 22, 2023, Judge Dehen also sought reimbursement as business expenses for the filing fees to file the writs and motions in File No. 02-CV-23-5125.

14. On or about November 29, 2023, Judge Dehen sent an email to Chief Judge Hiljus stating that he believed his "next step is to sue the branch/Sarah [Lindahl-Pfieffer] regarding Shufelt's wages." Throughout these proceedings Judge Dehen has acted in a manner suggesting that he is representing the interests of Shufelt and engaging in the prohibited practice of law while holding a judicial position.

CHARGES

Based upon the foregoing facts, the Board alleges:

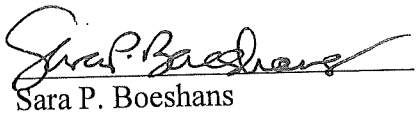
1. Judge Dehen's conduct violated the following Rules of the Minnesota Code of Judicial Conduct:

Rule 1.1	Compliance with the Law
Rule 1.2	Promoting Confidence in the Judiciary
Rule 1.3	Abuse of the Prestige of Judicial Office
Rule 2.1	Giving Precedence to the Duties of Judicial Office
Rule 2.2	Impartiality and Fairness
Rule 2.4(B)	External Influences on Judicial Conduct
Rule 2.5	Competence, Diligence, and Cooperation
Rule 2.6(A)	Right to Be Heard
Rule 2.9(A), (C)	Ex Parte Communications and Independent Investigations
Rule 2.11	Disqualification
Rule 2.13	Administrative Appointments
Rule 3.1(A), (C), (E)	Extrajudicial Activities in General
Rule 3.10	Practice of Law

WHEREFORE, the Board requests that the Supreme Court appoint a panel to conduct a hearing in this matter pursuant to Board Rule 8 and that the Court impose such sanctions as are just and proper.

MINNESOTA BOARD ON JUDICIAL STANDARDS

Dated: March 28, 2024

By: 

Sara P. Boeshans
Executive Secretary

1270 Northland Drive, Suite 160
Mendota Heights, MN 55120
(651) 296-3999

MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of Judge John P. Dehen
Tenth Judicial District Judge.

PRIVATE ADMONITION

BJS File No. 22-08

To: Judge John P. Dehen;

Pursuant to Rule 6(f), Rules of the Board on Judicial Standards (Board Rules), the Board on Judicial Standards (Board) considered the results of an investigation in the above matter and determined that there was reasonable cause to believe that you committed misconduct. The Board found that the misconduct in this matter is of an isolated and non-serious nature and a private admonition with conditions should be issued pursuant to Board Rule 6(f)(5)(ii).

The Board served a proposed private admonition on you and notified you that you had the right within 14 days to serve the Board with either a written demand for a private hearing before the Board or your written comments and criticisms regarding the proposed private admonition. You did not respond. Consequently, the contents of the proposed private admonition are now conclusively established, and the Board now issues the following findings, conclusions, and private admonition.

Findings

1. Judge John P. Dehen was elected to the Tenth Judicial District Court in 2010. He received a letter of caution in 2018 addressing ex parte communications.

2. On June 18, 2021, Judge Dehen sued two defendants, S.W. and C.G. for intentional fraud, negligent misrepresentation, and breach of contract in conciliation court related to the sale of six chairs. Prior to filing the conciliation court petition, in a June 10, 2021 letter to the defendants, Judge Dehen wrote:

> I'm going to sue you both for being involved in scamming me. It's called a misrepresentation under Minnesota law and it's unlawful. I will wait to file early next week in Scott County, so you have time to respond if you desire. . . .
>
> Being a District Court Judge in Anoka myself and presiding over matters similar to this, I know the presiding referee will require us to exchange exhibits ahead of time and attempt to talk/settle the matter—so that is why I'm including the exhibits and attempting to settle by returning all the items for a refund. . . . I'll get this sent into Scott County Court Administration next week if we can't make any progress. A trial will likely be scheduled in August 2021. As of now, that trial will be by zoom.

