

STATE OF MINNESOTA

IN SUPREME COURT

A14-1871

*Inquiry into the Conduct of the
Honorable Alan F. Pendleton*

**STATEMENT OF THE CASE OF
MINNESOTA BOARD ON
JUDICIAL STANDARDS**

Pursuant to Rule of Civil Appellate Procedure 133.03, Respondent Minnesota Board on Judicial Standards submits this Statement of the Case to clarify and supplement Appellant's Statement of the Case dated June 2, 2015. Only those sections requiring clarification or supplementation are referenced herein.

3. State type of litigation and designate any statutes at issue.

This case involves judicial disciplinary action taken pursuant to the Rules of the Board on Judicial Standards. At issue are violations of Article VI, Section 4 of the Minnesota Constitution and Rules 1.1, 1.2, 2.1 and 4.1(A)(9) of the Minnesota Code of Judicial Conduct.

4. Brief description of claims, defenses and issues litigated and result below.

Claims, defenses and issues litigated:

(1) The Board charged Judge Pendleton with failing to reside within the judicial district of his office, the Tenth Judicial District, for more than eight months from November 26, 2013 to July 31, 2014, alleging violation of Article VI, Section 4 of the

Minnesota Constitution, Rules 1.1, 1.2, and 2.1 of the Code of Judicial Conduct, and this Court's holding in *In re Karasov*, 805 N.W.2d 255 (Minn. 2011).

Judge Pendleton admitted that he did not live in the Tenth Judicial District for more than eight months from November 26, 2013 to July 31, 2014, but asserted that:

- (a) he looked for a place to live in the Tenth Judicial District before January 15, 2014 and after June 2, 2014;
- (b) his absence from the Tenth Judicial District between January 15, 2014 and June 2, 2014 was occasioned by what he characterized as a serious family emergency; and
- (c) throughout this period of absence, it was always his intent to remain a resident of the Tenth Judicial District.

The Hearing Panel found that the Board proved, by clear and convincing evidence, that Judge Pendleton was not a resident of his judicial district during the time period of January 15, 2014, through June 2, 2014, that he intended to abandon his residency within the district during this time while addressing family issues, and that he voluntarily lived with his second wife in Minnetonka for an indefinite period of time until he and his first wife decided where his son would go to school. The Panel found that, "Judge Pendleton intentionally disregarded his constitutional obligation to remain a resident of his judicial district during his continuance in office." (Panel Decision, ¶ 42.) The Panel concluded that by failing to reside within his judicial district from January 15, 2014, through June 2, 2014, Judge Pendleton violated Article VI, Section 4 of the Minnesota Constitution and Rules 1.1, 1.2, and 2.1 of the Minnesota Code of Judicial Conduct.

(2) The Board charged Judge Pendleton with making a knowingly false statement regarding his residence address in the Affidavit of Candidacy he filed on May 22, 2014, in connection with his candidacy for reelection in 2014, and that he made this false statement for the purpose of concealing the fact that he was living outside of the Tenth Judicial District, alleging violations of Rules 1.1, 1.2, and 4.1(A)(9) of the Code of Judicial Conduct.

Judge Pendleton admitted that he provided a false residence address on his Affidavit of Candidacy which created the appearance of impropriety in violation of Rule 1.2, but asserted that he did not intend to deceive or mislead the electorate.

The Hearing Panel found that the Board proved, by clear and convincing evidence, that Judge Pendleton knowingly made a false statement in the May 22, 2014 Affidavit of Candidacy. The Panel further found, "Judge Pendleton's testimony that he lacked any intent to deceive incredible when viewed in the context of the whole record." (Panel Decision, ¶ 44.) The Panel concluded that by knowingly making a false statement in the May 22, 2014 Affidavit of Candidacy, Judge Pendleton violated Rules 1.1, 1.2, and 4.1(A)(9) of the Minnesota Code of Judicial Conduct.

(3) Judge Pendleton additionally asserted as an affirmative defense that his due process rights were violated, primarily during the Board's investigation.

The Board responded that (1) Judge Pendleton's due process rights were not violated, (2) the rights Judge Pendleton claims were violated are not due process rights,

and (3) Judge Pendleton did not claim and cannot establish that he was prejudiced by the Board's alleged violations.

The Hearing Panel, citing *Karasov*, allowed Judge Pendleton to submit evidence regarding his due process claims, but declined to address the merits of the due process allegations.

Recommendations for Discipline:

The Hearing Panel made the following recommendations.

1. Judge Pendleton should be censured for his violations of the Minnesota Constitution and the Code of Judicial Conduct.
2. Judge Pendleton should be suspended without pay from his position as judge of district court for a period of at least 6 months. The Panel did not agree on the exact recommended length of suspension, with individual Panel members proposing suspensions ranging from 6 to 16 months.
3. The Supreme Court should impose additional sanctions, including but not limited to conditions on the performance of judicial duties and/or civil penalties, that it deems appropriate.

8. Is oral argument requested?

Yes. The Board also requests oral argument.

9. Identify the type of brief to be filed.

Formal Brief under Rule 128.02

Dated: June 17, 2015

Respectfully submitted,

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