

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING JUDGE
SALVADOR SARMIENTO,**

No. 191

**DECISION AND ORDER
IMPOSING PUBLIC CENSURE
PURSUANT TO STIPULATION
(Commission Rule 127)**

I

INTRODUCTION AND SUMMARY

This disciplinary matter concerns Judge Salvador Sarmiento, a judge of the Orange County Superior Court since 2003. On February 21, 2012, the commission filed its Notice of Formal Proceedings (Notice) against Judge Sarmiento charging him with attempting to influence an Orange County Superior Court commissioner to waive a \$300 civil assessment on his wife's traffic citation and to bypass standard procedures in the setting of a trial date.

The Supreme Court appointed three special masters to hold an evidentiary hearing and to report to the commission. The masters are Hon. Vance W. Raye, Presiding Justice of the Court of Appeal, Third Appellate District, Hon. Suzanne N. Kingsbury, Judge of the El Dorado County Superior Court, and Hon. Ronni B. MacLaren, Judge of the Alameda County Superior Court. Prior to the masters holding an evidentiary hearing, however, Judge Sarmiento and his counsel, Randall A. Miller, Esq., and the examiner for the commission, Gary W. Schons, Esq., (the parties) proposed a stipulated resolution of this inquiry to the commission, as follows.

By a Stipulation for Discipline by Consent (Stipulation), the parties propose, pursuant to Commission Rule 127(b), that this inquiry concerning Judge Sarmiento be resolved with the imposition of a public censure based upon the stipulated facts and legal conclusions. In addition to consenting to the proposed discipline, Judge Sarmiento expressly admits the truth of the stipulated facts and agrees with the stipulated legal

conclusions, including that he engaged in prejudicial misconduct. According to the terms of the Stipulation, Judge Sarmiento also agrees that in its decision and order imposing a public censure, the commission may articulate the reasons for its decision and include explanatory language the commission deems appropriate. Pursuant to the Stipulation, Judge Sarmiento waives hearing, review and any further proceedings.

Judge Sarmiento also executed on June 9, 2012, the requisite Affidavit of Consent (Affidavit) under rule 127(d) in which he admits the truth of the charges as modified by the Stipulation, consents to the imposition of a public censure, and waives review by the California Supreme Court.

This Decision and Order imposing a public censure is issued following the commission's vote (as indicated at the conclusion of this decision) to accept the stipulated agreement. The findings and conclusions, set forth herein, are based on the Stipulation and Affidavit.

II

STIPULATED FACTS AND LEGAL CONCLUSIONS

On November 18, 2010, Judge Sarmiento's wife received a traffic citation from the Santa Ana Police Department for violating Vehicle Code section 21950(a) (failing to yield to pedestrian in crosswalk). She intended to challenge the ticket on the basis that the crosswalk was unmarked. The ticket was filed with the court on December 21, 2010. On December 22, a "courtesy notice" was sent by the court to the judge's wife. A courtesy notice lists the cost to pay the ticket (bail), methods for making payment, and the amount due to the court to attend traffic school (bail plus a fee of about \$50). The bail amount was \$234. The pay-or-appear-by date was January 19, 2011.

No action was taken on the ticket by the January 19 deadline. The matter was referred to the court's collection unit. On January 24, a delinquency notice was sent to the judge's wife. It provided a 10-day grace period to either pay or appear, and stated that failure to do so would result in additional fees that may include a \$300 civil assessment and other fees.

No action was taken on the ticket within the grace period, and on Monday, February 7, 2011, a final notice was sent to the judge's wife. The final notice stated that an additional \$300 civil assessment (and \$25 in other fees) was now owed. The notice stated that if the judge's wife appeared within 10 days of the notice and showed good cause for failure to appear or pay the fine, the court may vacate the civil assessment (referred to as a CIVA). The notice explained that "Good cause may be defined as failure to pay or appear because you were serving military duty overseas, hospitalized, or incarcerated, or for other extraordinary reasons." The final notice also stated that if the judge's wife did not pay in full or show good cause, the court may take certain other action.

