

FILED

SEP 25 2008

Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE PETER J. McBRIEN,

No. 185.

NOTICE OF FORMAL
PROCEEDINGS

To Peter J. McBrien, a judge of the Sacramento County Municipal Court from April 10, 1987 to July 17, 1989, and of the Sacramento County Superior Court from July 18, 1989 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, persistent failure or inability to perform your duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

A. *Mona Lea Carlsson v. UlfJohan Carlsson* (No. 04FL02489)

Carlsson was a contested marital dissolution and child custody case that primarily involved the distribution of the family residence and a rental property. A court trial took place before you for a full day on March 2 and two half-days on March 3 and 9, 2006. Attorney Sharon Huddle represented Mr. Ulf Carlsson. You entered judgment in favor of Ms. Mona Carlsson on almost every issue. In a published opinion, the Court of Appeal reversed the *Carlsson* judgment and remanded with an order that the case be assigned to a different judge. (*In re marriage of Carlsson* (2008) 16 Cal.App.4th 281.)

1. On March 9, prior to the conclusion of Mr. Carlsson's case, Ms. Carlsson's expert witness was recalled for rebuttal on the issue of fair market value of the real properties. Ms. Huddle then recalled Mr. Carlsson's expert witness, Paktun Shah, to testify regarding fair market value. Mr. Shah had only briefly been on the witness stand when the trial ended with this exchange:

MS. HUDDLE: If you redid your capitalization and your sales market approach —

THE COURT: Pardon me. I have an EPO. Court is in recess.

MS. HUDDLE: I think he's just taking an Emergency Protective Order request. Is that it, like a domestic violence, it's his week; right?

THE CLERK: He's always assigned EPOs.

THE COURT: We're going to have to adjourn this. The County operator is on the phone. This trial has ended.

MS. HUDDLE: Your Honor, I don't even have my client's attorney fees costs [*sic*] put on.

THE COURT: Then I'll reserve over that issue or you can get a mistrial, one or the other.

MS. KEELEY: We don't want a mistrial. We'll reserve over that issue.

MS. HUDDLE: But your Honor, the house that we're evaluating —

(Judge Exits Room)

MS. KEELEY: We'll arrange another date. Don't panic.

MS. HUDDLE: Is that what he said?

MS. KEELEY: I'm going to ask for the *[sic]* him to reserve.

THE WITNESS: May I go?

MS. HUDDLE: Is he coming back? I'm in the middle of my examination.

MS. KEELEY: Ms. Huddle, I'm not prepared for a mistrial.

The parties and counsel sat in the courtroom for several minutes, uncertain how to proceed, until the court clerk announced that the trial was over, with no explanation. Your departure from the bench precluded Ms. Huddle from completing her expert's testimony, from calling certain other witnesses and from presenting closing argument in person.

By abandoning the trial in the middle of Mr. Carlsson's case-in-chief without giving him an opportunity to complete the presentation of evidence or offer rebuttal evidence, you denied Mr. Carlsson his constitutional right to due process and a fair trial.

Your actions in terminating the trial as you did violated the Code of Judicial Ethics, canons 2A and 3B(7).

2. During the March 3 session of the *Carlsson* trial, you made a sua sponte request for Mr. Carlsson to produce Statements of Economic Interest that were located at his place of employment, the State of California Department of General Services (DGS). You advised Mr. Carlsson to consult an attorney regarding his exposure to "potential penalties far beyond what we're talking about today."

The next court session was on March 9, where the following exchange took place:

THE COURT: Did he bring the documents with him?

MS. HUDDLE: He never went to work. He is on disability; he doesn't have them.

THE COURT: So, he has violated my request to bring those documents?

MS HUDDLE: The way I heard you say it, it was a suggestion that he bring them.

You then said that Mr. Carlsson should send somebody to get the documents before the end of the trial. Ms. Huddle objected that the documents were irrelevant. You overruled the objection despite agreeing that the documents you asked Mr. Carlsson to produce were irrelevant to the trial over which you were presiding. You added, "However, they may be relevant to other proceedings."

After Ms. Huddle said that she was advising Mr. Carlsson to assert his Fifth Amendment rights regarding the documents, you engaged in an exchange with her regarding whether her client could properly invoke the Fifth Amendment at that point. You then threatened Ms. Huddle with contempt if Mr. Carlsson failed to produce the Statements of Economic Interest, as follows:

MS. HUDDLE: I suppose — this is all on the record. I don't know what to do in a situation like this when you're actually asking him to produce evidence which might incriminate him and it's not even the opposing side presenting it.

THE COURT: Ms. Huddle, am I to take that as a 'no' placing you in the possibility of contempt?

Your threat of contempt under these circumstances was improper and violated the Code of Judicial Ethics, canons 2 and 3B(4).

