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Commission on Judicial Performance
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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE NO. 70	))))	ANSWER TO NOTICE OF FORMAL PROCEEDINGS

TO: THE COMMISSION ON JUDICIAL PERFORMANCE

The Honorable Kenneth Lynn Kloepfer herewith makes answer and responds to the Notice of Formal Proceedings as follows:

Respondent admits that he has been a judge of the San Bernardino County Municipal Court District since January 5, 1981.

Respondent denies that a Preliminary Investigation has been made pursuant to the provisions of Rule 904 of the California Rules of Court and further denies that, during the course of the Preliminary Investigation, he was afforded a reasonable opportunity to present such matters as he chose. Respondent further denies that the Commission has concluded that formal proceedings shall be instituted pursuant to Section 18 of Article VI of the California Constitution and in accordance with rules 901-922 of the California Rules of Court.

Respondent denies generally and specifically that he has committed wilful misconduct in office and that he has committed conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

With regard to the specific allegations contained in Counts One through Five of the Notice of Formal Proceedings admits, denies, and alleges as follows:

ORIGINAL

COUNT ONE

Answering Count One, Respondent denies generally and specifically that he has abdicated his judicial responsibility to be patient, dignified and courteous to litigants, witnesses, attorneys and others with whom he has dealt in his official capacity, and further denies that any of the behavior described in Count One evidences same or constitutes such abdication.

Answering paragraph (1) hereof, Respondent denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (1).

Answering Paragraph (2) hereof, Respondent denies generally and specifically, conjunctively and disjunctively each and every allegation of said parapraph (2).

Answering Paragraph (3) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (3).

Answering Paragraph (4) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (4).

Answering Paragraph (5) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (5).

Answering Paragraph (6) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (6).

Answering Paragraph (7) hereof, Respondent admits the allegations contained in Sentence 1 and Sentence 2 of said Paragraph (7). With regard to the allegations contained in Sentence 3 of said Paragraph (7), Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation contained in Sentence 3 of said Paragraph (7).

Answering Paragraph (8) hereof, Respondent denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (8). As further answer to said allegations, Respondent alleges that he was not rude, did not interrupt the testimony of the witness and was performing a legitimate judicial function in giving instruction to the witness regarding her duties.

Answering Paragraph (9) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Paragraph (9).

Answering Paragraph (10) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said

Paragraph (10).

Answering Paragraph (11) hereof, Respondent denies generally and specifically, conjunctively and disjunctively each and every allegation contained in Sentence 1 of said Paragraph (11). Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground, denies egenerally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentence 2 of said Paragraph (11). Respondent further alleges in regard to the described incident that his conduct was within the bounds of appropriate judicial conduct and constituted nothing more than a legitimate attempt to control a witness who was making inappropriate responses to an attorney's objections.

Answering Paragraph (12) hereof, Respondent denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentences 1 and 2 of said Paragraph (12). Respondent alleges that the defendant in the described case was detained pending resolution of his bail status after it was determined that he had failed to keep an interview appointment with the Public Defender and had arrived late to his court appearance. Ultimately, he was permitted to remain out of custody after the court was satisfied that he had been impressed with the need to keep his appointments and to make his court appearances on time. Respondent admits the allegations contained in Sentence 3 of said Paragraph (12). With regard to Sentence 4 of said Paragraph (12), Respondent admits the language attributed to him which is con-

tained within quotation marks, but denies generally and specifically the remaining allegations of Sentence 4. Respondent admits the allegations contained in Sentence 5 of Paragraph (12).

Answering Paragraph (13) hereof, Respondent denies generally and specifically, conjunctively and disjunctively, each and every allegation of said Paragraph (13).

Answering Paragraph (14) hereof, Respondent admits the conversation which is within quotation marks. Respondent denies generally and specifically, conjunctively and disjunctively that he spoke to the defendant in a discourteous and sarcastic manner or in any manner which was prohibited by or was outside the bounds of his judicial responsibilities and prerogatives.

