

IN THE MATTER OF COMPLAINT  
AGAINST THE JUNEAU COUNTY  
DISTRICT ATTORNEY'S OFFICE  
and JUNEAU COUNTY CIRCUIT  
COURT JUDGE STACY SMITH,

Case No. 20-296

Respondent.

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### **FINAL DECISION**

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1. The Crime Victims Rights Board (the "Board") finds that complainant A.A.<sup>1</sup> has shown by clear and convincing evidence that the respondent Juneau County District Attorney's Office (the "DA's Office"), violated A.A.'s rights as a crime victim. *See* Wis. Stat. § 950.04(1v).

### **BOARD PROCEDURE**

2. A.A. filed a complaint with the Board on March 11, 2021.
3. Upon receipt of the complaint, the Board contacted the Department of Justice (DOJ) Office of Crime Victim Services, which verified that the substance of the complaint had been presented to DOJ and that DOJ had completed the informal complaint process as to the issues raised in the complaint. *See* Wis. Admin. Code CVRB § 1.05(1), (4).

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<sup>1</sup> This decision uses the victim's initials to protect her privacy.

4. The Board gave a copy of the complaint to the DA's Office and invited it to answer the complaint. *See Wis. Admin. Code CVRB § 1.05(5)*. On April 9, 2021, the DA's Office filed a letter response.

5. At a meeting on May 24, 2021, the Board found probable cause and directed the Board's operations director to seek additional information about the material issues of fact identified by the Board. *See Wis. Admin. Code CVRB § 1.05(6)*.

6. The Board notified the parties and DOJ of its conclusions by issuing a written probable cause determination on July 15, 2021. *See Wis. Admin. Code CVRB § 1.05(8)*.

7. The Board has no authority to review or discipline judges and, therefore, takes no action with respect to the complaint against Juneau County Circuit Court Judge Stacy Smith. *See Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, ¶ 60, 376 Wis. 2d 147, 897 N.W.2d 384. The Board, however, has referred the alleged violation against Judge Smith to the judicial commission as permitted by Wis. Stat. § 950.09(2)(b).

#### **PROBABLE CAUSE DETERMINATION**

8. The Board found probable cause that the DA's Office violated A.A.'s rights:

- a. to be treated with fairness and dignity pursuant to Wis. Stat. § 950.04(1v)(ag);

b. to be provided with reasonable notice of court proceedings and to attend those proceedings pursuant to Wis. Stat. § 950.04(1v)(b), (g);

c. to consult with the district attorney in a timely manner pursuant to Wis. Const. art. I, § 9m(2)(h) and Wis. Stat. § 950.04(1v); and

d. to have an opportunity to provide a victim impact statement or other information to the court prior to the plea and sentencing pursuant to Wis. Stat. § 950.04(1v)(m), (pm).

### **INVESTIGATION SUMMARY**

9. The Board's operations director conducted an investigation to seek additional information about the material issues of fact identified by the Board.

10. During the investigation, the Board's operations director obtained the case log from the DA's Office and interviewed District Attorney Kenneth Hamm ("DA Hamm") and Victim/Witness Coordinator Michelle Mehne. DA Hamm did not have any recollection or notes about the case, beyond what was included in the response. Mehne recalled that although A.A. did not return the victim packet, A.A. told Mehne during a telephone call that she wanted notice of all court hearings and an opportunity to provide a victim impact statement and to confer with the district attorney about the possible outcomes of the case. Mehne recalled that during A.A.'s meeting with DA Hamm,

A.A. expressed her desire to be kept informed of developments in the case. Mehne also explained that case files include a “pink file” containing any correspondence from and notices to victims. Mehne said that the pink file in this case included multiple hearing notices, which would have been an indication that A.A. wanted to be notified of court hearings, and the fact that the pink file did not include the November 2, 2020, hearing notice would have been an indication that A.A. had not received notice of the November 2, 2020, hearing.

### **FINDINGS OF FACT**

11. The Board’s evidentiary standard for resolving disputed factual questions is the “[c]lear and convincing evidence” standard. “Clear and convincing evidence’ means evidence which satisfies and convinces the Board, because of its greater weight, that a violation occurred.” Wis. Admin. Code CVRB § 1.07(7).

12. The burden of proof is on the complainant. This burden of proof is very important and can be the deciding factor in the Board’s resolution of factual disputes. Where the evidence presented by the parties on a particular factual question is equally believable or plausible, the effect of the burden of proof is that the Board must find that the complainant failed to prove the point by clear and convincing evidence.

