

FILED

May 22, 2015

STATE OF MINNESOTA
BOARD ON JUDICIAL STANDARDS HEARING PANEL **OFFICE OF
APPELLATE COURTS**

A14-1871

Inquiry into the Conduct of The
Honorable Alan F. Pendleton

On October 07, 2014, the Board on Judicial Standards (board) filed, under Rule 8(a)(4), Rules of Board on Judicial Standards (RBJS), a formal complaint against respondent Alan F. Pendleton, Judge of District Court. Respondent's written response to the complaint was filed on October 29, 2014. By orders dated November 12, 2014, and January 6, 2015, the Minnesota Supreme Court assigned the undersigned three-person panel to conduct a hearing on the charges contained in the formal complaint. The public hearing took place on January 22, 2015. William J. Egan and Aaron Mills Scott of Oppenheimer, Wolff & Donnelly, LLP, appeared on behalf of the Board. Judge Pendleton was present throughout the hearing and was represented by Douglas A. Kelley and Steven E. Wolter of Kelley, Wolter & Scott, PA. The parties submitted written post-hearing briefs and proposed findings of fact, conclusions of law and recommendations on February 23, 2015. The record closed on March 2, 2015, upon the parties' submission of

post-hearing reply briefs. Having duly considered the testimony presented, the exhibits received, and the posthearing submissions solicited from the parties, the panel submits the following Findings of Fact, Conclusions, and Recommendations for Sanctions.

FINDINGS OF FACT

Background Facts

1. Judge Pendleton was appointed as a district court judge for Minnesota's 10th Judicial District in September 1999 and re-elected in 2002, 2008, and 2014. His current six-year term will expire in 2021. (Tr. at 31-32; Minnesota Judicial Branch website.) Judge Pendleton has been actively involved in judicial training and has received many awards during his tenure, including the Outstanding Judge of the Year Award in September 2012 from the Minnesota District Judges Association. (Tr. at 78-80.)

2. The 10th Judicial District encompasses Anoka, Chisago, Isanti, Kanabec, Pine, Sherburne, Washington, and Wright Counties. Originally chambered in Sherburne County, Judge Pendleton has been chambered at the Anoka County District Court since 2009. (Tr. at 31-33.)

3. Judge Pendleton was at all relevant times aware of his obligation under the Minnesota Constitution to reside in the 10th Judicial District. (Tr. at 65.)

4. Judge Pendleton considers himself to have been a resident of the 10th Judicial District continuously since 1995. He has voted in Anoka County for the past 20 years. He banks, goes to the doctor and dentist, has his prescriptions filled, has a safety deposit box, and has his car repaired in Anoka County. Despite two significant periods of time during which he did not maintain a residence in the district, Judge Pendleton testified before this panel that he never intended to abandon his residence in the 10th Judicial District. (Tr. at 118-20.)

5. From 1985 until February 2005, Judge Pendleton resided in the City of Ramsey in Anoka County with his first wife, Sarah and their three sons. In February 2005, Judge Pendleton moved out of the family home and stayed at a hotel in Ramsey for three or four months before making arrangements to purchase a townhome, also in Ramsey. Judge Pendleton lived in the Ramsey townhome from May 2005 until May 2007. Judge Pendleton's divorce from his first wife commenced in April 2005 and was finalized in April 2007. In May 2007, Judge Pendleton moved to a home that he had purchased in the City of Albertville in Wright County. (Tr. at 33-37.)

6. While his divorce proceedings were pending, Judge Pendleton rekindled a relationship with an old friend, Kimberly, who became his second wife in September 2007. Judge Pendleton's second wife does not wish to live in the 10th Judicial District, and has resided at all relevant times in

Hennepin County, which is in the 4th Judicial District. (Tr. at 37-38; Ex. 27 at 40-41.)

7. Judge Pendleton was acquainted with David S. Paull, who was the executive secretary for the board of judicial conduct at the time that Judge Pendleton was appointed to the bench and up until January 3, 2014. Judge Pendleton made numerous inquiries to Paull regarding ethical issues. In August 2005, Judge Pendleton contacted Paull, advised of his pending divorce and his intent to marry or live with his second wife, who then lived in Minnetonka, and sought advice on handling his residence obligations. Paull informed Judge Pendleton that other judges in similar circumstances had always maintained a residence in their county of election, offered to put Judge Pendleton in touch with these judges, but declined to offer legal advice. (Tr. at 53-59, 66, Exs. 1-5, 7.)

