

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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INQUIRY CONCERNING A JUDGE )  
No. 117 )  
\_\_\_\_\_ )

NOTICE OF  
FORMAL PROCEEDINGS

TO JUDGE CLAUDE E. WHITNEY:

It appearing that from May 31, 1989, to the present you have been a judge of the Orange County Municipal Court, your present term beginning on May 31, 1989; and

Preliminary investigation having been made pursuant to the provisions of rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission as a result of the preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to section 18 of Article VI of the California Constitution and in accordance with rules 901-922, California Rules of Court.

Now therefore, you are hereby charged with wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The particulars of the charges are as follows:

COUNT 1

In Fall, 1992, you presided over Department 203 of the Central Orange Municipal Court District, where in-custody defendants were arraigned on misdemeanor charges.

A. It is charged that you abdicated your judicial responsibility to ensure the rights of the defendants appearing before you. Examples include but are not limited to the following:

1. You or court attaches acting under your direction advised the defendants collectively that they would not be released on their own recognizance. This indicated to defendants and others present that you would neither exercise judicial discretion nor consider each case on its own individual merits as to own recognizance releases, as required by Penal Code section 1209.

2. You or court attaches acting under your direction advised the defendants collectively that all sentences would be "terminal" -- that is, probation would not be granted. This indicated to defendants and others present that you would neither exercise judicial discretion nor consider each case on its own individual merits as to grants of probation, as required by Penal Code section 1203.

3. You or court attaches acting under your direction advised the defendants collectively that all sentences would be consecutive to each other and to other sentences to which the defendant might be subject. This indicated to defendants and

others present that you would neither exercise judicial discretion nor consider each case on its own individual merits as to concurrent sentences, as required by Penal Code section 669.

4. You failed to inform defendants that "it is his or her right to have counsel before being arraigned," and you failed to ask each defendant individually before asking for a plea "if he or she desires the assistance of counsel," as required by Penal Code section 987(a).

5. You or court attaches acting under your direction advised the defendants collectively that if they pleaded guilty, they would be sentenced that day. You also advised them that if they pleaded not guilty, you would appoint the public defender to represent them, set bail, and continue the matter one week for a pre-trial conference. These advisements tended to indicate to defendants that if they desired the assistance of an attorney, they must plead not guilty. These advisements also tended to indicate to defendants that they were not entitled to an attorney until they had entered a plea. These advisements also tended to indicate to defendants that they could expect to remain in jail for one week if they pled not guilty or exercised their right to counsel. This resulted in defendants not receiving the assistance of an attorney in deciding what plea to enter at arraignment and whether to enter a plea at the initial appearance.

6. You failed to advise those defendants entering pleas of guilty of the possible consequences of a conviction on noncitizens, as required by Penal Code section 1016.5.

Individual defendants who were not properly advised of their rights and the possible consequences of their pleas and who were not individually asked if they desired the assistance of an attorney before arraignment include but are not limited to: Jose John Lopez on November 5, 1992; Debra Gean Brown on November 6, 1992; Anthony Joe Montoya on November 9, 1992; Tammy Lynn Hinds (on violations of probation only) on November 9, 1992; Carla Jean Barcus on November 9, 1992; Raymond Bradford Yapelli on November 9, 1992; Carlos Vincio Giron on November 10, 1992; and Barbara Van den Brink on July 14, 1992.

B. It is charged that you further abdicated your judicial responsibility to ensure the rights of in-custody defendants appearing before you for arraignment on criminal charges by not allowing the public defender's office to participate in the in-custody arraignment process. This, in conjunction with the inadequate advisements described above, resulted in defendants not receiving the assistance of an attorney at arraignment. This behavior is exemplified by, but not limited to, the following incidents:

1. On or about November 6, 1992, Deputy Public Defender Lorene Mies was monitoring Division 203. Before you took the bench, Mies, with the bailiff's permission, was speaking with an in-custody defendant who was inside the in-custody "cage." You came from your chambers to the courtroom and yelled at Mies to get away from the in-custody defendants and to not speak with them. Mies ceased her actions and asked to explain herself but was not allowed to by you.