Exhibit A

3. The conciliation court referee dismissed Judge Dehen's petition with prejudice. Judge Dehen removed the matter to district court. On February 28, 2022, Judge X.X. held the conciliation court appeal hearing. At that hearing, Defendant S.W. testified that she was treated poorly by Judge Dehen, in part, because he had informed her that he was a judge and that he would take her to court. Defendant S.W. testified:

> First of all, you told me I needed to go to over to my neighbor and tell him to give you his money back or you would take me to court – me to court. You told me that you were a judge and that you had heard cases like this before and you were pretty sure that you were going to win.
>
> I was recovering from surgery. It was very upsetting. My last day of vacation in five years, I had to be on Zoom court for the last one. This has been going for a year. It's very upsetting to me.

Trial Tr. 51:20, *Dehen v.* C. G. ., Court File No. 70-CV-21- . Judge X.X. credited the defendant's testimony and found:

> At some point, Plaintiff contacted Defendant S.W. , who had placed the Facebook Marketplace posting for her neighbor C.G . Plaintiff told S.W. that he was a Judge, that he had heard cases similar to this before, and he was pretty sure he would win. He also said that she should get her neighbor C.G. to refund his money, or he would take her to court along with C.G.

Findings of Fact, Conclusions of Law, Order for J. and J. 3, *Dehen*, Court File No. 70-CV-21-

Conclusions

Judge Dehen's conduct violated the following Rules of the Minnesota Code of Judicial Conduct,

1.1 (Compliance with the Law and Code),
1.2 (Promoting Confidence in the Judiciary),
1.3 (Abuse of the Prestige of Judicial Office), and
2.8(B) (Demeanor),

and warrants the issuance of this admonition.

Private Admonition

Based upon the foregoing Findings and Conclusions,

Judge Dehen is hereby admonished for the foregoing misconduct.

The attached Memorandum is made a part hereof.

Date: 6-15-2022

MINNESOTA BOARD ON JUDICIAL STANDARDS
1270 Northland Dr., Suite 160
Mendota Heights, MN 55120

By: Thomas M. Sipkins
Thomas M. Sipkins
Executive Secretary

MEMORANDUM

Rule 3.10 of the Code of Judicial Conduct ("Code") permits a judge to represent himself pro se in court. Comment 1 to Rule 3.1, however, cautions a judge against the use of the prestige of judicial office in such representation.

Rule 1.3 of the Code states: "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

Misuse of the judicial title to "cajole or bully favor is a classic example of judicial misconduct. . . . More subtle, implied attempts to misuse the prestige of office are captured by the . . . prohibition on creating the appearance of impropriety." Cynthia Gray, Jud. Conduct Rep., Spring 2005, at 1. Even where a judge does not make an explicit request or demand, "[g]ratuitous references to the judicial office . . . have been held to inappropriately invoke the prestige of the office." *Id. See also*, Rule 1.2.

Judge Dehen abused the prestige of judicial office by stating in a letter to the defendants: "Being a District Court Judge in Anoka myself and presiding over matters similar to this . . . ." The reference to his judicial title came immediately after a threat to sue the defendants. The reference was made in a way to show that he had special knowledge of the court's procedures and the referee's expectations. Judge Dehen's reference to his judicial title was to benefit himself, it was unnecessary, and it was unjustified. Based on Defendant S.W.'s testimony, it is clear that Judge Dehen's reference was perceived as intimidating, and the reference undoubtedly harmed the defendants' confidence in the integrity of the judiciary. Defendant S.W. testified:

> First of all, you told me I needed to go to over to my neighbor and tell him to give you his money back or you would take me to court – me to court. You told me that you were a judge and that you had heard cases like this before and you were pretty sure that you were going to win.
>
> I was recovering from surgery. It was very upsetting. My last day of vacation in five years, I had to be on Zoom court for the last one. This has been going for a year. It's very upsetting to me.

Trial Tr. 51:20, *Dehen v.* C.G., Court File No. 70-CV-21- , Judge XX, credited the Defendant S.W.'s testimony and found:

> At some point, Plaintiff contacted Defendant S.W., who had placed the Facebook Marketplace posting for her neighbor C.G. Plaintiff told S.W. that he was a Judge [sic], that he had heard cases similar to this before, and he was pretty sure he would win. He also said that she should get her neighbor C.G. to refund his money, or he would take her to court along with C.G.

Findings of Fact, Conclusions of Law, Order for J. and J. 3, *Dehen*, Court File No. 70-CV-21- , Judge Dehen's reference to his judicial title in the letter to the defendants violated the Code.