8. In February 2008, Judge Pendleton was evicted from his Albertville home following foreclosure proceedings. From February 2008 until September 2008, Judge Pendleton stayed with his second wife at her home in the City of Hopkins in Hennepin County, outside the 10th Judicial District. Judge Pendleton testified that he “was temporarily staying [in Hopkins] for six or seven months while I tried to resolve what I considered to be an extreme financial emergency I was going through.” (Tr. at 37, 41.)

9. Due to his financial circumstances following the foreclosure and eviction, Judge Pendleton asked his second wife for financial assistance to secure a new residence within the 10th Judicial District. Judge Pendleton testified that his wife did not want to “throw [her money] away for rent” and that they were looking for a property that would be a good investment. Judge Pendleton did not seek temporary housing within the 10th Judicial District during the six to seven months that he stayed in Hopkins, and testified that he could not afford to do so. (Tr. at 42-45.)

10. In September 2008, Judge Pendleton moved into a home that he and his wife had purchased in the City of Blaine in Anoka County. (Tr. at 41.)

11. In November 2010, Judge Pendleton again contacted Paull. At that time, judicial-discipline proceedings were pending against Hennepin County District Court Judge Patricia Kerr Karasov based on allegations that she had failed to reside within her judicial district. Paull’s notes reflect that Judge Pendleton had discussed with Paull many times that he stayed with his wife in Minnetonka on weekends but owned a townhouse in Blaine where he stayed during the week, and that Paull explained that this was different from the *Karasov* case because Judge Karasov had rented out her Hennepin County residence. (Tr. at 81-82; Ex. 7.)

12. At the end of November 2010, Judge Pendleton sent an email to his fellow judges in the 10th Judicial District, the district administrator and the Anoka County court administrator to address what he characterized as “a persistent rumor that I do not reside in the district.” Judge Pendleton disclosed in the email that he and his wife maintained separate residences, and asserted that, according to Paull, he was “in full compliance with all residency requirements.” (Tr. at 82-83; Ex. 8.)

13. In April or May 2012, Judge Pendleton moved into a townhome that he had purchased in the City of Anoka in Anoka County. (Tr. at 45-46.)

14. In 2013, Judge Pendleton decided to sell the Anoka townhome, primarily for financial reasons. The townhome was listed in early October 2013 and sold quickly. Judge Pendleton and the buyer signed a purchase agreement on October 30, 2013, and closed on November 27, 2013. (Tr. at 46-49.)

15. Beginning on the November 27, 2013, closing date, and until he moved into an apartment on August 1, 2014, Judge Pendleton did not have a place to live in the 10th Judicial District. He stayed with his wife at her residence in the City of Minnetonka in Hennepin County, outside the 10th Judicial District, from November 27, 2013, until July 31, 2014. (Tr. at 95, Ex. 20.)

16. Judge Pendleton went on a scheduled vacation trip from December 20, 2013 through January 6, 2014, and fell ill after initially returning to work on January 7, 2014. He ultimately returned to work on Monday, January 13, 2014. (Tr. at 91-92.)

17. There is conflicting evidence in the record regarding Judge Pendleton's attempts to locate a new residence within the 10th Judicial District between November 27, 2013, and December 20, 2013. In testimony given during the board's investigation on August 15, 2014, Judge Pendleton testified that he had not looked for an apartment in November or December 2013, because he "just didn't get around to it." (Tr. at 51-52; Ex. 27.) In a September 11, 2014, letter to the board's secretary and in testimony before this panel, Judge Pendleton asserted that he had begun to look for an apartment during that time period, asserting that he looked into a minimum of 12 apartment complexes and viewed apartments at three complexes. (Tr. at 47-48, 57-59; Ex. 30.) The panel accepts Judge Pendleton's explanation that he was mistaken regarding the dates during the meeting with the board, and thus credits Judge Pendleton's unvarnished testimony regarding the efforts he made to locate a new residence between November 27, 2013, and December 20, 2013.

