

MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of the Honorable Steven J.
Cahill, Seventh Judicial District Judge

PUBLIC REPRIMAND AND CONDITIONS

File Nos. 13-32, 13-41, 13-42

PROCEDURES

The Board on Judicial Standards (“Board”) received complaints against Judge Steven J. Cahill. The Board investigated these complaints. The Board’s investigation included review of documentary evidence, witness interviews, and a meeting with Judge Cahill and his attorney on February 4, 2014. On March 4, 2014, based upon the Board’s investigation and proceedings, the Board issued a notice of proposed reprimand and conditions to Judge Cahill in accordance with Board Rule 6(f)(5)(iii) and 6(f)(7). On March 24, 2014, Judge Cahill filed a response to the notice of proposed reprimand and a demand for formal hearing.

The Board and Judge Cahill entered into a stipulation in which the Board agreed to some of Judge Cahill’s requested modifications to the proposed reprimand and Judge Cahill agreed to withdraw his demand for formal hearing and to waive any right to appeal or dispute, either at this time or in any future proceeding involving the Board, the findings, conclusions, discipline, or other contents of the final reprimand and conditions set forth herein.

The Board now makes the following:

FINDINGS AND CONCLUSIONS

I. Failure to Follow Law.

1. *MP case.* Defendant MP, an immigrant, pled guilty to the felony offense of burglary in the third degree. At the May 7, 2012 sentencing hearing, notwithstanding the prosecutor’s objections, Judge Cahill imposed a gross misdemeanor sentence, 360 days in jail, which was less than the felony sentence of a year and a day called for by the sentencing guidelines. Judge Cahill did this because he was concerned that a felony conviction might result in MP’s deportation, even though Judge Cahill knew that appellate court precedent did not permit taking this factor into account. *See State v. Mendoza*, 638 N.W.2d 480, 483-84 (Minn. Ct. App. 2002) (holding that “possible deportation because of immigration status is not a proper consideration in criminal sentencing”). The prosecution appealed. Judge Cahill then issued a memorandum stating:

This court is well aware of two Court of Appeals cases which have held that potential immigration consequences are not to be taken into consideration for sentencing purposes. . . .

This court respectfully suggests that the Court of Appeals went astray in those cases

The Court of Appeals reversed Judge Cahill's order, stating that the district court "is bound by supreme court precedent and the published opinions of the court of appeals." *State v. Peter*, 825 N.W.2d 126, 129 (Minn. Ct. App. 2012) (citation and internal punctuation omitted).

2. *HT matter.* HT pled guilty to violating an order for protection. At the sentencing hearing on December 14, 2009, notwithstanding objections interposed by the prosecuting attorney, Judge Cahill ordered a stay of adjudication for one year because a conviction, which would result in a firearms prohibition, could adversely affect HT's employment with the Minnesota National Guard. Judge Cahill's order was in violation of settled law and binding precedent. *See State v. Foss*, 556 N.W.2d 540, 541 (Minn. 1996) (holding that a trial court judge could not issue a stay of adjudication over the prosecutor's objection unless there was compelling evidence of "clear abuse of discretion by the prosecutor in the exercise of the charging function"); *State v. Leming*, 617 N.W.2d 587, 589 (Minn. Ct. App. 2000) ("The possibility that a defendant may lose her job as a result of a conviction" does not "allow[] a court to stay adjudication over the prosecutor's objections."). The Court of Appeals reversed Judge Cahill's order, stating:

[A] stay of adjudication may be ordered only for the purpose of avoiding an injustice resulting from the prosecutor's *clear abuse of discretion* in the exercise of the charging function. . . .

In this case, the district court did not find that the prosecutor committed a clear abuse of discretion in the exercise of the charging function. Rather, the district court stated that the prosecutor "refused to consider" an amended charge that would not result in a sentence containing a firearms prohibition. . . . But mere disagreement with the prosecutor's exercise of the charging discretion is insufficient to establish a clear abuse of prosecutorial discretion in the exercise of the charging function and, thus, insufficient to justify a district court's stay of adjudication.

