

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81300

In Re:

Modification of Canon 3A(7) of the
Minnesota Code of Judicial Conduct

MOTION TO REMOVE
PETER S. POPOVICH

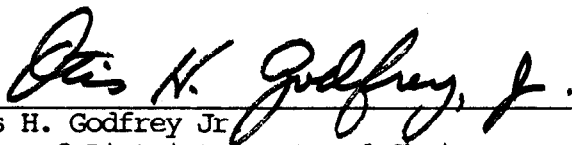
Minnesota Joint Media Committee,
Petitioner.

Pursuant to Section 3C(1) of the Code of Judicial Conduct, the
Minnesota District Judges Association, a party to these proceedings,
does hereby move the Supreme Court for the removal of Chief Justice
Peter S. Popovich from participation in this matter before the
Court. Said motion is based on the attached memorandum and exhibits,
and upon Canon 3C(1).

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY


Otis H. Godfrey Jr.
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom

DATED: March 23, 1989

STATE OF MINNESOTA

IN SUPREME COURT

No. C7-81300

In Re:

Modification of Canon 3A(7) of the
Minnesota Code of Judicial Conduct

MEMORANDUM IN SUPPORT OF

MOTION TO REMOVE

Minnesota Joint Media Committee,

Petitioner.

A hearing has been set by the Supreme Court upon a petition, brought by the Joint Media Committee, to amend the Code of Judicial Conduct so as to permit the use of cameras in the trial courts of Minnesota. This issue has been hotly contested since 1981, when the original petition was presented to the Court. Briefs opposing the petition have been and will be filed by the Minnesota District Judges Association, the State Bar Association and its affiliates, and by members of the public.

Attached hereto as Exhibit A is the affidavit of Mary Ann McCoy, the Executive Director of the Ethical Practices Board of Minnesota. Under state law all lobbyists are required to register with this agency. The attached Exhibit B contains photocopies of records from that agency which relate to the activities of Peter Popovich.

From these exhibits it is apparent that the Chief Justice was a lawyer lobbyist for Northwest Publications, one of the petitioners, from February, 1975 until 1976. It would further appear that Justice Popovich represented the Minnesota Broadcasters Association from February, 1975 until 1983, when he was appointed Chief Judge of the Court of Appeals. The petitioners herein

are members of the Minnesota Broadcasters Association, and therefore are former clients of the Chief Justice. The original petition was filed herein in 1981, when Peter Popovich was representing petitioners as a lawyer lobbyist.

We also submit as Exhibit C a copy of an article which appeared in the St. Paul Pioneer Press Dispatch on December 25, 1988. The article states that an ad hoc group called the Joint Media Committee was formed in 1973. It consisted of Peter Popovich, now the Chief Justice, and a number of other individuals as representatives of the corporations and organizations who constitute the petitioners. Messrs Finnegan, Shaw, Adams and Gillmor are also present and/or former members of the Bar, Bench and Media Committee of the State Bar Association and support the petition before the Supreme Court.

Canon 1 of the Code states that "a judge should participate in establishing, maintaining, and enforcing, and should individually observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective."

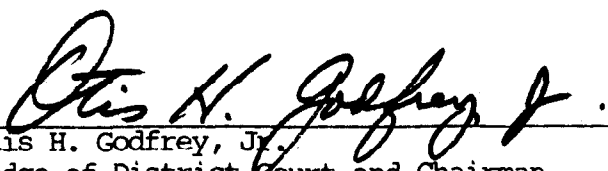
The administration of justice requires adherence by the judiciary of the highest ideals of personal and official conduct. See In Re Winton, 350 NW2d 337, 340 (1984). The age-old rule, so fundamental to the proper administration of justice, is that justice must not only be done, but it also must be perceived to be done. See In Re McDonough, 296 NW2d 648, 697 (1979). The emphasis of an ethical code is on its spirit rather than on its letter.

The Canons of Judicial Conduct are, of course, standards for the actions of all members of the judiciary. They require a judge to recuse himself and step aside in any matter where there is an actual or apparent conflict of interest. We would submit that a petition brought by former long term clients of a judge does indeed present such a conflict under Canon 3C(1) of the Code of Judicial Conduct.

We would accordingly move and request that Chief Justice Peter S. Popovich not participate in the matter pending before the Court upon the petition of the Joint Media Committee.

Respectfully submitted,

MINNESOTA DISTRICT JUDGES ASSOCIATION

BY 
Otis H. Godfrey, Jr.
Judge of District Court and Chairman
of the Committee on Cameras in the Courtroom

DATED: March 23, 1989

AFFIDAVIT

STATE OF MINNESOTA)
) S.S.
COUNTY OF RAMSEY)

Mary Ann McCoy, being first duly sworn, states that she is the Executive Director of the Ethical Practices Board of the State of Minnesota.

