

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE DONALD R. ALVAREZ

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Donald R. Alvarez, a judge of the San Bernardino County Superior Court since 2001. Judge Alvarez and his attorney, Edward P. George, Jr., appeared before the commission on December 14, 2005 pursuant to rule 116 of the Rules of the Commission on Judicial Performance to contest the imposition of a public admonishment. Having considered the written and oral objections and argument submitted by Judge Alvarez and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

Judge Alvarez is a judge of the San Bernardino County Superior Court. His term commenced in June 2001.

On October 5, 2003, around 6:30 p.m., Judge Alvarez was stopped by the California Highway Patrol in San Bernardino County for speeding on Interstate 215. Judge Alvarez was arrested, and a blood sample was drawn at 7:45 p.m. On October 17, 2003, the judge was charged with the misdemeanors of driving under the influence of alcohol and driving with a blood alcohol level of .08 percent or more (California Vehicle Code sections 23152(a) and (b)). The result of the test of the blood sample by the San Bernardino County Sheriff's Department laboratory of criminalistics was a blood alcohol level of .14 percent.

On January 28, 2004, Judge Alvarez entered a no contest plea to driving under the influence of alcohol, in violation of California Vehicle Code section 23152(a), and was found guilty and convicted of that charge. (The charge of violating Vehicle Code section 23152(b) was dismissed.) Judge Alvarez was placed on three years of informal probation, ordered to

attend an alcohol program, pay a mandatory fine and comply with other conditions of probation.

Judge Alvarez's unlawful action described above evidences a serious disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics, including failure to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved (canon 1), and failure to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2). Judge Alvarez's unlawful action also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, § 18, subd. (d).)

Judge Alvarez further violated the Code of Judicial Ethics by failing to report the filing of the charges and his conviction to the Commission on Judicial Performance. Canon 3(D)(3) provides that a "judge who is charged ... or convicted of a crime in the United States ... including all misdemeanors involving ... the personal use ... of alcohol, shall promptly and in writing report that fact to the Commission on Judicial Performance." This matter came to the attention of the commission from a source other than Judge Alvarez. The commission wrote to the judge about this matter on May 26, 2004, which was four months after his conviction and over seven months after charges were filed; as of that time Judge Alvarez had not reported to the commission.

In his August 2, 2004 response to the commission's preliminary investigation letter, Judge Alvarez stated, "The issue was never whether I should self-report, but when. It was never clear to me when the report should be made." (Emphasis in original.) Judge Alvarez further stated in his August 2004 response that it was his intention to self report upon completion of all post-disposition conditions of probation, including the alcohol program, which was required to be completed by August 15, 2004, in order to "report the entire complete case to the commission." (Emphasis in original.)

Canon 3D(3) clearly and unambiguously mandates a prompt report to the commission upon being charged or upon being convicted. Judge Alvarez reported neither event. Further, on at least two occasions, before and shortly after he was convicted, Judge Alvarez was told by then Presiding Judge J. Michael Welch and Presiding Judge Peter Norell that he must self report. Under these circumstances, the commission finds untenable the notion that the reporting obligation of canon 3D(3) would be satisfied by deferring reporting until some other occasion of the judge's choice, such as in this case, after the completion of all conditions of probation.

During Judge Alvarez's appearance before the commission, he apologized for driving while intoxicated and appeared truly remorseful and contrite over the incident itself, concerning which he accepted full responsibility. Nonetheless, the judge's failure to self report as described above was at a minimum improper action within the meaning of article VI, section 18(d) of the California Constitution.

The self-reporting requirement of canon 3D(3) assists the commission in fulfilling its constitutional mandate and in protecting the public. Under the Constitution, a judge charged with certain offenses is disqualified from acting as a judge. (Cal. Const., art. VI, § 18, subd. (a).) When a judge is convicted of certain charges, the commission is required to suspend the judge without pay and, if the conviction becomes final, the commission is required to remove the judge from office. (Cal. Const., art. VI, § 18, subd. (c).) A judge may also be censured or removed from office by the commission for “habitual intemperance in the use of intoxicants or drugs....” (Cal. Const., art. VI, § 18, subd. (d).) To protect the public, when a judge is charged with an alcohol-related charge, it is the commission’s policy to investigate not only the charged incident but also whether there is a substance abuse problem that is affecting the judge’s performance of judicial duties. A judge’s failure to report as required by canon 3D(3) impedes the commission’s performance of these constitutionally mandated duties. Therefore, it is critical that judges be prompt in fulfilling their reporting obligations under canon 3D(3).

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. Commission member Mr. Lawrence Simi is recused and commission member Mr. Jose C. Miramontes did not participate in this matter.

Dated: December 27, 2005

Marshall B. Grossman
Chairperson