

## **PUBLIC ADMONISHMENT OF JUDGE JAIME R. ROMÁN**

The Commission on Judicial Performance ordered Judge Jaime R. Román publicly admonished, pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

### **STATEMENT OF FACTS AND REASONS**

Judge Román has been a judge of the Sacramento County Superior Court since 2007. His current term began in January 2011.

As set forth below, the commission found that Judge Román abused his authority and violated the due process rights of individuals appearing before him when ordering an individual incarcerated for contempt, when ordering the payment of monetary sanctions, attorney fees and costs, and when granting ex parte relief. The commission also found that Judge Román's conduct in one of the sanctions matters raised an appearance of lack of impartiality and embroilment.

1. Judge Román presided over the 2010 trial of *People v. Johnson*, Nos. 08F08054, 08F10037, 09F01034 and 09F08416. The trial transcript reflects the following when witness Bryan Jones was called to testify:

MR. GOODMAN: People call Bryan Jones.

THE COURT: Hi, Mr. Jones. If you'll come on up and sit next to me.

THE CLERK: Please raise your right hand.

(Whereupon, in doing so, a hand gesture was made.)

THE CLERK: Mr. Jones.

THE COURT: I think we can do without that, Mr. Jones.

[Clerk swears the witness.]

(R.T. 260:24–261:5.)

Mr. Jones then testified until the end of the day's proceedings. Judge Román recessed the proceedings, excused the jury and the following occurred:

THE COURT: Deputy Parker, do we have someone to assist you?

THE BAILIFF: I'll get somebody.

THE COURT: All right. Mr. Jones, I'm having you here because when the clerk administered the oath to you, you characteristically did what we refer to as flipped her off.

THE WITNESS: I didn't mean to do that.

THE COURT: Unfortunately, that's contempt. I'm going to remand you. You're --

THE WITNESS: Oh, my God.

THE COURT: -- to jail, okay. And you'll --

THE WITNESS: What about my daughter [present in court].

THE COURT: That's unfortunate. You'll be there for 3 days.

THE WITNESS: Oh, Tony [defendant], look at all this shit you did, oh...

MS. LAMB: I'm sorry, what's happening, Your Honor?

THE COURT: He flipped off the clerk during the administration of the oath. That's contempt on its face.

THE WITNESS: I didn't mean to flip. I just put my hand up. Man, I got arthritis.

THE COURT: All right. Anything else we need to put on the record?

THE WITNESS: Oh my God.

MS. LAMB: I just wanted to state that my client has nothing to do with this.

THE COURT: That's why I did this out of the presence of the jury --

MS. LAMB: Thank you.

THE COURT: -- because I did not want anything [to] be connected with any defendant or, for that matter, the People with regard to what occurred; but it's contempt on its face. We all recognize it. So he's going to spend 3 days in the county jail thinking about that.

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THE COURT: All right. Any event, 3 days. He'll be here tomorrow, okay, because he's going to be in custody now, all right. And I'll need all five of you tomorrow at 9:00.

(R.T. 277:6-278:25.)

The next day when Mr. Jones was brought in to continue his testimony, outside the presence of the jury, he requested counsel. Judge Román ordered Mr. Jones returned “downstairs” pending the appointment of counsel. Later, outside the presence of the jury, Judge Román appointed counsel (Mr. Matheu) for Mr. Jones. Mr. Matheu asked Judge Román, “[I]s it a contempt hearing or has he already been adjudged in contempt?” Judge Román explained the events of the prior day and informed counsel that witness Jones was already serving three days in jail for contempt. Attorney Matheu then asked, “And obviously it wasn’t inadvertent or it wasn’t a mistake and what he was doing wasn’t a twitch of the hand; it was a clear, blatant lack of decorum before the Court?” Judge Román responded, “I’m 59 years old.” Attorney Matheu responded, “You know what a bird is; is that fair to say?” and Judge Román said yes. (R.T. 291:26–292:15; 333:10–334:13.)