18. On Wednesday, January 15, 2014, Judge Pendleton was notified that his middle son had been caught with drugs and drug paraphernalia at

school. Judge Pendleton suspended his apartment search to focus on getting his son treatment. (Tr. at 63.)

19. Judge Pendleton and his first wife discussed moving the son to a different school in the City of Andover, which would have required one of them to relocate to the attendance area for that school. Judge Pendleton continued to defer his apartment search pending a decision on whether his son would transfer schools. (Tr. at 63-64; Ex. 30.)

20. Judge Pendleton made no attempts to find housing in the 10th Judicial District from mid-January through May 2014. (Tr. at 63.)

21. Judge Pendleton admits he made a "choice" not to search for new housing in the 10th Judicial District. He concedes that it would have been an option for him to secure housing in the Andover attendance area in case they decided to transfer his son (while his first wife maintained her existing residence), but testified that he did not think that was a good option because he would be inconveniently located if they decided not to have his son transfer schools. He did not look into any short-term housing options. (Tr. at 63-65.)

22. Judge Pendleton also admits that he and his first wife did not have a deadline for making a decision whether to transfer their son to a different school, although he expected that the decision would be made around the end of the school year. (Tr. at 127-32.)

23. On June 2, 2014, Judge Pendleton learned about a domestic incident involving his youngest son and one of his second wife's daughters. Following this incident, Judge Pendleton's relationship with his first wife was strained, and it was clear to him that they would not be moving the middle son to another school. (Tr. at 67-69.)

24. Immediately after the incident between Judge Pendleton's son and his second wife's daughter, Judge Pendleton renewed his search for housing in the 10th Judicial District. On June 6, 2014, he talked to the manager of an apartment building the City of Ramsey and decided to rent a unit that would be available August 1, 2014. He viewed the apartment on July 5; put down a deposit on July 7; and signed a lease and moved into the apartment on August 1. Judge Pendleton continued to rent the Ramsey apartment through the time of the hearing before this panel. (Tr. at 31, 98-101.)

25. Judge Pendleton kept very private the fact that he did not have a home in the 10th Judicial District between November 27, 2013, and August 1, 2014. Despite his numerous previous discussions with Paull regarding ethical issues, he did not discuss his living situation with Paull (or the successor executive secretary of the board) between November 2013 and August 2014. He shared with some of his fellow judges that his son was having drug problems, but he did not tell any of the judges that he was

staying in Minnetonka with his second wife. Judge Pendleton testified that the only people at the courthouse who knew about his living arrangements were his court reporter, his law clerk, and the guardian ad litem (GAL) manager for the 10th Judicial District. The GAL manager testified that he was aware that Judge Pendleton was dealing with his son's drug problems during the first half of 2014, but denied knowing that Judge Pendleton was living in Minnetonka during that time. (Tr. at 66-67.)

26. The 10th Judicial District maintains a confidential directory of addresses and telephone numbers of judges, and sends emails 3-4 times a year requesting updated information for the list. (Tr. at 169.)

27. Judge Pendleton promptly notified the Michael Moriarty, the 10th Judicial District administrator, of his new address after he moved into the Anoka townhome in 2012. (Ex. 33.)

28. Judge Pendleton did not notify Moriarty of a change to his address during the time that he was living in Minnetonka between November 2013 and August 2014, despite receiving requests for updated information on December 31, 2013, March 31, 2014 and July 14, 2014. During that time, the directory, which was distributed to Judge Pendleton as an attachment to the email requesting updated information, continued to list the Anoka townhome as Judge Pendleton's address. (Exs. 40-42.)

29. On August 7, 2014, Judge Pendleton sent an email to Moriarty notifying him of his new address in Ramsey. On October 1, 2014, Judge Pendleton received the quarterly email attaching the directory and requesting updates; he immediately responded to report that his address had not been updated. (Exs. 44, 45.)

