

LESLIE M. METZEN
CHIEF JUDGE

CHAMBERS 119



DAKOTA COUNTY JUDICIAL CENTER
HIGHWAY 55
HASTINGS, MINNESOTA 55033

(651) 438-4325

STATE OF MINNESOTA
DISTRICT COURT, FIRST JUDICIAL DISTRICT

Frederick K. Grittner
Clerk of the Appellate Courts
25 Constitution Avenue
St. Paul, Minnesota 55155

OFFICE OF
APPELLATE COURTS
JAN 05 2001

FILED

RE: C0-00-1699
MSBA PETITION FOR ADOPTION OF PROFESSIONALISM ASPIRATIONS

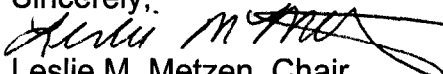
I am writing on behalf of the Conference of Chief Judges to endorse the Professional Aspirations submitted to the Minnesota Supreme Court by the Minnesota State Bar Association.

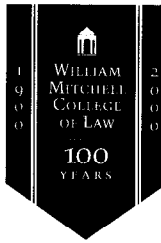
The Conference of Chief Judges agrees with the Bar Association that the legal profession has an obligation to conduct itself in a professional manner. The Professional Aspirations reflect the responsibility of judges and lawyers for upholding quality justice in this state. Commensurate with this responsibility is the obligation to conduct legal affairs according to the highest standards of professionalism.

The proposed standards reflect our commitment to professionalism. They memorialize obligations to each other, to clients, and to the people of the State of Minnesota. They are designed to raise public confidence in the legal profession and the justice system through the promotion and protection of professionalism and civility.

Please do not hesitate to contact me if you have any questions.

Sincerely,


Leslie M. Metzen, Chair
Conference of Chief Judges



Office of the
President and Dean

OPPORTUNITY. LEADERSHIP & SERVICE

OFFICE OF
APPELLATE COURTS
NOV 20 2000
FILED

November 17, 2000

Frederick K. Grittner
Clerk of the Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

Re: Petition for Adoption of Professionalism Aspirations

Dear Mr. Grittner:

Enclosed you will find twelve copies of a letter signed by all four of the Minnesota Law School Deans supporting the petition to adopt a set of Professionalism Aspirations.

Should you require any additional information, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink that reads "Harry J. Haynsworth". The signature is stylized and written in a cursive-like font.

Harry J. Haynsworth
President and Dean

November 6, 2000

OFFICE OF
APPELLATE COURTS

NOV 20 2000

FILED

The Honorable Russell Anderson
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue, Suite 423
St. Paul, MN 55155

Re: Professionalism Aspirations

Dear Judge Anderson:

The purpose of this letter is to express the support of the deans of the four Minnesota law schools for the petition filed by the Minnesota State Bar Association requesting adoption by the Court of the Professionalism Aspirations statement developed by the MSBA Professionalism Committee and subsequently approved by the MSBA General Assembly.

Professionalism and civility codes similar to the one set forth in the petition have been adopted on a widespread basis in this country during the past several years. They are a response to the belief that the behavioral standards of lawyers across this country have deteriorated. These codes are intended to be a statement of the expected behavior of lawyers to one another, to the court and to their clients.

In our opinion, it is very important that the Supreme Court adopt these professionalism aspirations. The Court's approval would be a clear signal to the bar and to the public that the Supreme Court of Minnesota approves the standards set forth in the Professionalism Aspirations and is taking a leadership role in dealing with professionalism concerns. Adoption by the Court will also have far greater impact than if these aspirational statements come only from the organized bar.

Assuming that the Court does adopt the Professionalism Aspirations, we encourage the members of the Court to think of ways the Professionalism Aspirations can be used effectively. One idea might be to have them distributed to all newly admitted lawyers at the semi-annual swearing-in ceremonies.

Should you have any questions about this matter, please do not hesitate to contact any of us.