. . . .

[N]othing in the record supports a conclusion that the prosecutor committed a *clear abuse of discretion* in the exercise of the charging function.

State v. Theis, No. A09-2286, 2010 WL 29000341, at *2, *3 (Minn. Ct. App. July 27, 2010) (citation and internal punctuation omitted, emphasis in original). After the Court of Appeals issued its opinion, Judge Cahill set aside the original conviction and vacated the defendant's guilty plea. The prosecution and defense subsequently entered into a plea agreement.

3. *AS case.* During the trial of this custody matter, without giving advance notice to the parties, Judge Cahill independently accessed an electronic criminal file containing a confidential pre-sentence investigation report relating to AD, the fiancé of one of the parties.

Without giving AD notice or an opportunity to be heard, Judge Cahill distributed copies of the report to the attorneys for the parties in violation of Minn. Stat. § 13.84 subds. 2, 4, and 5. Judge Cahill also told the attorney for one of the parties that she could show the report to the parenting investigator. The court then recessed for a lunch break of about one hour and 45 minutes during which time counsel had possession of the PSI report and were free to review it. When the trial resumed, in response to the motion of AS's attorney, Judge Cahill decided to receive into evidence only the portions of the PSI report that set forth AD's criminal history. Counsel returned the balance of the report to the court before they left the courthouse.

4. *DT Matter.* At the default hearing in an eviction action, Judge Cahill ordered an award of damages for unpaid rent. Judge Cahill did this even though he was reminded by the court administrator that damages for unpaid rent cannot legally be awarded in an eviction case.

5. *RC Matter.* A husband and wife both filed marriage dissolution petitions. On August 13, 2012, in the action brought by the wife, Judge Cahill granted her request to proceed in forma pauperis, noting that she did not have the ability to pay court costs. On August 21, 2012, Judge Cahill granted the wife's request to remove him from that case based on her timely notice of removal. On August 27, 2012, in the action brought by the husband, Judge Cahill signed an in forma pauperis order requiring the wife to pay \$100 toward court costs. In Judge Cahill's response to the Board, he stated that the wife was entitled to have all her court costs waived and that he was not able to explain why he required her to pay \$100 in court costs on one of the files.

6. *Clay County court file.* At the conclusion of the trial in this juvenile case, Judge Cahill handed the photograph exhibits, which had been marked and received into evidence, to the defense lawyer and told her to "hold on to them." Judge Cahill states that the court was converting to a paperless system and that it was not clear at the time how exhibits were to be handled.

7. *Code Violations.* The Board concludes that the foregoing conduct violated the following provisions of the Code of Judicial Conduct: Rules 1.1 and 1.2 (compliance with the law, promoting confidence in the judiciary), Rule 2.2 (fairness and duty to uphold the law), Rule 2.5(A) (competence and diligence), Rule 2.6(A) (right to be heard), and Rule 2.9(C) (prohibition against independent judicial investigation).

II. Improper Ex Parte Orders.

8. *Defendant PM.* On Thanksgiving Day 2012, while driving by the Clay County courthouse and jail, Judge Cahill spontaneously decided to grant a 24-hour furlough to a prisoner. The prisoner had not requested a furlough. Judge Cahill went into the courthouse, personally typed up the furlough, and delivered it to the jail without giving notice or providing the prosecuting attorney or any interested person an opportunity to be heard. When the jail notified the defendant of the furlough, the defendant declined it because he knew nothing about it and thought it was a mistake.

