

MINNESOTA BOARD ON JUDICIAL STANDARDS

In the Matter of the Honorable
Richard G. Spicer,
1st Judicial District Judge

PUBLIC REPRIMAND

File No. 12-32

The Minnesota Board on Judicial Standards hereby issues this Public Reprimand to the Honorable Richard G. Spicer, pursuant to *Rule 6(f)(5)(iii) R.Bd.Jud.Std.*

PROCEDURE.

The Board gave notice to Judge Spicer of a proposed Public Reprimand, and of his right either to demand a public hearing or to submit written comments and criticisms regarding the proposed public reprimand. *Rule 6(f)(7)) R.Bd.Jud.Std.* Judge Spicer did not demand a public hearing but did provide written and oral comment. The Board has considered Judge Spicer's comment and now issues this Public Reprimand.

DISCIPLINE HISTORY.

Judge Spicer has a history of making improper comments in court, including an incident on September 17, 2008, that led to a public reprimand by this Board in 2009. In that matter, Judge Spicer used disparaging speech regarding a defendant who was present in court for official business.

MISCONDUCT AND CODE VIOLATIONS.

1. On August 16, 2011, during jury selection in the case of *State v. Steven R. Latham* [Dakota County Case Nos. 19AV-CR-11-6798 and 19AV-CR-11-10412], on approximately 30 occasions, Judge Spicer made remarks to the jury pool and court staff which he regarded as humorous, many of which crossed the line of decorum and propriety. His improper comments included the following:

- When a juror stated that she knew the defense attorney because the two had shared a hotel room on a school choir trip for their daughter, you stated "Shared a room? ... I don't want to hear about that. Oh, it was a choir trip." T. 29. A few moments later, when a deputy entered the courtroom, you stated, "He wants to make sure we're safe. I don't know; we have a couple women sleeping together but besides that everything else is okay." T. 32.
- To a juror who stated she had been a victim of a crime after stating she had been a defendant in a civil lawsuit, you commented, "Interesting life, Jean." T. 37.
- After hearing some of the answers to jury selection questions, you asked the jurors "Do you guys have lives?" T. 38.
- When told by one of the jurors that he managed a pizza restaurant, you asked "Do they still taste like cardboard?" T. 39. When the same juror said he was unmarried, you asked the juror whether he had children and upon hearing the

reply you remarked, "You would be surprised how many times I get yes to that." T. 39.

- To another juror who stated she had a 42 year-old-child, you stated, "You don't look like you would have a 42 year old. You don't look much older than 42 yourself. Wow.... Wow. Very good." T. 44.
- When a juror stated he had worked in an airline stockroom, you asked, "Is that where they steal all our bags and put them in there?" T. 49.
- When advised of the consecutive ages of a juror's four children, you stated "Well,... you weren't shooting blanks. We know that much." T. 50.

2. In addition, apparently as another attempt at humor, when the jury was seated, Judge Spicer stated to them:

- When that's all done, they'll do their final arguments. I'll give you the instructions. You'll go into your deliberations. And all be done because -- I won't lie to you. I've had a half day vacation for some time to play in a golf tournament tomorrow afternoon. So, I will be out of here by noon come hell or high water." ("Counsel, jurors, laugh.") T. 68.

3. Shortly before his remarks regarding a golf tournament, Judge Spicer had stated to the jury, "At the end of the trial you'll have as much time as you need to discuss the case." T. 66. When trial concluded, Judge Spicer concluded his instruction to the jury by stating, "Now, the only thing that is not in here that I should tell you is that deliberations are now in your hands, which means that you are in control of your destiny. You can stay here, hypothetically, as long as you want. T. 141.

4. After deliberating briefly, the jurors found Mr. Latham guilty of the misdemeanors of violating a harassment restraining order and disorderly conduct. Upon conviction, Mr. Latham appealed. Mr. Latham's grounds for appeal included argument, "that the district court committed reversible error by extensively joking with the jury throughout jury selection and by indicating to the jury that it must conclude deliberations in time for the judge's golf outing." *State v. Latham*, 2012 WL 3792209 (Minn. App. Ct. Sept. 4, 2012) at *6.

5. The Court of Appeals affirmed Latham's conviction. The Court of Appeals stated, "Appellant did not object to the judge's conduct during trial. We therefore review appellant's assertion for plain error." *Id.* As to the claim that Judge Spicer made prejudiced comments in the Court of Appeals, the Court of Appeals stated that Mr. Latham "has not demonstrated how he was prejudiced or that his substantial rights were affected." *Id.* The Court of Appeals also stated that "several of the comments made by the judge to jurors during jury selection were inappropriate." *Id.* The Court of Appeals also found that Judge Spicer's comment regarding his golf outing did not constitute reversible error because his statement that jurors could deliberate "as long as you want" was found to have "mitigated any suggestion that the jury needed to end its deliberations prematurely. . . ." *Id.* at *7.

