

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning a Judge,
No. 9

To: The Honorable Murray Draper, Chairman,
California Commission on Judicial Qualifications

Judge Gerald S. Chargin hereby answers the charges
contained in the Notification of Charges filed by the
Commission herein:

I

ANSWER TO CHARGE (a), WILLFUL MISCONDUCT IN OFFICE

A. Re The Hearing in the Matter of Paul Pete
Casillas, Jr.

Judge Chargin denies that he committed willful misconduct
in office by the manner in which he conducted the hearing in the
Matter of Paul Pete Casillas, Jr., No. 40331, in the Juvenile
Division of the Superior Court for Santa Clara County on Septem-
ber 2, 1969, or by the statements he made at that hearing.

The remarks that Judge Chargin made at the hearing were

1 prompted by the nature and the aggravated circumstances of
2 the crime charged and admitted by the juvenile before the
3 court. His disposition of the case was to order the lenient
4 sentence recommended by the Juvenile Probation Department,
5 i.e., placement of the juvenile with his grandmother.

6 The case before him was one of incest committed by a
7 youth, who was 18 years of age at the time of the hearing,
8 against his 15 year old sister. This was not a single, isolated
9 instance of incest, but rather was one of a series of acts of
10 incest over a period of years with his sister, who was no more
11 than 12 years of age when the first admitted act occurred.
12 The girl was pregnant at the time of the hearing. The parents
13 of the offender and the girl, in whose home they resided, were
14 also present in court at the time of the hearing. The judge
15 made his extemporaneous remarks knowing he was going to render
16 the extremely lenient sentence recommended by the probation
17 officer. This is submitted not in justification of the nature
18 of the remarks but rather to set forth the background and
19 context in which the remarks were made.

20 It has been Judge Chargin's practice to accompany
21 juvenile sentencing with strong warnings designed to fore-
22 stall repetition. Admittedly, on this occasion, Judge
23 Chargin's remarks were strong; however, he acted in good faith
24 in lecturing the offender. Moreover, his language alone
25 cannot be deemed misconduct in office. The speech in no way
26 prejudiced the rights of the offender before the court or

1 affected the sentence ordered.

2 Even if Judge Chargin's words alone could be considered
3 to be misconduct, the circumstances under which they were spoken
4 demonstrate that he was not engaged in willful misconduct.

5 The remarks were an isolated instance of speech used
6 in a private sentencing hearing in a good faith attempt to
7 deter further crime. Judge Chargin's life and his record of
8 judicial service show that he is not bigoted and that the
9 implication of bigotry raised by his unfortunate choice of
10 words at the hearing is completely foreign to his character.
11 Though he spoke the words, Judge Chargin's good faith attempt
12 was to shock the offender into a full realization of the
13 repulsive nature of the crime he had seemingly callously
14 committed. The Judge's hope was that the offender could be
15 rehabilitated and that he would not be encouraged to commit
16 further crimes by the lenient punishment ordered.

17 By way of affirmative defense, Judge Chargin asserts
18 that the words used by judges in carrying out procedures within
19 their jurisdiction, in good faith, are privileged. The
20 privilege must apply at least where, as here, there is no
21 doubt that no one before the court was in any way prejudiced
22 by the mere use of the words.

23 While the words used by Judge Chargin may appear to be
24 clearly wrong, punishment of judges for negligently using
25 strong language would be a dangerous precedent. It would be
26 virtually impossible to establish a general rule to distinguish

1 language that constitutes misconduct from language that does
2 not. Almost any controversial language could provide some
3 group with ammunition for a charge of misconduct. The result
4 would be a decrease in the independence of judges marked by
5 an extreme reluctance to speak on occasions when speech is
6 demanded.

7 B. Re Public Statement.

8 Judge Chargin denies that he committed willful mis-
9 conduct in office by publicly explaining and apologizing for
10 his remarks at the above-numbered hearing.

11 Making the public statement attached to the Commission's
12 Notification of Charges cannot constitute willful misconduct in
13 office. The statement was made only after parties who had not
14 been before the court had publicized portions of the transcript
15 of the hearing. In the circumstances, Judge Chargin felt it
16 was his duty to explain that the youth before the court had,
17 in fact, received lenient treatment and that the actual purpose
18 of the harsh words was not to display bigotry but to forestall
19 future criminal behavior by the youth.