Yours very truly,



Harry J. Haynsworth
William Mitchell College of Law



Edwin J. Butterfoss
Hamline University
School of Law

David T. Link
University of St. Thomas
School of Law



E. Thomas Sullivan
University of Minnesota
Law School

C: Kent A. Gemander
David F. Herr

December 15, 2000

OFFICE OF
APPELLATE COURTS

DEC 22 2000



THE HONORABLE KATHLEEN A BLATZ
C/O FREDERICK K GRITTNER
CLERK OF THE APPELLATE COURTS
25 CONSTITUTION AVENUE
ST PAUL MN 55155

FILED

Re: Minnesota State Bar Association (MSBA) Petition for Adoption
of Professionalism Aspirations

Dear Chief Justice Blatz:

The Board of Directors of the Minnesota Defense Lawyers Association (MDLA) recently reviewed the Minnesota State Bar Association (MSBA) Petition for Adoption of Professionalism Aspirations. The MDLA Board is unanimously in favor of the Minnesota Supreme Court adopting the proposed Professionalism Aspirations. Since we believe that adoption of the Professionalism Aspirations will serve to enhance the quality, civility and professionalism of the trial bench and bar throughout the State of Minnesota, the purpose of this letter is to inform you that the MDLA fully supports and encourages the Minnesota Supreme Court's adoption of the Professionalism Aspirations.

This statement in support of the Petition is submitted pursuant to your Order dated November 15, 2000.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael S. Ryan".

Michael S. Ryan
mryan@murnane.com

MSR/ek/ 443790.1

cc: Kent A. Gernander, Esq.
David F. Herr, Esq.
Julius W. Gernes, Esq.
Kathryn Davis Messerich, Esq.
Steven J. Pfefferle, Esq.
Leon R. Erstad, Esq.
John H. Scherer, Esq.
Debra L. Oberlander

MDLA

Suite 812
401 Second Avenue South
Minneapolis, MN 55401-2300
<http://www.mdla.org>

(612) 338-2717
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Debra L. Oberlander

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Moorhead

Steven R. Schwegman
St. Cloud

Pat J. Skoglund
St. Paul

MDJA

MINNESOTA DISTRICT JUDGES ASSOCIATION

December 26, 2000

OFFICE OF
APPELLATE COURTS

DEC 27 2000

FILED

PRESIDENT

Honorable Thomas M. Stringer
Seventh Judicial District
Otter Tail County Courthouse
P.O. Box 417
Fergus Falls, MN 56638-0417
218/739-2271

Frederick K. Grittner
Clerk of Appellate Courts
25 Constitution Avenue
St. Paul, MN 55155

PRESIDENT ELECT

Honorable Timothy K. Connell
Fifth Judicial District
Rock County Courthouse
204 East Brown
PO Box 746
Luverne, MN 56166
507/283-5020

Re: The Petition For Adoption of Professionalism Aspirations

Dear Mr. Grittner:

VICE-PRESIDENT

Honorable Richard C. Perkins
First Judicial District
LeSueur County Courthouse
88 South Park Avenue
LeCenter, MN 56057-1620
507/357-2251

The Minnesota State Bar Association (MSBA) has asked the Supreme Court to adopt a set of Professionalism Aspirations.

I am pleased to submit this letter on behalf of the Minnesota District Judges Association (MDJA) to support the adoption by the Supreme Court of the Professionalism Aspirations as were set forth as an attachment to the Petition of the MSBA.

PAST PRESIDENT

Honorable Kathleen Gearin
Second Judicial District
B405 Juvenile & Family Justice Center
25 West 7th Street
St. Paul, MN 55102
651/266-5172

At a meeting on April 28, 2000, upon motion the Board of Directors of the MDJA voted unanimously to support this statement of Professionalism Aspirations. This topic was again discussed favorably on December 4, 2000, at the meeting of the Board of Directors of the MDJA.

TREASURER

Honorable James H. Clark, Jr.
Second Judicial District
B504 Juvenile & Family Justice Center
25 West 7th Street
St. Paul, MN 55102
651/266-5158

The MDJA believes that this statement will be a valuable tool in the object of providing continuing education to lawyers and to judges. The MDJA membership is committed to the enhancement of all lawyers and all judges of this state.

ADVISORY SERVICES DIRECTOR

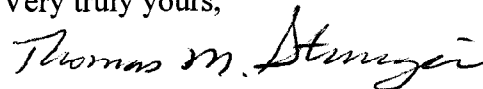
Stephen E. Forestell
120 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55156
Phone (651) 297-7582
Fax (651) 282-3916

The MDJA does fully support the adoption and distribution of the Professionalism Aspirations by the Minnesota Supreme Court respectfully submitted.

