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STATE OF MINNESOTA
DISTRICT COURT OF MINNESOTA
EIGHTH JUDICIAL DISTRICT

PAUL A. NELSON
JUDGE OF DISTRICT COURT

October 31, 2011

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Hon. Thomas G. Armstrong
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In Re: Inquiry into the Conduct of the Hon. Thomas G. Armstrong
File No. A11-121

Enclosed and served upon you by U.S. Mail are the Findings and
Recommendations of the hearing panel in the above-entitled matter.

Very truly yours,

A handwritten signature in cursive script that reads "Paul A. Nelson".

Paul A. Nelson
Presiding Officer

cc: David T. Schultz
Professor Paula O'Loughlin

**STATE OF MINNESOTA
IN SUPREME COURT
A11-121
BJS File Nos. 09-37 and 10-48**

*Inquiry into the Conduct of the
Hon. Thomas G. Armstrong*

A public hearing was held in the above-entitled matter on June 8 and 9, 2011. The matter was heard before a three member fact finding panel consisting of Professor Paul O'Loughlin, David T. Schultz, Esquire and the Honorable Paul A. Nelson, Judge of District Court, presiding officer. Douglas A. Kelley and Steven E. Wolter appeared on behalf of the Board on Judicial Standards. Judge Thomas G. Armstrong appeared pro se.

Having considered the testimony presented, the exhibits received, the post-hearing submissions and the entire file in this matter, the unanimous Panel makes the following Findings of Fact, Conclusions and Recommendations for Sanctions.

CHRONOLOGY AND PROCEDURAL HISTORY

1. On January 20, 2011 the Board on Judicial Standards (BJS) filed, under Rule 8 (a)(4), Rules of Board on Judicial Standards (RBJS), a formal complaint dated November 22, 2010 against Respondent Thomas G. Armstrong, Retired Judge of District Court and Respondent's January 12, 2011 written response.
2. On February 3, 2011 a three member hearing panel was appointed by order of the Chief Justice of the Minnesota Supreme Court. The hearing panel appointed were Professor Paula O'Loughlin, lay member, David T. Schultz, Esquire, attorney member and Paul A. Nelson, Judge of District Court, presiding officer.
3. On February 17, 2011 after input from counsel for Petitioner and Respondent, a scheduling order was issued setting certain deadlines, establishing procedures and setting a public hearing date of June 8, 9 and 10, 2011.
4. On April 6, 2011, in a telephone hearing on the record, Respondent sought an Order

compelling disclosures of handwritten notes of the interviews of all witnesses. Richard Thomas, Respondent's attorney, appeared on Judge Armstrong's behalf. Steven Wolter, counsel for the BJS, appeared and opposed the request.

5. On April 8, 2011 a Discovery Order and Memorandum was issued by the Presiding Officer granting the requested disclosure.
6. On May 16, 2001, Judge Armstrong submitted a letter in which he stated he had discharged his attorney, withdrew his request for a panel hearing and agreed to imposition of a sanction.
7. By letter dated May 20, 2011, Richard Thomas withdrew as counsel for Judge Armstrong.
8. On May 25, 2011 a pre-hearing conference by telephone was held with the Presiding Officer, on the record, to discuss the letter of May 16, 2011.
9. On June 2, 2011, Judge Armstrong advised the Presiding Officer and counsel that the matter would have to proceed to hearing as no agreement had been reached.
10. On June 8 & 9, 2011 a public hearing was held before the hearing panel at the Minnesota Judicial Center, St. Paul, MN.
11. At the conclusion of testimony the Panel and parties agreed to a schedule for submitting proposed findings and argument. Thereafter, on June 13, 2011 a formal Order for the briefing schedule was issued.
12. Both the BJS and Judge Armstrong submitted proposed findings and closing arguments on August 8, 2011.
13. Both the BJS and Judge Armstrong submitted their post hearing reply briefs on August 19, 2011.

FINDINGS OF FACT

1. Thomas G. Armstrong was a judge of district court in the Tenth Judicial District for 30

years, serving from January 5, 1981 through January 3, 2011. Judge Armstrong won a contested election in November, 1980 and later won four uncontested elections. In May 2010, Judge Armstrong again filed to run for reelection in the November, 2010 general election. Judge Armstrong withdrew his candidacy on June 2, 2010 after the filing period had closed to run for his office. Judge Armstrong is currently retired.