COUNT TWO

Respondent denies that he has abdicated his judicial responsibility to ensure the rights of defendants in criminal cases. He further denies that any of the behavior described in Count Two evidences same or constitutes such abdication.

Answering Paragraph (1) hereof, Respondent admits the first nine sentences (first paragraph) of Paragraph (1) with the modification as to Sentence 3 that the Public Defender had been appointed in 1980 to represent Dyer as to case TWV 22849. Respondent denies that the Public Defender represented Mr. Dyer in TWV 22849 in 1985.

Respondent admits the allegation in Sentence 10. With regard to Sentence 11, Respondent admits that he proceeded in the absence of counsel and did not notify the Public Defender of

the proceedings. With regard to Sentence 12, Respondent admits that he accepted guilty pleas and an admission of a violation of probation in the specified cases but denies that he failed to "elicit proper waivers". Respondent alleges that he inquired as to defendant's desire for counsel and that defendant specifically expressed a desire not to be represented by counsel and that Respondent honored that request. Respondent further alleges that he provided all necessary advisals and elicited all waivers required by law. Respondent admits that he did not order or have available a presentence probation report. Respondent further alleges that such a report is neither necessary nor required by law and that the imposition of sentence in the absence of same constituted no derrogation of the defendant's rights. Respondent further admits the allegation in Sentence 13 that he sentenced defendant, without notifying counsel, to 271 days in jail with regard to the specified cases. Respondent admits the allegation in Sentence 14 and alleges that he had no obligation to appoint counsel or ask an attorney to advise him. The defendant specifically waived his right to counsel and requested that the court proceed without counsel. Respondent admits the allegations in Sentences 15 and 16.

Answering Paragraph (2) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentence 1 of said Paragraph (2). With regard to Sentence 2, Respondent admits that defendant told him the name of an attorney whom he claimed represented him and also told him that he had not

spoken with the District Attorney. Respondent further admits that he remanded him to custody after having set bail and revoking defendant's own recognizance status. Respondent further alleges that this was done because the defendant arrived late, had not checked in, did not follow the required procedure, had not gone to a conference with a WETLA attorney as ordered and, although he stated he had an attorney, this attorney did not appear. With regard to Sentence 3, Respondent admits that defendant requested to say something and he gave the reply which is quoted.

Answering Paragraph (3) hereof, Respondent admits the allegations contained in Sentence 1. With regard to Sentence 2, Respondent alleges that counsel had not filed points and authorities or other moving papers in connection with his motion to suppress and was not prepared to proceed. Accordingly, Respondent denied the motion. The case was also scheduled for pre-trial at the same time. The motion having been denied, Respondent then asked counsel what he wished to do about the pre-trial. Counsel suggested that the court issue a bench warrant. The court ordered a bench warrant issued, setting $5,000 bail. Thereafter, counsel advised the court that he was authorized to proceed in the absence of the defendant but made no motion to continue or for any other order of court. Respondent's action was proper and required by the circumstances.

Answering Paragraph (4) hereof, Respondent admits Sentences 1, 2 and 3 of said Paragraph (4). Respondent denies the allegation contained in Sentence 4, generally and specifically, and further alleges that he denied the motion because counsel failed

to comply with the provisions of the applicable statute. Respondent further alleges that his action was lawful and proper.

Answering Paragraph (5) hereof, except as hereafter admitted, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation of Paragraph (5). Respondent admits that he ordered a bench warrant issued and the defendant's bail forfeited in the late afternoon of September 16, 1985. Respondent further admits that the defendant appeared with counsel on the morning of September 17 and that the defendant was remanded to custody until the bail bond was reassumed. Respondent further alleges that on September 16 both counsel and the defendant failed to appear at the call of the case on the morning calendar, that Respondent received a message indicating that counsel would be in court before noon but providing no information concerning the whereabouts of the defendant, that by 4:30 p.m. neither counsel nor the defendant had appeared nor had any further communications from counsel been received by the court, and that the Respondent then ordered the bench warrant and the bail forfeiture. Not only was this appropriate, it was also required that this action be taken to avoid statutory time problems with the case at a later time. The defendant having failed to appear on the appointed day, he appeared the next day with his bail in a forfeited status. Absent a reassumption of the bond or the posting of new bail, the court was required to place him in custody. The defendant was immediately released upon receipt of evidence that the bond was being reassumed.

