

MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of the Honorable Terrence M.
Walters, Third Judicial District Judge

AMENDED PUBLIC REPRIMAND AND CONDITIONS

File Nos. 13-40, 13-57, 13-85, 13-89

PROCEDURES

The Board on Judicial Standards (“Board”) received complaints against Judge Terrence M. Walters. The Board investigated these complaints. The Board’s investigation included review of documentary evidence, witness interviews, and a meeting with Judge Walters on December 13, 2013. On March 26, 2014, based upon the Board’s investigation and proceedings, the Board issued a notice of proposed reprimand and conditions to Judge Walters in accordance with Board Rule 6(f)(5)(iii) and 6(f)(7). In response, Judge Walters informally submitted several comments and additional documents to the Board, based on which the Board modified the reprimand. Judge Walters did not file a demand for a formal complaint and public hearing. Consequently, this reprimand is final.¹

The Board now makes the following:

FINDINGS AND CONCLUSIONS

I. Introduction.

1. Judge Walters was licensed as an attorney in 1976 and was appointed to the Third District bench in 2003. He is the only judge who regularly sits in Wabasha County.

2. Judge Walters committed the misconduct described below.

II. Failure to Supervise Law Clerk and Approval of Inaccurate Timesheets.

3. PH became Judge Walters’ law clerk in approximately 2004. PH consistently did not have enough work to do. PH regularly failed to work full eight-hour days. Starting in approximately 2009, to avoid boredom at work, PH took some pro bono bankruptcy cases, which he worked on during his regular work hours, and he sometimes attended meetings on the cases during regular work hours. PH usually did not come to work when Judge Walters presided in

¹ After the reprimand was issued, it was discovered that the reprimand contained two errors. On page 1, line 4, the date December 13, 2014 should have been December 13, 2013, and on page 5, paragraph 17, the date April 16, 2014 should have been April 16, 2013. The parties have stipulated to this amended reprimand which corrects the two errors. All other terms of the reprimand, including the effective date, remain the same.

another county or was on leave. Judge Walters did not attempt to find additional work for PH to do or notify court administration that PH was available to do other work.

4. Judge Walters was responsible for supervising PH. Judicial Branch policy provides:

Supervisors are responsible for reviewing and approving timesheets or electronic time entry of individual employees. . . .

. . . . Supervisors also need to ensure that timesheets are consistent with:

- Hours worked
- Number of staff
- Policies regarding issues such as leave usage, paid holidays and overtime pay as prescribed in the Judicial Branch Human Resource Rules or applicable union agreements.

Minn. Judicial Branch Policy 206(a), “Payroll Procedures,” ¶ III.B.1, at 3.

5. On August 7, 2012, then-Third District Chief Judge Robert Benson sent an e-mail to all Third District judges, court reporters, and law clerks, including Judge Walters and PH, stating in part:

I informed the bench [at a bench meeting] that a judge in our district had been publicly reprimanded in 1993, in part, for his failure to monitor vacation and sick leave. . . .

. . . .

Judges were urged to be very careful when authorizing time cards because judges are certifying that the time cards accurately reflect the hours worked and the leave time taken. . . .

. . . .

Judges are strongly encouraged to meet with their court reporter and law clerk to clearly communicate their expectations about these issues.

6. On December 4, 2012, Judge Benson sent a memo on “Court Reporter and Law Clerk Work Hours” to all Third District judges, court reporters, and law clerks, including Judge Walters and PH, stating in part:

[I]t is almost certain that all future audits by our internal auditor and the Legislative Auditor will include a detailed review of time records of confidential staff. . . .

. . . . I have attached a “Managing Judicial Staff Quick Reference Guide” that was provided to all judges last week. I provided this information to our District Judges last week and urged that they discuss these issues with their confidential staff and impress upon them the importance of following branch policies regarding the tracking and reporting of work hours.

It is important that everyone follow branch policies regarding work hours, timekeeping and reporting of work hours. Remember that your time records confirm that the hours claimed represent actual hours worked. . . .

7. Judge Walters did not discuss the need for accurate timesheets with PH, failed to properly supervise PH’s time, and did not attempt to ascertain or ensure that the hours reported on PH’s timesheets were accurate. Judge Walters knew or should have known that PH did not work the hours reported on his timesheets. Judge Walters nevertheless signed and approved PH’s timesheets.

