

**STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**FINDINGS AND ORDER IN THE MATTER OF
A COMPLAINT FILED AGAINST THE MINNESOTA STATE BAR ASSOCIATION**

Summary of Allegations and Responses

On May 20, 2006, Greg Wersal (“Complainant”) filed a complaint with the Campaign Finance and Public Disclosure Board (“Board”) against the Minnesota Judicial Council (“Council”), Chief Justice Russell Anderson and Associate Justice G. Barry Anderson.

The Complaint alleged that the Council sponsored a two-day retreat on February 15–16, 2006. Complainant alleged that the retreat was a contribution to or expenditure on behalf of candidates for judicial office. In support of the Complaint, Complainant submitted a document called “Summary/Talking Points” purportedly prepared by staff of the State Court Administrator’s office.

A major topic of discussion at the February, 2006 retreat were the recent decisions of the United States Supreme Court and the Eighth Circuit Court of Appeals in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), *subsequent appeal after remand* 416 F.3d 738 (8th Cir. 2005). The Complaint alleged that the Summary/Talking Points of the retreat reflect that the Council was acting as a political party or political fund acting on behalf of candidates for judicial office. According to the Complaint, the candidates are the incumbent judges, and that the notes of the retreat indicate that the Council “intends to take further action to assure the victory of incumbents and the defeat of “partisan political challenger” [sic] such as those endorsed by the Republican Party.”

On June 5, 2006, Complainant sent a letter to the Board stating that he wished to supplement his complaint by raising three issues: 1) the legality of a public body spending public funds on election activities for a candidate or ballot issue; 2) the actions of the Judicial Council in concert with the Minnesota State Bar Association and the coordination of “independent” campaign activities and expenditures; and 3) the Citizen’s Commission for the Preservation of an Impartial Judiciary (popularly known as the “Quie Commission”). Complainant also provided a research memo dated October 2000 and prepared by the League of Minnesota Cities, and three Opinions of the Attorney General, dated July 18, 1927, April 29, 1954, and July 10, 1958. The memo and Attorney General Opinions dealt with the issue of the legality of public spending on elections and ballot issues.

In the initial May 20 complaint, Complainant did not specifically mention the MSBA or the Quie Commission. In the June 5, 2006 follow-up letter, Complainant referred to the fact that Ms. Sue Holden, President of the MSBA, was a speaker at the retreat. According to Complainant, “One of the things she spoke about was the activity of the Judicial Campaign Conduct Committee of the MSBA.” Complainant stated that “It is my understanding that this group will attempt to raise challenges to the campaign conduct of challengers to any incumbent.” He further stated, “The MSBA is planning to doom the campaigns of challengers to any incumbent by filing complaints.” Complainant concluded: “I think the Judicial Council is engaged in illegal and impermissible coordination with the activities of the MSBA. A clear example of the coordination is found in the notes from the retreat which state ‘Need to work with the MSBA and MN Newspaper Association on voter guides.’ Notes from the Retreat, Page 6. If the MSBA were truly independent, the Judicial Council would not ‘work with’ the MSBA to develop a voter guide on judicial elections.” In addition, Complainant enclosed the Board’s Advisory Opinion 296, which in his opinion “indicates that the attendance of Ms. Holden at the retreat and her discussion of what the MSBA intends to do in the upcoming election is a violation of the law.”

Complainant’s June 5 letter also made allegations of wrongdoing by the Quie Commission, including that it had “probably” spent more than \$100 and was illegally coordinating activities with the Judicial Council and the MSBA.

On June 14, 2006, John A. Knapp responded to the Complaint on behalf of the Minnesota State Bar Association.

In his response, Mr. Knapp stated, “The MSBA has not endorsed and will not support or oppose the election of any individual judge or group of judges, whether incumbent or not incumbent, or Republican, Democrat or Independent.” Mr. Knapp further stated, “Complainant is incorrect when he asserts that the ‘MSBA endorses

judicial candidates' and incorrect when he states that the MSBA has 'always endorsed incumbents.'" Mr. Knapp indicated that the MSBA's interest in judicial elections is "protecting the integrity of the judicial system, not how to get incumbent judges elected."

