

MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of Judge Mary Carroll Leahy

PUBLIC REPRIMAND

File No. 19-14

TO: Judge Mary Carroll Leahy

The Board on Judicial Standards (“Board”) received a complaint concerning Judge Mary Carroll Leahy. The Board investigated the complaint. On February 21, 2020, based upon the Board’s investigation and proceedings, the Board issued a notice of proposed public reprimand and conditions to Judge Leahy in accordance with Board Rules 6(f)(5)(iii) and 6(f)(7). Board Member Cindy K. Telstad, Esq. recused herself and did not participate in the consideration of this matter.

Judge Leahy waived her right to demand a formal complaint and public hearing. Consequently, this public reprimand is final. Based upon the Board’s investigation and proceedings, the Board now makes the following:

FINDINGS OF FACT

I. Introduction.

1. Judge Mary Carroll Leahy was appointed to the Third Judicial District bench in 2006.

2. In 2015, the Board issued a private admonition to Judge Leahy for sending two emails to the parents of Winona High School students in order to rally the parents against a school administration proposal to eliminate the speech class. Judge Leahy did not sign the emails, but both emails indicated that they were sent from her Mary.C.Leahy@courts.state.mn.us account. In sending the emails, Judge Leahy abused the prestige of judicial office to advance her personal interests in violation of Rule 1.3, Minnesota Code of Judicial Conduct (“Code”).

A. The first email was sent to more than 90 recipients. In the email, Judge Leahy stated that she was appalled to learn of a proposal to eliminate speech class from the high school curriculum. She stated that the proponents of the proposal were going to force the proposal to a vote at the next school board meeting when the board chair was absent, which she said was “another sneaky move by the administration.” She stated, “I am happy to remind them [the members of the school board] of the oath of office they just took a week ago when I swore them all in” Judge Leahy urged the recipients of the email to attend the school board meeting and “make a show of force on this.”

B. The second email is dated the day of the school board meeting, and was addressed to the school board members. In this email, Judge Leahy again argued against the proposal but did not refer to her judicial office.

3. Judge Leahy served as Judge Terrence M. Walters' mentor as a result of his 2014 Public Reprimand and Conditions, which included Judge Walters' failure to supervise his law clerk and approval of inaccurate timesheets. Judge Leahy should have been aware that her conduct, provided hereinafter, violated the Code.

II. Failure to Supervise Law Clerk and Approval of Inaccurate Timesheets.

4. As described below, Judge Leahy did not properly supervise her law clerk, X.X., contrary to Minnesota Judicial Branch policies and despite receiving notice of the importance of compliance with the policies.

5. On September 12, 2017 and October 18, 2018, Third Judicial District Chief Judge Jodi L. Williamson sent an email to the Third Judicial District Court judges, court reporters, and law clerks, which stated:

Timekeeping

Court reporters and law clerks must complete an electronic time sheet in Employee Self-Service at the end of each two-week pay period. Unless they are less than a 1.0 FTE, court reporters and law clerks report their time on **exception** basis. This means they don't report hours worked each work day. They only report hours that were not worked, such as vacation, sick, holiday, etc. **The total hours worked plus any leave time must equal 80 hours each pay period.** Exempt employees working at the MJB must be able to account for 80 hours in a pay period to ensure proper use of taxpayer resources. It is permissible to break the hours up differently in each work week; however it must add up to 80 in a pay period.

....

When an employee completes his/her time sheet he/she checks a box indicating he/she has worked the required hours with the noted exceptions in a pay period. As the appointing authority, when a judge approves the time entry, he/she is attesting to the accuracy of the employee's time entry.

Attached to the emails was a document titled, "Court reporter & Law Clerk Time Keeping Frequently Asked Questions," which included the following question and answer:

[Question] I worked 9 hours on Monday and 7 hours on Tuesday. How do I document this on my timesheet?

[Answer] If a work adjustment takes place where the employee works 9 hours one day and then works 7 hours another day, *the adjustment must be approved by the appointing authority and occur within the same period.* Those schedule adjustments must be approved by the appointing authority and should be documented in writing with a comment in the comments section of the timesheet. For example, 10/1 – 9 hours, 10/2 – 7 hours.

6. Judicial Branch Policy 322(a) provides: “Teleworking . . . is a work arrangement that allows or requires work to occur at an alternative work location such as the employee’s home. Teleworking may be full-time, part-time, intermittent, temporary or permanent.” Part IV of the policy required the supervisor and the employee to document a teleworking arrangement on an acknowledgment form.

7. During the time of X.X.’s employment, the Third Judicial District did not authorize law clerks to work outside of the courthouse or from home.

8. Based on several complaints regarding Judge Leahy’s law clerk, X.X., a Judicial Branch auditor performed a thorough review of X.X.’s timekeeping. The audit period was from December 12, 2018 through March 5, 2019.

9. According to the audit report, X.X. could not account for 50.5 hours claimed on X.X.’s timesheets during the six-week audit period. The audit report states:

Employee was paid for hours not worked during the scope of review. Employee did not always take the appropriate leave time when necessary.