8. An investigation by the Minnesota Judicial Branch determined that over the course of 12 two-week pay periods from January 30 through July 16, 2013, PH was overpaid for 257.75 hours in which he was not at work. PH repaid the State of Minnesota for the overpayment.

9. Judge Walters’ failure to supervise PH and approval of PH’s incorrect timesheets violated Minnesota Judicial Branch Policy 206(a) and Rule 1.1 (“A judge shall comply with the law”), Rule 1.2 (“A judge act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”), and Rule 2.12(A) (“A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code.”), Minnesota Rules of Judicial Conduct.

III. Refusal to Allow Defendant to Withdraw Plea.

10. In *State v. Martin*, the prosecutor and the defendant, represented by Assistant Public Defender Christina Moriarty, entered into a written plea agreement whereby Martin would plead guilty, the maximum jail sentence would be 45 days, and Martin would have the right to withdraw the guilty plea if the court did not approve the agreement. At the May 1, 2012 sentencing hearing, Judge Walters ordered Martin to serve 67 days in jail. Judge Walters stated: “Assuming you earn maximum good time credit, that would compute down to 45 days actually served.” The following exchange then occurred:

Ms. Moriarty: Your honor, I would ask for a moment to discuss this with my client. I believe the agreement was specifically for 45 –

The Court: He’s remanded.

Ms. Moriarty: – days –

The Court: I'm the Judge.

Ms. Moriarty: I understand that, but I would just like to find out if he wants to withdraw the plea.

The Court: He's not going to withdraw the plea. Agreements for recommendations are just that.

Ms. Moriarty: It was an agreement though. It's for – it states – it says the state agrees. It's says agrees to 45-day jail cap so I –

The Court: Did I sign that? Was I a signatory on that –

Ms. Moriarty: No. But, Your Honor –

The Court: Was I a party to that contract?

11. Moriarty attempted to point out that the plea agreement provided that if the court did not approve the agreement, the defendant had the right to withdraw his plea of guilty and have a trial. Judge Walters stated:

The Court: If he behaves himself, he will serve 45 days.

Ms. Moriarty: May I have an opportunity to –

The Court: This hearing is concluded.

Judge Walters spoke to Moriarty in an angry tone of voice.

12. Later that day, Judge Walters sent an e-mail to Moriarty and the prosecutor stating that he would reduce the sentence to 45 days.

13. Judge Walters' conduct at the hearing violated Rule 15.04, subd. 3(1) of the Rules of Criminal Procedure which provides:

When a plea is entered and the defendant questioned, the trial court judge must reject or accept the plea of guilty on the terms of the plea agreement. . . . If the court rejects the plea agreement, it must advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea.

14. Judge Walters' conduct at the May 1, 2012 hearing violated Rule 2.2 ("A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."), Rule 2.5(A) ("A judge shall perform judicial and administrative duties competently and diligently."), Rule 2.6(A) "A judge shall accord every person or that person's lawyer the right to be heard according to law."), and Rule 2.8(B) ("A judge shall

be patient, dignified and courteous to . . . persons with whom the judge the deals in an official capacity . . .”), Minnesota Code of Judicial Conduct.

IV. Trying Defendant In Absentia.

15. In *State v. Matson*, the defendant was charged with criminal trespass. Mattson entered a plea of not guilty and agreed to a court trial. Mattson failed to appear on the trial date, April 5, 2013.

16. The presence of a defendant is required at every stage of a trial. Minn. R. Crim. Proc. 26.03, subd. 1(1). A defendant’s presence is waived only if “[t]he defendant is absent without justification after the trial starts.” *Id.*, subd. 1(2). Since the trial had not already started when Matson failed to appear for trial, the correct procedure was for Judge Walters to issue a bench warrant. Instead, Judge Walters tried Matson in absentia, allowing the prosecutor to present testimony. Judge Walters found Matson guilty, indicated that he would order a pre-sentence investigation, and issued a warrant for Mattson’s arrest.