2. Judge Armstrong and his wife reside with their three youngest sons, all of whom attend school and are autistic. The challenges that he and his wife face in caring for them played a significant role in one of the ethical violations asserted by the BJS.

3. The Board asserted that Judge Armstrong violated the Minnesota Code of Judicial Conduct by:

(a) disclosing nonpublic information from a sealed court file for a personal purpose unrelated to the case,

(b) privately informing his law clerk of his decision to retire and then withdrawing his candidacy for judicial office immediately after the filing deadline had closed thereby leaving his clerk as the only candidate for his seat, and

(c) contacting a witness in his personal disciplinary investigation for the purpose of discussing, and attempting to influence, the witness's future testimony.

Release of Confidential Information

4. On March 12, 2009, Judge Armstrong presided over a civil harassment action that was scheduled for a contested hearing. The petitioner alleged that a 40-year old female family friend had engaged in sexual contact with the petitioners' 16-year old son. The petitioner appeared pro se. The respondent was represented by attorney William Mauzy.

5. The case was resolved without a hearing after the parties agreed to the terms of a no-contact order. Mr. Mauzy requested that the entire court file be sealed. Such a sealing was common at that time in the Tenth Judicial District and Judge Armstrong granted the request. A written order sealing the file was issued.

With that sealing the file was unavailable to the general public and could be accessed only by the Court or authorized court personnel. Pursuant to Judge Armstrong's order, the entire court file was physically placed in an envelope and taped shut.

6. Less than two weeks after the harassment case was settled, the petitioner filed a complaint with the Board on Judicial Standards, alleging judicial misconduct with respect to Judge Armstrong's handling of the case. The Board sent a copy of the complaint to Judge Armstrong's chambers and asked him to respond.
7. Judge Armstrong was on vacation when the Board's letter was delivered. His law clerk, Dawn Hennessy, opened the letter, called Judge Armstrong at home, and read the letter to him over the telephone. Judge Armstrong asked Ms. Hennessy to retrieve the sealed file, copy it and bring a copy to his home.
8. Judge Armstrong sent a written response to the complaint to the Board on June 10, 2009. His 11-page letter identified the parties to the harassment proceedings and referred to the juvenile victim by name 14 times. Judge Armstrong enclosed 11 exhibits, including the harassment petition and other pleadings obtained from the sealed court file along with a transcript of the March 12, 2009 hearing.
9. When he received the complaint, Judge Armstrong had been in conflict with the Board for virtually his entire judicial career. This conflict was elaborated on in great detail in Judge Armstrong's own response, his opening statement, testimony and in his written submissions to the hearing panel.
10. His displeasure with the Board was prompted in part by the Board's processing, years earlier, of a complaint brought by a junior military officer that accused Judge Armstrong of lying in an officer efficiency report he prepared in his capacity as a Judge Advocate General (JAG) in the United States Army Reserve. In approximately 1999, Judge Armstrong discussed his displeasure over the Board's involvement in that matter with Minnesota State

Senator Donald Betzold, who was a fellow JAG officer at the time.

Both men believed that it involved a purely internal military matter outside of the Board's jurisdiction. Senator Betzold served on the Senate Judiciary Committee and informally asked Judge Armstrong to "keep him in the loop" respecting contacts with the Board.

11. Judge Armstrong was again angry with the Board when he received the harassment petitioner's complaint. He sent a copy of the complaint and his complete response, including exhibits, to Senator Betzold. Judge Armstrong told the Board that he was informing Senator Betzold of the matter, and described Senator Betzold as "an old friend" who "takes a special interest in your Board."

Judge Armstrong stated: "I have had discussions with him (Senator Betzold) in the past about misconduct by your Board. I know he will hold these documents in confidence."

12. Senator Betzold testified that he did not ask Judge Armstrong to send the documents and that he did not know that the pleadings sent to him came from a sealed court file. Judge Armstrong did not redact his letter or the attachments to remove information that identified the parties or the minor victim before sending a copy to Senator Betzold. Because the file was sealed, if Senator Betzold had sought directly to access the court file, either personally or as a member of the Senate Judiciary Committee, he would have had to have filed a petition and obtained a court order permitting access.

