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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE ELAINE M. RUSHING, NO. 177	RESPONDENT'S ANSWER TO NOTICE OF FORMAL PROCEEDINGS

COMES NOW Elaine M. Rushing, a Judge of the Sonoma County Superior Court, and answers the Notice of Formal Proceedings as follows:

COUNT ONE

Judge Rushing admits that on the night of June 21, 2005 in Sonoma County California, while under the influence of alcohol she was arrested for violating California Vehicle Code §23152(b); that at the time of her arrest, she had a blood alcohol level of approximately 0.2%, and that on August 8, 2005, she entered a plea of no contest in Sonoma County Superior Court Case Number SCR-469285 to the charge of violating California Vehicle Code §23152(b) and §23578.

Two days after the incident, Judge Rushing reported it to the Commission on Judicial Performance. She accepted immediate responsibility for drinking and driving and is mortified that she made such a bad decision on the night of June 21, 2005.

Following her conviction Judge Rushing completed 10 days of work release, paid all fines and fees and participated in the 45-hour First Offenders Drinking Drivers Program.

Judge Rushing admits that by virtue of the above, her conduct violated the Code of Judicial Ethics, Canons 1 and 2A.

COUNT TWO

Judge Rushing denies the allegation that "in an effort to avoid being arrested for crimes related to your drinking and driving referenced in Count One, you engaged in a course of dishonest conduct."

Judge Rushing concedes that she was operating her vehicle on the evening of June 21, 2005, while under the influence of alcohol. Although she has no recollection whatsoever of striking or colliding with a stone and mortar wall at 5571 Crystal Drive in Santa Rosa, she does not dispute that such a collision did in fact occur. Indeed, as a result of that collision, Judge Rushing sustained a contusion to her head and injuries to her right leg and was treated for the injuries by Dr. Thomas J. Honrath.

Prior to the incident, Judge Rushing was at a friend's house having dinner. The purpose of the visit was grief support because her friend's mother had just

died. Judge Rushing drove to her friend's house, arriving around 6:15 p.m. She brought some food for dinner and consumed several glasses of wine before leaving her friend's residence. The evening was very emotional because of the grief surrounding her friend's maternal loss. During the course of the evening, a couple arrived who were friends of Judge Rushing's friend. The couple was getting ready to travel out of state to attend a funeral.

Judge Rushing has a recollection of someone helping her out of her automobile but has no memory whatsoever of seeing personnel from the fire department or an ambulance and has no recollection of speaking with any persons from the fire department or an ambulance service.

Apparently, a private citizen had called 911 regarding the incident and a paramedic was dispatched to the scene. The paramedic was attempting to obtain Judge Rushing's identification and the only identification she was able to produce was her Sonoma County Employee badge showing that she was a judge. In fact, her California driver's license was found several days after the incident under the passenger seat of her vehicle and was never presented to the California Highway Patrol nor found by the California Highway Patrol at the scene. Judge Rushing has no recollection of identifying herself to Firefighter Ramos as a judge, but obviously her Sonoma County Employee Identification showed her to be a judge.

As set forth herein, Judge Rushing was dazed and confused and inebriated and has a limited recollection of speaking with the police. If she told Firefighter Ramos or the California Highway Patrol that she was in the backseat of her car,

that would certainly show the state of her confusion given the fact Judge Rushing's car has no backseat.

Judge Rushing denies that she violated The Code of Judicial Ethics, Canons 1 and 2A.

COUNT THREE

Judge Rushing denies that she invoked her judicial office in an effort to avoid being arrested for crimes relating to her drinking and driving and further denies invoking her judicial office to otherwise receive preferential treatment from the California Highway Patrol.

It appears from the police investigation that the first person to interview Judge Rushing was Firefighter Ramos. He requested identification from Judge Rushing and she was unable to locate her California driver's license. Apparently, Judge Rushing provided Officer Ramos with her Sonoma County employee badge which was the only means of identification available to her. Judge Rushing customarily attaches the badge to her purse and presumably, it was given to Mr. Ramos.

Following the accident, Judge Rushing was dazed and confused and admittedly inebriated. The other statements supposedly attributed to Judge Rushing in Count Three of the Notice of Formal Proceedings can neither be confirmed nor denied, because she has a limited recollection of the event.

It appears that Judge Rushing was placed under arrest at the Rohnert Park police station when she was given her Miranda warning. Judge Rushing denies

she "persisted in telling Officer Holman that you were a Superior Court Judge....when Officer Holman placed you under arrest."

