

STATE OF MINNESOTA

IN SUPREME COURT

File No. _____

*Inquiry into the Conduct of the
Honorable Alan F. Pendleton*

RESPONSE TO FORMAL COMPLAINT

Judge Alan F. Pendleton, by and through the undersigned counsel, provides the following response to the formal complaint of the Board on Judicial Standards dated October 7, 2014, in accordance with Board Rule 8(a)(3):

1. At all relevant times, Judge Pendleton consistently and in good faith followed the rules governing judicial residency requirements as he understood them. Judge Pendleton respects the Code of Judicial Conduct and has taken great pains to comply with its mandates throughout his entire judicial tenure. On multiple occasions, he sought and obtained informal advice and advisory opinions from the Board, through its Executive Secretary, on myriad issues ranging from publication of a legal text respecting criminal law topics, filing a personal affidavit in a family member's divorce proceedings, and other matters. He often discussed his personal situation with the Board's Executive Secretary and received assurances that his living arrangements complied with ethical requirements respecting judicial residency.

2. Except as expressly admitted, qualified or otherwise answered herein, Judge Pendleton denies each and every allegation of the Complaint.

3. Responding to the first, unnumbered paragraph of the Complaint, admits that on or about July 9, 2014, the Board received a report alleging that he had been living for "significant periods of time over the last several years" at his wife's home in Minnetonka. The person making

the report described his information respecting Judge Pendleton's living arrangements as "cursory" and conceded that he had no knowledge respecting Judge Pendleton's intended residence. After receiving the report, the Board conducted a perfunctory investigation limited to looking up real estate tax information about Judge Pendleton's wife's home and attempting to view pictures of her residence on Google Maps.

4. Admits the allegations of paragraph 1 of the Complaint.

5. Admits that the first sentence of paragraph 2 of the Complaint accurately quotes a portion of the Minnesota Constitution respecting the residency requirement established for district court judges. Admits that in the *Karasov* decision the Minnesota Supreme Court censured and suspended the respondent judge after "[c]onsidering the totality of the circumstances of [that] case." 805 N.W.2d at 277. As part of its decision in *Karasov*, the Court cautioned: "[o]ur opinion should not be read to address whether any other out-of-district living arrangement by a district court judge would violate the Minnesota Constitution's residency requirement." *Id.* at 265, n.6. The *Karasov* decision explains that judicial residency determinations involve "a highly fact specific inquiry," which looks both to the subject judge's physical presence and intent to reside within his or her judicial district. *Id.*

6. Responding to paragraph 3 of the Complaint, admits he has been aware of the constitutional residency requirement for judges throughout his judicial tenure. States that at various times after his separation in 2005 and remarriage in 2007, he discussed his personal living arrangements with the Board and sought advice from the Board's Executive Secretary. From those discussions, the Board knew that Judge Pendleton married his current wife in 2007, that she lived outside his judicial district, that he spent weekends at his wife's home, and that he maintained a

separate residence within the Tenth Judicial District.

After the Board's formal complaint against Judge Karasov became public in 2010, Judge Pendleton called the Board's Executive Secretary seeking clarification respecting the case. The Board's Executive Secretary opined that Judge Pendleton's situation was different than that in *Karasov* and placed a memorandum noting his informal advice in the Board's file.

7. Responding to paragraph 4 of the Complaint, admits that he lived in the Anoka condo during the work week and spent weekends at his wife's residence in Minnetonka during the time he owned the Anoka condo.

8. Responding to paragraph 5 of the Complaint, admits that he listed the Anoka condo for sale in October 2013 in an effort to save money and relocate closer to his children's high school. He received a favorable purchase offer much faster than anticipated from a buyer who demanded a quick closing. After the sale, he moved his personal possessions and furniture from the Anoka condo into a paid storage unit and began temporarily staying at his wife's home while he searched for a new apartment within his judicial district. Denies that this constitutes moving from the district as defined by law and interpreted by the Minnesota Supreme Court in *Karasov*.

His last night at the Anoka condo was on November 25, 2013. The condo sale closed on November 27, 2013. Judge Pendleton was on vacation from December 20, 2013 through January 7, 2014. After coming down with food poisoning, he was out of the office the entire next week.