3. Shortly after the end of the *Carlsson* trial, you instructed your courtroom clerk to ask the court reporter to prepare a partial transcript of Mr. Carlsson's testimony concerning his real estate ownership and his disclosures on his Statements of Economic Interest about his real estate holdings. Your clerk told the court reporter that you were instructing her not to tell anyone, including the attorneys in the case, about your request for the partial transcript. You then sent the partial transcript to Mr. Carlsson's employer, DGS, and informed DGS that you believed Mr. Carlsson had failed to disclose certain information on his Statements of Economic Interest about his real estate holdings. As a result of your actions, Mr. Carlsson's employment was terminated. You continued to preside over the *Carlsson* case without disclosing to the parties your actions with respect to the partial transcript.

Your conduct constituted embroilment and violated the Code of Judicial Ethics, canons 2 and 3E(2).

4. During the *Carlsson* trial, you displayed impatience with Ms. Huddle and repeatedly threatened a mistrial if the proceedings were not concluded quickly enough, curtailing the parties' right to present evidence on all material disputed issues. You were also discourteous to Ms. Huddle. For example, you said, "This

is not a law school class," in a derogatory manner while she was examining a witness.

Your conduct violated the Code of Judicial Ethics, canons 2 and 3B(4).

B. County of El Dorado v. John Chardoul (No. 01FS05265)

In the above-captioned paternity matter, the minor child's mother, Cynthia Galiano, a party in the case, wrote a letter to the court dated July 10, 2006, requesting permission to appear by telephone at a mandatory settlement conference on August 15, 2006. Ms. Galiano did not send Mr. Chardoul or his attorney a copy of her letter. Ms. Galiano had previously made this request to Judge Allen Sumner while he was presiding over a hearing in the matter on July 17, 2006, and he had denied it.

Although this case was not assigned to you, you granted Ms. Galiano's ex parte request by stamping her letter "So ordered" and signing it on August 7, 2006, even though Local Rule 14.02 requires personal attendance at family law mandatory settlement conferences. You granted Ms. Galiano's ex parte request without prior notice to Mr. Chardoul or his counsel, and without affording Mr. Chardoul or his counsel the opportunity to be heard on the matter. After you granted Ms. Galiano's request, you did not advise Mr. Chardoul or his attorney that you had done so, or that you had received the ex parte communication from Ms. Galiano. Mr. Chardoul first learned of Ms. Galiano's ex parte communication with you on August 15, 2006, when he appeared in person at the settlement conference, and she did not.

Your actions regarding the ex parte communication violated the Code of Judicial Ethics, canons 2 and 3B(7).

C. *Dymora v. Dymora* (No. 99FL07480)

On April 4, 2000, while you were presiding over the above-captioned marital dissolution case, petitioner's counsel Donna T. DeCuir sent you a letter submitting her proposed Findings and Order After Hearing regarding a hearing over which you had presided on March 14, 2000. She did not send a copy of her letter to respondent's counsel Deborah Eldridge. Ms. DeCuir's April 4, 2000 letter to you stated that, in addition to submitting the Findings and Order After Hearing that she had prepared, she was also submitting the Findings and Order After Hearing "prepared by this office but altered by [opposing counsel] Ms. Eldridge and her most recent threatening letter." Ms. DeCuir's correspondence to you indicated that there was a dispute between the attorneys in the case regarding the language of the proposed Findings and Order After Hearing. You acted upon Ms. DeCuir's ex parte communication to you by signing the Findings and Order After Hearing she had prepared and submitted with her letter. After Ms. Eldridge found out about Ms. DeCuir's ex parte communication to you, she wrote you on April 19, 2000, to request that you vacate the order on the grounds that Ms. DeCuir's letter constituted an improper ex parte communication and that the Findings and Order After Hearing you signed did not accurately reflect the court's minute order for the March 14, 2000 hearing. You then vacated the Findings and Order After Hearing submitted by Ms. DeCuir and signed the Findings and Order After Hearing submitted by Ms. Eldridge.

Your signing of the order based upon the ex parte communication violated the Code of Judicial Ethics, canons 2 and 3B(7).

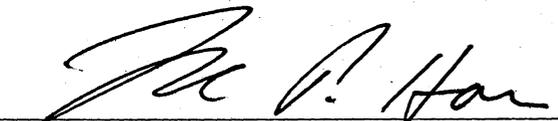
YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 9/22/08



HONORABLE FREDERICK P. HORN
CHAIRPERSON

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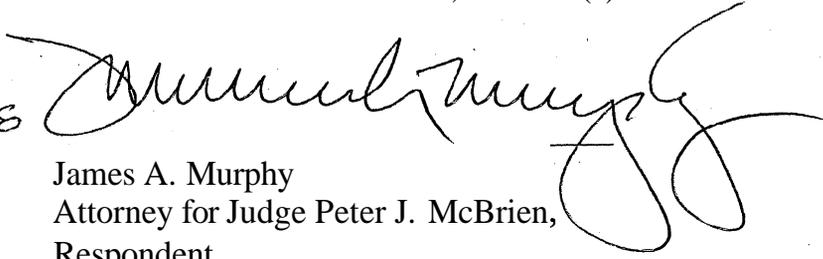
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ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
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I, James A. Murphy, on behalf of my client, Judge Peter J. McBrien, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 185 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge McBrien has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: September 24, 2008


James A. Murphy
Attorney for Judge Peter J. McBrien,
Respondent