13. Judge Armstrong did not notify the parties that he was releasing information from the sealed file before sending his letter to Senator Betzold. Mr. Mauzy testified by affidavit that if he had received such notice, he would have taken action to preserve the confidentiality of his client's identity.

14. Canon 3, Rule 3.5 of the Code of Judicial Conduct, which became effective July 1, 2009, provides that "(a) judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties." The

confidentiality rule in place on June 12, 2009, when Judge Armstrong mailed the sealed materials to Senator Betzold, contained no intent element and provided instead that “(a) judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.” See Code of Judicial Conduct, Canon 3(A)(12)(2004). The Formal Complaint charged Judge Armstrong with intentionally disclosing confidential nonpublic court information for personal use.

15. The Board has proved, by clear and convincing evidence, that by sending confidential information from a sealed court file to Senator Betzold, Judge Armstrong improperly disclosed or used nonpublic information acquired in his judicial capacity for a purpose unrelated to his judicial duties.

Election matter

16. After initially winning election to judicial office in 1980 against a sitting judge, Judge Armstrong was reelected to four additional terms in unopposed elections.

17. Judge Armstrong’s judicial seat was again on the ballot in the November 2010 general election. On May 18, 2010, Judge Armstrong filed an Affidavit of Candidacy to seek reelection and have his name placed on the November ballot. Judge Armstrong debated whether or not to file for reelection, describing his choice as “51/49 (percent) call.” He began to regret his decision to run “almost immediately” after he had filed because of serious and legitimate conflicting family demands.

18. On May 25, 2010, one of Judge Armstrong’s sons had an incident at school, which Judge Armstrong emotionally described as “the mother of all meltdowns.” After considering his options the following weekend, Judge Armstrong decided to retire and withdraw from the upcoming election.

19. Between May 18, 2010, when Judge Armstrong filed his affidavit of candidacy and June 1, 2010, no other candidate had filed to run for Judge Armstrong’s seat. June 1, 2010 was the

deadline for all candidates seeking the office to file affidavits of candidacy to have their name placed on the general election ballot.

20. The Memorial Day holiday was observed on Monday, May 31, 2010. At approximately 11:00 a.m. on Tuesday, June 1, 2010, Judge Armstrong informed his court reporter, Greg Cosgrove, and his law clerk, Dawn Hennessy, of his decision to retire and withdraw from the election. He then left the courthouse and returned home.

21. Ms. Hennessy began considering filing for the judicial seat shortly after talking with Judge Armstrong. Before their discussion, Ms. Hennessy testified she had no ambition to be a judge and had never thought about running for the office. She stated she had no intention of running against her employer of ten years and had never even considered challenging Judge Armstrong for the judgeship.

22. Ms. Hennessy printed an Affidavit of Candidacy off of the Internet, filled it out, and drove to the election office to file her application. She sat on a bench outside the election office for at least a half an hour contemplating whether or not to file the affidavit.

23. The filing period for judicial candidates closed at 5:00 p.m. on June 1, 2010. Ms. Hennessy entered the election office a few minutes before filings closed and filed her affidavit of candidacy between 4:50 and 5:00 p.m. No other candidate filed for the office before the deadline expired.

24. After affidavits of candidacy are received in local election offices, they are publically posted and can be electronically viewed on the Minnesota Secretary of State's website.

Sometime during the evening of June 1, 2010, Judge Armstrong's wife checked the filings on-line and saw that Dawn Hennessy had filed to run for election to Judge Armstrong's judicial seat. His wife told Judge Armstrong, "this doesn't look good." When later asked by Board counsel why Ms. Hennessy's filing did not look good, Judge Armstrong replied, "Isn't it obvious?"

25. On June 2, 2010, Judge Armstrong sent letters to Governor Pawlenty and Chief Justice Magnuson notifying them of his impending retirement at the end of his judicial term and his decision to immediately withdraw from the November 2010 election. In the letter, Judge Armstrong also requested a transfer to senior status upon his retirement.