It is misconduct for a judge to use the contempt power to incarcerate someone without following correct contempt procedures, which include notice and the opportunity to be heard. (See *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533 [California Supreme Court found that a judge committed willful misconduct by holding a litigant in contempt without informing her that she was in contempt and failed to give her a chance to respond before sentencing her to jail]; *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 855–856). Judge Román’s description of Mr. Jones’s conduct did not inform Mr. Jones that he was being charged with contempt of court. Judge Román did not give Mr. Jones the opportunity to speak on his behalf before sentencing him. Although Mr. Jones thereafter offered an explanation, Judge Román had already sentenced him to jail. Judge Román contended in his response to the commission that he “went a step further” than he was required to and appointed counsel, but this did not happen until the next day after Mr. Jones had spent the night in jail.

The commission determined that Judge Román’s actions constituted abuse of the contempt power and abuse of authority and violated Mr. Jones’s due process rights. This conduct violated canon 2A of the Code of Judicial Ethics (judges “shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”) and canon 3B(7) (judges “shall accord to every person who has a legal interest in a proceeding ... the full right to be heard according to law”).

Judge Román also failed to follow proper contempt procedures after incarcerating Mr. Jones by failing to issue a written order reciting the evidentiary facts supporting the contempt finding as required by statute. (*Raiden v. Superior Court* (1949) 34 Cal.2d 83, 86; *Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 125 fn. 16 [advising that in view of *Raiden*, the judge “must draw the order with meticulous care and should not delegate the draftsmanship to counsel or depend upon the clerk, no matter how experienced, to incorporate it into the minutes”].) A written order is the judgment in a direct contempt proceeding and the prompt preparation of the order by the court is jurisdictional and essential to a valid contempt, and is the basis for the contemnor’s right of appeal. (*In re Buckley* (1973) 10 Cal.3d 237, 247; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694.) Judge Román explained to the commission that he understood at the time that the transcript, his observance of the conduct, Mr. Jones’s excuses and the court’s guilty adjudication and length of jail sentence were sufficient, but admitted his failure to prepare the required written order. Judge Román’s conduct in failing to issue the required written order violated canon 2A of the Code of Judicial Ethics (judges “shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”).

The California Supreme Court and the commission have stressed that “[t]he contempt power, which permits a single official to deprive a citizen of his fundamental liberty interest without all of the procedural safeguards normally accompanying such deprivation, must be used with great prudence and caution,” and that “[i]t is essential that judges know and follow proper procedures in exercising this power.” (Public Admonishment of Judge Lisa Guy-Schall (1999), citing *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1314 and *Ryan v. Commission on Judicial Performance, supra*, 45 Cal.3d at p. 533 [failure to know or research proper contempt procedures constituted bad faith]; *Kloepfer v. Commission on Judicial Performance, supra*, 49 Cal.3d at p. 858.) Ignorance of proper contempt procedures, without more, constitutes bad faith. (*Cannon v. Commission on Judicial Qualifications, supra*, 14 Cal.3d at p. 694.)

2. Also during the *Johnson* trial, Judge Román sanctioned Assistant Public Defender Crystal Lamb \$150 for failure to appear at 3:00 p.m. on February 2, 2010, to discuss jury instructions pursuant to his oral order at the end of the proceeding that day. After Ms. Lamb failed to appear, Judge Román instructed her to appear in his courtroom at 8:00 a.m. on February 3, 2010. On the morning of February 3, 2010, with all counsel present, Judge Román conducted a proceeding on the record outside the presence of the jury concerning Ms. Lamb’s failure to appear. Judge Román began by stating, “You weren’t here yesterday at 3:00.” Judge Román heard Ms. Lamb’s explanation, questioned her further and she responded with further explanation. Judge Román asked the co-defendant’s counsel if he was appointed or retained and what level he was. (R.T. 662:23-663:28.) Judge Román then said:

THE COURT: Okay. I’m going to sanction you, impose a monetary sanction, because we all had to be here, okay, of \$150, 75 to the DA’s office, 75 to the Conflict Criminal Defenders Panel, okay?

(R.T. 664:1-4.)

Judge Román then stated that the sanction was because “you [co-defendant’s counsel] were here for an hour yesterday, and we were doing nothing.” Ms. Lamb apologized and said she would gladly write the checks, which she did immediately thereafter. (R.T. 664:16-21.)

Judge Román did not give Ms. Lamb notice that he was contemplating a monetary sanction at any time prior to ordering her to pay the \$150 sanction and never stated the statutory basis for the sanction.