A traffic ticket that is not delinquent may be set for trial by a traffic clerk upon posting of bail; it may be set for arraignment without any payment. After a CIVA is added, a collections clerk may set the ticket for trial only upon posting of the original bail plus the CIVA; it may be set for arraignment without any payment. For both delinquent tickets and tickets that are not delinquent, it is the court's policy that staff may set a court date at the counter window only upon the appearance of either the ticket recipient or an attorney for the recipient. A trial date for a non-delinquent ticket or a ticket in CIVA status also may be set by a judicial officer, upon the appearance in court of either the ticket recipient or an attorney appearing on his or her behalf. The collections staff does not have the authority to vacate a CIVA unless it can be demonstrated that it was added in error, e.g., that ticket payment in fact was timely made.

Judge Sarmiento has been a judicial officer in the Orange County Superior Court since July 1997. From July 1997 through late August 2003, he served as a commissioner. Since then he has been a judge. Judge Sarmiento has been assigned to department 50 of the Central Justice Center in Santa Ana since approximately February 2010.

In February 2011, traffic matters were being heard in Central in department 54 by Commissioner Carmen Luege, who was hired by the court in June 2009. Departments 50 and 54 are on the second floor, and share a common hallway between the courtrooms and chambers.

On February 9, 2011 around 3:30 p.m., Judge Sarmiento spoke with a traffic clerk about the ticket, in the traffic staff area behind the counter windows. The judge told her that he needed to take care of his wife's ticket, or words to that effect. The clerk accessed the ticket on the court's case management system (called Vision) and told the judge that she could not act on the ticket because it was in collections. She printed out minutes for the ticket and wrote "\$609.00" at the top, which is the amount that would have been due to the court for traffic school (original bail of \$234, plus the \$300 CIVA and \$25 in related fees, plus a \$50 traffic school fee). The traffic clerk gave the minutes to the judge and referred him to a collections staff member. (At this time traffic staff and collections staff were located in the same area, on the first floor.) The judge spoke briefly with collections staff.

On the morning of Thursday, February 10, 2011, the judge approached Commissioner Luege about his wife's ticket, during a brief break in her traffic calendar. Judge Sarmiento initially greeted the commissioner in the hallway in back of the courtrooms. He then walked with her into the entryway area of her chambers, where they stood and talked.

Judge Sarmiento told Commissioner Luege that his wife got a ticket, that it had been sitting on his desk but he had forgotten about it, and that there was now a civil assessment. Commissioner Luege does not recall the judge's exact words. Judge Sarmiento admits that he asked Commissioner Luege to address the CIVA. He admits that in doing so, he was seeking to have her vacate the CIVA.

Commissioner Luege responded by saying that she had to get back to court, and would get back to him. The commissioner did not intend to remove the CIVA, but wanted time to think about how to tell Judge Sarmiento "no" in a way that would not be offensive to him.

Judge Sarmiento then left a folded piece of paper on the commissioner's desk without saying what it was. Commissioner Luege returned to her courtroom without looking at the paper left by the judge. When she returned to chambers after the morning

traffic calendar had concluded, she discovered that it was the minutes for his wife's ticket containing the clerk's original "\$609.00" notation at the top.

Judge Sarmiento's regular courtroom clerk was absent on February 10, and a substitute clerk was filling in. After Judge Sarmiento concluded his afternoon calendar on February 10, he gave the substitute clerk a copy of the courtesy notice for his wife's ticket and asked him to check the status of the ticket. The substitute clerk accessed the ticket on Vision and told Judge Sarmiento that the last action taken was the addition of the CIVA. The judge responded that he was going to talk to "Carmen," and left.

Around 4:00 p.m., Judge Sarmiento returned to Commissioner Luege's chambers, where she was sitting at her desk reviewing correspondence. He told her that he had checked and that she had not done anything on the ticket, or words to that effect. He asked whether he could "at least get a trial date." When the commissioner said that she was not sure that she could give him a trial date, the judge did not respond. The commissioner then told Judge Sarmiento that she would give him a trial date.

She walked into the traffic courtroom with the judge. The regular courtroom clerk had temporarily stepped out. The commissioner instructed the backup clerk (who had only a few weeks of experience with traffic matters) to set a trial date for the ticket; the commissioner said nothing regarding the CIVA. The backup clerk provided a trial date of March 16, 2011. The commissioner and the judge left the courtroom. Judge Sarmiento admits that in approaching Commissioner Luege in the afternoon, he bypassed normal procedures for obtaining a trial date, and sought and obtained favorable treatment on behalf of his wife.

