

State Bar clears Union County District Attorney Kelsie McDaniel of ethics complaint

By ALEX WITTWER

The (La Grande) Observer
LA GRANDE — Union County District Attorney Kelsie McDaniel is free of a complaint that hounded her for almost a year.

Retired attorney Anne Morrison's complaint to the Oregon State Bar against McDaniel stemmed from the prosecutor's action in 2020 to block Circuit Judge Wes Williams from presiding over criminal cases. The bar on Sept. 11 dismissed the complaint.

"My actions were driven at all times by my statutory and constitutional obligations as DA for Union County," McDaniel said. "My representations have been and will continue to be truthful and accurate. When I learn of additional information, I clarify."

The events preceding the complaint, which The Observer reported in April 2020, were based on an 31-page memorandum McDaniel submitted to the court alleging Williams committed dozens of instances of misconduct and that the state could not receive a fair trial under him. McDaniel used the memo as the basis to remove Williams from presiding over criminal cases.

Williams has not spoken about McDaniel's move to sideline him.

"The code of judicial ethics forbids me from making a public comment regarding McDaniel's memo," he said.

Williams, however, offered up a written statement he had prepared:

"My campaign promise to the people of Union and Wallowa counties was that I would honor the principles of equality before the law and that I would treat all with mutual respect and dignity; and protect their constitutional rights. I have and I will continue to remain true to this promise."

Memorandums

Williams was not the first to receive such a memo.

Rod Underhill as district attorney of Multnomah County in 2017 filed a nearly identical memo against Circuit Judge Judith Matarazzo. The Underhill memo covered four areas of concern while McDaniel's memo contains six, and the Underhill memorandum chronicled 10 years of alleged misconduct where as the McDaniel memorandum is from 2019-20, and

five of the complaints concern matters in January 2019, soon after Williams took his oath as a judge.

Other district attorneys in Oregon have filed similar motions to remove circuit judges, including in Umatilla, Lane and Klamath counties. And other district attorneys in Eastern Oregon have removed Williams from cases.

The Baker County District Attorney's Office confirmed it disqualifies Williams whenever he presides on cases there, though without an accompanying memo.

Oregon law gives attorneys the power to bench a judge. An attorney only needs to file a motion to recuse a judge and provide an affidavit stating they believe they cannot have a fair and impartial trial or hearing before the judge, and the action is in good faith and not for the purpose of delaying proceedings. The affidavits don't require evidence or allegations, such as the ones from Underhill or McDaniel.

The law, however, requires dismissing a judge in each case. The McDaniel memorandum acted as a blanket dismissal of Williams for all cases.

"It's very much a nuclear option for something. It doesn't even look like they tried anything else first," said Amber Bevacqua-Lynott, a former Oregon State Bar discipline counsel attorney.

McDaniel's office pulled it off for more than a year, at least up until she took maternity leave earlier this year. The district attorney's office continues to file disqualifications against Williams, though without the memo.

A second look

The disqualifications relegated Williams to a minimal workload. And the memo underpinning the motions drew the scrutiny of Morrison.

She saw an article in The Observer and the 31-page memorandum as unusual — citing multiple occurrences where that judge has shown impropriety and bias. She said using that memo to subsequently sideline the judge was cause for concern.

Morrison obtained copies

of the transcripts and public records that were used in drafting the memorandum and set to work.

"When I started comparing what Kelsie McDaniel had said in her memorandum to the actual transcript, I thought there are multiple misrepresentations," Morrison said. "It's not just one. It's not just an accident because it happens over and over and over again. And they're serious misrepresentations, because if you heard the whole story instead of what she was saying in her memorandum, I think your picture of

any of those decisions made by the judge might be very different."

She said she found an issue with nearly every single complaint in the memo.

"The DA has essentially lied to the court, which we're not allowed to do," Morrison said, "and I think has lied to the public also about these cases because she has misrepresented so many of them in such an extreme way."

So she sent a complaint of her own to the Oregon State Bar against McDaniel.

Matters of representations

McDaniel's accusations of impropriety cites cases where Williams reduced bail and decided not to jail defendants against state recommendations. In one case, during pretrial, the memo states, Williams gave advice from the bench to the defense attorney and recommended a key expert witness for the defense.

But according to Morrison's complaint, in that case, nearly 250 pages of transcripts, mostly centered around pretrial discussions regarding suppression of evidence, show Williams gave even-handed direction and advice to the state and the defense. McDaniel did not paint a true picture of Williams' actions, according to Morrison.

McDaniel, through her lawyer Dayna Underhill — wife of former Multnomah County District Attorney Rod Underhill — asked the Oregon State Bar for a prompt dismissal. The response

affirmed that none of the allegations against Williams in the original memorandum amounted to ethics violations and McDaniel operated within legal standards and frameworks when writing the memo.

The bar dismissed the ethics complaint, finding McDaniel never misquoted Williams nor made statements that were lies. The bar did, however, examine the allegation that McDaniel had omitted context in the memo but determined McDaniel only needed to show a perception of bias to recuse Williams.

Morrison sticks to her story

Morrison appealed, but the bar reaffirmed its position that McDaniel acted in a lawful way and had done nothing wrong. The Oregon State Bar Professional Responsibility Board also stated the backdrop of the Morrison complaint was based on a political feud between McDaniel and Williams.