30. On May 22, 2014, during the time that he was staying with his second wife in Minnetonka, Judge Pendleton filled out an affidavit of candidacy indicating his intent to run for reelection to his judicial office in November 2014. (Ex. 13.) The affidavit includes spaces for a candidate to fill in his or her address, but also indicates that “[a]ll address and contact information is optional for federal, judicial, county attorney, and county sheriff office candidates.” Judge Pendleton wrote in the address of the Anoka townhome, which he had not lived in since November 2013. (Ex. 13, Tr. at 73.)

31. Judge Pendleton testified that filling out the affidavit was “a spontaneous, split decision,” that he “saw there was a space for an Anoka County address,” knew that he didn’t have a current Anoka County address, and put down his last known Anoka County address. He further testified: “I was not thinking of my wife’s home as my home or my address or my residence.” (Tr. at 73.)

32. Judge Pendleton admits that using the out-of-date address on the affidavit of candidacy was “not an accurate statement,” was an “error of judgment,” and “created an appearance of impropriety.” (Tr. at 74.) But he denies any “intent to deceive the electorate.” (*Id.*) Although Judge Pendleton testified that he was “filling in a short-term gap” between Anoka County addresses (*id.*), there is no evidence that Judge Pendleton made any attempt to correct the inaccurate affidavit of candidacy after moving into the Ramsey apartment on August 1, 2014.

Board Investigation Facts¹

33. By letter dated July 15, 2014, the board’s current executive secretary, Thomas C. Vasaly, notified Judge Pendleton that it was investigating information that he may have been living at his second wife’s Minnetonka address for significant periods of time over the last several years and requesting certain information in response. Judge Pendleton received the letter on July 21, 2014, and submitted a response by letter dated July 24, 2014. (Exs. 20, 21.)

¹ Judge Pendleton asserts that the board’s procedure violated his procedural due-process rights. Consistent with the panel’s approach in *Karasov*, this panel allowed Judge Pendleton to develop a record regarding these alleged violations and includes findings regarding the procedure. The panel, however, reaches no conclusions regarding the merits of the due-process allegations.

34. By letter dated July 31, 2014 from Vasaly, the board requested Judge Pendleton to appear before it on August 15, 2014. In that letter, Vasaly advised that the meeting with the board would probably last less than an hour. (Ex. 22.)

35. On August 14, 2014, Vasaly sent Judge Pendleton an email advising him that his estimate that the meeting would last less than an hour “might be an underestimate.” (Tr. at 105-06; Ex. 26.) Before the meeting, Judge Pendleton called Vasaly to ask what the topics were going to be at the meeting; Vasaly told him that the meeting would be limited to the residency issue. Although Vasaly had the affidavit of candidacy in his possession at that time, he understood it to be relevant to the residency issue that had been disclosed to Judge Pendleton and did not separately disclose it as an issue to be addressed at the meeting. (Tr. at 105, 210-212.)

36. During the August 14 meeting, Vasaly produced and questioned Judge Pendleton regarding the affidavit of candidacy. (Tr. at 106; Ex. 27 at 35-40.)

37. Also during the meeting, Vasaly asked Judge Pendleton when he started a relationship with his second wife. Judge Pendleton responded: “Well, I’ve known her since we were teenagers. So I guess I’m not sure what you’re asking.” Vasaly then asked, “When did you begin an intimate

relationship with your wife?" Judge Pendleton answered that it was likely in the summer of 2006. (Tr. at 109-110; Ex. 27 at 29.)

38. On September 26, 2014, Vasaly sent a letter by email to Judge Pendleton indicating that the board had determined to issue a formal complaint and inquiring whether Judge Pendleton would like to meet with the board to submit additional information, particularly in relation to the severity of the alleged misconduct in relation to the *Karasov* matter. (Ex. 123.) Judge Pendleton replied by email the same day indicating that he did wish to meet with the board, and Vasaly replied within hours that a meeting before October 10 was preferable. (Exs. 123, 124.)

39. On October 2, 2014, Vasaly sent another email to Judge Pendleton, reminding him that the board would like to schedule a meeting before October 10 if Judge Pendleton still wished to meet. By this time, Judge Pendleton had retained counsel, who requested a copy of the file in advance of any additional meeting. Vasaly provided the file, but neither Judge Pendleton nor his counsel further communicated with Vasaly regarding the proposed additional meeting. (Tr. at 117, 137, 218-19; Ex. 124.)