Answering Paragraph (6) hereof, Respondent admits the allegations in the first three sentences (first subparagraph) of Paragraph (6), except that Respondent alleges that when the case came before Respondent it had been continued more than seven times previously. Respondent further alleges that he properly refused to permit further continuances of the hearing and properly ordered the probation hearing to proceed on January 10, 1986. Respondent further alleges that he was clearly within his judicial discretion to inquire into violations of probation notwithstanding the decision of the Los Angeles County District Attorney not to prosecute a driving under the influence case. With regard to Sentences 4 and 5 (second subparagraph), Respondent has no information or belief sufficient to enable him to answer, and basing his denial upon said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation of said Sentences 4 and 5. Respondent further alleges that the officer who testified at the hearing provided sufficient evidence for the court to conclude that a violation of probation had occurred, based upon the applicable standard of proof and that the court properly found that there had been a violation. With regard to Sentences 6, 7, 8, 10 and 11 of said Paragraph (6), Respondent admits the allegations contained in said Sentences. With regard to the allegation contained in Sentence 9 of said Paragraph (6) to the effect that defendant had never waived his right to counsel, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and dis-

junctively, each and every allegation in Sentence 9. Respondent alleges that, at the time defendant requested an attorney, he considered the request to be inappropriate and untimely since the defendant had been previously noticed that the hearing would proceed and that witnesses would be called and had not requested an attorney. Respondent further assumed that all proper procedures had been followed by previous judges who had handled the case and that the defendant would have been properly arraigned on the violation and informed of his right to counsel at his first appearance in court. Respondent did not know then and still does not know that defendant had not been previously advised of his right to counsel. Respondent admits the allegations contained in Sentences 12, 13 and 14 of Paragraph (6). Respondent denies the allegations contained in Sentence 15 generally and specifically on the ground that it is unintelligible to Respondent. Respondent does admit that there was a notice of appeal filed and that he set the sentence aside, ordered the defendant released from custody and set the matter for a new hearing, all pursuant to the suggestion of Respondent and stipulation of counsel. Respondent denies that he "asserted" jurisdiction over the case, but agrees that he in fact exercised the jurisdiction he had over the case in making the above-mentioned orders. Respondent admits the allegations contained in Sentences 16, 17 and 18 of Paragraph (6). Respondent further alleges that his denial of the affidavit of prejudice filed by the public defender was clearly proper. Respondent further alleges that at the second probation violation hearing he again was presented with competent evidence of a violation of probation, that Respondent properly

found a violation and properly sentenced the defendant. Respondent further alleges that the defendant was represnted by appointed counsel at the second hearing and the second sentencing and that all proper procedures were followed. After listening to the comments of counsel at the sentencing hearing, Respondent was persuaded to reduce the sentence from 180 to 120 days. Respondent further alleges that he first learned of defendant's claim that he had never been advised of his right to counsel when he read the moving papers which were served on him pursuant to the habeas corpus proceeding. After researching the record, Respondent became convinced that there was an insufficient record as to whether this had been done. Respondent so advised counsel for both sides and suggested to counsel that the previous proceedings be set aside and that another hearing be held with counsel present. Accordingly counsel for defendant would withdraw his appeal and request for habeas corpus and the defendant would be released from custody pending the new hearing. Counsel stipulated to this approach and it was carried out.

COUNT THREE

Respondent denies that he has abused his contempt power and his powers to issue orders to show cause and bench warrants. Respondent further denies that any of the behavior alleged in Count Three exemplifies or constitutes such abuse.

Answering Paragraph (1) hereof, Respondent has no information or belief sufficient to enable him to answer Sentences 1, 3, 4 and 5 of said Paragraph, and basing his denial on said ground denies generally and specifically, conjunctively and dis-

junctively, each and every allegation contained in Sentences 1, 3, 4 and 5. With regard to the allegations contained in Sentences 2 and 6 of Paragraph (1), Respondent denies said allegations generally and specifically, conjunctively and disjunctively.