The commission determined that Judge Román abused his authority and violated Ms. Lamb’s due process rights by imposing a monetary sanction without prior notice. This conduct violated canon 2A of the Code of Judicial Ethics (judges “shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”) and canon 3B(7) (judges “shall accord to every person who has a legal interest in a proceeding ... the full right to be heard according to law”). Before sanctions are imposed, adequate notice is mandated based upon the due process clauses of both the federal and state constitutions. (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 976.) While a court may raise the issue of sanctions on its own motion, it must give notice of its intent to impose sanctions “before findings are made and at a time preceding the trial judge’s decision whether, in fact, to impose sanctions.” (*Bergman v. Rifkind & Sterling, Inc.* (1991) 227 Cal.App.3d 1380, 1387 [original italics] [sanctions

award reversed because judge's findings regarding sanctions preceded his review of the attorney's explanation and evidence of good cause]; Public Admonishment of Judge Ronald J. Maciel (2006.) The reason for the notice requirement is to advise the responding party that the imposition of sanctions is being considered, and to give the party an opportunity to prepare for the hearing. (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1081.)

3. Judge Román presided over a hearing in *Rapozo v. Rapozo*, No. 10FL07683, on April 9, 2012, and issued an order of that same date enumerating and ruling on 70 issues collectively presented by the parties. Judge Román told the commission that, as always, there were only 15 minutes available to hear all of the motions associated with the *Rapozo* action. The ruling awarded petitioner \$29,500 in attorney fees pursuant to Family Code section 2030, \$4,500 in costs pursuant to Family Code sections 2030 and 2031, \$20,000 in attorney fees as a sanction pursuant to Family Code section 271, and \$5,000 in attorney fees as a sanction against respondent's counsel, Steven Wessels. Judge Román told the commission that he believed petitioner had filed a written sanctions motion, but petitioner had not requested any of these awards either in writing or in open court at the time of the hearing of the cause on the merits. (Family Code section 2031(b)(1) permits oral requests in open court at the time of the hearing on the merits for an award of attorney fees and costs under Family Code section 2030.) Judge Román had not issued an order to show cause giving Mr. Wessels or his client notice that he was contemplating such awards, nor had he otherwise provided notice. After Mr. Wessels filed a motion to vacate the awards on the ground that neither he nor his client had been provided notice and an opportunity to respond, Judge Román issued a June 1, 2012 order vacating his April 9, 2012 order as to each of these awards. Judge Román noted in his June 1, 2012 order that Mr. Wessels had objected at the April 9, 2012 hearing to lack of notice regarding attorney fees and sanctions.

The commission determined that Judge Román abused his authority and violated Mr. Wessels's and his client's due process rights in issuing these awards totaling \$59,000 without notice or an opportunity to respond. This conduct violated canon 2A of the Code of Judicial Ethics (judges "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary") and canon 3B(7) (judges "shall accord to every person who has a legal interest in a proceeding ... the full right to be heard according to law").

In his response to the commission, Judge Román admitted that he erred in issuing the awards, but stated it was a harmless mistake that he corrected immediately upon notice that no motion had been made. In the commission's view, the scope of the violations precludes treating the conduct as a mistake. To the contrary, the commission determined that Judge Román's April 9, 2012 and June 1, 2012 orders raised an appearance of lack of impartiality and embroilment, in violation of canon 2A of the Code of Judicial Ethics. Notice and an opportunity to respond were required as to all of the awards. Yet, in his April 9, 2012 order, Judge Román "granted" two motions that had never been made. Notwithstanding the absence of any motion and the detailed basis required by California Rules of Court, rule 5.93 (2012) to support requests for attorney fees and costs under Family Code section 2030, Judge Román, on his own, determined the amounts of attorney fees and costs to award under Family Code section 2030(a)(2) in a 21-page highly-detailed order while failing to include the findings required by Family Code section 2030(a)(2). Judge Román had been a judge since 2007 and had been presiding in family court for a year and a half

before he issued this order. He had the opportunity to become familiar with the statutes and rules governing pretrial attorney fees and costs, and sanctions. He acknowledged in his response to the commission that motions for such attorney fees and costs were “all too common.”

