STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Former Judge James R. Simpson No. 168	MODIFICATION OF DECISION AND ORDER IMPOSING PUBLIC CENSURE AND BARRING JUDGE SIMPSON FROM RECEIVING ASSIGNMENTS

On December 9, 2002, the Commission entered its Decision and Order Imposing Public Censure and Barring Judge Simpson from Receiving Assignments.

The final paragraph on Page 10 is modified to read:

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Michael A. Kahn, Mrs. Penny Perez, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose this public censure and bar from receiving assign-ments. Commission members Mr. Marshall B. Grossman and Mrs. Crystal Lui did not participate in this proceeding.

The modification is to correct a clerical error concerning the participation of Mrs. Crystal Lui. The modification accurately reflects that Mrs. Crystal Lui had recused herself and did not participate in this matter. It has no other affect upon the Commission's decision and order.

Dated: February ___, 2003

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Honorable Risë Jones Pichon
Chairperson

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Former Judge James R. Simpson, No. 168	DECISION AND ORDER IMPOSING PUBLIC CENSURE AND BARRING JUDGE SIMPSON FROM RECEIVING ASSIGNMENTS

This is a disciplinary matter concerning Judge James R. Simpson, a judge of the Glendale Municipal Court from December 2, 1994 to January 21, 2000, and of the Los Angeles County Unified Superior Court from January 22, 2000 to December 10, 2001. Formal proceedings having been instituted, this matter came before the Commission on Judicial Performance pursuant to rule 127 of the Rules of the Commission on Judicial Performance.

The commission concludes, based on Judge Simpson's stipulation that, prior to his retirement, Judge Simpson presided over matters involving friends, gave favorable treatment to friends, and tried to influence other judicial officers and police in their handling of matters concerning the judge's friends. The commission hereby publicly censures Judge Simpson and bars him from receiving an assignment, appointment, or reference of work from any California state court.

APPEARANCES

Judge Simpson is represented by attorneys Edward P. George, Jr., and Timothy L. O'Reilly of Long Beach, California. Trial Counsel for the Commission on Judicial Performance is Jack Coyle.

PROCEDURAL HISTORY

A Notice of Formal Proceedings was filed on June 27, 2002, charging Judge Simpson with six counts of unethical conduct. Judge Simpson filed his answer on July 31, 2002. Pursuant to rule 121 of the Rules of the Commission on Judicial Performance, the commission requested the appointment of three special masters, and the Supreme Court appointed Justice Eileen C. Moore, presiding, Justice Dennis A. Cornell, and Judge Joan Marie Borba as masters. The masters held a prehearing conference on September 12, 2002, and the evidentiary hearing before the masters was scheduled to commence on December 9, 2002, in Santa Ana, California.

On November 20, 2002, Judge Simpson and Trial Counsel submitted a Stipulation for Discipline by Consent pursuant to rule 127 of the Rules of the Commission on Judicial

Performance.[1] On November 21, 2002, the commission issued an order vacating the hearing date in order that the commission might consider the Stipulation at its December 2002 meeting.

THE STIPULATION FOR DISCIPLINE BY CONSENT

A. Judge Simpson's Agreement to Discipline

Judge Simpson and Trial Counsel propose that the commission dispose of this matter by issuing a censure and bar from receiving an assignment, appointment, or reference of work from any California state court. Judge Simpson understands that if the commission accepts the proposal, the commission may articulate the reasons for its decision, and he agrees to accept any such explanatory language.

Judge Simpson has signed and submitted an affidavit consenting to the sanction of a censure and bar from any assignments, stating that his consent is freely and voluntarily given, admitting to the truth of the charges as set forth in the Stipulation, and waiving review by the Supreme Court.

B. The Findings of Fact and Conclusions of Law

The Stipulation for Discipline sets forth findings of fact and conclusions of law tracking the allegations set forth in the Notice of Formal Proceedings:

COUNT ONE

> On July 2, 1993, Allen Brandstater received a citation (number VQ08144) for violating Vehicle Code section 5204(a) (improper registration tags). Because Mr. Brandstater was a friend of Judge Simpson and was the campaign manager for his 1994 judicial campaign, Judge Simpson should have been disqualified from participating in the case pursuant to Code of Civil Procedure section 170.1(a)(6)(C).
>
> On August 3, 1993, Mr. Brandstater appeared at the traffic counter of the Glendale Municipal Court and received an extension to September 17, 1993, to pay $10 bail and to show proof of correction. He failed to post bail or show proof of correction.
>
> On March 8, 1994, Judge Barbara Burke issued a bench warrant for Mr. Brandstater for failure to appear. The bail amount on the warrant was $287.