9. *Defendant PB.* On December 27, 2012, without giving notice or providing the prosecuting attorney or any interested person an opportunity to be heard, Judge Cahill issued an order which authorized PB to be released from jail to attend AA up to ten hours a week. On February 27, 2013, again without giving notice or providing the prosecuting attorney or any interested person an opportunity to be heard, Judge Cahill issued an order which required PB to undergo a mental status evaluation, with the expense of the evaluation and any medication or treatment prescribed for him while he was incarcerated to be borne by the County. In Judge Cahill's response to the Board, he stated:

What I wanted to do . . . was to make a bold statement to get [the jail staff's and the prosecutor's] attention It worked. As I expected, the County Attorney soon file[d] a motion for me to rescind my order.

10. *KN matter.* By email sent at 12:44 p.m. on Wednesday June 12, 2013, the Clay County Planning and Environmental Programs Department informed KN that he did not have the necessary permits to build a moto-cross track and that he should contact the department as soon as possible. Assistant Clay County Attorney JS was copied on the email. The afternoon of Thursday June 13, without giving notice to the County or providing the County with an opportunity to be heard, Judge Cahill issued a Temporary Restraining Order which permitted KN to conduct motorcycles races beginning that weekend. The Temporary Restraining Order was issued even though the papers submitted by KN in support of his request for the TRO did not address what efforts, if any, had been made to give notice to the County, or provide reasons to support a claim that notice should not be required, contrary to the provisions of Rule 65.01 of the Rules of Civil Procedure.

11. *KC matter.* KC, age 16, was charged with vehicular homicide. The case received substantial media coverage. KC was released to the custody of his parents subject to conditions including a 9:00 p.m. curfew. On May 3, 2013, KC asked to attend prom and Judge Cahill granted him a three-hour furlough. Without giving notice or providing the prosecutor or any interested person with an opportunity to be heard, Judge Cahill granted the request. Subsequently, Judge Cahill was 40 minutes late for the dispositional/sentencing hearing. The family of the boy who was killed felt that Judge Cahill's tardiness was disrespectful to the memory of their son. Judge Cahill states he will write a letter of apology to the boy's family.

12. *Code Violations.* The Board concludes that the foregoing conduct violated the following provisions of the Code of Judicial Conduct: Rule 2.5(A) (competence and diligence), Rule 2.6(A) (right to be heard), and Rule 2.9 (ex parte communications).

III. Chronic Tardiness and Related Misconduct.

13. *Chronic Tardiness (pre-investigation).* During 2012 and 2013, Judge Cahill was chronically late for court. Examples include the following:

- a. Judge Cahill was 40 minutes late for a 9:00 a.m. master calendar in Alexandria on August 20, 2012;

- b. Judge Cahill was 18 minutes late for hearings scheduled to start at 9:00 a.m. on March 21, 2013;
- c. Judge Cahill was 10 minutes late for a motion hearing at the start of a jury trial on April 16, 2013;
- d. Judge Cahill was 40 minutes late for a sentencing/dispositional hearing on June 10, 2013.
- e. Electronic key card records reveal that Judge Cahill was late for court 18 or more times during the five week period between Sept. 12 and Oct. 17, 2012.

14. *Chronic Tardiness (during investigation)*. On August 26, 2012, the Board served on Judge Cahill a notice of investigation regarding possible violations of the Code of Judicial Conduct including chronic tardiness. Thereafter, electronic key card records show that Judge Cahill was late for court the morning, the afternoon, or both on 20 or more occasions in October 2013 and 18 or more times in November 2013. Judge Cahill was late 20 or more times in December 2013, which was almost every single court day that month. For example, Judge Cahill was 20 minutes late for court the morning on December 3, 2012, 15 minutes late that same afternoon, and 8 minutes late the morning on December 18, 2013. More recently, Judge Cahill was 20 minutes late the morning of January 23, 2014.