Further, Judge Román’s comments in the April 9, 2012 order reflected embroilment. Judge Román’s June 1, 2012 order stated, “Mr. Wessels again observes that he was not provided notice in petitioner’s ‘responding papers’ -- an oversight that will clearly not recur.” Judge Román’s admittedly erroneous award of \$5,000 in sanctions against Mr. Wessels resulted in a report to the State Bar by Judge Román (which he told the commission he corrected after he vacated the award two months later). Finally, the order requiring the total payment of \$59,000 in attorney fees, costs and sanctions was outstanding from April 9, 2012 to June 1, 2012, and was only vacated after Mr. Wessels filed a motion to vacate.

4. Judge Román presided over a child custody hearing in *Gray v. Gray*, No. 99FL00645, on October 10, 2012. On October 9, 2012, respondent mother filed a Declaration of Respondent in Support of Return of Minor’s Belongings along with a proof of service showing service by mail and fax on October 9, 2012 on father’s counsel, Steven Wessels. The hearing date listed on the proof of service was the following day, October 10, 2012 at 9:00 a.m., the time set for the custody hearing. Mother’s declaration asked the court to order father to immediately turn over certain alleged belongings of the 16-year-old minor, including her iPhone and iPad. At the custody hearing, mother reiterated her ex parte demand for the phone and iPad. Mr. Wessels objected on the ground that mother had not provided notice of the demand, other than by fax the night before the hearing, which he had only received the morning of the hearing, and that father therefore had no opportunity to respond to the demand. Mr. Wessels also contended that there was no emergency justification for mother’s untimely ex parte demand, and told Judge Román that father was not present to respond to mother’s demand because father believed the custody matter had been resolved by a stipulation presented to Judge Román at the hearing. Judge Román told the commission that he believed the iPhone and iPad rightly belonged to the 16-year-old minor because she was the only party with the passcode, so he ordered father to turn over the phone and iPad forthwith.

The commission determined that Judge Román abused his authority and violated the father’s due process rights when he ordered him to turn over the phone and iPad in response to mother’s untimely ex parte demand. This conduct violated canon 2A of the Code of Judicial Ethics (judges “shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”) and canon 3B(7) (judges “shall accord to every person who has a legal interest in a proceeding ... the full right to be heard according to law”).

At the time of this hearing, an applicant for ex parte relief was required to give the opposing party notice of the application by 10:00 a.m. the court day before the ex parte hearing. (Sacramento County Superior Court Local Rules, rule 14.08 (C) (2012); California Rules of Court, rule 3.1203(a) (2012).) Judge Román was aware that this requirement had not been satisfied. Judge Román contended to the commission that “untimely notice notwithstanding,” father was able to appear and contest the motion through his counsel of record. This ignores the governing rules and the purpose of notice, i.e., protection of the party’s constitutional right of due process. (*Caldwell, supra*, 222

Cal.App.3d at p. 976.) In the commission's view, the implication that counsel was necessarily aware of the facts that father would have been able to present concerning ownership of the phone and iPad if notice had been timely is unsupported and inconsistent with the purpose of timely notice and due process. Judge Román also contended that father was aware of mother's demand for the phone based on earlier filings and a Family Court Services report. These earlier documents did not contain a demand for turnover of the phone, were not the same as a demand for specific property being made in a timely motion, and did not give father notice that a hearing would be held on this issue on October 10, 2012. Judge Román also contended that Mr. Wessels's contention that the property belonged to the father "completely lacked merit" because none of the parties had disputed that the phone and iPad belonged to the minor until the October 10, 2012 hearing. In the commission's view, it was contrary to due process principles to expect father to dispute in advance a demand that had not yet been made. Further, in the commission's view, nothing in mother's declaration constituted the required affirmative factual showing on personal knowledge of any immediate, significant and irreparable injury or danger, or other statutory basis for granting relief without notice.

The commission concluded that Judge Román's conduct as described above constituted improper action at a minimum.

Commission members Anthony P. Capozzi, Esq.; Hon. Ignazio J. Ruvolo; Ms. Mary Lou Aranguren; Ms. Pattyl A. Kasparian; Dr. Michael A. Moodian; Nanci E. Nishimura, Esq.; Ms. Sandra Talcott; Mr. Adam N. Torres; and Hon. Erica R. Yew voted for the Notice of Intended Public Admonishment. Commission member Hon. Thomas M. Maddock was recused from this matter, pursuant to commission policy declaration 6.1. Commission member Mr. Richard Simpson did not participate.

Date: May 16, 2016