Employee was not appropriately coding and working the hours captured on the timesheet in accordance with MN Judicial Branch Payroll Policy 206(a).¹

Judge did not properly review and approve employee timesheets to ensure hours recorded by employee were worked. This is the responsibility of the judge as to the employee’s supervision in accordance with the MN Judicial Branch Payroll Policy 206(a).

Employee did not have a teleworking agreement on file that provided hours of work and approval from the judge.

10. Judge Leahy met with the Board regarding the auditor’s findings. Judge Leahy stated that she had no basis to criticize the auditor’s report. In defense, Judge Leahy noted that she was trying to assist X.X. by making work accommodations for X.X. as X.X. was going through a difficult time in X.X.’s personal life.

¹ Judicial Branch Payroll Policy 206(a) states:

Specific responsibilities for judges, supervisors, and managers are needed to ensure an appropriate review of payroll timesheets and electronic time entry, as provided in the following procedures. When reference is made to duties and responsibilities of supervisors, these provisions also apply to judges, managers, and any other staff with supervisory responsibilities.

1. Supervisors are responsible for reviewing and approving timesheets or electronic time entry of individual employees. Supervisors who are designated as primary approvers should be the most knowledgeable about the work schedule of the employee.

. . . . Supervisors also need to ensure that timesheets are consistent with: Hours worked

III. Inappropriate Electronic Communications.

11. On April 7, 2016, Third Judicial District Administrator Shelley Ellefson sent an email to the Third Judicial District Court judges regarding updates to the Judicial Council Policy 317, Use of the Internet and Other Electronic Communication Tools Policy, which stated:

eCourt has changed the way all employees and judges in the Branch do their work. More information than ever is at our fingertips. Our electronic tools have made communication with our co-workers quick and easy. Perhaps, sometimes our electronic tools have allowed communication to become too casual. Regardless of whether you are using voicemail, email, or Lync, your communications are retained. All communications using these court provided tools must be able to withstand public scrutiny without embarrassment to the Judicial Branch, its customers, judges or employees. We should all be reminded that electronic messages can be forwarded beyond the intended recipients, accessed or inadvertently disclosed, subpoenaed in a legal action, or otherwise made public. Communications from all of these tools are considered public records, unless they meet a limited exception to the Rules of Public Access. *For example, comments about an event, person, or hearing would be public and must be made available if requested regardless of whether the comments occurred on your email or via Lync.*

I want to make sure that everyone clearly understands the rules, laws and policies governing access to and dissemination of electronic communications and records of the Judicial Branch. If you don't understand the court's data access regulations or if you just aren't sure, it's important to talk with your supervisor or appointing authority.

(emphasis added).

12. During the Judicial Branch auditor's review of X.X.'s timekeeping, it was discovered that Judge Leahy and X.X. engaged in inappropriate use of Judicial Branch emails. The communications included comments that could reasonably be considered harmful to the reputation and business of the Judicial Branch. Judge Leahy and X.X. made some of these comments about the matter before the court while court was in session.

13. Judge Leahy and X.X. engaged in email communications which were disparaging to the attorneys and parties. For example, in an email with the subject line "[S]hoot me already," Judge Leahy wrote of an attorney: "He is an awful attorney." Of a party, Judge Leahy wrote: "He is a most obnoxious mean man." In another matter, Judge Leahy wrote in an email to X.X.: "Kill me," in response to an email about the attorney appearing before her.

14. During a jury trial regarding a criminal sexual conduct charge, X.X. wrote: "[Y]our last sexual experience." Judge Leahy responded: "EEEEEEEEEEEEkkkkkkkkkkkkkkkkkkkkk."

15. Regarding another criminal jury trial, X.X. wrote an email with the subject: “[C]an you keep a secret?” The email stated: “This VD sucks. Don’t tell anyone.” Judge Leahy responded: “Deep sigh.” During the meeting with the Board, Judge Leahy explained that “VD” stood for voir dire.

16. In another criminal jury trial, X.X. stated in an email: “[J]ust accept the [jury] panel and put on [the] case!” Judge Leahy responded: “They won’t . . . the [S]tate will ask a million dumb questions about burden of proof, etc.”

17. In an email communication with X.X., Judge Leahy refers to those Sheriff’s Department employees involved in the decision to change the warrant process as “stupid people.”

18. Judge Leahy did not advise X.X. that the emails were inappropriate; instead, Judge Leahy personally engaged in the same inappropriate use of Judicial Branch emails.

19. X.X. kept personal belongings in X.X.’s office and had personal mail sent to the courthouse. On February 13, 2019, Judge Leahy sent X.X. the following message: “[W]hen you come back to Winona tomorrow can you take some of the plants, clothing, etc. out of the office? . . . There is more stuff downstairs too. Going to need to stop sending your mail to the courthouse—people are making snotty comments.” On February 22, 2019, Judge Leahy sent X.X. a reminder to remove personal belongings, such as clothing, shoes, and food containers, from X.X.’s office.

