DISTRICT COURT OF MINNESOTA
TENTH JUDICIAL DISTRICT

HONORABLE JOHN P. DEHEN
JUDGE OF DISTRICT COURT

CHAMBERS
ANOKA COUNTY COURTHOUSE
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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