Answering Paragraph (2) hereof, Respondent admits that the two quotations contained within said Paragraph (2) are correct and otherwise denies generally and specifically, conjunctively and disjunctively the allegations contained in said Paragraph (2).

Answering Paragraph (3) hereof, Respondent admits that the quotation contained within said Paragraph (3) is correct and otherwise denies generally and specifically, conjunctively and disjunctively the allegations contained in said Paragraph (3).

Answering Paragraph (4) hereof, Respondent admits the allegations contained in said Paragraph (4) with the exception of the final sentence of said Paragraph. Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically each and every allegation of the final sentence of Paragraph (4).

Answering Paragraph (5) hereof, Respondent has no information or belief sufficient to enable him to answer Sentences 1, 2 and 3 of said Paragraph (5), and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation of said Sentences 1, 2 and 3. Respondent admits the allegations contained in Sentences 4, 5 and 6 with the exception that Respondent alleges that he ordered the spectator detained pending a contempt hearing and that attorney Harve

Schiffman was the attorney who requested the court to reconsider the matter. The spectator did utter a four-letter expletive.

Answering Paragraph (6) hereof, Respondent admits the allegations contained in Paragraph(6), however denies that the described behavior constituted an abuse of judicial power.

Answering Paragraph (7) hereof, Respondent denies generally and specifically, conjunctively and disjunctively, each and every allegation of Paragraph (7).

Answering Paragraph (8) hereof, Respondent admits the allegations contained in Sentence 1 of said Paragraph (8). Respondent denies the allegation in Sentence 2 and alleges that an alternative writ was issue which set an appearance date of November 26, 1985. In regard to Sentence 3, Respondent admits that the case was set for trial on November 26, 1985 and that it was scheduled to be called on his morning calendar on that date. It was not scheduled for trial before Respondent. With regard to Sentence 4, Respondent denies generally and specifically, conjunctively and disjunctively each and every allegation contained in Sentence 4 of Paragraph (8).

COUNT FOUR

Respondent denies that he abdicated his judicial responsibility to remain an objective, impartial arbiter and further denies that he has acted beyond his judicial authority on the basis of unseemly personal involvement in matters before him. He further denies that the behavior described in Count Four exemplifies or constitutes such abdication or unauthorized action.

Answering Paragraph (1) hereof, Respondent has no information or belief sufficient to enable him to answer Sentences 1 and 2 of said paragraph, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation of said Sentences 1 and 2. Respondent admits that the prosecutor moved for a dismissal after a defense motion to exclude certain admissions by the defendant had been granted. With regard to Sentence 3, Respondent admits that he did not disqualify himself from the case. A motion under C.C.P. 170.6 was brought and properly denied. Respondent also admits the allegation contained in the final sentence of Paragraph (1). With regard to the remaining allegations of Paragraph (1), Respondent has no information or belief sufficient to enable him to answer same, and basing his denial on said ground, denies the remaining allegations generally and specifically, conjunctively and disjunctively.

Answering Paragraph (2) hereof, Respondent has no information or belief sufficient to enable him to answer, and basing his denial upon said ground, denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentence 1 of Paragraph (2). Respondent admits the allegations contained in Sentences 2 and 3. With regard to Sentence 4, Respondent denies that he refused to grant a continuance and alleges that he in fact granted a continuance from 10:30 until 1:30 p.m., although the prosecutor's request for a longer continuance was at that time denied, after a consideration of the nature and status of the case and the substantial inconvenience and hardship to the jurors which

would result from a longer continuance. With regard to Sentence 5, Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively each and every allegation contained in Sentence 5. With regard to Sentence 6, Respondent denies that he failed to comply with the writ and admits that he again continued the case to the next morning. Respondent admits the allegations contained in Sentence 7. With regard to Sentence 8, Respondent admits that he excused the jury until April 18 and denies that he ordered the parties into chambers in derogation of the stay order. Respondent alleges that he requested the parties to discuss the problem in chambers and that an agreement to resolve the dilemna was reached. This meeting and agreement did not in any way constitute a violation of a stay order of the Superior Court. With regard to Sentence 9, Respondent denies that the case was dismissed and alleges that the case was mistried by stipulation of the parties, with the concurrence of the court, and that the defendant waived jeopardy. With respect to Sentence 10, Respondent denies the allegations contained in Sentence 10 generally and specifically, conjunctively and disjunctively.