13. The Board finds no dispute of material fact.

14. A.A. was the victim of a sexual assault in Juneau County Case No. 19-CM-0240. This fact is undisputed.

15. The case was assigned to Victim/Witness Coordinator Mehne. This fact is undisputed.

16. Mehne mailed a victim packet to A.A. but received no written response or victim impact statement from A.A. This fact is undisputed.

17. Mehne had a telephone conversation with A.A., during which A.A. verbally requested notice of all court hearings and an opportunity to provide a victim impact statement and to confer with the district attorney about the possible outcomes of the case. This fact is undisputed.

18. The case proceeded and trial was scheduled for November 2–3, 2020. A.A. was subpoenaed to appear at trial so DA Hamm asked Mehne to schedule a meeting with A.A. to discuss the subpoena and trial process. This fact is undisputed.

19. DA Hamm had a telephone meeting with A.A. on September 14, 2020. The meeting focused on trial preparation, but there was some discussion about the possibility of the case being resolved with a plea before trial. This fact is undisputed.

20. A final pre-trial hearing was held on October 20, 2020. The defendant was arrested at the hearing because he had violated the conditions of his bond. The November 2, 2020, trial date was kept on the calendar as a

status hearing in Case No. 19-CM-0240 and to address the new bail jumping charge in Case No. 20-CM-0418. This fact is undisputed.

21. Between October 20 and November 2, 2020, DA Hamm and defense counsel reached an agreement, whereby the defendant would plead guilty to an amended criminal charge in Case No. 19-CM-0240 and to the new bail jumping charge in Case No. 20-CM-0418. This fact is undisputed.

22. DA Hamm thought he had told Mehne that the case would be resolved by a plea on November 2, 2020, but Mehne indicated that that was not the case. This fact is undisputed.

23. Mehne told A.A. about the November 2, 2020, status hearing, but she did not tell A.A. that the case would be resolved at the hearing with a plea and sentencing. This fact is undisputed.

24. DA Hamm says that because of this miscommunication or misunderstanding, he thought that A.A. had been properly notified of the purpose of the hearing and that she did not intend to provide a victim impact statement. DA Hamm thought his office was in compliance with victim rights requirements and informed the court as much. This fact is undisputed.

25. At the hearing on November 2, 2020, DA Hamm represented to the court that his office had complied with victim rights obligations and implied that A.A. supported the plea agreement. This fact is undisputed.

26. At the hearing on November 2, 2020, the defendant pleaded guilty to misdemeanor disorderly conduct and was sentenced right away. This fact is undisputed.

27. Mehne informed A.A. of the outcome of the case. This fact is undisputed.

28. A.A. contacted the DA's Office to complain about the plea and sentencing hearing proceeding without her. DA Hamm spoke to A.A. briefly and apologized. This fact is undisputed.

### **CONCLUSIONS OF LAW**

29. The Board employs a three-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the allegations implicate any constitutional or statutory victim rights; and (3) whether the respondent failed to comply with any duty imposed by a constitutional or statutory provision.

30. Whether a person is a crime victim is determined by statute. "A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both." Wis. Stat. § 939.12. A crime victim is "[a] person against whom a crime has been committed." Wis. Stat. § 950.02(4)(a)1. If the crime victim is deceased, his or her family member is a victim. Wis. Stat. § 950.02(4)(a)4.a.

31. A.A. was a crime victim because she reported she was a victim of a sexual assault, conduct prohibited by state law.

32. Whether a respondent is subject to the Board's authority is also determined by statute. The Board has authority to conduct reviews and issue reprimands of "public officials, employees or agencies that violate the rights of crime victims." Wis. Stat. § 950.09(2)(a); *but see Gabler*, 376 Wis. 2d 147 (statute unconstitutional as applied to judges).

33. The DA's Office is subject to the authority of the Board because it is a public agency within the meaning of Wis. Stat. § 950.09(2)(a).

34. The Board considered whether the undisputed facts demonstrate that the DA's office violated A.A.'s crime victim rights as set forth in paragraph 8.

35. First, the Board considered whether the DA's Office violated A.A.'s right to be treated with fairness and dignity pursuant to Wis. Stat. § 950.04(1v)(ag) when DA Hamm told the court that he had complied with victim rights obligations.

36. Pursuant to Wis. Stat. § 950.04(1v)(ag), a crime victim has a right "[t]o be treated with fairness [and] dignity . . . by public officials, employees, or agencies."

37. DA Hamm represented to the court that his office had complied with victim rights obligations and implied that A.A. supported the plea

agreement.<sup>2</sup> While that was incorrect, there is no evidence that DA Hamm’s misstatement was intentional, such that it would rise to the level of a separate victim rights violation, beyond those found below. The Board, therefore, finds that A.A. has not shown by clear and convincing evidence that the DA’s Office violated her right to be treated with fairness and dignity. *See* Wis. Stat. § 950.04(1v)(ag).