2. On November 12, 1992, Deputy Public Defender Jeff Lund appeared before you in Division 203 for the misdemeanor in-custody arraignments. After you took the bench, and while advising the defendants of their rights, you stated if they wanted an attorney appointed they would be returned to court on November 19 (one week) to appear with their attorney and they would speak with their attorney at that time. Lund then asked if the court would advise the defendants there was a public defender in court at that time available to them. You said you would not and told Lund he had been warned and if he said another word he would be removed from the courtroom. You asked Lund if he understood. Lund started to respond to the effect that some of the defendants might need an attorney, and you yelled at Lund and told the bailiff to take Lund from the courtroom. The bailiff approached Lund and Lund voluntarily rose and left the courtroom.

C. It is charged that on June 12, 1992, Barbara Van den Brink appeared before you as a defendant in 8 separate misdemeanor cases. The district attorney and the public defender agreed to a negotiated disposition on these cases and an additional case in which the defendant had been arrested but had not yet been arraigned. That additional case ultimately became case number 92CM08641. The negotiated disposition of June 12, 1992, included a total time in custody of one year on the eight cases before you on June 12, 1992. The negotiated disposition also included an agreement that the defendant would receive a sentence on the additional case (ultimately case number 92CM08641) of 90 days in custody with no probation.

On July 14, 1992, Van den Brink appeared before you again for arraignment on Case No. 92CM08641, in which the charge was prostitution (Penal Code section 647(b)), for which the maximum sentence was 6 months. As charged above in Count IA, you failed to advise Van den Brink of her right to an attorney prior to arraignment and failed to ask her if she wanted an attorney before taking her plea. During the arraignment you told her that if she entered a plea of guilty, you would sentence her to one year in county jail. She responded by a statement indicating she was supposed to receive a sentence of 90 days on the case. You then stated there was nothing in the file indicating that she was to receive such a sentence. Van den Brink entered a plea of guilty at that arraignment and was sentenced to a term of one year in county jail. This sentence was twice the maximum allowable period of incarceration and four times the period agreed upon in the plea bargain.

By failing to advise her of her right to an attorney at arraignment on July 14, 1992, and by failing to ask her if she desired the assistance of an attorney for arraignment, you deprived her of counsel. By sentencing her to one year in county jail on a single count of prostitution, you imposed an illegal sentence and abused your authority.

COUNT 2

It is charged that you have failed to be patient, dignified, and courteous to lawyers and jurors with whom you deal in an official capacity. This behavior is exemplified by, but not limited to, the following incidents:

A. In approximately April 1992, you yelled at Deputy District Attorney Michelle Gigliotti. Ms. Gigliotti had requested dismissal of a case late in the afternoon of the tenth day that the case had been trailing for trial. When she did this you stood up, pointed at her and yelled at her. You said, inter alia, that you were going to report her to the State Bar. She told you that you had a misimpression of what had happened and asked if she could leave the courtroom. You yelled for her to get out of the courtroom.

B. On or about November 6, 1992, Deputy Public Defender Lorene Mies was monitoring Division 203. Before you took the bench, Mies, with the bailiff's permission, was speaking with an in-custody defendant who was inside the in-custody "cage." You came from your chambers to the courtroom and yelled at Mies to get away from the in-custody defendants and to not speak with them. Mies ceased her actions and asked to explain herself but was not allowed to by you.

C. On November 12, 1992, Deputy Public Defender Jeff Lund appeared before you in Division 203 for the misdemeanor incustody arraignments. After you took the bench, and while advising the defendants of their rights, you stated if they

wanted an attorney appointed they would be returned to court on November 19 (one week) to appear with their attorney and they would speak with their attorney at that time. Lund then asked if the court would advise the defendants there was a public defender in court at that time available to them. You said you would not and told Lund he had been warned and if he said another word he would be removed from the courtroom. You asked Lund if he understood. Lund started to respond to the effect that some of the defendants might need an attorney, and you yelled at Lund and told the bailiff to take Lund from the courtroom. The bailiff approached Lund and Lund voluntarily rose and left the courtroom.

D. In approximately 1991, you yelled at Private Attorney Heidi Mueller in open court when she requested that her client and the interpreter sit behind her during the preliminary hearing.

E. On approximately June 19, 1991, you yelled at Deputy Public Defender Phil Zeleski for requesting a court reporter on the first day of jury trial in People v. John William Roblee rather than filing a motion in advance.