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Answering Paragraph (3) hereof, Respondent admits the allegations contained in Sentence 1 of said paragraph. With regard to Sentence 2, Respondent admits that he increased the bail at the conclusion of the preliminary hearing from $13,000 to $150,000 and alleges that he properly did so. He further admits that he assessed $1500 in attorney fees and alleges that he properly did so. He further alleges that the language "even though you were not the trial court and criminal proceedings were not yet completed" is irrelevant and immaterial. Nevertheless, Respondent admits that he was not the trial court and alleges that the criminal proceedings had been concluded as to the Municipal Court. Respondent admits that he ordered the money for the fees to be taken from posted bail. He further admits that he was told that defendant's grandmother had posted the bail and did not authorize the bail to be used for that purpose. Respondent alleges that the record did not support this representation and in fact showed that the defendant had posted the bail. With regard to the final sentence of said Paragraph (3), Respondent has no information or belief sufficient to enable him to answer said sentence, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in said final sentence.

Answering Paragraph (4) hereof, with the exception of the final sentence, Respondent denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Paragraph (4). Respondent admits the allegations contained in the

final sentence of Paragraph (4).

Answering Paragraph (5) hereof, Respondent admits the allegations contained in the first six sentences of Paragraph (5). With regard to Sentence 7, Respondent admits that Judge Hyde issued the alternative writ described in Sentence 7, however with regard to the allegation that he issued a peremptory writ directing Respondent to vacate the trial date, Respondent has no information or belief sufficient to enable him to answer this latter allegation, and basing his denial on said ground denies this latter allegation generally and specifically. With regard to Sentence 8, Respondent admits that the writ set an appearance date of November 26, 1985. Respondent denies the allegations contained in Sentences 9, 10 and 11 generally and specifically, conjunctively and disjunctively. Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentence 12. Respondent admits the allegations contained in Sentences 13 and 14. Respondent alleges that the allegations contained in Sentence 15 are irrelevant and immaterial, having no bearing on these proceedings, and that they should be stricken. Respondent has no information or belief sufficient to enable him to answer, and basing his denial on said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in Sentence 15.

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Returning to Paragraph (4) hereof, Respondent additionally alleges that the allegations in the final sentence of said paragraph are irrelevant and immaterial, constitute hearsay and opinion evidence, are inadmissible and have no bearing upon this proceeding. Accordingly said allegations should be stricken from the Notice of Formal Proceedings.

COUNT FIVE

Respondent denies that he has abused his power in making fee orders and further denies that any of his actions in any of the cases referred to in this count constitute or evidence any such abuse.

Answering Paragraph (1) hereof, Respondent admits that he imposed attorney fees of $2000, however denies that he did so without regard to the cost of the services rendered and denies that he did so without regard to the defendant's ability to pay. Respondent admits that he did not specifically tell defendant at that time that he had a right to a hearing, but assumed that had been done at the time that counsel was appointed. In fact, Respondent did conduct a hearing. Respondent admits that he did not inform defendant of any rights he might assert at a hearing and also admits that he did not inform defendant of a right to seek modification or vacation of the judgment. Respondent alleges that he had no obligation to inform defendant of such rights or, to the extent that any such obligation existed, a failure to give such advice in no way demonstrates an abuse of power in making fee orders. Respondent admits that he told defendant's counsel that

he could sell his car to pay the fees. Respondent admits that he subsequently reducedthe amount of the fee to $750 at counsel's request but denies that same was done without regard to the defendant's ability to pay. The defendant was not told, at this modification hearing, that he had a right to seek modification.