26. After sending his letter, Judge Armstrong invited a group of people, including Ms. Hennessy and Mr. Cosgrove to lunch at a restaurant located next to the election office. On the way to lunch, Judge Armstrong went to the election office and filed an Affidavit of Withdrawal, thus removing his name from the election ballot. In Judge Armstrong's opinion, any negative public perception occasioned by this withdrawal was "not a consideration."¹

27. Judge Armstrong's withdrawal left Ms. Hennessy as the sole candidate running unopposed for Judge Armstrong's seat. This prompted an adverse public reaction.² Ms. Hennessy recalled that "people...thought that I did it underhandedly...that we conspired to do it, that it was a plan, that it was a plot, that it was something that we had...dreamed up to do." According to Ms. Hennessy, "the spin that everyone put on it was that it was a big conspiracy, a plot and plan that we had conspired to do this so that I could have his job after he withdrew."

28. Canon 1 of the Minnesota Code of Judicial Conduct ("Code") requires judges to uphold and promote the independence, integrity, and impartiality of the Judiciary and directs that judges avoid impropriety and the appearance of impropriety with respect to their personal actions. Canon 1, Rule 1.2 of the Cod mandates that judges "shall act, at times, in a manner

¹ The verbatim testimony is as follows:

Q. Judge, what I'm suggesting is, on Tuesday night, if you had followed through with the course of the action that you were going to do, you were going to leave the impression to the public that you had rigged an election. You're telling this panel you didn't even consider how that would look, what it would do to your other colleagues in the state?

A. I had said I was going to withdraw and I went and I withdrew and that's it.

Q. Okay. Let's talk about that. Do you admit that it was going to cause an uproar or do you deny that?

A. I had no thought of that whatsoever; and when you talk about colleagues in the state, I've been an outsider in the judiciary for 30 years, so I don't think of it as a bunch of colleagues at all. There's only the ones I work with in Washington County and that's it.

Q. So you really didn't care if this rubbed off on the judiciary?

A. It's not a matter of caring, it's a matter that it's not a consideration. I don't know how other people are going to view it. I don't even know if Dawn is going to stay in this race or what she's going to do.

² The Board sought to admit numerous newspaper articles addressing the matter. They were not admitted but the media attention to the matter is a matter of common knowledge.

that promotes public confidence in the integrity and impartiality of the Judiciary, and shall avoid impropriety and the appearance of impropriety.”

29. The Board has proved, by clear and convincing evidence, that by filing for reelection to judicial office, privately informing his long-time law clerk of his decision to withdraw from the race, failing to take any action whatsoever to mitigate the adverse effects that his decision would have to the public and judicial branch, and then withdrawing after the deadline for other candidates to file had closed, thus leaving Ms. Hennessy as the sole candidate for the seat, Judge Armstrong created an appearance of impropriety.

Witness Contact

29. As part of its investigation of Judge Armstrong’s conduct, the Board engaged the law firm of Kelley, Wolter & Scott as outside counsel.

30. On June 14, 2010, Rodney M. Haggard, an investigator employed by the firm, traveled to the Washington County Courthouse to serve investigatory subpoenas on Judge Armstrong and Dawn Hennessy. While there, Mr. Haggard spoke with Washington County Court Administrator Annette Fritz. Fritz told Haggard she had conversed with Judge Armstrong about the election issue on June 2, 2010. The specifics of the contacts by Judge Armstrong with Annette Fritz were unclear and disputed. It appears to the panel that such contacts were incidental and without any intent by Judge Armstrong to intimidate, influence or tamper with the investigation process.

31. The Board has not proved, by clear and convincing evidence, that by contacting a witness in an ongoing disciplinary investigation Judge Armstrong created an appearance of impropriety.

CONCLUSIONS

1. By providing nonpublic information acquired in his judicial capacity to Senator Betzold for personal purposes unrelated to his judicial duties, Judge Armstrong has violated both former Code of Judicial Conduct Canon 3(A)(12) and Canon 3, Rule 3.5 of the current Code.

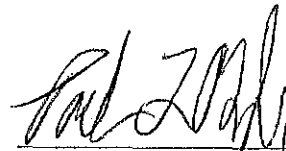
2. By providing inside information of his impending decision to withdraw from the election for his judicial seat to his law clerk and then withdrawing after she filed for the office and the filing period for other candidates had expired, thus leaving the clerk to run unopposed and taking no action whatsoever to mitigate the negative perception such actions caused, Judge Armstrong violated Canon 1, Rule 1.2 of the Code (requiring the avoidance of any appearance of impropriety).