Judge Pendleton returned to work on January 13, 2014, planning to resume his search for an apartment in Anoka. Two days later, on January 15, 2014, he learned that one of his children had been caught at school with drug paraphernalia. Judge Pendleton immediately arranged for drug testing and enrolled his child in a counseling program. He and his ex-wife also began discussions

about moving their child to another school. They soon learned that because the open-enrollment period had expired, any school transfer would require establishing a residence in the new school district. Judge Pendleton offered to move nearby the proposed new school, which is also located in the Tenth Judicial District.

The potential school transfer constituted a major family decision that would involve changing primary child custody arrangements with his former wife and uprooting their high-school aged child, who had lived in the same home, with the same friends, for the child's entire life. Judge Pendleton temporarily stayed with his wife in Minnetonka while he and his family considered their options and worked to get his child back on track. By June 2014, a decision was made not to transfer Judge Pendleton's child to another school.

9. Responding to paragraph 6 of the Complaint, admits that he rented an apartment in Anoka with a lease term from August 1, 2014 through July 31, 2015.

States that once the transfer issue was resolved, Judge Pendleton promptly located an apartment within walking distance of his children's high school. In early June, he spoke with the apartment manager, who told him that a unit was under renovation and would not be available for occupancy until August 1. He met with the manager on July 5, 2014 to view the unit and paid deposit and application fees on July 7, 2014. Judge Pendleton paid the fees and reached an agreement to rent the apartment on July 7, 2014, more than a week before the Board notified him of its investigation.

10. Responding to paragraph 7 of the Complaint, admits that he temporarily stayed at his wife's home in Minnetonka while he worked to resolve the school transfer described above and obtain new housing in Anoka County. Judge Pendleton states that it was always his intent to remain

a resident of the Tenth Judicial District and asserts that his temporary absence did not constitute a change of residence.

11. Responding to paragraph 8 of the Complaint, states that judicial candidates are not legally required to list a residence address when filing for election to judicial office and that the choice whether or not to include a residence address on their affidavit of candidacy is optional for judges. Admits that he mistakenly listed the Anoka condo on his affidavit of candidacy.

12. Responding to paragraph 9 of the Complaint, specifically denies making any knowingly false statement for the purpose of concealing his residence. Judge Pendleton asserts that he has fully complied with the all residency requirements established by Minnesota law respecting the upcoming election for his judicial seat.

13. In response to Charge 1 of the Complaint, denies that he failed to reside within the Tenth Judicial District. Further denies that his conduct violated the Code of Judicial Conduct, the Minnesota Constitution or the holding in *Karasov* and puts the Board to its strict burden of proving the same by clear and convincing evidence.

14. In response to Charge 2 of the Complaint, denies making a knowingly false statement in his affidavit of candidacy. Further denies that his actions respecting the affidavit violated the Code and puts the Board to its strict burden of proving the same by clear and convincing evidence.

15. As and for an affirmative defense, Judge Pendleton asserts that the Board repeatedly violated its own rules during the course of its investigation. Among other things, the Board:

a. Violated Board Rule 6(d)(iv) by failing without good cause to disclose that the Board itself was the complainant in this matter;

b. Violated Board Rule 6(d)(6) by ordering Judge Pendleton to appear for sworn

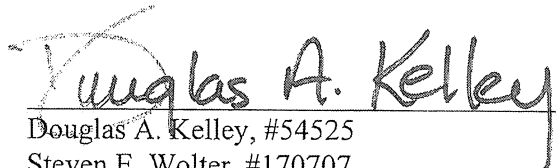
testimony on August 15, 2014 without giving him 20 days' advance notice as required by the Rule.

c. Violated Rule 6(d)(2)(I) by repeatedly failing to notify Judge Pendleton that it was investigating his affidavit of candidacy despite numerous opportunities to provide such notice during letter and email exchanges and telephone conversations with Judge Pendleton regarding the anticipated discussion topics before his testimony on August 15, 2014.

d. Improperly asked about Judge Pendleton's private sex life during his August 15, 2014 testimony in violation of the holding of *In re Agarter*, 353 N.W.2d 908 (Minn. 1984). In *Agarter*, the Court recognized that a judge's private sex life concerns the "most intimate of human activities and relationships" and warned the Board not to delve into intimate details without first establishing a compelling and sufficient reason for such questioning. *Id.* at 914. Here, as in *Agarter*, the Board lacked any valid basis to make its irrelevant and improper inquiry.

Dated: October 29, 2014.

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