Answering Paragraph (2) hereof, Respondent admits that he assessed attorneys fees of $1500 at the close of the preliminary hearing and alleges that this was done after a proper hearing. Respondent admits that he ordered the money taken out of previously post bail. Respondent denies that this was done without regard to the actual cost of services or that it was done without regard to the defendant's ability to pay. Respondent did not tell defendant that he had a right to a noticed hearing and did not tell him of the rights he might assert at a hearing. Respondent had no obligation to do so. Respondent further did not tell him of a right to petition the court to modify or vacate its judgment.

Answering Paragraph (3) hereof, Respondent admits that he imposed fees of $50 but denies that this was done without regard to defendant's ability to pay. Respondent admits that he did not tell the defendant of a right to a hearing but alleges that he did in fact conduct a hearing. Respondent did not tell the defendant the rights he might assert at a hearing. Respondent had no obligation to tell defendant of his right to a hearing or of his rights at the hearing. Respondent did not tell defendant of his right to petition the court to modify or vacate its judgment.

Answering Paragraph (4) hereof, Respondent admits that he imposed fees of $50 and otherwise incorporates his responses to

Paragraph (3) and makes them a part hereof.

Answering Paragraph (5) hereof, Respondent admits that he imposed fees of $50 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof.

Answering Paragraph (6) hereof, Respondent admits that he imposed fees of $75 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof.

Answering Paragraph (7) hereof, Respondent admits that he imposed fees of $30 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof.

Answering Paragraph (8) hereof, Respondent admits that he imposed fees of $75 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof.

Answering Paragraph (9) hereof, Respondent admits that he imposed fees of $30 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof.

Answering Paragraph (10) hereof, Respondent admits that he imposed fees of $150 and otherwise incorporates his responses to Paragraph (3) and makes them a part hereof. With regard to the final sentence of Paragraph (10), Respondent has no information or belief sufficient to enable him to answer, and basing his denial upon said ground denies generally and specifically, conjunctively and disjunctively, each and every allegation contained in said final sentence.

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AFFIRMATIVE DEFENSES

Respondent hereby presents the following affirmative defenses directed towards the Commission's proceedings, the Notice of Formal Proceedings, and Counts One through Five thereof:

1. The Commission and its agents and representatives are guilty of laches.

2. The Commission's proceedings are in violation of Rule 905, California Rules of Court which provides that when the Commission concludes that formal proceedings should be instituted, a written notice of formal proceedings shall be issued "without delay." The Commission had determined to initiate formal proceedings on later than June, 1986. The Notice of Formal Proceedings was issued on December 16, 1986. The Notice was not issued without delay. The proceedings must be dismissed and terminated.

3. The delays in instituting formal proceedings occasioned by the passage of time, the undue consumption of time in completing the investigation, and the undue consumption of time between the decision to proceed and the issuance of the Notice of Formal Proceedings are violative of Respondent's constitutional right to due process of law and fundamental fairness and constitute a denial of his procedural rights under Rule 910. These delays are further violative of the principles enunciated in Rost v. Municipal Court (1960) 184 Cal.App.2d 507, Gates v. Department of Motor Vehicles (1979) 94 Cal.App.3d 921 and other related cases.

4. The violations of Respondent's due process rights are material and prejudicial to him in that he cannot determine

whether there is some basis in fact for them, who might have information regarding them, and over the period the Commission has been examining these issues memories of the witnesses who will testify or of potential witnesses may have been lost or faded, or imprinted by the conduct of the investigation in a version factually and adverse to Respondent.

5. The Commission's Notice of Formal Proceedings is deficient in that it is ambiguous, confusing and unclear, and fails to notify the Respondent of which Canons, statutes or other provisions of law he has allegedly violated. The numerous statements of alleged wrongdoing are not related clearly to the commission of a particular public offense, or to a clearly defined specific duty owed under a particular Canon, statute or other provision of law. In view of these ambiguities and the lack of clarity, the Respondent is unable to properly prepare to defend himself.