15. *Untimely decision*. Judge Cahill self-reported the following matter. *In re Rahman Abdul Thomas* involved a civilly committed person who filed a motion seeking relief based upon allegedly ineffective treatment. The opposing party, the State of Minnesota, disputed that the movant was entitled to a hearing and disputed that the movant was entitled to relief. The issues were submitted to Judge Cahill on September 5, 2013. A decision was due no later than 90 days from that date pursuant to Minn. Stat. § 546.27. On March 7, 2014, a court clerk sent Judge Cahill an e-mail asking about the case, and he responded that “I should now issue an order to get this case off the docket, and I will do so in the next few days.” Judge Cahill did not issue an order until March 28, 2014, 115 days after the 90-day deadline.

16. *Losing track of file and attempted visits to litigant*. EL brought an action to register title to a mobile home. Judge Cahill heard the matter on July 20, 2012. The defendant did not appear. EL submitted the original certificate of title to her mobile home, and Judge Cahill assured her that it would be returned to her. Judge Cahill lost track of the file on his desk for more than five months. On November 15, 2012, a clerk informed Judge Cahill, “Judge Cahill---the PLN was in today asking about the status of the case. Hrg. was held in July, there hasn't been any further action. The file is on your desk. Please advise.” A clerk gave him a similar message on December 11, 2012. On January 11, 2013, Judge Cahill determined that the case should go by default and issued an order to register title. Without advance notice to EL, Judge Cahill drove to her home several times after work in an attempt to personally deliver the order and title certificate to her. EL was either not home or did not wish to come to the door. Judge Cahill decided to issue amended findings, conclusions, and order on February 26, 2013. A clerk mailed the amended findings and the title to the plaintiff on February 27, 2013.

17. *Starting court before staff was present.* On March 11, 2013, Judge Cahill started court before court staff was present.

18. *PC matter.* This case involved a petition by an owner to recover a vehicle that had been administratively forfeited after his arrest. Even though Judge Cahill were informed that the county attorney was in another courtroom, he called the case after he was informed that the county attorney was no longer detained in another courtroom and, based on the non-appearance of the prosecutor, Judge Cahill granted the owner's petition before determining whether the county attorney had, in fact, received proper notice of the hearing. In fact, the county attorney had not received proper notice.

19. *Lack of preparedness for and inattentiveness during court proceedings.* Multiple sources report that Judge Cahill occasionally appears to be unprepared for hearings and that he is occasionally inattentive during court proceedings.

20. *Code Violations.* The Board concludes that the foregoing conduct violated Minn. Stat. § 546.27 and the following provisions of the Code of Judicial Conduct: Rule 1.1 (compliance with the law), Rule 2.1 (precedence of duties of judicial office), Rule 2.5(A) and (B) (competence, diligence, and cooperation with judges and court officials), and Rule 2.8(B) (decorum and courtesy).

IV. Discourtesy to Court Staff.

21. *Discourtesy to court staff.* On several occasions, Judge Cahill was disrespectful to court staff.

22. *Code violations.* The Board concludes that the foregoing conduct violated the following provisions of the Code of Judicial Conduct: Rule 2.5(A) and (B) (competence, diligence, and cooperation with judges and court officials), and Rule 2.8(B) (decorum and courtesy).

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

PUBLIC REPRIMAND AND CONDITIONS

1. Judge Cahill is hereby reprimanded for the foregoing misconduct.
2. Judge Cahill will comply with the following conditions:
 - a. Judge Cahill 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. The Board encourages Judge Cahill to seek professional help in determining these causes.

- b. Within one month after the date this reprimand becomes final, Judge Cahill will identify to the Board a proposed mentor who will assist Judge Cahill in addressing the causes of the misconduct described above. The Board has the discretion to accept or reject the mentor. The mentor will submit at least two reports to the Board concerning Judge Cahill's progress in meeting this goal. The first report will be submitted within three months after the date this reprimand becomes final, and the second report will be submitted within six months after the date this reprimand becomes final.
- c. Within two months after the date this reprimand becomes final, Judge Cahill will submit to the Board and the mentor a proposed plan showing how he will address the causes of the misconduct described above.
- d. Within six months after the date this reprimand becomes final, Judge Cahill will take the initiative to schedule a meeting with a designated Board member and the Board's Executive Secretary. The purpose of the meeting is to assist the Board in monitoring Judge Cahill's progress.
- e. Compliance with the foregoing conditions is required by Rule 2.16, Minnesota Code of Judicial Conduct. If Judge Cahill does not comply with the conditions set forth herein or if additional misconduct occurs, the Board will consider whether additional discipline is appropriate.

