

## MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of Senior Judge  
Edward W. Bearse

### AMENDED PUBLIC REPRIMAND

File No. 15-17

TO: Judge Edward W. Bearse.

The Board on Judicial Standards (“Board”) received a complaint concerning Judge Edward W. Bearse. The Board investigated the complaint. On November 5, 2015, based upon the Board’s investigation and proceedings, the Board issued a notice of proposed reprimand and conditions to Judge Bearse in accordance with Board Rules 6(f)(5)(iii) and 6(f)(7). In response, Judge Bearse submitted several comments, based on which the Board modified the reprimand. Judge Bearse did not file a demand for a formal complaint and public hearing. Consequently, this reprimand is final. Based upon the Board’s investigation and proceedings, the Board now makes the following:

#### FINDINGS OF FACT

1. Judge Bearse was appointed to the Tenth Judicial District bench in 1983, where he served as judge until he retired in 2006. He was then appointed and assigned to serve statewide as a Senior Judge. He has no disciplinary history with the Board.
2. As described below, Judge Bearse publicly posted comments on his Facebook page concerning cases to which he was assigned as a Senior Judge. Judge Bearse states that he believed that his Facebook posts were available to approximately 80 family members, friends and members of his church, but in fact they were available to the public.

#### *State v. Weaver*

3. Deandre Weaver was charged with intentionally engaging in the sex trafficking of an individual in violation of Minn. Stat. § 609.322, subd. 1a(4), a felony. The evening of September 8, 2015, after the first day of trial, Judge Bearse posted the following comment on Facebook:

Some things I guess will never change. I just love doing the stress of jury trials. In a Felony trial now State prosecuting a pimp. Cases are always difficult because the women (as in this case also) will not cooperate. We will see what the 12 citizens in the jury box do.

4. After two additional days of trial, Weaver was found guilty by a jury. The county attorney’s office discovered Judge Bearse’s Facebook post and disclosed it to the defense after the trial and before sentencing. On September 18, 2015, Weaver moved for a new trial. The motion

was assigned to Judge Joseph Chase. In granting the motion on September 24, 2015, Judge Chase made the following comments, as reflected in the informal court minutes:<sup>1</sup>

The posting at 7:57 pm in the evening which followed jury selection and opening statements . . . imply the premise [that] the defendant is guilty of the charge and the corollary that the woman involved is a prostitute. They imply a pre-judgment of the case before any evidence is heard. . . . The court will vacate the verdict and order a new trial.

### ***State v. Tong***

5. In July 2015, Judge Bearse presided over a serious felony trial involving Charles Tong. Tong waived a jury. During the court trial, defense counsel had an apparent panic attack and was taken away by ambulance. In August, Judge Bearse posted the following comment on Facebook:

Now we are in chaos because defendant has to hire a new lawyer who will most likely want to start over and a very vulnerable woman will have to spend another day on the witness stand. . . . I was so angry that on the way home I stopped to see our District Administrator and told him, "Michael, you are going to have to just listen to me bitch for awhile." . . . [W]e know the new lawyer (probably quite justifiably) will be asking for another continuance. Terrible day!!!

6. In September, a judge notified the Chief Judge of the Tenth Judicial District of the post and commented, "Sounds like it is likely to be raised as a legal issue soon." The Chief Judge forwarded the e-mail to Judge Bearse and recommended that he delete the post. On September 17, 2015, Judge Bearse did so and recused himself. On the same day, Judge Bearse was also notified of objections to his post concerning *State v. Weaver*. Judge Bearse ceased posting comments about any of his cases. Several posts prior to that date are described below.

### **Vehicular Homicide and Kidnapping Cases**

7. In an April 2014 Facebook post, Judge Bearse commented on cases that had come before him as signing judge:

My day yesterday in the Hennepin County District Court in Minneapolis: . . . Criminal Vehicular Homicide where defendant stoned on Xanax supplemented it w/a lot of booze and then drove wrong way down a freeway colliding w/an innocent citizen driving the right way down the same freeway killing him. . . . and most interesting -- three kidnappings . . . where the three were physically tortured to try and find the drugs.

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<sup>1</sup> Spelling and punctuation have been corrected.

### **Petition to expunge conviction**

8. One of Judge Bearse's Facebook posts in April 2015 described a medical school graduate's petition to expunge her conviction for disorderly conduct. According to Judge Bearse, the medical board would not license her with the conviction on her record. Judge Bearse commented, "[L]isten to this and conclude that lawyers have more fun than people." He then related that the conviction was based on the graduate's assault on her boyfriend whom she had found having sex with her best friend. He stated that he granted the petition although "[s]he is about two years early based on our new statute" and if the prosecution appealed, "which they will not, I think I will be reversed." Comments on Judge Bearse's post included the following: "I am always heartened by the application of common sense. An excellent decision, in my opinion." and "You're back in the saddle again Judge."

### **Other Posts**

9. In two instances in 2014, Judge Bearse made negative remarks in Facebook posts concerning criminal defendants with lengthy histories of bench warrants, in one instance commenting, "We deal w/a lot of geniuses!" Other comments included "What a zoo!" (referring to Hennepin County District Court on a particular day); and "Just awful his son turned out to be such a Klunk." (referring to a case in which the son was charged with felon in possession of a shotgun).