Thereafter, without consulting Commissioner Luege (and not at the instruction of Judge Sarmiento), the backup clerk accessed the ticket on Vision and made various entries, including entries vacating the CIVA and related fees. Shortly thereafter, the regular clerk returned to the courtroom and learned what the backup clerk had done; this was then brought to the attention of Commissioner Luege. At the commissioner's direction, later that afternoon, the backup clerk corrected the erroneous entries vacating the CIVA and related fees.

During the period after the backup clerk had vacated the CIVA and related fees, but before those erroneous entries were corrected, Judge Sarmiento went downstairs to the collections staff area to post bail. When the collections clerk accessed the ticket, bail was listed at \$234 (the original bail) because the entries vacating the CIVA had not yet been corrected. The judge paid \$234.

On March 16, 2011, the judge's wife entered a guilty plea and the CIVA and related fees were paid.

Judge Sarmiento's conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(1) (a judge shall not allow family, social or other relationships to influence the judge's judicial conduct or judgment), 2B(2) (judge shall not lend the prestige of judicial office to advance pecuniary or personal interest of judge or others), and and 3B(7) (improper ex parte communications prohibited). The judge's conduct constitutes prejudicial misconduct.

III

DISCIPLINE

By attempting to influence another judicial officer on behalf of his wife, Judge Sarmiento engaged in serious judicial misconduct which severely damages the reputation of the judiciary. The public has a right to expect that justice will be dispensed with an even hand and without favoritism. Judge Sarmiento's conduct makes it more difficult for judges throughout the state to maintain the trust and respect of the public. The commission recently emphasized that the use of the judicial office to provide procedural shortcuts or lenient dispositions to family and friends in traffic matters "subverts the impartiality of the judicial system and undermines respect for the judiciary as a whole." (*Inquiry Concerning Stanford* (2012) 53 Cal.4th CJP Supp. 1, 25.) We issue this public censure in an effort to restore public confidence in the integrity and impartiality of the judiciary.

Judge Sarmiento's misconduct is aggravated by the fact that he requested preferential treatment from his subordinate, a commissioner, who is employed by the court. This placed the commissioner in the uncomfortable position of having to find a way to say "no" to the judge without offending her superior.

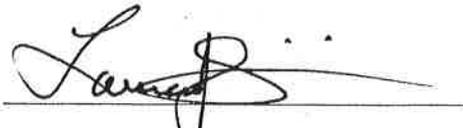
While Judge Sarmiento's misconduct is seriously at odds with a judge's duty to uphold the impartiality and integrity of the judiciary, we have determined that censure rather than removal is the appropriate discipline because we are not convinced, based on this single incident of misconduct, that Judge Sarmiento lacks "the temperament and ability to perform judicial functions in an even-handed manner." (*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 918 [The number of wrongful acts is relevant to determining whether they were merely isolated occurrences or, instead, part of a course of conduct establishing "lack of temperament and ability to perform judicial functions in an even-handed manner."].) The judge's lack of prior discipline for similar misconduct during his lengthy tenure as a judicial officer contributes to this conclusion.

In assessing whether removal is necessary to fulfill our mandate to protect the public, we consider the likelihood of future misconduct. An appreciation for the impropriety of one's actions is essential to a willingness and capacity to reform. (*Inquiry Concerning Platt* (2002) 48 Cal.4th CJP Supp 227, 248 ["A judges failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform."].) By the terms of the Stipulation, Judge Sarmiento acknowledges engaging in serious misconduct that warrants the imposition of this severe sanction.

We conclude that the purpose of judicial discipline – protection of the public, enforcement of rigorous standards of judicial conduct and the maintenance of public confidence in the integrity and independence of the judicial system – can be accomplished through a censure. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112.) Accordingly, the commission hereby imposes this public censure of Judge Sarmiento. (Cal. Const. art. VI, §18 (d).)

Commission members Mr. Lawrence J. Simi, Hon. Erica R. Yew, Anthony P. Capozzi, Esq., Hon. Judith D. McConnell, Nanci E. Nishimura, Esq., Ms. Maya Dillard Smith, Ms. Sandra Talcott, Mr. Adam N. Torres, and Mr. Nathaniel Trives voted to accept the parties' settlement proposal and to issue this decision and order imposing a public censure pursuant to the stipulated agreement. Commission member Hon. Frederick P. Horn was recused. Commission member Ms. Mary Lou Aranguren did not participate.

Dated: July 5, 2012



Lawrence J. Simi
Chairperson