Affiant further states that the Ethical Practices Board has in its files a listing of all lobbyists who have been required to file, pursuant to the provisions of Minnesota law. Affiant states that the records reflect that Peter Popovich was a registered lobbyist as of February 14, 1975 for Northwest Publication, Inc., and that his registration as a lobbyist for that corporation was terminated in 1976. The records further reflect that Peter Popovich registered on February 11, 1975 as a lobbyist for the Minnesota Broadcasters Association, and that said registration continued until it was terminated in 1983.

Further Affiant sayeth not.

Mary Ann McCoy
Mary Ann McCoy

Subscribed and sworn to before
me this 20th day of March, 1998.

Robert A. Erdmann
Notary Public

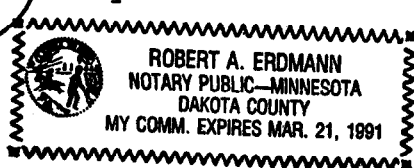


Exhibit A

Popovich, Peter
2-14-75

M-0204-LOIA
5-16-31

0669

T
1976

314 Minn. Building, St. Paul 55101, 222-5515

Northwest Publication, Inc.

legislation affecting newspapers

Popovich, Peter
2-11-75

M-0203-LOGL 0478

5-16-30

T
1983

314 Minnesota Bldg., St. Paul, Minn. 55101
222-5515

Minn. Broadcasters Assn.

broadcasting and legislation affecting
the industry

Let 86-210
Box 6

Exhibit B

paper, public's right to know sturdier in Finnegan's wake

John Finnegan's 37-year career with the Pioneer Press Dispatch, including 17 years as managing editor, is a testament to his associates here can attest to his record here and achievement as he prepares to retire as senior vice president and assistant managing editor to George Hage, journalism professor at the University of Minnesota. Hage, who retired in 1980, was named the Distinguished Journalism Award of the Society of Professional Journalists, Sigma Delta Chi.

— The Editor

The state Supreme Court calls him "the one of the courts."

A Minnesota professor who is an ethics and law calls him "Mr. First Amendment," that's his reputation nationally.

Manager of the Minnesota Newspaper Association calls him "the one indispensable man" in the state for the public's right to know news.

He says, "Essentially, he's a teacher."

Finnegan, senior vice president and assistant managing editor of the Pioneer Press Dispatch, will retire after 37 years with the paper, first as managing editor, then as executive editor, and finally as managing editor.

He worked with him in his office at the Pioneer Press Dispatch, and he was a part of the team that helped the paper to fit Band-aids to fingertips and carpentering on a doll house for the paper's children and Kelly Deeney.

He values his enormous contribution to the paper, but also to the larger community.

GEORGE HAGE

George Hage, senior vice president and assistant managing editor of the Pioneer Press Dispatch, says, "I need not worry that I'm going to the sidelines at age 64. The red pen is still sharp and punny, and the paper is still avid."

now?

number of reasons, and Finnegan's marshals them succinctly in this oration. "I have an excellent staff, the paper is in reasonably good health. I have a number of people to work on, and Knight-Ridder's retirement program for senior executives is a good one."

He says, "I had a bout with prostate a year ago, but after my last checkup, I'm very positive."

He was elected president of the First Amendment Press, a national umbrella organization for media associations, in which he represents the American Society of News Editors. The mission of the organization is to promote the understanding of their First Amendment rights — "all their rights," Finnegan says.

He is currently developing an education program for the First Amendment that will be available at all school grades. A three-year fund-raising campaign will be necessary to finance the program.

He has a number of First Amendment issues that are continuing study and reassessment: privacy, what is pornography, limits on speech — how much freedom of expression and how specific product labeling.

He was sponsored by the congress recommendation in the wording of the First Amendment that Finnegan found

most frightening is the attitude we have in surveys, the attitude that 'I have these freedoms, but not you, not you, not you's a tremendous lack of tolerance in the First Amendment.'

He asks the question whether the public thinks the First Amendment is all, but Finnegan is not John Jr., who holds a doctorate in



Jerry Gay/Staff Photographer

Finnegan in newsroom of paper he's leaving after 37 years.

It was with this purpose that the elder Finnegan brought together an ad hoc group that called itself the Joint Media Committee back in 1973. It consisted of Peter Popovich, now a state Supreme Court justice but then a lawyer lobbying for the broadcasting industry; Robert M. Shaw, then manager of the Minnesota Newspaper Association; Rodgers Adams, chairman of the First Amendment Rights Committee of the Star Tribune; and Professor Donald M. Gillmor of the School of Journalism and Mass Communication at the University of Minnesota.

