

State of Minnesota

**BEFORE THE BOARD ON JUDICIAL STANDARDS**

Inquiry into the Conduct of The Honorable Jack S. Nordby

BJS File No. 2009-124

**FORMAL STATEMENT OF COMPLAINT**

The Board on Judicial Standards (Board), having determined that sufficient cause exists to proceed in the above-referenced matter pursuant to the ***Rules of the Board on Judicial Standards (R.Bd.J.Stds.)***, Rule 6(f), and having received a timely demand for a formal hearing, hereby makes the following Formal Statement of Complaint against the Honorable Jack S. Nordby. This Complaint is made and served under ***R.Bd.J.Stds., Rule 8(a) 1 and 2.***

Notice is hereby given that ***R.Bd.J.Stds., Rule 8(a)(3)*** requires your written response to this Complaint within twenty (20) days of the date of service.

**FACTUAL BACKGROUND**

1. Judge Jack S. Nordby has served as a district judge in the Fourth Judicial District since 1995. His current term expires in January 2015.
2. Judge Nordby was scheduled to sentence defendant Kris Hahn on December 16, 2009 following Hahn's conviction for first degree criminal sexual conduct against a child. A prosecutor, defense attorney, Hahn, Hahn's victim and the victim's mother all appeared in court that day for sentencing.
3. Although Judge Nordby eventually continued the sentencing date, he took victim impact testimony from Mr. Hahn's victim and the victim's mother.
4. Immediately after the victim impact testimony, Judge Nordby told the parties that he needed more time to research whether the sentence on Mr. Hahn's state court conviction should run consecutive to a federal court sentence Mr. Hahn was currently serving.
5. Judge Nordby then announced to the parties and spectators that he wanted to "raise another issue on my own, here, that I've given some attention to."

6. Judge Nordby noted that Mr. Hahn had made allegations that the prosecutor, his own attorneys, the victim and Judge Nordby were all involved in a conspiracy to deprive Hahn of his constitutional rights. Judge Nordby further said: "Since we last dealt with this issue, it has occurred to me that there is one phenomenon that could lend some weight to Mr. Hahn's concerns, a phenomenon of which he and his counsel may not be aware".

7. Judge Nordby then read a lengthy statement directed against WATCH, a court monitoring organization. The statement consumed 11 pages of court transcript, and is attached to this Complaint and incorporated by reference.

8. In this statement, Judge Nordby said that members of WATCH had been present at times throughout the Hahn court proceedings, and that WATCH monitors carried red clipboards.

9. In regard to the red clipboards, Judge Nordby stated:

a. The bearers of the clipboards were a "cheering section" for the victim and the prosecution;

b. The red clipboards were a "not very subtle threat to the judge";

c. The red clipboards were "arguably ex parte communications to judges about pending cases";

d. The red clipboards "represent strongly partisan communications of a threatening nature to judges";

e. Because of the presence of the red clipboards, the defendant "will have a plausible argument that they create either an actually biased court, or a palpable appearance of bias";

f. When a red clipboard appears, a judge should notify the defendant that an advocate of the accuser has said to the judge "Do it our way or we'll get you";

g. Red clipboards are like gang signs and insignia used to influence and intimidate witnesses ("We have encountered in recent years an occasional problem with gang members allegedly using gang signs and insignia to influence or intimidate witnesses. The dynamic of the phenomenon is essentially the same"); and

h. It is "unlikely and unprovable" that red clipboards have no effect at all on judges.

10. Judge Nordby noted that although WATCH monitors were present in the courtroom during the course of Hahn's trial, the monitors didn't say anything to Judge Nordby, they didn't communicate with Judge Nordby, and they didn't misbehave in any way in the courtroom.

11. Judge Nordby failed to identify any specific way in which WATCH monitors threatened him, attempted to influence him, or attempted to “get him” in the Hahn proceedings, other than by watching the proceedings and carrying red clipboards.

12. Judge Nordby levied several accusations against WATCH during his statement. They include:

- a. WATCH has a sexist agenda;
- b. Judge Nordby knows of “no judges who have genuine respect or esteem for WATCH”;
- c. WATCH has improperly attempted to change judges’ assignments, including Judge Nordby’s;
- d. WATCH has an “intended nefarious influence on the justice system”; and
- e. WATCH is a “mixture of self-righteousness, officiousness, arrogance, humorlessness, and ignorance”

13. At the conclusion of his statement, Judge Nordby distributed a copy of his prepared remarks, along with a 24 page printout of legal research citations which he told those present in the courtroom addressed the issue of demonstrative conduct in court. The document was compiled using WestLaw, a subscription-based computerized legal research service, and was printed two days earlier, on December 14, 2009.

