



May 18, 2018

The Honorable Jennifer R. Dorow  
Chief Judge of the Third Judicial Administrative District  
Waukesha County Courthouse  
515 W Moreland Blvd  
Waukesha WI 53188-2428  
[jennifer.dorow@wicourts.gov](mailto:jennifer.dorow@wicourts.gov)

*Re: Potential Conflict of Interest*

Dear Judge Dorow:

My office represents Ozaukee County Judge Joseph W. Voiland, a witness relative to the attached Investigative Charge which you oversee.

As Chief Judge the District Court Administrator assists you in “carrying out [the Chief Judge’s] duties and responsibilities.” Supreme Court Rules § 70.16(4). Published reports, citing documents obtained as open records, indicate that your Administrator authored the attached letter on behalf of the subjects of the investigation, denying the claims at issue in these proceedings. That letter labels material information as “false” and falsely states that the Department of Justice “concluded that there was no basis” to the claims at issue. At a minimum, with respect to the level of coordination between your Administrator and the subjects of the investigation, you appear to be a witness who may have relevant information relating to that letter and how it came to be.

As that letter appears to indicate that your office judged these matters prior to the start of the investigation—and failed to disclose that judgment at the outset—we ask that you determine, and set forth in writing, whether you will recuse yourself pursuant to the Wisconsin Supreme Court Rules, Section 60.04(4).

Thank you for your consideration.

Regards,

A handwritten signature in black ink, appearing to read 'Brent Nistler', written in a cursive style.

Brent Nistler

CC: Director of State Courts

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**Charge:** Under the direction of Third Judicial District Chief Judge Jennifer Dorow, to investigate claims by Judge Joseph Voiland concerning Ozaukee County officials, including the following (Allegations are in summary form. Please consult with Judge Voiland for specifics and supporting documentation):

- 1) COC/RIP allegedly improperly altered and/or deleted circuit court records to include minutes, dates, presiding court officials, court orders, case assignments including one JD case; (If these actions occurred in the past, determine whether they are continuing?);
- 2) COC/RIP improperly acting in PR cases by converting between formal and informal without the required approval of the assigned judge, apparently in an effort to grant continuances to attorneys in those cases;
- 3) COC and County Treasurer failed to maintain a designated account for fees as required by sec. 814.615, Wis. Stats.;
- 4) Failure by the Ozaukee County judges to appoint a director of family court services as required by sec. 767.405(1m)(a), Wis. Stats.;
- 5) Presiding Judge Paul Malloy directing Court Commissioner Barry Boline to disregard a court order issued by Judge Joseph Voiland for a custody study or mediation in a family case;
- 6) Other, similar or related allegations as may be brought to your attention by any of the Ozaukee County judges or Chief Judge Jennifer Dorow.

Pertinent SCR and Statutes:

**SCR 70.32 Chief judge; clerk of courts.** The chief judge may direct the activities of all clerk of court offices within the district and may recommend or direct changes in the operation of any clerk's office.

**814.615 Fees for mediation and studies.**

**(1)**

**(a)** Except as provided under sub. (2), for family court services provided under s. 767.405 a county shall collect the following fees:

1. For the first mediation session conducted upon referral under s. 767.405 (5), no fee.
2. For all mediation provided after the first session mediation described under subd. 1., a single fee of \$200, regardless of the number of mediation sessions held.
3. For a study under s. 767.405 (14), a fee of \$300.

**(b)** The county shall determine when and how to collect the fees under par. (a). Subject to sub. (3), the county shall reduce the fees in accordance with the parties' ability to pay or provide the services without payment of the fees if both parties are unable to pay.

**(2)** In lieu of the fee under sub. (1) (a) 2. or 3., a county may establish a fee schedule to recover its reasonable costs of providing family court services under s. 767.405. A fee schedule established under this subsection may apply in lieu of the fee under sub. (1) (a) 2. or 3. or both, and shall require no fee for the first mediation session conducted upon referral under s. 767.405 (5); provide for payment for any other services based on the parties' ability to pay; and take into account the fees the county collects under s. 814.61 (1) (b) and (7) (b). Fees shall be based on services actually provided. The county may not collect a single fee applicable without regard to the number of sessions or services provided. Subject to sub. (3), the county shall provide family court services to the parties even if both parties are unable to pay.

**(3)** The court or a circuit court commissioner shall direct either or both parties to pay any applicable fee under this section. If either or both parties are unable to pay, the court shall grant a separate judgment for the amount of the fees in favor of the county and against the party or parties responsible for the fees.

**(4)** The county treasurer shall deposit fees collected under this section in a separate account for the exclusive purpose of providing mediation services and studies under s. 767.405.

**767.405 Family court services.**

**(1) Definitions.** In this section:

**(a)** "Mediation" means a cooperative process involving the parties and a mediator, the purpose of which is to help the parties, by applying communication and dispute resolution skills, define and resolve their own disagreements, with the best interest of the child as the paramount consideration.

**(b)** "Mediator" means a person with special skills and training in dispute resolution.

**(1m) Director.**

**(a)** Except as provided in par. (b) and subject to approval by the chief judge of the judicial administrative district, the circuit judge or judges in each county shall designate a person meeting the qualifications under sub. (4) as the director of family court services in that county.