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[1] With the issuance of this decision accepting the Stipulation for Discipline by Consent, the Stipulation is filed and is available to the public.

On September 27, 1995, although the case was not assigned to him, Judge Simpson had his court clerk obtain the file. Judge Simpson recalled the bench warrant and continued the matter to October 4, 1995.

On October 4, 1995, Judge Simpson continued the matter to November 15, 1995 for payment of $270. Mr. Brandstater did not appear in court on November 15, 1995, and did not make payment until November 21, 1995.

Judge Simpson violated the Code of Judicial Ethics, canons 1, 2A, 2B(1) and 3E. By recalling a bench warrant issued 18 months earlier by Judge Burke and continuing the matter twice, Judge Simpson violated canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to respect and comply with the law or act in manner that promoted public confidence in integrity of judiciary), and 2B(1) (allowing a social or political relationship to influence judge's judicial conduct or judgment, or conveying the impression that an individual was in a special position to influence the judge).

Judge Simpson violated canon 3E(1) (judge shall disqualify himself in any proceeding in which disqualification is required by law) because, due to his relationship with Mr. Brandstater, "a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (Code Civ. Proc. § 170.1(a)(6)(C).) The judge also violated canon 3E(2) by failing to disclose on the record his relationship to Mr. Brandstater.

Since Judge Simpson's actions were unjudicial, were conducted in bad faith, and were taken in his judicial capacity, his conduct was willful misconduct within the meaning of article VI, section 18 of the California Constitution. Judge Simpson's conduct was unjudicial in that it violated the Code of Judicial Ethics. Judge Simpson acted in bad faith by taking judicial actions for the improper purpose of benefiting his friend and former campaign manager, Allen Brandstater. In taking judicial actions in the case, Judge Simpson was acting in a judicial capacity.

COUNT TWO

Count one is incorporated by reference.

On May 23, 1997, Allen Brandstater was charged in a misdemeanor complaint (case number 7GL02340) with driving under the influence of alcohol in violation of Vehicle Code sections 23152(a) and 23152(b). The complaint alleged that Mr. Brandstater had a blood alcohol content of .20 percent or higher within the meaning of Vehicle Code section 23206.1.

On July 2, 1997, Mr. Brandstater's lawyer appeared before Judge Simpson for a pretrial hearing. Judge Simpson stated that he could not handle the matter

himself, declared a "conflict," and ordered the case transferred to Judge Laura Matz. Because of Judge Simpson's recusal and his relationship with Mr. Brandstater, Judge Simpson should have been disqualified from further participating in the case pursuant to Code of Civil Procedure section 170.3.

On August 19, 1997, Mr. Brandstater pled nolo contendere to a violation of Vehicle Code section 23152(b) and admitted the special allegation of a blood alcohol content of over .20 percent. Judge Matz sentenced Mr. Brandstater to, among other things, three years summary probation, a mandatory fine, a three month first offender alcohol treatment program (hereafter "DUI program"), and 50 extra Alcoholics Anonymous meetings.

On December 18, 1997, Judge Matz extended the deadline for Mr. Brandstater to pay the fine and attend the DUI program to March 18, 1998.

On April 9, 1998, a report of non-compliance with the DUI program requirement was filed with the court. On April 13, 1998, Judge Matz issued a bench warrant for Mr. Brandstater and set bail at $10,000. On April 14, 1998, Judge Matz revoked and reinstated Mr. Brandstater's probation and extended the proof of completion date to May 6, 1998.

On May 18, 1998, another report of non-compliance with the DUI program requirement was filed with the court. On May 19, 1998, despite the fact that he had recused himself and should have been disqualified from the case, Judge Simpson continued the matter to May 29, 1998, to allow Mr. Brandstater additional time to complete the DUI program and file proof of attendance at AA meetings.

On July 30, 1998, another report of non-compliance with the DUI program was filed with the court. On August 3, 1998, Judge Simpson revoked Mr. Brandstater's probation for failure to complete the DUI program, without appearances by the parties. On August 6, 1998, Judge Simpson ordered a bench warrant for Mr. Brandstater's arrest and set bail at $10,000.

Judge Simpson violated the Code of Judicial Ethics, canons 1, 2A, 2B(1) and 3E. By taking actions in Mr. Brandstater's case after he was disqualified, including continuing the case for 10 days when Mr. Brandstater failed to comply with the DUI school probation condition, and subsequently setting bail after revoking Mr. Brandstater's probation, Judge Simpson violated canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to respect and comply with the law or act in manner that promoted public confidence in integrity of judiciary), and 2B(1) (allowing a social or political relationship to influence judge's judicial conduct or judgment, or conveying the impression that an individual was in a special position to influence the judge). Due to his relationship with Mr.