20 In addition, Judge Chargin felt that in the circum-
21 stances it was his duty to point out that his language at the
22 hearing in question was an isolated instance and wholly un-
23 characteristic in its implications about his thinking or his
24 past or possible future behavior.

25 Moreover, assuming that such a statement could be
26 construed as misconduct in office, still Judge Chargin's

1 statement was not in any sense a willful commission of any
2 such misconduct. His intent was to protect the integrity of
3 the courts by explaining the circumstances that gave rise to
4 language he used.

5 By way of affirmative defense to the charge of willful
6 misconduct, it must be pointed out that the public statement
7 explaining Judge Chargin's language was not made in office.
8 As noted above, the statement was issued only after partial
9 public disclosures by parties who had no direct interest in
10 the matter before the court. The statement was not issued
11 as a part of the disposition of the case, nor did the thoughts
12 expressed in the statement in any way prejudice the disposition
13 of the case, which disposition was final before the statement
14 was issued.

15 By way of affirmative defense to both charges of
16 willful misconduct, Judge Chargin submits that in so far as
17 subsection (d) of section 18 of Article VI of the California
18 Constitution requires suspension from the practice of law,
19 of a judge removed under subsection (c) of said section and
20 Article, said provisions would deny Judge Chargin equal pro-
21 tection of the law.

22 Neither the language used in the hearing nor the
23 public statement made by Judge Chargin would provide an
24 adequate basis for disbaring an attorney who was not also
25 a judge from the future practice of his profession. Therefore,
26 the fact that the language and statement were made by a judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

cannot provide a basis for disbarment from the practice of law without violating the principle of equal protection of law.

II

1 ANSWER TO CHARGE (b), CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE THAT BRINGS THE JUDICIAL OFFICE INTO DISREPUTE.

2 A. Re The Hearing in the Matter of Paul Pete Casillas,
3 Jr.; Conduct and Statements at the Casillas' Hearing.

4 Judge Chargin denies that he engaged in conduct
5 prejudicial to the administration of justice that brings the
6 judicial office into disrepute by the manner in which he con-
7 ducted the hearing in the Matter of Paul Pete Casillas, Jr.,
8 No. 40331, in the Juvenile Division of the Santa Clara County
9 Superior Court on September 2, 1969, or by the statements he
10 made at that hearing.

11 Judge Chargin asserts that his speech, by itself, ab-
12 sent any prejudice to any party before the court, cannot con-
13 stitute conduct prejudicial to the administration of justice
14 that brings the judicial office into disrepute.

15 Judge Chargin's remarks were made at a hearing that is
16 private by law. They were intended to further the administra-
17 tion of justice by forestalling any further criminal behavior
18 on the part of the juvenile being sentenced while following
19 the recommendation of the Juvenile Probation Department in
20 placing him with his grandmother.

21 No possible prejudice to the administration of justice
22 nor disrepute could have arisen if Judge Chargin's speech at
23 the hearing had not been released by parties not before the
24 court. It was not Judge Chargin's intent or expectation that
25 anyone beyond those before the court on the date of the
26 hearing should hear any speech that he might make that day.

1 By way of affirmative defense, Judge Chargin asserts
2 that history, logic, and policy all dictate that the phrase
3 "conduct prejudicial to the administration of justice that
4 brings the judicial office into disrepute" was meant to apply
5 only to conduct of a judge while not on the bench. The legis-
6 lative history of the charging language shows that it was
7 added to Article VI, section 18 of the California Constitution
8 in 1966 and that the purpose of the amendment was to add to
9 the original section some language that would give the
10 Commission on Judicial Qualifications jurisdiction of a
11 judge's behavior while not on the bench. The words "willful
12 misconduct in office" were retained to cover behavior while
13 on the bench.

14 Logic would be abandoned if the words "conduct
15 prejudicial to the administration of justice that brings the
16 judicial office into disrepute" were read to include conduct
17 both on the bench and off. The words "willful misconduct in
18 office" were retained in the constitutional section when the
19 new language regarding conduct prejudicial to the administra-
20 tion of justice was added, and the same punishment is provid-
21 ed for violations under the words "willful misconduct" and
22 "conduct prejudicial, etc.,". Since the phrase "conduct
23 prejudicial, etc.," is obviously a wider, more general, cate-
24 gory of offenses, the retention of the words "willful miscon-
25 duct" would have been without purpose. Obviously, then, if
26 both phrases are to be given some logical meaning, "willful

1 misconduct in office" must be read to cover offenses while on
2 the bench and "conduct prejudicial, etc.," to cover offenses
3 while not on the bench.