17. Matson was picked up on the arrest warrant and on April 12, 2013 appeared before another judge who was unaware that Judge Walters had convicted him. The other judge gave Matson a new court date. Shortly thereafter, Matson obtained a public defender, who demanded a jury trial. On April 16, 2013, Judge Walters sent an email to court administration stating that he would vacate the finding of guilt and that the case should be scheduled for a jury trial. Judge Walters stated: “The rules allow for a trial in the defendant’s absence if without justification, which is certainly the case here. But as I read the rule the defendant has to be present for some part of the trial before being absent.”

18. On April 23, 2013, the prosecutor dismissed the charge against Matson.

19. Judge Walters’ conduct at the April 5, 2013 trial date violated Rule 2.2 (“A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”), Rule 2.5(A) (“A judge shall perform judicial and administrative duties competently and diligently.”), and Rule 2.6(A) “A judge shall accord every person or that person’s lawyer the right to be heard according to law.”), Minnesota Code of Judicial Conduct.

V. Discourtesy to Psychologist.

20. *State v. Harwick* involved a defendant who was deaf. Harwick was represented by Moriarty. Moriarty moved for an examination pursuant to Rule 20, Rules of Criminal Procedure, to determine whether Harwick was competent and whether he had the ability to rationally consult with his attorney. Judge Walters granted the first request but denied the second. Moriarty recommended that the court retain LJ, a deaf psychologist who knew American Sign Language.

21. A court clerk contacted LJ, who stated that she would not need an interpreter and would be able to provide a Rule 20 examination for approximately \$1,280. On April 16, 2012, Judge Walters sent an e-mail to the court clerk stating:

If she can do it for a total (including interpreter) of \$1,200, it is within the parameters I set. I want to be clear, however, that this to be a *Rule 20* exam and not some agenda-driven “cause”.

(Emphasis in original.)

22. Judge Walters’ e-mail implied that LJ was apt to engage in unprofessional conduct. Judge Walters had no basis for making this suggestion, and his comments served no legitimate purpose.

23. The court clerk forwarded Judge Walters’ e-mail to LJ, who responded:

I am offended by the judge’s implication that I would be “agenda-driven” in my provision of a Rule 20 evaluation for a deaf client. It would be unethical to evaluate a deaf client without taking into consideration linguistic and cultural issues that affect the client’s competence in legal proceedings.

I decline to be involved any further in this matter.

24. Judge Walters’ e-mail violated Rule 2.8(B) (“A judge shall be patient, dignified and courteous to . . . persons with whom the judge the deals in an official capacity”), Minnesota Code of Judicial Conduct.

Based upon the foregoing Findings and Conclusions, the Board now issues the following:

PUBLIC REPRIMAND AND CONDITIONS

1. You are hereby reprimanded for the foregoing misconduct.
2. You will comply with the following conditions:
 - a. You will determine the causes of the misconduct set forth above and take the actions necessary to ensure that the misconduct is discontinued and not repeated.
 - b. Within one month after the date this reprimand becomes final, you will, at your own expense, identify to the Board either a reputable “anger management” program or therapist who will provide individual “anger management” counseling and therapy. The Board has the discretion to accept or reject the proposed anger management program or therapy. You will successfully complete the program or therapy within six months after this reprimand becomes final.

- c. Within one month after this reprimand becomes final, you will identify to the Board a proposed mentor who will assist you in addressing the causes of the misconduct described above. The Board has the discretion to accept or reject the proposed mentor. The mentor will submit at least two reports to the Board concerning your progress in meeting this goal. The first report will be submitted within three months after the date this reprimand becomes final, and the last report will be submitted within six months after this reprimand becomes final.
- d. Within one month after this reprimand becomes final, you will write a letter of apology to LJ, with the text of the letter to be approved in advance by the Board.
- e. Within two months after the date this reprimand becomes final, you will submit to the Board and the mentor a proposed plan showing how you will address the causes of the misconduct described above.
- f. Within six months after the date this reprimand becomes final, you will submit a report to the Board describing how you have complied with the foregoing conditions, and you will schedule a meeting with a designated Board member and the Board's Executive Secretary.
- g. Compliance with the foregoing conditions is required by Rules 1.1 and 2.16, Minnesota Code of Judicial Conduct. If you do not comply with the conditions set forth herein or if additional misconduct occurs, the Board will consider whether additional discipline is appropriate.

MINNESOTA BOARD ON JUDICIAL
STANDARDS

Dated: April 22, 2014

By: s/ Thomas C. Vasaly
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