ADMINISTRATIVE DIRECTOR

Carol M. Solberg
73 Spruce Street
Mahtomedi, MN 55115
Phone or Fax (651) 426-1746

Very truly yours,



Thomas M. Stringer
President - MDJA

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



JACK NORDBY
JUDGE
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0421
(612) 348-3502
FAX (612) 348-2131

December 20, 2000

OFFICE OF
APPELLATE COURTS

DEC 26 2000

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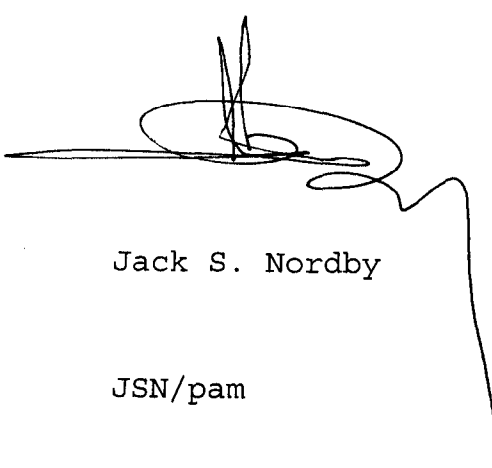
Mr. Frederick Grittner
Supreme Court Administrator and
Court of Appellate Courts
25 constitution Avenue
St. Paul, Mn. 55155

Dear Mr. Grittner,

Case # CO - 00-1699

Enclosed for filing are twelve copies of my statement.

Yours truly,



Jack S. Nordby

JSN/pam

Mr. Frederick Grittner
Supreme Court Administrator and
Clerk of Appellate Courts
25 Constitution Avenue
St. Paul, Mn. 55155

C0 - 00-1699

Statement of Jack Nordby in Opposition to
Petition for Adoption of Professional Aspirations

I recommend rejection of the proposed "Professional Aspirations", pursuant to the court's order of November 15, 2000, for the following reasons:

1) They are superfluous. Every important and proper "aspiration" is already contained explicitly or by obvious implication in the Rules of Professional Conduct, the Code of Judicial Conduct, the Rules of Decorum, or elsewhere in statutes, rules, judicial opinions, and common sense.

2) They therefore create a new and unnecessary level of bureaucratic entanglement for lawyers and judges. We need few things less in the practice of law than yet another layer of regulations, particularly one that instills an obsequious mentality.

3) They will inevitably be used as weapons, by thin-skinned lawyers and judges, quite contrary to their purported purpose. They will become weapons for those inclined to finger-wagging, a phenomenon already in oversupply.

4) They are too vague, general, and cliché-ridden to be useful. ("Our word is our bond"! Aspiration I.B.) (The Court of Appeals recently has held to the contrary. State v. Johnson, 617 N.W.2d 440 (Minn.App.2000).)

5) They are patronizing and in effect defamatory to the bench and bar, suggesting that Minnesota lawyers and judges are so uncivil and discourteous as to require the bar association's, and the court's, correcting hand.

6) Much more importantly, they operate against the lawyer's duties of zealous advocacy and loyalty to clients, and are permeated with suggestions that lawyers should be more concerned with not offending their adversaries and judges and others, than with vigorously representing their clients. They elevate manners over professionalism, disclaimers to the contrary notwithstanding. They are elitist, the product apparently of thinking more oriented toward etiquette than the often gritty unpleasantness of practicing law. (I am anxious to acknowledge, however, that the names I have seen associated with the proposal are those of excellent lawyers, whose motives, abilities, and professionalism I surely do not question.)

7) The aspirations will therefore make the bar less professionally effective, more cowardly. For every lawyer who is overzealous and abrasive, we have ten (or twenty, or a hundred) who are too diffident, timorous, and insecure to be effective. Lawyers need exhortation to courage, outspokenness, persistence, and outrage in the face of perceived injustice. This is after all an

adversary system, already surrounded by more than enough enforceable restraints to cower the weak-hearted. The aspirations, I am afraid, encourage euphemism, half-truths, and hypocrisy; we need instead their opposites.

8) The aspirations will, of course, have absolutely no effect on lawyers who are strong and principled enough to resist their seduction. Their dampening influence will be on those who least need it, who need more rather than less spine. The program will no doubt make them agreeable at bar association cocktail parties, but even less effective than they already are in the courtroom. The problem is not that any good lawyer will obey these platitudes to a client's disadvantage, but that mediocre lawyers may.

