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July 23, 2013

Detective Dan Douglas
Anoka County Sheriff's Office - CID
13301 Hanson Blvd NW
Andover, MN 55304

**RE: CONFLICT CASE INVOLVING
MILLE LACS COUNTY ATTORNEY JANICE JUDE**

Dear Detective Douglas:

At the request of the Mille Lacs County Attorney's Office and the Anoka County Sheriff's Office, based upon a perceived or potential conflict of interest, I have reviewed numerous documents forwarded to this office for possible criminal prosecution against Mille Lacs County Attorney Janice Jude. Based upon my review of these materials, I conclude that there is insufficient evidence or probable cause that would warrant criminal charges.

Facts

My review of this case follows investigations conducted by the Milaca Police Department; the Mille Lacs County Sheriff's Office; and the Anoka County Sheriff's Office, relative to allegations that on May 26, 2013, Mille Lacs County Attorney Janice Jude hosted a party at her residence where underage alcohol consumption occurred. The focus of my review was to determine whether any criminal charges were warranted against Mille Lacs County Attorney Janice Jude relative to this incident.

Investigation of this matter was initiated by the Milaca Police Department and the Mille Lacs County Sheriff's Office on the morning of May 27, 2013. The ongoing investigation was then referred to the Anoka County Sheriff's Office on or about May 31, 2013, which then continued through the end of June, 2013. My review of this case has included the following items: Milaca Police Department case file number: 13001063; Mille Lacs County Sheriff's Office case file number: 13004942; and Anoka County Sheriff's Office case file number: 13-134065, which included investigative reports of Detective Dan Douglas and 19 witness statements, including those of Russ and Janice Jude.

Potential Charges

In my review of the case materials in this matter, along with review and consideration of other possible local and/or state violations, I have identified the following possible offenses for consideration: *providing alcoholic beverages to a person under 21 years of age*, in violation of Minn. Stat. § 340A.503, Subd. 2(1); and *Misconduct of a Public Officer or Employee*, in violation of Minn. Stat. § 609.43 (1).

Before beginning an analysis of the evidence and various reports for possible criminal prosecution, it is important to understand the limits of criminal prosecution. Criminal prosecution must be considered in the context of several legal, practical, and ethical concepts. First, criminal statutes are to be construed narrowly, State v. Hass, 159 N.W.2d 118, 121 (Minn. 1968). Second, in misdemeanor and gross misdemeanor cases, a prosecutor must be able to persuade six people of guilt beyond a reasonable doubt. While cases may technically be charged on probable cause, it would be irresponsible to bring a charge without a belief that a conviction could be obtained. Third, both the American Bar Association and the National District Attorneys Association have promulgated prosecution standards that address the issue of charging a person

with a crime. These standards, ABA Standards for Criminal Justice, 3-3 (3rd ed. 1993) and the NDA National Prosecution Standards, 4-2 (3d ed. 2009), discuss the considerations a prosecutor should have in mind when determining whether to charge an individual with a crime. The prosecutor's primary objective identified by both organizations' standards, and by the Minnesota Rules of Professional Conduct, is to do justice.

It is also important to understand that the lack of a criminal charge does not mean that the conduct in question is appropriate. For instance, most of the conduct in society that is in violation of statutory or common law is resolved between parties or in the civil courts. These issues, such as personal injury, contract violations, landlord tenant matters, mortgage foreclosures, sexual harassment, employment discrimination and workplace issues and human rights violations are right or wrong issues that are typically resolved or litigated in a civil context. Therefore, when we determine that a matter is not appropriate for criminal prosecution, we are not stating that it was proper conduct. We are merely stating that, *from a purely criminal prospective*, there may be legal, practical or ethical concepts for which pursuing criminal charges in a case are inappropriate.

As stated above, based upon my review of the investigation in this matter, I do not find probable cause or sufficient evidence to warrant criminal charges on the above offenses. A detailed discussion of my findings with respect to the above possible charges follows.

Providing Alcoholic Beverages to A Person Under 21 Years of Age

In order to obtain a conviction for providing alcoholic beverages to a person under 21 years of age, under Minn. Stat. § 340A.503, Subd. 2(1), the State must prove beyond a reasonable doubt that a defendant sold, gave, bartered or furnished an alcoholic beverage to a person under the age of 21 years. CRIMJIG 27.04. However, there is insufficient evidence in this case to prove this offense beyond a reasonable doubt.

