

MINNESOTA BOARD ON JUDICIAL STANDARDS

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News Release

Contact: Thomas C. Vasaly, Executive Secretary

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Date: October 31, 2014

For Immediate Release

JUDICIAL BOARD FILES FORMAL COMPLAINT AGAINST JUDGE ALAN F. PENDLETON

On October 31, 2014, the Minnesota Board on Judicial Standards filed a formal complaint against District Court Judge Alan F. Pendleton with the Minnesota Supreme Court. Judge Pendleton 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 Pendleton's response.

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

Please note: The Board may not have e-mail service the afternoon of October 31, 2014 due to installation of a computer upgrade. However, the Board may be contacted by telephone.

STATE OF MINNESOTA

IN SUPREME COURT

File No. _____

Inquiry into the Conduct of the Honorable
Alan F. Pendleton

**FORMAL COMPLAINT OF BOARD
ON JUDICIAL STANDARDS**

On July 9, 2014, the Board on Judicial Standards (“Board”) received information concerning Judge Alan F. Pendleton. The Board conducted an investigation which included a meeting with Judge Pendleton on August 15, 2014. On September 26, 2014, the Board reviewed the results of the investigation and determined that there is reasonable cause to believe that Judge Pendleton 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 Pendleton serve a written response to this complaint within 20 days after service of the complaint.

FACTUAL ALLEGATIONS

The Board alleges:

1. Judge Pendleton was licensed to practice law in Minnesota in 1980. He was appointed to the Tenth Judicial District bench in 1999 and has served continuously as a judge since his appointment. He is currently chambered in Anoka County.

2. The Minnesota Constitution provides: “Each judge of the district court in any district shall be a resident of that district at the time of his selection and during his continuance in office.” Minn. Const., Art. VI, Sec. 4. In 2011, the Supreme Court suspended a judge for residing outside her district and for failing to be candid and honest. *In re Karasov*, 805 N.W.2d 255 (Minn. 2011). The Court stated: “By this sanction, we convey our lack of tolerance for a judge’s failure to comply with her constitutional obligations and for a judge’s failure to act in a candid and honest manner when responding to the Board.” *Id.* at 277.

3. At all times relevant, Judge Pendleton was aware both of the requirement in the Minnesota Constitution that a judge reside within his district and of the *Karasov* opinion.

4. From July 2012 until November 27, 2013, Judge Pendleton owned a condominium in the Tenth Judicial District located at 2200 2nd Ave. N. # 205, Anoka, Minnesota (“the condo”). From approximately 2010 through the present, Judge Pendleton’s wife has owned and resided in a single family home in Minnetonka in Hennepin County, which is not within the Tenth Judicial District. Judge Pendleton states that he and his wife have always

maintained separate residences and that during the period of time he owned the condo, he spent weekends at his wife's Minnetonka residence and stayed at the condo during the work week.

5. Judge Pendleton hired a real estate agent to sell the condo and the condo was put on the market on October 4, 2013. Judge Pendleton entered into a purchase agreement with a buyer on or about October 30, 2013. The closing and sale of the condo took place on November 27, 2013. After November 27, 2013, Judge Pendleton retained no legal interest in the condo. Judge Pendleton states that the last night he spent in the condo was November 25, 2013. On November 26, 2013, Judge Pendleton moved to his wife's Minnetonka residence.

6. Judge Pendleton rented an apartment in Anoka County beginning August 1, 2014.

7. From November 26, 2013 through July 31, 2014, Judge Pendleton resided at the Minnetonka residence and did not maintain a residence in the Tenth Judicial District. During this period, Judge Pendleton did not have a place to live in the Tenth Judicial District and did not stay overnight in the Tenth Judicial District.

8. Judge Pendleton is a candidate for re-election to judicial office in the 2014 election. On May 22, 2014, Judge Pendleton filed an Affidavit of Candidacy with the Minnesota Secretary of State. The Affidavit of Candidacy is attached hereto as Exhibit A. The Affidavit includes blanks where the candidate may insert his "Residence Address." The Residence Address portion of the Affidavit is not submitted under oath. On that portion of the Affidavit, Judge Pendleton listed as his residence address 2200 2nd Ave. N. #205, Anoka, Minnesota. This address is the address of the Anoka condo Judge Pendleton sold on November 27, 2013.

9. Judge Pendleton knowingly made a false statement by listing the address of the Anoka condo as his Residence Address in his May 22, 2014 Affidavit of Candidacy. Judge Pendleton made this false statement for the purpose of concealing the fact that he was living outside his judicial district. From May 22, 2014, through the present, Judge Pendleton's Affidavit of Candidacy has been available to the public at the office of the Secretary of State, and the candidate filings section of the Secretary of State's website lists the Anoka condo address as Judge Pendleton's residence address.

CHARGES

Based upon the foregoing facts, the Board alleges:

1. Judge Pendleton's failure to reside in the Tenth Judicial District from November 26, 2013 through July 31, 2014 violated Rules 1.1, 1.2, and 2.1 of the Code of Judicial Conduct, Article VI, Section 4 of the Minnesota Constitution, and the holding in *In re Karasov*, 805 N.W.2d 255 (Minn. 2011).