Referring to the appearance of Ms. Susan Holden at the Judicial Council retreat, and subsequent statements made by her and reported in the press, Mr. Knapp stated, "Again, it is important to reaffirm that Ms. Holden did not indicate in any way that the MSBA would be supporting or opposing any individual candidate or group of candidates." According to Mr. Knapp, "Instead, Ms. Holden discussed with the Judicial Council the importance of maintaining the integrity of the judicial system and the MSBA's hope to avoid partisan judicial campaigns heavily funded by special interests in the upcoming 2006 elections which could threaten the integrity of the judicial system." Mr. Knapp further stated that Ms. Holden also reported on a study then underway in the MSBA Rules of Professional Conduct Committee, which was reviewing the Judicial Canons in light of the *White* decision. According to Mr. Knapp, Ms. Holden further reported on the study ongoing in the MSBA Judicial Elections Committee of campaign conduct committee structures in use in other states whereby judicial candidates voluntarily agree to adhere to certain principles in their campaigns. In addition, Mr. Knapp indicated that Ms. Holden reported on the bar's public education efforts on judicial topics.

Referring to Advisory Opinion 296 cited by Complainant in discussing concepts of "agency" and "cooperation" in connection with independent expenditures, Mr. Knapp indicated, "In this case, there is not only no actual or implied coordination of campaign expenditures, there are no expenditures." According to Mr. Knapp, "Because the MSBA has not made any expenditure in support of or in opposition to a clearly identified candidate, the question of whether or not there was any agency or cooperation between the MSBA and other parties is meaningless."

Mr. Knapp further argued that "There is no campaign finance law in Minnesota that makes it illegal for concerned citizens to gather to discuss issues of common concern and to reach consensus about possible solutions to such issues." According to Mr. Knapp, "Indeed, if such a law did exist, it would be unconstitutional." Mr. Knapp went on to state that "It is perfectly appropriate and essential to the functioning of our democracy, for all interested parties, including Mr. Wersal and his supporters, to discuss the appropriate method of electing or retaining judges in Minnesota." He further stated that there was no specific legislation or proposed constitutional amendment to change the method of selecting or retaining judges in Minnesota that was supported by the MSBA during 2006. Mr. Knapp also stated, "Further, the MSBA is not attempting to advance any particular legislation concerning judicial selection through the Quie Commission." Mr. Knapp pointed out that "Actually, under its governing structure, the MSBA Assembly will have to decide whether to support or oppose the recommendations of the Quie Commission after those recommendations are made known."

On August 14, 2006, Complainant sent a third letter to the Board, stating that he wished to supplement his complaint with two items. First, Complainant stated that in July, he personally attended a meeting of the Quie Commission that was open to the public. Complainant further stated, "Staff members of the Minnesota Supreme Court Administrators [sic] Office, were in attendance and helping organize the meeting. Again, the salaries of the staff were paid for by public funds...." Complainant went on to describe connections between the Quie Commission, the MSBA and the courts.

Second, Complainant attached an article from the August 7, 2006 "Minnesota Lawyer" magazine. The article described an "affirmation" that the MSBA is sending to all judicial candidates. The affirmation contains certain voluntary pledges relating to the conduct of judicial campaigns, that candidates are asked to consider making. The pledges include a commitment to not seek political party endorsements and not to engage in political advertising. Complainant's letter states that "The entire thrust of this activity is to protect incumbent judges up for reelection." Complainant further states his belief that "this appears to be a clear violation of the Campaign Finance and Disclosure laws which prohibits [sic] coordination of activities."

The "Minnesota Lawyer" article states that the MSBA asks judicial candidates to sign the affirmation and distribute it to their campaign staffs. The article further states, "Candidates are specifically instructed that the affirmation should *not* be returned to the MSBA." According to the article, MSBA Executive Director Tim Groshens stated "We cannot do anything that would amount to endorsing the election or non-election of any individual." The article also notes that "The MSBA's high level of caution on the endorsement issue may be at least partially attributable to a 2001 ruling against the bar group by the state Campaign Finance and Public Disclosure Board." A copy of the

Board's February 23, 2001 Findings In The Matter Of A Complaint Regarding The Minnesota State Bar Association are attached. The Board notes Mr. Groshens' statement regarding endorsements as reported in the "Minnesota Lawyer" article and assumes it to be an accurate statement of the position of the MSBA for purposes of these findings.

The Complaints against the Minnesota Judicial Council, Chief Justice Russell Anderson, Associate Justice G. Barry Anderson, and the Quie Commission are dealt with in separate Findings and Orders relating to those Complaints. Therefore, these Findings relate only to the Complaint as it relates to the activities of the Minnesota State Bar Association..