20. At the meeting with the Board, Judge Leahy admitted that her emails with X.X. were inappropriate, and she should have chosen her words more carefully.

CONCLUSIONS

1. The foregoing conduct of Judge Leahy violated the following provisions of the Code of Judicial Conduct:

Rule 1.2 (Promoting Confidence in the Judiciary);

Rule 2.8(B) (Decorum and Demeanor); and

Rule 2.12 (Supervisory Duties).

2. The foregoing conduct also violated Rule 4(a)(2), (5), and (6) Rules of the Board on Judicial Standards, providing that grounds for discipline include “[a] persistent failure to perform judicial duties”; “[c]onduct prejudicial to the administration of justice that brings the judicial office into disrepute”; and “[c]onduct that constitutes a violation of the Code of Judicial Conduct or Rules of Professional Conduct.”

PUBLIC REPRIMAND

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

The memorandum below is made a part hereof.

MINNESOTA BOARD ON JUDICIAL STANDARDS

Dated: 3-19-2020

By: Thomas M. Sipkins
Thomas M. Sipkins
Executive Secretary

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MEMORANDUM

Rules 1.2 and 2.12(A) of the Judicial Code require a judge to maintain public confidence, and “require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code.” These rules require a judge to properly supervise law clerks. Judge Leahy’s supervision of X.X. did not meet this standard. In addition, Judge Leahy’s inappropriate emails violated Rules 1.2, 2.8(B), and 2.12(A).

A public reprimand “is a public sanction imposed by the board . . . based on a finding that the judge has committed serious misconduct.” Definitions, Rules of Board on Judicial Standards. Judge Leahy received education from the chief judge and district administrator regarding a judge’s duty to supervise law clerks and court reporters and inappropriate electronic communication. She received a private admonition in 2015 related to her use of her court email account. Judge Leahy also served as a mentor to Judge Walters, who had failed to supervise his law clerk. Despite this history, Judge Leahy failed to properly supervise X.X.’s timekeeping and courthouse activities, and engaged in inappropriate electronic communications with X.X. The Board determined Judge Leahy committed serious misconduct, and decided that the present matter may be resolved with the issuance of this public reprimand.

The Code and Judicial Branch policies require judges to supervise court employees, including their law clerks. Rule 2.12(A). Proper supervision does not require a judge to “spy” on employees. A judge may ensure employees work 80 hours per pay period in a respectful manner.

A judge may set and communicate expectations for an employee's work hours in accordance with Judicial Branch policies. When a judge is not in the courthouse, the judge could look to other judges or court personnel to supervise employees, if necessary. When an employee is dealing with personal or health issues, a judge may need to provide additional supervision to ensure the employee is fulfilling the employee's duties. Proper supervision of employees is critical to maintaining cordial relationships with court administration and to maintaining public confidence in the judiciary.

Additionally, the duty to supervise court employees also extends to an employee's use of electronic communications. The Code and Judicial Branch policies prohibit a judge from sending disparaging and inappropriate emails. Even when electronic messages are considered confidential, they may be forwarded outside the Judicial Branch or otherwise made public. Emails that are disparaging to attorneys, litigants, and witnesses violate Rule 2.8(B). Rule 2.8(B) requires a judge to "be patient, dignified, and courteous to litigants, jurors, witnesses, court staff, . . . and others with whom the judge deals with in an official capacity, and shall require similar conduct of lawyers, court staff, . . . and other subject to the judge's direction and control." According to the Arthur Garwin et al., *Annotated Model Code of Judicial Conduct* (3d ed. 2016) at 196-97:

Rule 2.8(B) has several purposes, the most obvious of which is to require judges to act in a way that engenders respect for the judicial system. The people who come before the court, including lawyers, witnesses, jurors, spectators, and court staff cannot be expected to respect the judiciary when judges are rude, sarcastic, or impatient. As the court stated in *In re Jenkins*, 503 N.W.2d 425, 427 (Iowa 1993):

The people who come to court, litigants, witnesses, jurors, even lawyers, cannot select the judge who is to preside over them. Although circumstances may on occasion demand sternness, a judge should strive to be kind. The authority exercised by a judge is so great as to easily break ordinary people who are rendered comparatively helpless in their relationship with a court. Such authority should not be entrusted to those who, either deliberately or through thoughtlessness, offend the ordinary sensibilities of citizens. . . .

A second purpose of Rule 2.8(B) is to ensure that judicial proceedings both are and appear to the public to be fair and impartial. *In re Brown*, 691 N.E.2d 573 (Mass. 1998) ([I]t is not enough that judges know that they are fair and impartial, they must appear to be so as well, and "an impartial manner, courtesy and dignity are the outward sign of that fairness and impartiality").

Emails between a judge and court staff that are disparaging and inappropriate, even if they are not yet made public, violate the Code.

The Board directs Judge Leahy to determine and address the causes of her conduct. If the conduct continues, the Board will consider whether additional discipline is appropriate.