"We used to meet in Jack's living room," Popovich recalls. "I wrote the new Open Meeting Law with Jack looking over my shoulder. It was Jack who proposed the section on penalties for violation of the law. If a public official violates it once, the penalty is \$100. But for three violations, the offender forfeits the right to serve on a public body for the period of the term of his or her office."

"There have been some prosecutions for a second violation, but none for a third."

Popovich admires Finnegan's writing style ("very succinct, very clear") and his personal manner ("never offensive.") "When he used to testify at the Legislature in support of open meetings or open records or the shield law, some of the legislators could get pretty rough in examining him. Maybe they were sore about something the newspapers had said about them. But Jack never, ever lost his cool."

Popovich thinks Finnegan has been a great spokesman for the media "as one segment of the public." Popovich continues, "He has shown great insights. I call him the conscience of the courts, causing judges to think about the implications of an issue. No doubt about it, he has had a very salutary effect on the courts."

For Shaw, Finnegan was "a different kind of editor who cared personally about openness and was willing to spend his own time to head off efforts to shut out the public. Jack was always there. He had a consistent value: Meetings and records must be open so the public can know how business is conducted."

Shaw attributes the Minnesota Newspaper Association's continuing legal battles for access to information to Finnegan's presence on the MNA board of directors. "He pushes the issue."

And from the academy, Gillmor, now director of

the University's Silha Center for the Study of Media Law and Ethics, notes that Finnegan has chaired the Freedom of Information Committees of the Associated Press Managing Editors and American Society of Newspaper Editors more often than any other editor. "He really deserves the title of Mr. First Amendment," Gillmor says.

While Finnegan was fighting First Amendment battles, the paper he helped run was gaining muscle, largely through the merger of the Knight and Ridder groups. In recent years, the Pioneer Press Dispatch has won two Pulitzer Prizes for in-depth reporting: John Camp's "Life on the Land" in 1986 and Jackie Banaszynski's "AIDS in the Heartland" in 1988.

Finnegan is proud of the awards, but more proud of the building of news staff strength that made winning the awards possible. In the Knight-Ridder system, managers plan by objective, and Finnegan's five-year plan, articulated in 1980, was to expand the news staff so that it would have the capacity for a Pulitzer winner by 1985.

"I missed it by one year," he says of the first Pulitzer. "The second one proved the first was no fluke. It demonstrated our depth of staff, that we had the people to cover the day-to-day news while freeing up a writer-photographer team for the extended reporting necessary to make a strong impact."

A news staff with such capabilities is not built overnight on a shoestring, and Finnegan had to fight for the essential budgeting. Tom Carlin, publisher emeritus of the St. Paul papers, whose relationship with Finnegan goes back many years, gives Finnegan high marks as a team player.

"When Jack moved into top management, he had a new role, had to make hard personnel decisions, hard budget decisions. Jack was always an effective advocate for the news side."

"An editor has a tough line to walk. He wants to improve the quality of the news operation, but he has to recognize the needs of the business side. There used to be a sort of parochialism among the departments of the paper — circulation, advertising, promotion, news. We needed to knock down the walls and look at the whole. Jack responded beautifully to that need, while still being an articulate advocate for the news operation."

Veteran journalist shares insights

On the reporting of private lives of public officials and candidates:

"I think the growing tendency to dig more deeply is a good thing if the private aspects bear on the official conduct; for example, the official's judgment. A danger is that the hard instinct takes over, and disclosures go too far in sensationalizing."

competition when a story may be overplayed for impact."

On charges that newspapers are arrogant:

"It's hard to avoid the appearance of arrogance, at least, when the newspaper must make hundreds of value judgments every day. You're putting yourself in the position of a god. But

Carlin likes to remember, as well, the imp in Finnegan. It's never far from the surface.

He recalls the day in December 1980 when they broke ground for the new printing plant across the river.

"This was an investment of \$50 million by corporate Knight-Ridder, and corporate Knight-Ridder was very concerned that the site we had chosen had enough elevation so we wouldn't get flooded out. We made a number of careful studies, brought in the Corps of Engineers, and finally got the corporate go-ahead."

"Well, on the big day, all the brass and the invited dignitaries were gathered at the site, and I was all ready to turn the first shovel, when Jack came up to me real quiet, pulled me aside and said, 'Tom, maybe you shouldn't go ahead. Look what I just found,' and he opened his hand on a clamshell. I nearly died."