A private admonition may be issued if a judge's "misconduct appears to be of an isolated and nonserious nature." Board Rule 6(f)(5)(ii). The Board has determined that this matter may be resolved with the issuance of this admonition.

DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE JOHN P. DEHEN
JUDGE OF DISTRICT COURT

CHAMBERS
ANOKA COUNTY COURTHOUSE
2100 THIRD AVENUE
ANOKA, MN 55303-2489
(763) 760-6700
FAX (763) 712-3247

April 16, 2024

Ms. Sarah P. Boeshans
Executive Director
Minnesota Board on Judicial Standards
12170 Northland Drive
Suite 160
Mendota Heights, Minnesota 55120

Re: BJS file Nos. 23-31, 23-41

Dear Ms. Boeshans:

I request a hearing in the matter.

The gravamen of the Board's complaint surrounds the Court's issuance of two writs of mandamus. The appellate process already addressed the claimed errors, and that process was completed prior to the Board's involvement in the matters. With some exceptions, I would agree the factual record you provided is largely undisputed. My view, however, has and continues to be that I found facts, reached legal conclusions, and applied Minnesota law as I understood it at the time, which are generally protected activities pursuant to Rule 4(c) of the Rules of the Board of Judicial Standards. I am not sure as to the basis for which the Board must be contending that I was acting "contrary to some clear and determined law and the error is egregious, made in bad faith or made part of a pattern or practice of legal error" as would be required to avoid the general protections provided to judicial officers in Rule 4(c). The Court of Appeals did not make any of those findings. I certainly do not believe I acted against clear and determined law, that my error was egregious, that they were made in bad faith, or that they are a part of any pattern or practice of legal error. Thus, if the Board does in fact believe there is any such bases to support proceeding with discipline over the general safe harbor provided by Rule 4(c), please indicate and clarify with specificity all the facts and applicable law at issue in order to enable me to properly defend the matter.

Rule 10 (b)(2) indicates that the burden of proving discipline is on the agency by "clear and convincing" evidence. Rule 4(c), appears to be squarely on point in this matter where it states: "The board shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as understood by the judge unless the judge acts contrary to clear and determined law and the error is egregious, made in bad faith, or made part of a pattern or practice of legal error. Claims of error shall otherwise be left to the appellate process." Two precedential cases mention this rule: *In Re Murphy*, 737 N.W.2d 355, 362 (Minn. 2007) (citing

Rule 4(c)'s prohibition of imposing discipline upon a judge who applies the law as he understands it without fraud, corrupt motive, or bad faith) and *In Re Stacey*, 737 N.W.2d 345, 348 (Minn. 2007) (noting that the Board is barred from taking action against a judge for making findings of fact, reaching a legal conclusion or applying the law as understood by the judge).

Clearly, Rule 4(c) was promulgated for the purpose of not allowing the undermining the important function of judicial discretion and autonomy of a judicial officer even if the judicial officer is incorrect.

Regarding the "previous discipline" mentioned in the complaint, I advised your predecessor director that I was working from home at that time like many of my colleagues because of COVID-19 pandemic restrictions. My response to your predecessor director was sent from my home address which was listed on all correspondence. Nevertheless, your office chose to mail the admonition to the Anoka County Courthouse for reasons unknown to me. I further advised your predecessor director that I never saw the proposed admonition that your office mailed to the Anoka County Courthouse until after the fourteen-day period was passed. I recall that it was only a few days over the fourteen-day deadline and I immediately requested leave to request a hearing. This was denied by the director at that time. I further agree I did not appeal to the district court to set aside that finding under Rule 60.

Let this next portion of my letter serve as my written response to the factual allegations:

1. Regarding paragraph 1, I admit.
2. Regarding paragraph 2, I admit with the caveat that HR refused to give me its claimed HR "policy" at any point in this case, before, during, or after. I have access to the HR policies and procedures and did not see any reference to anything even resembling such a "policy" as I elaborated on in the case filings. First, HR provided me a portion of the union contract regarding transferring employees, but this was wholly inapposite to the matter. Second, HR provided me with an arbitration decision preventing judges from setting the wages of current employees, which was again inapposite. Finally, the crux of the matter was that HR refused to *consult, review, or approve* my chosen appointee or otherwise respond to me on why HR was treating my requested hire differently than two other judges' recent court reporter hires in similar situations, where the HR policies directly spoke to equity in hiring and salary determinations and required HR to consult, review, or approve a Court's selected appointee.
3. Regarding paragraph 3, I deny that I lacked "inherent authority" at the time these writs were issued. It was only until after the Court of Appeals ruled on the issue was it legally established that I lacked "inherent authority." Second, I deny that the initial setting compensation for court reporters is done by court administration pursuant to collective bargaining agreement. See also the Court of Appeals amicus brief of union attorney Kevin Beck. The union specifically advised the Court of Appeals in this amicus brief that they do not set the initial wage of new hires. The initial setting of wages of a new hire is performed by the judicial officer up to a level maximum level 6. At a level where the judicial officer requests a higher step (steps 7-11), HR is <u>mandated</u> to conduct a review of the hire and consult with the judicial officer. In this matter, HR refused to conduct its

policy-mandated (and therefore, by reference, statute-mandated) consultation, reviewal, or approval, resulting in a standoff between this Court and court administration.

4. Regarding paragraph 4, I admit that following HR's refusal to *consult, review, or approve* my desired employee, I initiated a writ of mandamus process. I deny that I "assigned" anything to myself. It was an issue of first impression, so far as my research revealed, and involved the inherent power of a constitutional district court to maintain a court unit provided as provided by the legislature in statute and pursuant to the published HR rules. I further believed in good faith that I had the inherent authority to so issue the first writ given the waiver and refusal of our court administrator to evaluate my proposed employee or otherwise provide me with the "policy". The second writ was further issued given what I believed to be similarly indisputable facts regarding a step 6 and my understanding of the difference between a peremptory writ and an alternative writ, which was all laid out in my filings in district court and with the court of appeals.
5. Regarding paragraph 5, I admit I issued a writ attempting to appoint my chosen employee at a step 11 consistent with what I believed was my inherent authority and Sarah Lindahl-Pfeiffer's waiver by her failing to exercise her duty under statute and published HR policies and procedures. The writ speaks for itself and I would urge you to closely read the arguments I laid out therein and the responsive brief supporting the writ which I filed with the court of appeals.
6. Regarding paragraph 6, state court administration, who I believe was advising Lindahl-Pfeiffer, requested that the AG office seek a peremptory writ.
7. Regarding paragraph 7, which contains a recitation of the Court of Appeals decision, I admit.
8. Regarding paragraph 8 and the second writ, I admit with the caveat that I set a hearing for a meaningful opportunity to be heard following a discussion with Carla Heyl and the attorney general for Lindahl-Pfeiffer. There is also a specific email contained in your investigation, bates page 92, where I stated "let me know if you or counsel is requesting a hearing so I can accommodate that." I deny that I considered it a closed file. I issued the second, *alternative* writ concluding that the Court of Appeals in the first *peremptory* writ case foreclosed a step 11, but not a step 6, which is why I issued the second writ.
9. Regarding paragraphs 9-10, I admit to those paragraphs as a recitation of the Court of Appeals decision.
10. Regarding paragraph 11, I admit.
11. Regarding paragraph 12, I admit the Court of Appeals determined I lacked authority and had a conflict. Again, I believed I had the inherent authority to issue the writs at the time they were issued, reasoning that the Minnesota Constitution provides courts with the ability to preserve their basic ability to function, which I laid out in each writ in detail. Second, the hearing on the recusal I scheduled did not take place because the Court of Appeals denied the writ before the hearing could take place. I deny that I acknowledged I was beneficially interested other than the right of any judicial officer to appoint a competent court reporter in order to allow the judicial officer, and therefore district court, to function.
12. Regarding paragraph 13, I admit. My right to appoint a competent court reporter is a duty connected with my role as a judicial officer. In my opinion, any expense related to my court duties as a judicial officer protecting my court would typically be a business expense.
13. Regarding paragraph 14, I admit I sent an email to Judge Hiljus indicating that an option or next step would be to sue the branch. I deny that throughout the proceedings I "acted"

in any manner that I was representing Ms. Shufelt. She was specifically advised I was not representing her. At all times I was acting to obtain my court reporter so I could continue to function as a district court of record.

I deny violating any of the Rules of Judicial Conduct.

Sincerely,

John P. Dehen