F. In approximately 1991, you yelled at Attorney Ron McGregor for whispering to the courtroom bailiff, Keith Boettner.

G. In Fall 1991, you yelled at attorney Ron McGregor for whispering to Deputy Public Defender Bonnie Dohrmann.

H. In approximately 1991, you yelled at attorney Ron McGregor when McGregor pointed out to a civil pro per litigant the location of a piece of paper on the floor that the litigant had been looking for.

I. You yelled at attorney Douglas Kirk on approximately May 27, 1992 and criticized him personally before the jury. Kirk arrived several minutes late for resumption of a jury trial in which he represented one of two co-defendants. He had called the court to report that he would be late because he was in Superior Court on another case. When he entered the courtroom, you yelled at him in front of the jury and berated him for being late and set the matter for an order to show cause re contempt. Kirk was not allowed to state why he was late.

J. In approximately early 1990 you yelled at Deputy Public Defender Deborah Barnum in your chambers. You called her into chambers and accused her of having a policy of disqualifying you. Ms. Barnum denied this; she said she had suggested to some new deputy public defenders they might want to avoid conducting trials before a judge who did not have much experience and sometimes reacted with hostility. You then yelled at Ms. Barnum that you would never believe another word she said because you knew she was lying to you at that time.

K. You were rude and demeaning to Deputy District Attorney Diana Gomez and Deputy Public Defender Sheryl Beasley in a criminal case. You referred to the attorneys as "girls" and told them not to turn the matter into a "cat fight."

L. You were rude and demeaning to Deputy Public Defender Alan Crivaro. In approximately 1991, Deputy Public Defender Crivaro appeared with Deputy Public Defender Pamela Boyd for a hearing continued from the previous day. Boyd had been the only public defender on the case the previous day. Crivaro, as a deputy public defender with the office's Writs and Appeals section, had researched and prepared a points and authorities in opposition to a prosecution motion for discovery under the new procedures of Proposition 115. When Boyd, Crivaro and the prosecutor, Jimmy Harris, went into chambers for argument on the motion, you ordered Crivaro out of chambers and told him he did not belong there. When Boyd then argued the motion, she would leave chambers to discuss a point with Crivaro, return to chambers and argue the point, and repeat the process when necessary. It was then, and had been for some time, a common practice for both the district attorneys's office and the public defender's office to have attorneys from their writs and appeals sections write points and authorities and present oral argument on motions in cases which were being prosecuted by other deputy district attorneys or deputy public defenders.

Count 3

It is charged that you have engaged in conduct that conveyed the impression of bias and prejudgment in criminal matters.

A. You signed the bind over order ("blue sheet") before completion of all the testimony at preliminary hearings. This gave the appearance of having decided in the prosecution's favor before having heard all the evidence and argument of counsel.

B. On July 30, 1992, you held defendant Luis Arriaga Villagomez to answer on a charge of petty theft with a prior conviction (Penal Code sections 666/488) although the prosecution offered no evidence that the defendant had suffered the prior conviction. Following the preliminary examination, you told the prosecutor that she had not proven the prior but you had the prior in the file and had taken judicial notice of it.

C. On May 14, 1991, the case of People v. Mark Rose was on calendar for progress review on a probation violation on a conviction of failure to provide support (Pen. Code, section 270). A jail sentence of 90 days had earlier been stayed. There had been several court appearances since the original stay and each time the jail sentence was further stayed. The case had been before other judges during the continuances in which the stay had remained in effect. When the case came before you on May 14, 1991, you ordered the defendant remanded to serve the stayed jail sentence; you would not receive or review documentary evidence from defense counsel or the defendant and would not allow the defense to present reasons why the stay should remain in effect. While the defendant was in custody a writ of habeas corpus was issued by the Orange

County Superior Court. You said to the deputy public defender who handled the writ, after the issuance, something to the effect "You mean I have to hold a hearing before I put him in jail? Well, you learn something new every day."

It is asserted that your conduct as charged in this notice constitutes wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of the California Constitution, Article VI, section 18, subdivision (c).

The filing and service of this notice does not foreclose the Commission on Judicial Performance from bringing additional charges against you at a later date by amendment.

You have the right to file a written answer to the charges against you within fifteen days after service of this notice upon you. The answer must be filed with the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer must be verified, must conform in style to California Rules of Court, rule 15, subdivision (c), and must consist of an original and eleven legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: May 13, 1994

  
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CHAIRPERSON