40. On October 6, 2014, Vasaly sent Judge Pendleton an email advising him that the formal complaint would be served shortly and inquiring whether he would waive personal service. Judge Pendleton understood this communication as a retraction of the offer to have an

additional meeting. Vasaly testified that “[t]here was never any suggestion that we would hold up filing the formal complaint until we heard from him” and that the purpose of the additional meeting was to discuss the severity of the alleged misconduct and appropriate sanction. (Tr. at 139-40, 219; Ex. 125.)

41. No additional meeting took place between Judge Pendleton and the board. (Tr. at 118.)

Findings on Ultimate Issues

42. The board has proven, 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. Beginning November 27, 2013, Judge Pendleton did not have a place to live in the 10th Judicial District. Although he initially made efforts to retain new housing, Judge Pendleton suspended his housing search completely between January 15, 2014, and June 2, 2014. Judge Pendleton asserts that he intended to remain a resident of the 10th Judicial District during this time, but has presented no evidence corroborating that intent. Rather, the evidence supports the inference that he intended to abandon his residency within the district while addressing his familial issues. Judge Pendleton voluntarily decided to live with his second wife in Minnetonka for an indefinite period of time until he and his first wife figured out where his son would go to school. Judge

Pendleton's failure to disclose his living situation during this time period—particularly in light of his previous disclosures to both his colleagues and to Paull—belies Judge Pendleton's assertion that he intended to remain a resident of the 10th Judicial District. The fact that Judge Pendleton subsequently renewed his intent to reside in the district does not persuade the panel that he remained a resident of the district throughout. The panel finds that Judge Pendleton intentionally disregarded his constitutional obligation to remain a resident of his judicial district during his continuance in office.

43. The board has not proven, by clear and convincing evidence, that Judge Pendleton failed to reside within his judicial district between November 27, 2014 and January 14, 2014 or between June 3, 2014 and July 31, 2014. During these periods, the evidence reflects that Judge Pendleton was actively pursuing replacement housing in the 10th Judicial District.

44. The board has proven, by clear and convincing evidence, that Judge Pendleton knowingly made a false statement in the May 22, 2014 affidavit of candidacy. Judge Pendleton concedes that he had not lived at the address he provided on the affidavit for more than six months. The panel finds Judge Pendleton's testimony that he lacked any intent to deceive incredible when viewed in the context of the whole record.

CONCLUSIONS

1. 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 Minn. Code Jud. Conduct Rules 1.1, 1.2, and 2.1.

2. By knowingly making a false statement in the May 22, 2014 affidavit of candidacy, Judge Pendleton violated Minn. Code Jud. Conduct Rules 1.1, 1.2, and 4.1(A)(9).

RECCOMENDATIONS

Based on all of the foregoing, and pursuant to RBJIS 11(b), the panel respectfully recommends:

1. That Judge Pendleton be censured for his violations of the Minnesota Constitution and the Code of Judicial Conduct.

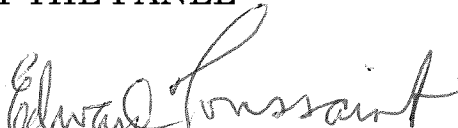
2. That Judge Pendleton be suspended without pay from his position as judge of district court for a period of at least 6 months.²

² The panel is divided on the appropriate suspension, with proposals ranging from 6 to 16 months.

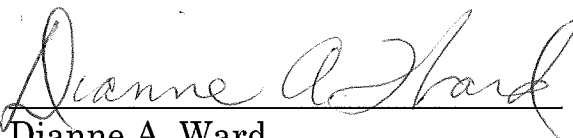
3. That the court impose additional sanctions, including but not limited to conditions on the performance of judicial duties and/or civil penalties, that it deems appropriate.³

BY THE PANEL:

Dated: May 22, 2015.



Honorable Edward Toussaint



Dianne A. Ward



Patrick Sexton

³ The panel is divided on the propriety of additional sanctions, and thus makes only a general recommendation in this regard.