More often the Finnegan imp is evidenced in outrageous puns — groaners, the family call them, and the innumerable examples are perhaps best forgotten. Ozzie St. George, a copy editor at the paper whose friendship with Finnegan goes back to their first jobs on the Rochester Post-Bulletin, says, "I always try to put 'em out of my mind."

But St. George will never forget Finnegan's first car, a used Studebaker, and Jack's pride on the winter mornings when it would start — until the morning the steering wheel shattered in his hands. One of Jack's boasts, according to St. George's wife Mimi, is that he has paid cash for every car he has ever owned.

St. George also remembers that Jack, as a new reporter in St. Paul, first impressed his editors when he covered by phone a fire at the Chase Hotel in Walker, Minn. "They couldn't believe the amount of detail Jack worked into his story. They didn't know until later that the hotel had been owned by Jack's grandfather and then by his father, and that Jack had practically grown up in it."

St. George also recalls that Finnegan got his start in Newspaper Guild activity in Rochester ("a very slim unit") that eventually led to his becoming president of the Newspaper Guild of the Twin Cities at the time of a strike against the Pioneer Press and Dispatch in 1957. "He was a very take-charge kind of guy, an ideal trade union leader," says John Carmichael, at that time executive secretary of the Guild.

Finnegan himself says of those days: "One of the things I fought for then, as now, gives equal pay for women for the same work."

The Chase Hotel episode suggests the depths of Finnegan's roots in the state, and the Walker home town perhaps explains his enthusiasm for outdoor activity. He's an ardent (but high handicap) golfer and an even more ardent fisherman.

"There's not a state park in the state that he hasn't taken the family camping in," John Jr. attests, "and he's good at it."

But Finnegan's wife Norma remembers that after a couple of boating mishaps, family speculation ran high as to what lake Finnegan Sr. would fall into next.

Several Finnegan offspring and spouses share with their parents the possession and use of a bass boat. "It's sort of a consortium," Norma explains. "There was a time when John and I worried about a son and a son-in-law who were riding motorcycles. We thought it would be healthier for them to share ownership of a boat."

Given the demands of Finnegan's "free time" (he has given countless speeches; chaired the parish council of St. Luke's Catholic Church; chaired the Metropolitan Planning Commission, which preceded the Metro Council; served as the first lay member of the State Board of Professional Responsibility, which enforces lawyers' ethics code; and many, many more), one might expect his sons and daughters (three of each) to feel some resentment at the time taken from family. But John Jr. will have none of it.

"I think we understood the high value both Mother and Dad put on education, and these jobs were all part of his role as teacher," the younger Finnegan said.

And he's won lots and lots of awards. Forgive my prejudice if I mention just one: the Outstanding Achievement Award of the University of Minnesota in 1974. (He earned the B.A. in journalism, magna cum laude, in 1948, and a master's degree in 1965).

"He's a man of fine principles and the will to stand by his beliefs," says Bernard H. Ridder Jr., chairman

STATE OF MINNESOTA

IN SUPREME COURT

C7-81-300

In Re Modification of Canon 3A(7) of
the Minnesota Code of Judicial Conduct.

OFFICE OF
APPELLATE COURTS

MAR 30 1989

FILED

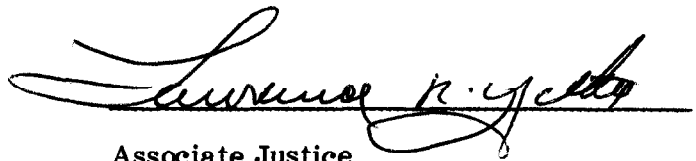
ORDER

WHEREAS, a motion was filed on behalf of the Committee on Cameras in the Courtroom, Minnesota District Judges Association, requesting this court as a whole to remove Chief Justice Peter S. Popovich from participation in connection with a pending petition for modification of Canon 3A(7), Minnesota Code of Judicial Conduct,

IT IS HEREBY ORDERED that the court declines to rule on the motion to remove one of its members from participation in a pending proceeding and refers it to Chief Justice Popovich for his individual decision.

Dated: *March 30, 1989*

BY THE COURT:



Associate Justice

MEMORANDUM

It has long been the practice of this court to honor decisions of its individual members as to whether to participate in a pending proceeding. See State ex rel. Wild v. Otis, 257 N.W.2d 361 (Minn. 1977) cert. denied 434 U.S. 1003 (1978) (holding that the question of recusal of a Supreme Court Justice is to be left to the individual justice).

Accordingly, we have declined to rule on this motion and instead we refer the matter to Chief Justice Popovich individually for decision.

POPOVICH, C.J., took no part.