RECOMMENDATIONS FOR SANCTIONS

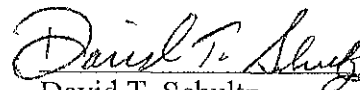
Pursuant to R. Bd. Jud. Std. 11(b)(2), the Panel hereby issues a public reprimand against Judge Armstrong for the misconduct described above. Furthermore, in light of his misconduct and abiding failure to acknowledge or appreciate its effect on the public's faith and confidence in the integrity of the Judiciary, the Panel respectfully requests that the Supreme Court impose a limitation, pursuant to R. Bd. Jud. Std. 11(b)(3)(iv), precluding Judge Armstrong from being accorded senior judge status.

The public reprimand is stayed until the time for appeal has run or any appeal is completed.

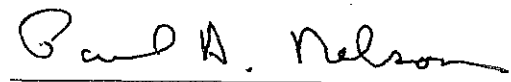
Dated October 31, 2011



Paula O'Loughlin



David T. Schultz



Paul A. Nelson, Presiding Officer

MEMORANDUM

While the findings of facts, conclusions and recommendations stand on their own, the Panel believes that there are two matters that merit further discussion and comment. The first relates to the election controversy. The second is Judge Armstrong's unseemly and offensive submissions and the slandering of numerous present and former district court judges and Supreme Court justices.

Throughout the entire proceeding there has been very little dispute about the facts surrounding either of the incidents that the panel has found to have been proven. The election issue needs to be examined because of what it is not.

Judge Armstrong's decision to withdraw his candidacy was based on his family situation. He clearly agonized over the decision and was emotionally distraught. His decision to withdraw or the wisdom of that decision is not why he is subject to discipline. Based on his testimony it appears that he made the correct choice to withdraw his candidacy. The timing of it all was imposed by when his family crisis occurred and the requirements of state law. He only decided to withdraw on Memorial Day weekend.

June 1, 2010, a Tuesday was the day after Memorial Day. It was also the last day for anyone to file for his position. He had decided to withdraw and informed his law clerk and court reporter of that decision that morning. He then went home. Even in his depressed state he could have done any of the following that morning but chose not to.

- 1) Contact the Chief Judge of his District and inform him of his decision and ask him to take action that he felt appropriate.
- 2) Contact the District Administrator, Michael Moriarity, and inform him of his decision and ask him to follow through.

- 3) Contact the office of the Secretary of State and inform them of the decision he had made and the problems it was going to cause.
- 4) Contact the Public Information Office of the Judicial Branch and advise them of the situation.
- 5) Delay notifying his law clerk and court reporter of his decision for another six hours.

He set into motion a series of events that led to a “firestorm” of public comment and the appearance of a conspiracy. He had numerous ways to prevent that. He did not even consider the effect of his decision on the Judiciary nor did he, nor does he, care.

The Judicial Canons requires a judge to avoid “even the appearance of impropriety.” He clearly knew the problems that his withdrawal would cause even if his law clerk had not filed, which the evidence showed was without his knowledge, but certainly after learning that she had filed that there were options available to him to diminish the public outcry and concern over what had occurred. He simply considered it to be private to him and that the rest of the Judiciary and the public could think what they like because of it was of no concern.

The hearing panel in this matter was appointed by the Chief Justice of the Minnesota Supreme Court Laurie Gildea, pursuant to the requirements of law to hear and decide the three claims of misconduct alleged in the Board on Judicial Standards Petition of November 22, 2010. Those three matters have been heard and now determined after a full hearing and argument.

Judge Armstrong, beginning with his 83-page pro se response to the Board on Judicial Standards Petition and continuing through his final submission to the Panel on August 19, 2011, repeatedly raised events and issues arising throughout

his 30-year career as a judge of district court. Those include, in detail, his prior conflicts with the Board on Judicial Standards, its members, directors and counsel. He has repeatedly expressed negative attitudes and opinions toward current and past members of the Judiciary at both the Supreme Court and trial court level.

This hearing panel has focused solely on the facts and the applicable law and rules on the three specific claims brought the Board on Judicial Standards. It has not considered anything else. However, because of Judge Armstrong's continuous, lengthy and often offensive and insulting submissions this comment is required. Judge Armstrong has now made a complete and public record of his views. That he has chosen to impugn and insult the character and reputation of so many in doing so is troubling. The panel simply notes that we have set all that aside and made an independent, unbiased, fact and law driven decision.