The following memorandum is made a part hereof.

MINNESOTA BOARD ON JUDICIAL
STANDARDS

Dated: April 21, 2014

By: s/ Thomas C. Vasaly
Thomas C. Vasaly
Executive Secretary

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MEMORANDUM

Judge Cahill, in his January 2014 meeting with the Board, forthrightly acknowledged that he has a problem with tardiness. However, he did not acknowledge that he committed any violations of the Code of Judicial Conduct based on his tardiness or any other conduct. Judge Cahill's appears to have difficulty in acknowledging clear legal authority constraining his discretion. Three examples will serve.

First, even after the Board notified Judge Cahill that Minn. Stat. § 13.84 provides that a pre-sentence investigation (PSI) report is private, Judge Cahill continued to asserted that PSI reports are not confidential and that he was correct in disclosing the PSI report referred to in the *AS* case (paragraph 3 above). In February 2014, when it was pointed out to him that Minn. Stat. § 609.115, subd. 6 expressly provides that a PSI report shall not be disclosed except as otherwise directed by a court, Judge Cahill finally admitted that PSI reports are private, but claimed that he had issued a “strict protective and confidentiality order” authorizing disclosure of the PSI report in the *AS* case in accordance with Minnesota statute. The Board then learned that Judge Cahill’s order was merely a verbal direction to counsel that the PSI report was given to them in confidence and was not to be reproduced. This verbal direction to counsel, unaccompanied by any notice to AD or other process, was not sufficient to authorize the disclosure of the report. Further, Judge Cahill’s subsequent decision to direct counsel to return the most sensitive portion of the report did not remedy the fact that counsel had reviewed the entire report over the lunch break.

Second, with respect to the *HT* case (paragraph 2 above), Judge Cahill continues to believe that “the law was not settled in 2009 on the question of whether the court could issue a stay of adjudication over the prosecutor’s objection where a defendant’s employment may be at risk as a result of the conviction.” The Court of Appeals opinion reversing his order shows that this belief is incorrect.

Third, with respect to the *MP* case (paragraph 1), Judge Cahill continues to believe that the “law was somewhat unsettled” about whether a risk of deportation could properly be considered in making a sentencing decision. In reversing his order, the Court of Appeals held that the law was settled and the district court was bound by precedent.

Judge Cahill asserts that his guiding principle “is to always try to do the *right* thing, unless the right thing is clearly prohibited by law.” (Emphasis in original.) Judge Cahill’s actions in the matters noted above were clearly prohibited by law. In some instances, such as the *AS* case, Judge Cahill could have accomplished any legitimate objectives by going through proper legal procedures. In other instances, the “right thing” to do in a particular situation has been decided by the Legislature or the appellate courts, and Judge Cahill was required to follow their directives. Rule 1.1 of the Code of Judicial Conduct requires a judge to comply with the law, and Comment 2 to Rule 2.2 requires a judge “to interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.” Judge Cahill went beyond what the law allowed.

The Board considered whether more serious discipline was appropriate. Notwithstanding the widespread pattern of misconduct summarized above, Judge Cahill does not have a previous disciplinary history with the Board. The Board determined that the most appropriate discipline at this stage is a public reprimand and conditions.

The underlying causes of Judge Cahill’s conduct are not clear. The Board directs Judge Cahill to determine and address the causes of his conduct. If the conduct continues, the Board will consider whether additional discipline is appropriate.