**(b)** If 2 or more contiguous counties enter into a cooperative agreement under sub. (3) (b), the circuit judges for the counties involved shall, subject to approval by the chief judge of the judicial administrative district, designate a person meeting the qualifications under sub. (4) as the director of family court services for those counties.

**(c)** A county or counties may designate the supervisor of the office of family court commissioner as the director under par. (a) or (b).

**(2) Duties.** A director of family court services designated under sub. (1m) shall administer a family court services office if such an office is established under sub. (3) (a) or (b). Regardless of whether the office is established, the director shall:

**(a)** Employ staff to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14), arrange and monitor staff training, and assign and monitor staff case load.

**(b)** Contract under sub. (3) (c) with a person or public or private entity to perform mediation and to perform any legal custody and physical placement study services authorized under sub. (14).

**(c)** Supervise and perform mediation and any legal custody and physical placement study services authorized under sub. (14), and evaluate the quality of the mediation or study services.

**(d)** Administer and manage funding for family court services.

Mr. Litke,

The DOJ investigation never should have been initiated. They concluded that there was no basis to the claim and dropped the investigation. Unfortunately, this frivolous exercise involving valuable resources never should have occurred.

Ozaukee County has always enjoyed top of the line judges that have served the citizens well. As an elected official myself, I have enjoyed working with them as a team and when an issue, perceived or otherwise occurred we did what any healthy top performing organization does, we discuss it as a group to identify the issue or question the practice and make adjustments if warranted.

This has been the practice of Presiding Judge Malloy, Judge Williams and their predecessors. Judge Voiland, rather than pursuing this course of action on a court practice that has been in effect prior to my tenure here thinks that a secret, John Doe like, investigation had to be started.

In my opinion, this investigation was an unnecessary witch hunt that found nothing but left in its wake a real sense of harassment stemming from Judge Voiland.

The claims you wish for me to answer are either false, twisted in their presentation or context, or merely are office issues that normally are not aired out to the media. As a reporter you should question yourself when all of sudden you are provided something like this as there clearly is a reason and clearly they had nothing to do with the original frivolous complaint.

Why would someone give you a DOJ investigation report that resulted in no credible evidence of wrong doing but yet is full of additional minor complaints that have nothing to do with the original investigation. As information, I have never been formally notified by the DOJ of their decision to not pursue any further action and to drop the investigation. They apparently did not think enough of this to even let me know they no longer are going to pursue it.

None-the-less, I am answering your questions as I believe it is important that allegations like this unanswered would give the wrong impression as to the truth, no matter how boring the truth is:

- Refusing to file orders in a timely manner: **The CoC office does not have a policy of refusing to file lawful orders or to do so timely. If a lawful order was not filed timely I would investigate and address the issue why.**
- Refusing to answer questions, sometimes for months: **This is an open ended claim and has not context to it. I have put in extra effort to address questions or issues from Judge Voland and about Judge Voiland. He is not very physically available at work.**

- Opening his mail, even mail marked confidential: **Judges should not be receiving personal mail at work. It is possible that staff opened what he might perceive as confidential but to staff all mail is handled the same. If something was so personal that staff should not be handling it, he should have it mailed to his home. Again, there is no context to your question so I would say that if true it was because staff opened the mail as if it was any other piece of mail. That is what staff does in order to process the work product efficiently and effectively.**
- Using his personal divorce as an example case in staff training: **This was done. It was not directed by me to do so. It was a lapse in judgement by staff and was addressed immediately.**
- Adjourning court dates the judge had not ordered adjourned: **Again this claim is out of context. The clerk's we have are hard working, good people with experience. If they adjourned a matter contrary to the Judges wishes, it was either an honest mistake done without malice or the Judge was not available to provide additional guidance to the clerk.**
- Creating a "dummy" John Doe case to (he believed) skip his turn in the John Doe assignment rotation: **False. Flat out false conspiratorial claim.**
- Putting a copy of the appeals ruling overturning him in his mailbox: **All judges have copies of appeal decisions in their mailbox. If he is cc'd by the court of Appeals on a matter he will receive a copy.**
- Delaying passing along invitations until it was too late or almost so: **False. Staff process mail as fast as we get it to all the judges equally. There is no reason nor incentive for staff to engage in this practice. If the judge did not receive something timely it was either because it did not come in timely or he was not at work to receive it.**

The investigation also found your office conducted business in ways that at least weren't consistent with best practices elsewhere:

- Changing probate cases from formal to informal on your own, typically granting extensions as part of that without judicial involvement. **Across the District and the State my office, my practice, my staff and my skills are viewed as a leaders, mentors and are held in high regard.**
- Routinely backdating judicial transfers (and sometimes orders), sometimes by many months: Again, context is not provided. Does staff make mistakes from time to time. **Yes. However, any issues in this regard were done without malice and have been corrected internally.**
- Appointing deputy registers in probate without judicial approval: **All judges were aware of the appointed deputy RIPs. When an order was not found on file Presiding Judge Malloy followed up to rectify the situation.**

It is good for individuals to question government officials actions. I do encourage that as it helps us become more effective. However, there is a healthy way to do that and a cancerous one. I am fortunate that Presiding Judge Malloy and Judge Williams chose to work in an open, available and collegial atmosphere so we can address the serious matters in front of the court to best serve the citizens of Ozaukee County. I hope that Judge Voiland will join in this approach.