4 The public policy supporting the independence of the
5 judiciary also supports the conclusion that the phrase
6 "conduct prejudicial, etc.," was a charging phrase meant to
7 apply to offenses only while judges were off the bench. While
8 acting in office a judge is protected by the more difficult
9 to establish standard of "willful misconduct in office" and
10 the danger of interference with his traditional independence
11 is lessened. The same considerations do not apply to a
12 judge's acts off the bench and thus the policy of judicial
13 independence is not so directly affected by charges made under
14 the phrase "conduct prejudicial, etc.". Therefore, since
15 Judge Chargin's remarks at the hearing in question were made
16 while on the bench they will support a charge, if at all, only
17 under the phrase "willful misconduct in office".

18 B. Re Public Statement.

19 Judge Chargin denies that he committed conduct
20 prejudicial to the administration of justice that brings the
21 judicial office into disrepute by publicly explaining and
22 apologizing for his remarks at the hearing in question.

23 Just as making the public statement attached to the
24 Commission's Notification of Charges cannot constitute willful
25 misconduct in office, making the statement cannot constitute
26 conduct prejudicial to the administration of justice that

1 brings the judicial office into disrepute. As noted above,
2 the statement was made only after parties who had not been
3 before the court had publicized portions of the transcript of
4 the hearing. Judge Chargin felt that to further the adminis-
5 tration of justice and to lessen any possible effect these
6 partial disclosures would have on the reputation of the
7 judicial office it was his duty to explain some of the cir-
8 cumstances of the hearing, the disposition of the case, and
9 the actual purpose of the words used at the hearing. More-
10 over, Judge Chargin felt that in the circumstances it was his
11 duty to point out that his language at the hearing in question
12 was an isolated instance and wholly uncharacteristic in its
13 implications about his thinking or his past or possible future
14 behavior.

15 Judge Chargin's intention in making the public state-
16 ment was to protect the administration of justice and repu-
17 tation of the judicial office. Thus, the public statement
18 cannot be construed as conduct prejudicial to the administra-
19 tion of justice that brings the judicial office into disrepute.

20 By way of affirmative defense to the charge that Judge
21 Chargin committed conduct prejudicial to the administration of
22 justice that brings the judicial office into disrepute both in
23 regard to the conduct and comments at the hearing and in regard
24 to the public statement, Judge Chargin asserts that the
25 charging language of the California Constitution is so vague
26 and ambiguous as to deprive Judge Chargin and others similarly

1 situated of due process of law.

2 The constitutional language "conduct prejudicial to
3 the administration of justice that brings the judicial office
4 into disrepute" is so vague that the judges subject to its
5 sanctions must necessarily guess at its meaning. Therefore,
6 the language fails to inform judges as to what the state
7 commands or forbids. As such, the constitutional language
8 violates the first essential of due process of law and cannot
9 be used as a basis for censure or removal of a judge.

10 By way of affirmative defense to both charges of
11 conduct prejudicial to the administration of justice that
12 brings the judicial office into disrepute, Judge Chargin sub-
13 mits that in so far as subsection (d) of section 18 of Article
14 VI of the California Constitution requires suspension from the
15 practice of law, until further order of court, of a judge
16 removed under subsection (c) of said section and Article, said
17 provisions would deny Judge Chargin equal protection of the
18 law.

19 Neither the language used in the hearing nor the public
20 statement made by Judge Chargin would provide an adequate
21 basis for disbarring an attorney who was not also a judge from
22 the future practice of his profession. Therefore, the fact
23 that the language and statement were made by a judge cannot
24 provide a basis for disbarment from the practice of law with-

25 ****

26 ****

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

out violating the principle of equal protection of law.

WHEREFORE, respondent respectfully prays that the charges against him, and each of them, be dismissed.

DATED: January 16, 1970.

HANSON, BRIDGETT, MARCUS & JENKINS

By: /s/ Gerald D. Marcus
GERALD D. MARCUS
Attorneys for Respondent.