While Judge Rushing does have a limited recollection of events at the scene, she does remember requesting the highway patrol officer to remove the handcuffs because they were placed very tight and were causing the pain. She does not dispute that she may have requested Officer Holman to remove the handcuffs because of her pain they were causing and may very well have told him that she was not a flight risk, even after placed in detention, given her professional status.

Judge Rushing was extremely surprised to see the reference in the police report regarding her treatment of Highway Patrol officers in court and has absolutely no memory of such conversation. If she were asked to explain how she could possibly make such a statement in view of the fact that she does not believe she has ever "violated court rules" to help the CHP the only thing she can think of is that when judges have the preliminary hearing assignment, as she did for some considerable period of time as part of her felony assignment, law enforcement personnel often arrive in the courtroom having worked the graveyard shift and are exhausted. Typically, all judges do what they can to call these cases first to get the officers home to sleep.

Judge Rushing specifically denies that her conduct violated the Code of Judicial Ethics, Canons 1, 2A or 2B(2).

MITIGATION

Judge Rushing accepted immediate responsibility for drinking and driving and is mortified that she made such a bad decision on the night of June 21, 2004. She continues to be extremely remorseful and expressed this anguish in an open apology to the Sonoma County community published in the Santa Rosa Press Democrat shortly after the incident.

The public scrutiny placed on Judge Rushing has been embarrassing and humbling. In response to Judge Rushing's open letter to Sonoma County residents, the Santa Rosa Press Democrat published an editorial which presented a positive picture of an otherwise negative event. As the editor noted:

> [Judge Rushing's] admission was both necessary and appropriate. Public officials accept the responsibility to set an example for others, and when they make a mistake, they need to step forward and say so.
>
> If her candor seems unusual, it is only because we live in a time when so many public figures seek to duck responsibility for their actions ...
>
> No one can doubt that this was a painful series of events for Rushing and her family. While the law, rightly, demands that people act responsibly when it comes to alcohol and automobiles – "There is no excuse," said Rushing's apology – many of us know otherwise honorably people who have failed that standard at some point in their lives.
>
> People learn from their mistakes. In this case, the best outcome would for Judge Rushing and everyone else to learn from hers.

Judge Rushing first came to Sonoma County over 30 years ago, in 1971 when she was in her twenties. For a number of years she was a part time language instructor at Santa Rosa Junior College. She speaks several languages. In 1976 her

son Adam was born in Santa Rosa. For the next three years she commuted to Hastings Law School in San Francisco on the Golden Gate Transit bus while she raised her son and worked part time.

Judge Rushing began the practice of law in 1979. First, she worked as a trial lawyer for 13 years. In 1992, she was deeply honored to be the first woman judge appointed to our Superior Court. She took and continues to take this honor very seriously. As a judge she immersed herself into the world of judging, taking classes, joining committees and learning new assignments. For three years she was in Family Law. For two years she was the Sonoma County Superior Court's Presiding Judge.

Through the years Judge Rushing has taught classes to judges throughout the state including literature and judicial reasoning. .

Judge Rushing has also spent considerable energy concentrating on sensitizing judges to gender bias issues, and teaching ways to recognize and overcome gender bias. Having been raised in several different countries, by a family that moved frequently, she understands that with different cultures, come different perspectives.

Recognizing that the courts could become clogged arteries of justice, Judge Rushing volunteered for statewide committees with the goal of streamlining litigation to make the courts more accessible to people trying to get their cases to trial. She purposefully volunteered for committees to increase communication between segments of our community who feel disenfranchised, to make sure that

their voices are heard. Nine years ago Judge Rushing became a criminal law judge presiding over felony cases. In April of 2005 she requested re-assignment to the court's civil litigation side. Thus her current duty involves adjudicating the non-criminal cases.

Elaine Rushing has been a judge for almost 14 years and is extremely proud to serve on the Sonoma County Superior Court. Both on and off the bench, Judge Rushing has worked hard to instill in our community the utmost respect for the integrity and dignity of the court. And, she has worked tirelessly to set an example, both within the court and in her everyday life, of respect for all people.

Dated: March 3, 2006

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Attorneys for THE HONORABLE ELAINE M. RUSHING

HBW.10309294

VERIFICATION

I, ELAINE M. RUSHING, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing RESPONDENT'S ANSWER TO NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 3-3-06

Elaine Rushing

ELAINE M. RUSHING

CERTIFICATE OF SERVICE

I, Jolene F. Devlin, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is.

On March 3, 2006, I served the following document(s) on the parties in the within action:

RESPONDENT'S ANSWER TO NOTICE OF FORMAL PROCEEDINGS

Jack Coyle
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Commission on Judicial Performance
455 Golden Gate Avenue, Ste. 14400
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I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on March 3, 2006.

By _____
Jolene F. Devlin