"I am pleased that the Oregon State Bar Professional Responsibility Board saw it the same way and dismissed the complaint in its entirety," McDaniel said. "Being the district attorney comes with having to make difficult decisions, but I always strive to do the right thing."

The memo in the eyes of the Oregon State Bar only needed to show what McDaniel believed to be true, even if the addition of context from the court transcripts provided counterpoints to many allegations.

Morrison disagreed with the bar's ruling.

"What they're saying is that in this context, she doesn't have to give the full facts," she said. "She only has to give what supports her belief. I was dumbfounded when I read that."

With the bar complaint receiving its second dismissal, however, Morrison's options moving forward are limited.

"I feel that strongly that she has badly misrepresented what happened," Morrison said. "And, you know, she's the DA. It's her job to hold all of us accountable. If we go out there and violate the law, we should be called into account for it. If we're found responsible for it, we should be held responsible for it. ... I think she should be held accountable for what she does."

Oregon lawmakers urge Biden administration to revive free community college plan

By MEERAH POWELL

Oregon Public Broadcasting Democrats in the Oregon Legislature sent letters to the state's U.S. congressional delegation Monday, Nov. 1, urging them and the Biden administration to revisit a plan for free community college.

President Joe Biden originally included two years of free community college in his "Build Back Better Plan," but removed it from the spending framework last week. Democratic leaders on Capitol Hill worked to scale back what had previously been a \$3.5 trillion package last week to satisfy concerns from moderates in their party, particularly Sen. Joe Manchin, D-W.Va., and Sen. Kyrsten Sinema, D-Ariz.

The state lawmakers in Oregon are hoping Biden and other Democratic leaders will reconsider the policy in the near future.

"By not investing in two years of free community college, this threatens Oregon's and the United States' ability to develop and retain a workforce that meets today's evolving industry needs," the state Democrats who authored the letter wrote.

They wrote that two years of free community college would help lift millions of Americans economically, especially those from underserved communities such as people of color and people with low incomes.

"I believe the investments we make in our students today will yield many certificates and degrees needed to strengthen our community in Oregon and across our nation, which will help decrease lifelong debt that many people are experiencing,"

Rep. Teresa Alonso Leon, D-Woodburn, one of the letter's authors, told OPB Monday.

The state lawmakers noted that Oregon already has a version of free community college through the Oregon Promise Act — which came out of a Senate bill passed by state lawmakers in 2015.

But, the Oregon Promise does not cover everyone. Only students who have recently earned an Oregon high school diploma or GED are eligible; there are specific requirements for grade point average and Oregon residency; and, it only covers up to 12 credits per term.

"Oregon shows what is possible, but we cannot stop here. We urgently need more funding to maintain the Oregon Promise Act to support students, retain talent, and grow our economy," the lawmakers wrote.

High school graduates are choosing not to attend college due to rising tuition costs, the state lawmakers said — a trend that's only been exacerbated by the pandemic. Enrollment declined sharply last year at Oregon's community colleges, according to data shared by the state's Higher Education Coordinating Commission.

"This is not sustainable. We can and should build back better," they wrote. "That starts by creating a post-secondary pathway for students by removing financial barriers, like tuition, that will incentivize students to attend community colleges where they can get the training they need to secure a job, receive a good wage, and ensure we are economically relevant and competitive."

Judge sides with Democrats in Oregon redistricting dispute

SALEM (AP) — A judge has found that new congressional districts passed by Oregon Democrats meet all legal criteria, with little evidence they amount to blatant partisan gerrymandering.

Oregon Public Broadcasting reports the tentative opinion, released Monday, Nov. 1 by retired state Judge Henry Breithaupt, is not the final word in an ongoing lawsuit, in which Republicans are seeking to have the new six-district congressional map redrawn. Breithaupt is acting as a "special master" in the case, tasked with making findings of fact for a five-judge panel that will decide the outcome.

Following the latest U.S. Census Oregon received an additional seat in the U.S. House — increasing the number of congressional districts from five to six. There are currently four Democratic U.S. House members from Oregon and one Republican.

The findings by Breithaupt suggest Republicans have failed to prove their

insistence that Democrats purposefully stacked the new congressional maps in their own favor. A lawsuit filed on behalf of former Secretary of State Bev Clarno and three other former Republican elected officials called the map "a clear, egregious partisan gerrymander."

Breithaupt's opinion relies heavily on a proposed set of facts suggested by the Oregon Department of Justice, which is representing the Legislature in defending the map.

Breithaupt agreed with the state's contention that the new maps meet statutory criteria requiring them to be of roughly equal popula-

tions and contiguous, and to use existing transportation, political and geographic boundaries. The judge also agreed that an additional factor that must be considered — that lawmakers cannot unduly split communities of common interest — was difficult to determine.

The court challenge to Oregon's congressional map is the state's first time operating under a new system for resolving such conflicts. Under a law passed in 2013, a panel of five judges — one from each of the state's current five congressional districts — are the arbiters of the dispute. That panel has until Nov. 24 to decide

whether to dismiss legal challenges to the new map.

The congressional map proposed by Democrats was a major sticking point in the special session lawmakers held to pass new political maps in September. Republicans objected to the plan because it spread ultra-liberal Portland between four of the districts. They also took issue with a rejiggered fifth congressional district that now connects Portland to Bend.

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