### **CONCLUSIONS**

10. Judge Bearse is subject to the Code of Judicial Conduct pursuant to Part II of the Application section of the Code, and he is subject to the Board's jurisdiction pursuant to Rule 2(b) and the Terminology section ("Judge") of the Board Rules.

11. The foregoing conduct violated the following provisions of the Code of Judicial Conduct:

Rule 1.2, requiring a judge to promote confidence in the independence, integrity, and impartiality of the judiciary;

Rule 2.1, requiring that the duties of judicial office take precedence over a judge's personal activities;

Rule 2.8(B), requiring a judge to be dignified and courteous with litigants;

Rule 2.10(A), prohibiting a judge from making a public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; and

Rule 3.1(A) and (C), prohibiting a judge from participating in activities that interfere with the proper performance of the judge's judicial duties or that

would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

12. The foregoing conduct also violated Rule 4(a)(5), Rules of the Board on Judicial Standards, providing that grounds for discipline include “[c]onduct prejudicial to the administration of justice that brings the judicial office into disrepute.”

### **PUBLIC REPRIMAND**

Based upon the foregoing Findings and Conclusions, the Board hereby publicly reprimands Judge Bearse for the foregoing misconduct.

The memorandum below is made a part hereof.

#### **MINNESOTA BOARD ON JUDICIAL STANDARDS**

Dated: November 24, 2015

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

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### **MEMORANDUM**

Judge Bearse's posts put his personal interest in creating interesting posts ahead of his duty to maintain the appearance of impartiality. Rule 2.1 of the Judicial Code provides that the duties of judicial office must take precedence over a judge's personal activities. Comment 1 to this rule states that “judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.”

The posts regarding *State v. Weaver* could reasonably be interpreted as showing that Judge Bearse had concluded that Weaver was guilty before he heard any evidence. His conduct burdened the administration of justice because it resulted in vacating the verdict rendered after a three-day trial.

Similarly, Judge Bearse's post in *State v. Tong* indicated that he had already decided that a witness was “very vulnerable.” He also stated that he was angry because the defendant would probably be justified in requesting a continuance. However, unlike the situation in *State v. Weaver*, Judge Bearse's conduct did not itself require a new trial since the case needed to be retried anyway.

Judge Bearse's posts on the other cases identified herein do not violate Rule 2.10(A) because there is no showing that the posts impaired the fairness of the cases. Nevertheless, the posts violated the other rules cited herein. Judge Bearse's posts could reasonably be interpreted as showing he had concluded that the defendants were guilty. Even if these cases were not assigned to him for trial, his opinions on the defendants' guilt could undermine the appearance of his impartiality in criminal cases that were assigned to him.

Judge Bearse's decision to grant a medical school graduate's petition to expunge her conviction illustrates one of the problems with the posts. He commented that he granted the petition although she had not met the two-year waiting period and if the prosecution appealed, "which they will not, I think I will be reversed." He received favorable comments on the post. This could create the appearance that Judge Bearse's decisions on cases could be influenced by the desire to make a good impression of himself on his Facebook page. One court has commented that judges who convey the appearance that they covet favorable publicity can lead an objective observer to wonder whether their judgments are influenced by the prospect of favorable coverage in the media. *United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir. 2001) (en banc) (disqualifying judge who had given interviews to reporters).

The Board has not concluded that Judge Bearse in fact pre-judged any cases or that his decisions were influenced by his posts. The Board's concerns are with the appearance of lack of impartiality, with Judge Bearse's putting his personal communication preferences above his judicial responsibilities, and with conduct prejudicial to the administration of justice. The Minnesota Supreme Court recently directed that judges "should be sensitive to the appearance of impropriety and should take measures to assure that litigants have no cause to think their case is not being fairly judged." *State v. Finch*, 865 N.W.2d 696, 705 (Minn. 2015) (citation and internal punctuation omitted).

Judge Bearse states the following: that since going on Senior status in 2006 he has served in 23 counties throughout the state and has presided over numerous court and jury trials; that in 2011, when Olmsted County found itself over a year behind in criminal trial processing, he and two other senior judges were on a panel that just started trying cases one after another and in less than a year's time brought Olmsted's caseload current; that in 2011 when a Washington County judge went on a 90 day medical leave, he successfully presided over and managed the judge's civil block plus other work; and that Judge Bearse has presided over many special assignment cases in various counties where there were conflicts or the nature of the case required special assignment. Judge Bearse explains that he has been on Facebook for only two years and was unaware of Facebook privacy settings. He states that he now realizes that his posts should not have been shared even with friends.

This is the first time Judge Bearse has been disciplined in over 32 years on the bench. The Board acknowledges Judge Bearse's reputation as a highly competent, hard-working judge, his immediate corrective actions when the posts became an issue, his full co-operation with the Board, and his remorse.

After this reprimand was issued, the parties stipulated on November 23, 2015 to amend the reprimand to add specific dates and to clarify the sequence of events.