Of the 16 individuals that attended the party and from whom statements were obtained, none of them indicated that any alcohol was provided by Ms. Jude. Rather, in a majority of the statements, the individuals stated that those drinking at the party had brought their own alcohol with them, or received alcohol from others who had brought alcohol with them. Likewise, there is no evidence that any of the alcohol at the party came from Ms. Jude's house or garage, either with or without her knowledge, and at least six individuals affirmatively stated that no alcohol came from either of these two sources. In statements provided by both Russ Jude and Ms. Jude, both deny providing any alcohol to minors, both confirmed the instructions to Ms. Jude's daughter that there was to be no underage drinking, and both deny having any knowledge of seeing underage drinking occurring at the party. In her statement, Ms. Jude's daughter confirmed she was instructed there was to be no underage drinking, neither Russ nor Ms. Jude provided any alcohol to minors, and neither Russ nor Ms. Jude was aware of the underage drinking. Without solid evidence linking Ms. Jude to the providing of alcohol to a minor, the State will not be able to prove this charge beyond a reasonable doubt.

Similarly, questions related to Russ Jude's or Ms. Jude's knowledge of underage consumption that night were also asked of those interviewed. From a criminal standpoint, however, the answer is essentially irrelevant. This is based upon my review of the Mille Lacs County Code and the lack of any Social Host Ordinance that would allow for criminal charges to be brought based upon knowledge of minor consumption on one's property. Likewise, I found nothing in the Minnesota Statutes whereby mere knowledge of underage consumption on one's property would equate to a criminal offense. Even if there had been such an ordinance or statute, I further find the facts insufficient to prove beyond a reasonable doubt as to whether Russ or Janice Jude possessed such knowledge.

According to the statements reviewed, the location where the minors were consuming alcohol was located some distance from the house and garage. This location was further screened, to some extent, by the layout of the land. None of those interviewed indicated that it would be possible to see whether or not there was anyone consuming alcohol if they were looking from the house or garage location. Furthermore, there is no indication that either Russ or Janice Jude went down to the location where the party was occurring, but there are several statements affirming that neither of them actually did. None of those interviewed indicated that either Russ or Janice Jude ever saw anyone drinking.

In some of the interviews, there were statements suggesting that Janice Jude had established a rule that night that if kids were drinking, they were not to be driving and would have to stay overnight. Even if true, this would only show that Ms. Jude at least considered the possibility that there may be underage consumption. However, simply the mere possibility that underage consumption *may* occur does not, in and of itself, establish that Ms. Jude knew of the consumption. Furthermore, the statements in the interviews referencing this topic are less than clear as to whether Ms. Jude herself made this rule, or whether this came from Ms. Jude's daughter. According to Ms. Jude's daughter, she made this rule "[c]ause they were [her] close friends and [she] didn't want them to get hurt." She further stated that Ms. Jude did not say this because she didn't even know they were drinking. Most of those interviewed stated that they had just heard this rule by word of mouth from others at the party. I was unable to locate, in any of the interviews, any statements suggesting that this rule was spoken by Ms. Jude to any of the party goers. Given all of the foregoing, and even if there existed an offense for which knowledge of minor consumption may be criminally charged, the evidence is simply insufficient to prove beyond a reasonable doubt that either Russ or Janice Jude possessed such knowledge.

Misconduct of a Public Officer or Employee

In order to obtain a conviction for Misconduct of a Public Officer or Employee, under Minn. Stat. § 609.43, subparagraph (1), the State must prove beyond a reasonable doubt that Ms. Jude intentionally failed or refused to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law. Minnesota Statute § 388.051 sets forth the statutory duties of a county attorney. Arguably, in applying Minn. Stat. § 388.051 to the facts of this case, perhaps the only enumerated duty Ms. Jude would be obligated to perform would be the pursuit of criminal charges against those minors who had consumed alcohol on the night in question. However, given the facts and circumstances of this case, it does not appear that the state could prove beyond a reasonable doubt that Ms. Jude intentionally failed or refused to perform this duty.

It has already been established that there is a potential conflict of interest surrounding Ms. Jude in her role as county attorney and in relation to the events alleged to have occurred on May 26th. Thus the transfer of the investigation to the Anoka County Sheriff's Office and the review of this case by my office. Even absent this investigation into any alleged wrongdoing by Ms. Jude, in my opinion, there remains a potential conflict of interest that would arise in the event Ms. Jude was to pursue criminal charges against those minors who had consumed alcohol on her property. It is conceivable that, since the underage consumption occurred on her property, she could very well be called as a witness should any of those cases go to trial. I believe that this conflict would be a defense to any allegation that her failure or refusal to pursue such charges was intentional. As a result, the state would not be able to meet its burden of proving that Ms. Jude violated Minn. Stat. § 609.43, subparagraph (1).

Conclusion

The available evidence in this case does not support a finding of criminal wrongdoing on the part of Mille Lacs County Attorney Janice Jude beyond a reasonable doubt. Accordingly, a criminal complaint against Mille Lacs County Attorney Janice Jude will not issue. The review of this matter by this office is concluded.

Sincerely,



Scott Q. Baumgartner
Andover City Prosecutor and as
Appointed Special Assistant Mille Lacs
County Attorney

cc: County Attorney Janice Jude,
Mille Lacs County Attorney's Office

Chief Todd Quaintance,
Milaca Police Department

Captain Jason Lasart,
Mille Lacs County Sheriff's Office