6. Respondent was denied an adequate opportunity to respond to the charges against him during the preliminary investigation in violation of Rule 904. This denial is occasioned by, but is not limited to, the failure of the Commission to specify in adequate detail the charges against Respondent. It is also alleged that Respondent was not afforded a reasonable opportunity to present such matters as he may choose by virtue of the fact that counsel for Respondent was denied an opportunity after requesting same to meet with and present relevant matters in person to the Commission's investigating attorneys and to the Commission itself. In fact, an initial agreement between Investigating Attorney

Dorfman and counsel for Respondent to arrange such a meeting was rescinded. The Deputy Attorney General responsible for preparing the Notice of Formal Proceedings also refused such a meeting. These refusals occurred in spite of counsel's urgings that a meeting and oral discussion of these matters would shed light upon the issues in this matter and might affect the Commission's decision as to whether formal proceedings should be initiated.

7. The actions which are attributed to Respondent in the Notice of Formal Proceedings are protected by principles of judicial immunity and may not be the subject of a Commission proceeding.

8. The actions which are attributed to Respondent in the Notice of Formal Proceedings are within the bounds of judicial discretion, and are subject to review on appeal or by other legal proceedings and are not properly a subject of the Commission's proceedings.

9. The allegations made against Respondent in the Notice of Formal Proceedings do not establish that he is guilty of wilful misconduct in office.

10. The allegations made against Respondent in the Notice of Formal Proceedings do not establish that he is guilty of conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

11. The Commission, its agents and representatives are guilty of unclean hands.

12. The proceedings herein are the product of political

maneuverings on the part of certain individuals who opposed the re-election of Respondent. The Commission, by misusing its proceedings and failing to follow the Rules of Court, has made itself a part of said political maneuverings and has engaged in discriminatory and selective prosecution of these proceedings. The fact of the investigation, which was improperly initiated, was used against Respondent in his recent election contest. Respondent has already been publically chastized by extensive publicity concerning the Commission's investigation and some of the particulars thereof. In spite of this, Respondent was re-elected by a wide margin. The proceedings should be dismissed because of their improper origin and misuse and because they constitute unlawful and selective and discriminatory prosecution.

13. The Commission failed to comply with Rule 904 which provides that the Commission shall make a preliminary investigation "upon receiving a verified statement, not obviously unfounded or frivolous." The provision permitting the Commission to initiate an investigation on its own motion does not permit same simply because a written unverified statement is received. If this were true, the Rule would be meaningless. The Commission's action has rendered the rule meaningless in this particular case.

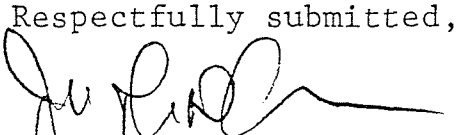
14. The proceedings herein are contrary to public policy in that they deter judges from stating reasons for their decisions and rulings, and undermine the independence of the judiciary. In one instance, Respondent received an investigation (Rule 904) letter from the Commission concerning a case which was still pending before

him and concerning which there were still issues of substance to be decided. Such action by the Commission and by the complaining party was a highly improper attempt to influence the outcome of a pending matter.

WHEREFORE, Respondent urges and demands that these proceedings be dismissed and terminated, that the charges not be sustained and that they be found to be untrue, and that, except as requested above, the Commission take no further proceedings in regard to any disciplinary action against Respondent.

Dated: February 19, 1987

Respectfully submitted,



JOSEPH D. CANTY, JR.
Attorney for Respondent

VERIFICATION

I, the undersigned, say:

I have read the foregoing Answer to Notice of Formal Proceedings and know the contents thereof. I am the Respondent in this proceeding.

The matters stated in the foregoing Answer to Notice of Formal Proceedings are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on February 19, 1987 at Upland, California.

I declare under penalty of perjury that the foregoing is true and correct.

Kenneth Lynn Kloepfer

KENNETH LYNN KLOEPFER
Judge of the Municipal Court