Brandstater, Judge Simpson should have [sic] not have participated in this case, and his judicial actions in the case violated canon 3E(1).

For the same reasons that were stated in Count One, Judge Simpson's conduct was willful misconduct within the meaning of article VI, section 18 of the California Constitution.

COUNT THREE

Count one is incorporated by reference.

On January 7, 1999, Mark Enzenauer received a citation (number 365243) for driving an unregistered vehicle in violation of Vehicle Code section 4000(a). On March 25, 1999, Mr. Enzenauer appeared before Glendale Municipal Court Commissioner Steven Lubell and pled guilty. Commissioner Lubell continued the matter to April 30, 1999 for proof of registration. On April 30, 1999, Mr. Enzenauer failed to appear and Commissioner Lubell issued a bench warrant and set bail at $500.

On May 11, 1999, Judge Simpson met in his chambers with Mr. Enzenauer and Mr. Brandstater and discussed Mr. Enzenauer's case. They told Judge Simpson that Mr. Enzenauer had received a registration ticket and had had difficulties in having his vehicle pass a smog inspection. The meeting took place while Commissioner Lubell was on the bench. Twice during the meeting, Judge Simpson called or had his clerk call Commissioner Lubell to summon him to Judge Simpson's chambers about the matter.

When Commissioner Lubell appeared in Judge Simpson's chambers later that afternoon, Mr. Enzenauer and Mr. Brandstater were present. Judge Simpson had Mr. Enzenauer's citation and was reviewing his case file. Judge Simpson asked Commissioner Lubell why Mr. Enzenauer had had to wait so long in his courtroom. Commissioner Lubell told Judge Simpson that he had not made Mr. Enzenauer wait that long. Mr. Brandstater told Commissioner Lubell that Mr. Enzenauer was a good person who had worked for him as a videographer, and Mr. Brandstater requested Commissioner Lubell's help. Judge Simpson asked Commissioner Lubell what could be done. Commissioner Lubell responded that Mr. Enzenauer could resolve the matter in open court.

Judge Simpson then ordered the case transferred back to Commissioner Lubell's court for further proceedings on May 12, 1999. Commissioner Lubell recalled the bench warrant, fined Mr. Enzenauer $135 on the ticket, and granted him an extension to June 11, 1999 to show proof of registration.

At the time of his actions, Judge Simpson knew that Mr. Enzenauer was a friend and business associate of Allen Brandstater. Due to Judge Simpson's relationship with Mr. Brandstater, Judge Simpson should have been disqualified

from participating in Mr. Enzenauer's case pursuant to Code of Civil Procedure section 170.1(a)(6)(C).

Judge Simpson violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 2B(2), 3B(7) and 3E. By discussing the case with Commissioner Lubell, in the presence of Mr. Brandstater and Mr. Enzenauer, Judge Simpson violated canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to respect and comply with the law or act in manner that promoted public confidence in integrity of judiciary), 2B(1) (allowing social or political relationships to influence judge's judicial conduct or judgment, or conveying the impression that an individual was in a special position to influence the judge), and 2B(2) (lending prestige of judicial office to advance pecuniary or personal interests of others). By discussing the case with Commissioner Lubell outside the presence of the prosecution, Judge Simpson violated canons 2B(2) (judge shall not initiate communications with sentencing judge) and 3B(7) (judge shall not initiate ex parte communications). By transferring the case to Commissioner Lubell's courtroom, Judge Simpson violated canon 3E(1) (judge shall disqualify himself in any proceeding in which disqualification is required by law).

For the same reasons that were stated in Count One, Judge Simpson's conduct was willful misconduct within the meaning of article VI, section 18 of the California Constitution.

COUNT FOUR

Count one is incorporated by reference.

On September 14, 1999, Martha Thayer received a citation (number 393301) for failing to stop for a red light in violation of Vehicle Code section 21453(a). The officer who issued the ticket gave Ms. Thayer until October 20, 1999 to appear in court. The case was never assigned to Judge Simpson. In addition, because Ms. Thayer was a good friend of Allen Brandstater and had been a friend or acquaintance of Judge Simpson for more than 30 years, Judge Simpson should have been disqualified from participating in the case pursuant to Code of Civil Procedure section 170.1(a)(6)(C).