14. The defendant, Kris Hahn, asked Judge Nordby for a copy of Judge Nordby’s statement along with a copy of the WestLaw printout. Judge Nordby gave both to Hahn.

15. By his remarks in court, and by providing a copy of his statement and legal research to Hahn, Judge Nordby in effect acted as an advocate for Hahn and suggested motion strategy to him.

16. Hahn’s sentencing was continued to February 8, 2010.

17. Prior to Hahn’s continued sentencing, Hahn filed two pro se motions. One was a motion to dismiss for prosecutorial misconduct, and the second was a motion to convene a grand jury to investigate WATCH. Both motions were predicated on the lengthy statement Judge Nordby read in court on December 16, 2009.

18. Judge Nordby spent a substantial amount of time in court on February 8 discussing Hahn’s motions, before dismissing his motion to dismiss for prosecutorial misconduct, and referring Hahn’s motion to convene a grand jury to other Fourth Judicial District judges.

19. During Hahn’s sentencing hearing on February 8, 2010, Judge Nordby noted that WATCH had filed a complaint with the Board on Judicial Standards following the December 16, 2009 hearing in

the Hahn case. At the February 8, 2010 hearing, Judge Nordby continued to criticize WATCH. Judge Nordby stated that:

a. He had “absolutely no fear that whatever the Board on Judicial Standards may do with the complaint WATCH has filed against me that they’ll remove me from office. They will not do so”;

b. It was “not the first time WATCH has attacked me publicly. They’ve attacked me in the newspaper and in their newsletter and, for all I know, they were prepared to campaign against me”; and

c. WATCH has “affected dozens, perhaps hundreds of cases, at least potentially”.

20. Although Judge Nordby was aware of WATCH’s presence in the courtroom during the Hahn trial, he failed to bring this to the attention of the parties until sentencing, when the opportunity for a party to request corrective action had passed.

21. WATCH was not a party to the Hahn prosecution, and Judge Nordby did not give WATCH an opportunity to be heard before he levied his “findings” against WATCH on both December 16, 2009 and February 8, 2010.

22. Canon 1 of the Minnesota Code of Judicial Conduct requires judges to uphold and promote the independence, integrity, and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety.

23. Rule 1.1 of the Minnesota Code of Judicial Conduct provides that a judge shall comply with the law, including the Code of Judicial Conduct.

24. Rule 1.2 of the Minnesota Code of Judicial Conduct provides that a judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

25. Rule 1.3 of the Minnesota Code of Judicial Conduct provides that a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

26. Canon 2 of the Minnesota Code of Judicial Conduct requires judges to perform the duties of judicial office impartially, competently and diligently.

27. Rule 2.1 of the Minnesota Code of Judicial Conduct provides that the duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.

28. Rule 2.3 of the Minnesota Code of Judicial Conduct requires judges to perform the duties of judicial office without bias or prejudice, and to avoid, by words or conduct, manifesting bias or prejudice in the performance of the duties of judicial office.

29. Rule 2.5 of the Minnesota Code of Judicial Conduct requires judges to perform judicial and administrative duties competently and diligently.

30. Rule 2.8 of the Minnesota Code of Judicial Conduct provides that a judge shall; (1) require order and decorum in proceedings before the court, and (2) be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity.

31. Canon 3 of the Minnesota Code of Judicial Conduct provides that a judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

32. Rule 3.1(E) of the Minnesota Code of Judicial Conduct provides that a judge may engage in extrajudicial activities, except as prohibited by law or the Code; however, when engaging in extrajudicial activities a judge shall not make use of court premises, staff, stationery, equipment, or other resources, except for incidental use of activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law or Judicial Branch policy.

33. Rule 4 of the Board on Judicial Standards provides as grounds for discipline or other action: (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.. and (6) Conduct that constitutes a violation of the Code of Judicial Conduct or Professional Responsibility.

## **SPECIFICATION OF CHARGES**

34. Judge Nordby violated Canons 1, 2 and 3 and Rules 1.1, 1.2, 1.3, 2.1, 2.3, 2.5, 2.8, 3.1(E) and 4 of the Minnesota Code of Judicial Conduct on December 16, 2009 in statements he prepared and made during court proceedings in State v. Hahn as specified in Paragraphs 5 through 14 above.

THE MINNESOTA BOARD ON JUDICIAL STANDARDS

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