The Board considered this matter in executive session at its meetings on June 7, 2006 and August 15, 2006. The Board's decision was based on information provided with the Complainant's letters of May 20, June 5 and August 14, 2006, and the response from Mr. Knapp.

Relevant Statutes

1. Minn. Stat. §10A.01, subd. 9. **Campaign expenditure.** "Campaign expenditure" or "expenditure" means a purchase or payment of money or anything of value, or an advance of credit, made or incurred for the purpose of influencing the nomination or election of a candidate or for the purpose of promoting or defeating a ballot question.

2. Minn. Stat. §10A.01, subd. 10. **Candidate.** "Candidate" means an individual who seeks nomination or election as a state constitutional officer, legislator, or judge. An individual is deemed to seek nomination or election if the individual has taken the action necessary under the law of this state to qualify for nomination or election, has received contributions or made expenditures in excess of \$100, or has given implicit or explicit consent for any other person to receive contributions or make expenditures in excess of \$100, for the purpose of bringing about the individual's nomination or election. A candidate remains a candidate until the candidate's principal campaign committee is dissolved as provided in section 10A.24.

3. Minn. Stat. §10A.01, subd. 11. **Contribution.** "Contribution" means money, a negotiable instrument, or a donation in kind that is given to a political committee, political fund, principal campaign committee, or party unit."

4. Minn. Stat. §10A.01, subd. 28. **Political fund.** "Political fund" means an accumulation of dues or voluntary contributions by an association other than a political committee, principal campaign committee, or party unit, if the accumulation is collected or expended to influence the nomination or election of a candidate or to promote or defeat a ballot question.

5. Minn. Stat. §10A.12. **Political funds.**

Subdivision 1. **When required.** An association other than a political committee or party unit may not contribute more than \$100 in aggregate in any one year to candidates, political committees, or party units or make any approved or independent expenditure or expenditure to promote or defeat a ballot question unless the contribution or expenditure is made from a political fund.

6. Minn. Stat. §10A.14. **Registration.**

Subdivision 1. **First registration.** The treasurer of a political committee, political fund, principal campaign committee, or party unit must register with the board by filing a statement of organization no later than 14 days after the committee, fund, or party unit has made a contribution, received contributions, or made expenditures in excess of \$100.

7. **10A.17 Expenditures.**

Subd. 4. **Independent expenditures.** An individual, political committee, political fund, principal campaign committee, or party unit that independently solicits or accepts contributions or makes independent expenditures on behalf of a candidate must publicly disclose that the expenditure is an independent expenditure. All written communications with those from whom contributions are independently solicited or accepted or to whom independent expenditures are made on behalf of a candidate must contain a statement in conspicuous type that the activity is an independent expenditure and is not approved by the candidate nor is the candidate responsible for it. Similar language must be included in all oral communications, in conspicuous type on the front page of all literature and advertisements published or posted, and at the end of all broadcast advertisements made by that individual, political committee, political fund, principal campaign committee, or party unit on the candidate's behalf.

Based on the above Statement of Facts and Relevant Statutes, the Board makes the following:

Findings Regarding Probable Cause

1. There is no evidence that the Minnesota State Bar Association has made a contribution, received contributions, or made expenditures in excess of \$100.
2. There is no evidence that the Minnesota State Bar Association has independently solicited or accepted contributions or made independent expenditures on behalf of a candidate or to promote or defeat a ballot question.

Based on the above Findings, the Board makes the following:

Order

1. The allegation that the Minnesota State Bar Association violated the provisions of the Minnesota Ethics in Government Act, Minn. Stat. §10A.14, by failing to register as a political committee, political fund, political party or party unit within 14 days after making expenditures in excess of \$100 is dismissed.
2. The allegation that the Minnesota State Bar Association has made a contribution, received contributions, or made independent expenditures in excess of \$100 in violation of Minn. Stat. §10A.17 is dismissed.
3. The Board's investigation of this matter is hereby made a part of the public records of the Board pursuant to Minn. Stat. §10A.02, subd. 11. Board staff is directed to forward copies of these Findings to Greg Wersal and John A. Knapp.

Dated: August 15, 2006



Bob Milbert, Chair

Campaign Finance and Public Disclosure Board