Subsequently, Mr. Brandstater visited Judge Simpson in his chambers and asked him whether there was a way Ms. Thayer could avoid paying the fine and whether traffic school would keep the ticket from appearing on her driving record. Judge Simpson told Mr. Brandstater that Ms. Thayer could go to traffic school. Mr. Brandstater left a copy of Ms. Thayer's ticket with Judge Simpson.

Ms. Thayer did not appear in court on October 20, 1999, nor did she contact the clerk's office on or before that date to request a continuance. On October 20, 1999, Judge Simpson, or his court clerk at the judge's direction,

contacted the clerk's office and requested that the matter be continued. As a result, Ms. Thayer's appearance date was continued to December 6, 1999.

Judge Simpson violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 2B(2) and 3E. By contacting the clerk's office and requesting that the matter be continued, Judge Simpson violated canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to respect and comply with the law or act in manner that promoted public confidence in integrity of judiciary), 2B(1) (allowing social or political relationships to influence judge's judicial conduct or judgment, or conveying the impression that an individual was in a special position to influence the judge), and 2B(2) (lending prestige of judicial office to advance pecuniary or personal interests of others). Judge Simpson's failure to disqualify himself from the case violated canon 3E(1).

Since Judge Simpson's actions were unjudicial, were conducted in bad faith, and were taken in his judicial capacity, his conduct was willful misconduct within the meaning of article VI, section 18 of the California Constitution. Judge Simpson's conduct was unjudicial in that it violated the Code of Judicial Ethics. Judge Simpson acted in bad faith by taking judicial actions for the improper purpose of benefiting his friends, Martha Thayer and Allen Brandstater. By causing Ms. Thayer's case to be continued, Judge Simpson was acting in a judicial capacity.

COUNT FIVE

A. In approximately the summer of 1995, Judge Simpson contacted Glendale Municipal Court Commissioner Dona Bracke about an expired registration citation that Judge Simpson said had been issued to the son of a friend of his. The ticket was in warrant status. Judge Simpson asked Commissioner Bracke questions about the ticket, such as how such matters were handled.

B. In approximately the latter half of 1995 or early 1996, Judge Simpson went to Commissioner Bracke with another traffic ticket, told her that it had been issued to a friend of his, told her what the charge was and asked questions about the ticket, such as what the customary fine was.

C. In approximately 1996, Judge Simpson went to Commissioner Bracke's chambers with another traffic ticket that Judge Simpson told her had been issued to a friend of his. Judge Simpson asked Commissioner Bracke questions about the ticket, including what the normal fine would be. Commissioner Bracke later recused herself from the case because of the communication from Judge Simpson.

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D. In approximately 1997, Judge Simpson called Commissioner Bracke to his chambers. Judge Simpson told Commissioner Bracke that the wife of a good

friend of his who owned a Pasadena restaurant had received a ticket for which she was supposed to have appeared in Commissioner Bracke's courtroom. Judge Simpson told Commissioner Bracke that his friend was a very good person and had catered some events for him. Judge Simpson said that his friend had gone to court in his wife's place because she was ill, but that he left when Commissioner Bracke did not call his wife's name or acknowledge him when he answered on her behalf. As a result, a warrant had issued.

Judge Simpson asked Commissioner Bracke what his friend could do about the warrant. Commissioner Bracke said that Judge Simpson's friend could post bail on the warrant or hire a lawyer to come in. Commissioner Bracke also said that Judge Simpson's friend could bring in documentation and that her practice was to hold a warrant for two weeks if someone had a medical excuse. Judge Simpson later told his friend that he needed to bring to court some documents or medical papers.

Approximately one or two days later, Judge Simpson came through the back door of Commissioner Bracke's courtroom with his friend. Judge Simpson was wearing his judicial robe. The courtroom was full of people. Judge Simpson had his arm around his friend's shoulder, looked at Commissioner Bracke and said that this was the friend whose wife's ticket he had told her about. Judge Simpson patted his friend on the shoulder and assured him that Commissioner Bracke would take care of him. Judge Simpson walked his friend into the audience section of the courtroom to sit down.

Commissioner Bracke put the matter toward the end of the calendar to try to avoid creating the appearance that another judge could bring a friend into court to receive special treatment. When Commissioner Bracke called the case, Judge Simpson's friend responded. He had brought some documents explaining why his wife was unable to come to court. Commissioner Bracke recalled the warrant and held it for one or two weeks for the man's wife to come to court. Later that day, Judge Simpson asked Commissioner Bracke if everything went okay with the citation. Commissioner Bracke told Judge Simpson that she recalled the warrant and held it.