9) The aspirations in some particulars virtually demand incompetence. A lawyer is not, for example, as they suggest, required to be "civil," or "courteous", or "fair", in cross-examination, (Aspiration III.A.), and often will be ineffective if he or she is. It is sometimes in the very nature of effective cross-examination and argument to be aggressive, offensive, even cruel. A trial often must be, and should be, a savage thing; a courtroom can and sometimes must be a savage place.

It is difficult to understand why either the bar association or this court would spend time on a proposal that is by its own terms unenforceable in any fashion and represents at best a public-relations effort. Surely both the bar association and the court should devote their resources to some of the genuine defects in our judicial system: racism, inequality, victim's rights, speedy

decision of cases, (to name only a few), rather than pondering a proposal designed to make us less effective in curing such ills as these. Aspiration I.C. enjoins us to "educate our clients, the public, and other lawyers regarding the spirit and letter of the Professional Aspirations." It is difficult to conceive a less productive way for any lawyer or judge to spend his or her time. (Would these educational sessions qualify as billable hours?)

Possibly the bar association has forgotten, if it ever knew, the once-famous words of Lord Brougham, expressing the lawyer's true role:

An advocate, by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world, that client and none other. To save that client by all expedient means--to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon any other. Nay, separating even the duties of a patriot from those of any advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate it should unhappily be, to involve his country in confusion for his client's protection.

The proponents of these aspirations would no doubt rejoin along these lines: "That's all very well, of course, but surely we should not offend anyone in the process."

To which we may respond in the words of the Seventh Circuit Court of appeals:

Attorneys have a right to be persistent, vociferous, contentious and imposing, even to the point of being obnoxious, when acting in their client's behalf. In re Dellinger, 461 F.2d 389, 400 (7th Cir.1970).

More recently Justice Tomljanovich said, in another context but wisely, and pertinently: "The courts simply cannot be the arbitrator of all hurt feelings. It is important that we communicate our feelings to one another, but if we must live in fear that a lawsuit [or claim of violating the Aspirations, we may interpolate] will result each time we make a comment or use a word that someone, somewhere, sometime might find offensive, all human exchange of words and ideas will cease, and our world will be a worse place in which to live." Bilal v. Northwest Airlines, 537 N.W.2d 614 (Minn.1995), dissenting.

It is not that I am against courtesy and cooperation. There are times, even in the practice of law, when they are not out of place. But they surely should not be embodied in a code that insidiously undermines zeal. If a word or action helps a client's cause, and it is neither illegal nor unethical, it is not only a lawyer's right but duty to employ it, and fearlessly. It is all right to aspire to be well-liked; but for a lawyer (or judge) it is much better to be respected (even feared); the two qualities are,

unhappily, not always compatible. The aspirations are suitable enough for board rooms, country clubs, judges's socials, and the like, but not for the rough and tumble of the courtroom where fire and brimstone are often more to the purpose than treacle. A legal dispute is a serious business, involving often unpleasant people ensnarled in unpleasant events; it is not a social occasion. Lawyers and judges would do a disservice to clients, victims, witnesses, and other interested persons if we led them to believe otherwise.

These aspirations betray no respect for free speech in general, or free expression in the law in particular, where it is so badly needed.


Lawyers and judges should be encouraged not forbidden to offend one another on those not infrequent occasions where it is deserved. More litigants's rights have been diluted and lost by the fear of doing so than by the practice itself. It is no bad thing that a lawyer should, from time to time, for example, frankly point out to a judge that he is ignorant, inattentive, unpunctual, biased, or a pompous ass -- and vice versa.

The very existence of such a litany as this, officially adopted, will give clients a sense of helplessness, an impression that their spokespersons are weak, that the judicial system itself is more concerned with courtesy than the doing of justice, that -- in short -- surrender is preferable to unpleasantness.

Contrary to the thrust of many of the aspirations, it is often not a lawyer's duty or proper role, and may be a betrayal of these, to make the process easy and convenient and pleasant for his or her adversary, or others, or for the court.

Any client with a seriously contested dispute would be well-advised to seek out a lawyer who explicitly does not subscribe to these aspirations.

Respectfully submitted,



Jack S. Nordby

Hennepin County Government Center
300 South 6th Street
Minneapolis, Mn. 55487

JSN/pam