6. Judge Spicer has informed the Board that his intention, in *State v Latham*, was to use humor to make the court participants more comfortable in their role as jurors. Humor, when used cautiously, sparingly and respectfully, has a place in the courtroom. However, in *Latham*, the Court of Appeals found, and the transcript citations above show, several of Judge Spicer's remarks were "inappropriate." More specifically, the Board finds Judge Spicer's comments were insensitive and demeaning. In addition, the Board finds that Judge Spicer did not consider the position of the defendant who believed that, because of Judge Spicer's numerous attempts to use humor in the proceedings, Judge Spicer did not take seriously defendant's right to a fair trial.

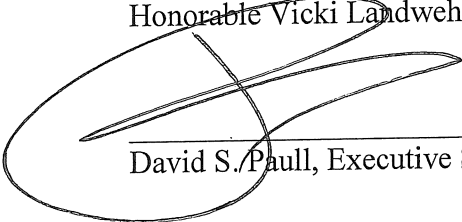
7. Judge Spicer's conduct violated the Minnesota Code of Judicial Conduct (Code), at Canon 1, Rule 1.1, Canon 1, Rule 1.2, Canon 2, Rule 2.8(B) and Board Rules 4(a)(5) and (6).

WHEREFORE, the Minnesota Board on Judicial Standards hereby issues this Public Reprimand to the Honorable Richard G. Spicer.

Date: 3/26/13 MINNESOTA BOARD ON JUDICIAL STANDARDS
2025 Centre Pointe Boulevard
Suite 180
Mendota Heights, MN 55120



Honorable Vicki Landwehr, Board Chairperson



David S. Paull, Executive Secretary

CODE OF JUDICIAL CONDUCT, CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1 *Compliance with the Law*

A judge shall comply with the . . . the Code of Judicial Conduct.

Rule 1.2 *Promoting Confidence in the Judiciary*

A judge shall act at all times in a manner that promotes public confidence in the ... judiciary, and shall avoid impropriety and the appearance of impropriety.

CODE OF JUDICIAL CONDUCT, CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.8(B) *Decorum, Demeanor, and Communication with Jurors*

(A) A judge shall be patient, dignified, and courteous to [court participants] ... with whom the judge deals in an official capacity ...

RULES OF BOARD ON JUDICIAL STANDARDS

Rule 4. *Grounds for Discipline or Other Action*

(a) Grounds for Discipline or Other Action Shall Include:

(5) Conduct prejudicial to the administration of justice that brings the judicial/office into disrepute. ...

(6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.

Rule 6(f). *Disposition After Investigation*

(1) Upon conclusion of an investigation or determination by another agency or court, the executive secretary may recommend disposition to the board.

(2) The board shall review the results of the investigation or determination by another agency or court and the recommendations of the executive secretary and determine whether there is reasonable cause to believe the judge committed misconduct.

(3) A finding of reasonable cause shall require the concurrence of a majority of the full board.

(4) Upon determination that there is not reasonable cause to believe the judge committed misconduct, the board shall dismiss the complaint or end the inquiry. Upon dismissal or termination of the inquiry, the board may issue a letter of caution that addresses the judge's conduct.

(5) If the board finds there is reasonable cause to believe the judge committed misconduct, it may:

(i) enter into a deferred disposition agreement for a period of time, and the agreement may specify the disposition upon completion;

(ii) if the misconduct appears to be of an isolated and non-serious nature, issue a private admonition, which may include conditions;

(iii) issue a public reprimand, which may include conditions; or

(iv) issue a Formal Complaint.

(6) Prior to issuance of a private admonition, the board shall serve the judge with a copy of the proposed private admonition and a notice stating that within 20 days after service of the proposed private admonition, the judge may serve the board with either a written demand for a private hearing before the board, or the written comments and criticisms of the judge regarding the proposed admonition. If the judge makes a timely demand for a private hearing, the board shall comply. If no timely demand for a hearing is made, the board may consider the comments and

criticisms, if any, but may in its discretion release the private admonition as originally prepared.

- (7) Prior to issuance of a public reprimand, the board shall serve the judge with a copy of the proposed reprimand and a notice stating that within 20 days of service of the proposed reprimand, the judge may serve the board with either a written demand for a formal hearing as provided in Rule 8, or the written comments and criticisms of the judge regarding the proposed reprimand. If the judge makes a timely demand for a formal hearing, the board shall comply with Rule 8. If no timely demand for a hearing is made, the board may consider the comments and criticisms, if any, but may in its discretion release the reprimand as originally prepared.
- (8) The board shall notify the judge of its action and shall disclose the names of the board members who did not participate in the action.