When Judge Simpson's friend's wife later appeared in court, Commissioner Bracke recused herself from the case because of the communications from Judge Simpson.

Judge Simpson violated the Code of Judicial Ethics, canons 1, 2A, 2B(1), 2B(2) and 3B(7). By communicating with Commissioner Bracke about pending traffic cases involving his friends and acquaintances, Judge Simpson violated canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to act in manner that promoted public confidence in integrity of judiciary), 2B(1) (allowing social relationships to influence judge's judicial conduct or judgment, or conveying the

impression that an individual was in a special position to influence the judge), and 2B(2) (lending prestige of judicial office to advance pecuniary or personal interests of others). By discussing cases with Commissioner Bracke outside the presence of one or both of the parties, Judge Simpson violated canon 3B(7) (judge shall not initiate ex parte communications).

Judge Simpson's conduct was prejudicial to the administration of justice and brought the judicial office into disrepute within the meaning of article VI, section 18 of the California Constitution. Prejudicial misconduct is "'conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office....'" (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1104, cert. den. (1999) 525 U.S. 1070, citing *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 312.) Because Judge Simpson's purpose in approaching Commissioner Bracke is disputed, the parties do not stipulate that the judge's conduct was in bad faith, and hence willful.

COUNT SIX

In 1998, Judge Simpson asked to speak to Glendale Police Officer Randy Petersen in chambers. Once there, Judge Simpson showed Officer Petersen a ticket he had issued that day and told him that the ticket had been issued to someone Judge Simpson knew. Judge Simpson asked Officer Petersen about the circumstances of the ticket and how it could be handled. Judge Simpson's conduct implied that he wanted Officer Petersen to give his friend favorable treatment.

By communicating with Officer Petersen about a traffic ticket the officer had issued to the judge's acquaintance, Judge Simpson violated the Code of Judicial Ethics, canons 1 (failing to observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved"), 2A (failing to act in manner that promoted public confidence in integrity of judiciary), 2B(1) (allowing a social relationship to influence judge's judicial conduct or judgment, or conveying the impression that an individual was in a special position to influence the judge), and 2B(2) (lending prestige of judicial office to advance pecuniary or personal interests of another).

Since Judge Simpson's actions were unjudicial, were conducted in bad faith, and were taken in his judicial capacity, his conduct was willful misconduct within the meaning of article VI, section 18 of the California Constitution. Judge Simpson's conduct was unjudicial in that it violated the Code of Judicial Ethics. Judge Simpson acted in bad faith by acting with the improper purpose of benefiting his acquaintance. By calling a police officer into his chambers to discuss a traffic ticket with the officer, Judge Simpson was acting in a judicial capacity.

C. The Commission's Adoption of the Findings and Conclusions

The commission adopts these findings of fact and conclusions of law as its findings and conclusions. The commission also concurs with Judge Simpson and Trial Counsel that those allegations in Count Five in the Notice of Formal Proceedings that remain disputed need not be resolved.[2]

DISCIPLINE

On the basis of these findings and conclusions, the commission, as authorized by article VI, section 18(d) of the California Constitution, publicly censures Judge Simpson and bars him from receiving an assignment, appointment, or reference of work from any California state court. This is the maximum sanction the commission may levy against a former judge, and the appropriate sanction for "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system."[3]

This decision shall constitute the public censure of Judge Simpson and a bar to Judge Simpson receiving an assignment, appointment, or reference of work from any California state court.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez, Ms. Ramona Ripston, Ms. Barbara Schraeger and Dr. Betty L. Wyman voted to impose this public censure and bar from receiving assignments. Commission member Mr. Marshall B. Grossman did not participate in this proceeding.

Dated: December ___, 2002

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Honorable Risë Jones Pichon
Chairperson

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[2] The facts stipulated to in paragraphs A through C of Count Five are less detailed than those that were set forth in the Notice of Formal Proceedings. The Stipulation explained:

> The parties have omitted from paragraphs A – C of this count certain facts alleged in the Notice of Formal Proceedings that are in dispute and cannot be resolved without a hearing. The parties believe that it is unnecessary to resolve these factual disputes because (1) Judge Simpson admits that his conduct in paragraphs A – C nevertheless violated the Code of Judicial Ethics, (2) the overall stipulated misconduct is sufficient to support the proposed discipline, and (3) since Judge Simpson is a former judge, resolution of the disputed facts at a hearing would not result in discipline more severe than a censure and a bar.

[3] *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.