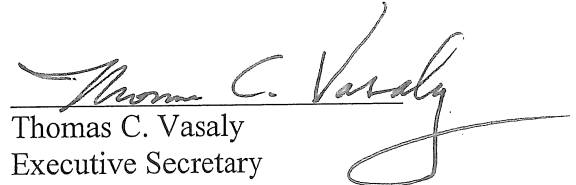
2. Judge Pendleton's knowingly false statement of his Residence Address in his Affidavit of Candidacy violated Rules 1.1, 1.2, and 4.1(a)(9) of the Code of Judicial Conduct.

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: October 7, 2014

By:


Thomas C. Vasaly
Executive Secretary

2025 Centre Pointe Boulevard, Suite 180
Mendota Heights, MN 55120
(651) 296-3999

ANOKA

609706



Office of the Minnesota Secretary of State
AFFIDAVIT OF CANDIDACY

Filing #	19
Cash/Check #	1260
Amount \$	300

Instructions

All information on this form is available to the public. Information provided will be published on the Secretary of State's website. If filing for partisan office and not a major party candidate, you must file both an affidavit of candidacy and a nominating petition. (Minn. Stat. 204B.03)

Candidate Information

Name and Office
 Candidate Name (as it will appear on the ballot) Mon. Alan F. Pendleton
 Office Sought 10th Judicial District Court Judge #36 District # 10th
 For Partisan Office, Provide Political Party or Principle N/A
 For Judicial Office, Provide Name of Incumbent Mon. Alan F. Pendleton

Residence Address

Do not complete if residence address is to be private and checkbox below is marked. All address and contact information is optional for federal, judicial, county attorney, and county sheriff office candidates.

Street Address 2200 2nd Ave N #205
 City Anoka State MN Zip Code 55303

☐ My residence address is to be classified as private data. I certify a police report has been submitted, or I have an order for protection regarding my safety or my family's safety, and I have attached a separate form listing my residence address.

Campaign Address and Contact

Candidate Phone Number (Required) 763-998-1508

Campaign Contact Address (Required for those who have checked the box above):

Street Address N/A
 City N/A State N/A Zip Code N/A
 Website N/A Email N/A

Affirmation

For all offices, I swear (or affirm) that this is my true name or the name by which I am generally known in the community.

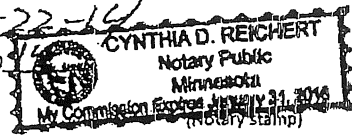
If filing for a state or local office, I also swear (or affirm) that:

- I am eligible to vote in Minnesota;
- I have not filed for the same or any other office at the upcoming primary or general election (except as provided in M.S. 204B.06, subd. 1 (2));
- I am, or will be on assuming office, 21 years of age or more;
- I will have maintained residence in this district for at least 30 days before the general election; and
- If a major political party candidate, I either participated in the party's most recent precinct caucuses or intend to vote for a majority of that party's candidates at the next general election.

If filing for one of the following offices, I also swear (or affirm) that I meet the requirements listed below:

- United States Senator - I will be an inhabitant of this state when elected and I will be at least 30 years old and a citizen of the United States for not less than nine years on the next January 3rd, or if filled at special election, within 21 days after the election.
- United States Representative - I will be an inhabitant of this state when elected and I will be at least 25 years old and a citizen of the United States for not less than seven years on the next January 3rd, or if filled at special election, within 21 days after the election.
- Governor or Lieutenant Governor - I will be at least 25 years old on the first Monday of the next January and a resident of Minnesota for not less than one year on election day. I am filing jointly with 0121538
- Supreme Court Justice, Court of Appeals Judge, District Court Judge, or County Attorney - I am learned in the law and licensed to practice law in Minnesota. My Minnesota attorney license number is 0121538 and a copy of my license is attached.
- State Senator or State Representative - I will be a resident of Minnesota not less than one year and of this district for six months on the day of the general or special election.
- County Sheriff - I am a licensed peace officer in Minnesota. My Board of Peace Officer Standards and Training license number is 0121538 and a copy of my license is attached.
- School Board Member - I have not been convicted of an offense for which registration is required under Minn. Stat. 243.166.
- County, Municipal, School District, or Special District Office - I meet any other qualifications for that office prescribed by law.

Candidate Signature Alan F. Pendleton Date 5-22-14
 Subscribed and sworn to before me this 22 day of May, 2014
 Notary public or other officer empowered to take and certify acknowledgement



White Copy - Filing Officer Yellow Copy - CFPD Board Pink Copy - Public Information Goldenrod Copy - Candidate Rev. 12/2013

EXHIBIT A

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

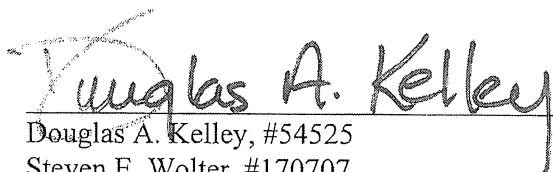
testimony on August 15, 2014 without giving him 20 days' advance notice as required by the Rule.

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 Agerter*, 353 N.W.2d 908 (Minn. 1984). In *Agerter*, 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 *Agerter*, the Board lacked any valid basis to make its irrelevant and improper inquiry.

Dated: October 29, 2014.

KELLEY, WOLTER & SCOTT, P.A.

A handwritten signature in dark ink, reading "Douglas A. Kelley". The signature is written in a cursive style with a horizontal line underneath the name.

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