38. Second, the Board considered whether the DA’s Office violated A.A.’s right to be provided with reasonable notice of court proceedings and to attend those proceedings pursuant to Wis. Stat. § 950.04(1v)(b), (g).

39. Pursuant to Wis. Stat. § 950.04(1v)(b) and (g), a crime victim has a right “[t]o attend court proceedings in the case” and “[t]o have reasonable attempts made to notify [her] of hearings or court proceedings.”

40. The DA’s Office misinformed A.A. about the purpose of the hearing on November 2, 2020, and A.A. did not attend the hearing as a result. The Board, therefore, finds that A.A. has shown by clear and convincing evidence that the DA’s Office violated her right to be provided with reasonable

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<sup>2</sup> The Board assumes that when the court asked if the DA’s Office was “victim compliant” and DA Hamm indicated that his office was “in compliance with victim rights,” (Compl. 9, 10), they were referring to the victim’s right to notification of court proceedings, to make a statement to the court, and to confer with the district attorney. *See* Wis. Stat. §§ 950.04(1v)(g), (j), (L), 971.08(1)(d), 972.14(3).

notice of court proceedings and to attend those proceedings. *See* Wis. Stat. § 950.04(1v)(b), (g).

41. Third, the Board considered whether the DA's Office violated A.A.'s right to consult with the district attorney in a timely manner pursuant to Wis. Const. art. I, § 9m(2)(h) and Wis. Stat. § 950.04(1v).

42. Pursuant to Wis. Const. art. I, § 9m(2)(h), a crime victim has a right “[u]pon request, to confer with the attorney for the government.”

43. Pursuant to Wis. Stat. § 950.04(1v)(j), a crime victim has a right to “have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095(2).”

44. Wisconsin Stat. § 971.095(2) reads:

In any case in which a defendant has been charged with a crime, the district attorney shall, as soon as practicable, offer all of the victims in the case who have requested the opportunity an opportunity to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The duty to confer under this subsection does not limit the obligation of the district attorney to exercise his or her discretion concerning the handling of any criminal charge against the defendant.

45. “District attorney” means any of the following:

(a) The district attorney or other person authorized to prosecute a criminal case or a delinquency proceeding under ch. 938.

(b) A person designated by a person specified in par. (a) to perform the district attorney's duties under this chapter.

Wis. Stat. § 950.02(2m)(a), (b).

46. A.A. requested an opportunity to confer with the district attorney about the possible outcomes of the case. While no meeting for that specific purpose was scheduled, DA Hamm met with A.A., at his request, to discuss her trial testimony. During that meeting, the parties discussed the possibility of the case being resolved with a plea before trial, but there is insufficient evidence about whether and to what extent the parties discussed any specific or potential plea agreement. The Board, therefore, finds that A.A. has not shown by clear and convincing evidence that the DA's Office violated her right to consult with the district attorney in a timely manner. *See* Wis. Const. art. I, § 9m(2)(h); Wis. Stat. § 950.04(1v).

47. Finally, the Board considered whether the DA's Office violated A.A.'s victim right to have an opportunity to provide a victim impact statement or other information to the court prior to the plea and sentencing pursuant to Wis. Stat. § 950.04(1v)(m), (pm).

48. Pursuant to Wis. Stat. § 950.04(1v)(m) and (pm), a crime victim has a right “[t]o provide statements concerning sentencing [or] disposition” and “[t]o have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.”

49. A.A. verbally requested an opportunity to participate in the case and provide a victim impact statement to the court at sentencing. Yet, the DA's Office did not tell A.A. about the plea agreement or that the case would be resolved by plea and sentencing at the hearing on November 2, 2020. As a result, A.A. did not attend the hearing and did not provide any information or a victim impact statement to the court. Based on these undisputed facts, the Board finds that A.A. has shown by clear and convincing evidence that the DA's Office violated A.A.'s right to have an opportunity to provide a victim impact statement or other information to the court prior to the plea and sentencing. *See Wis. Stat. § 950.04(1v)(m), (pm).*

## ORDER

Based on the foregoing, it is hereby ORDERED:

1. That the complainant has shown by clear and convincing evidence that the respondent violated her rights as a crime victim.
2. That the Board recommends that the DA's Office conduct a thorough review of its communication and record-keeping policies and practices related to victims and consider implementing an accurate and accessible system to clearly document victim communications and requests.
3. That this is a final, appealable order of the Board, and as such makes final and appealable any previous non-final orders of the Board.
4. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10.
5. That a copy of this final decision shall be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the “Service List” below.

Dated this 27th day of January, 2022.

  
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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

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