

## PUBLIC ADMONISHMENT OF JUDGE JOSEPH E. BERGERON

The Commission on Judicial Performance ordered Judge Joseph E. Bergeron 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 Joseph E. Bergeron has been a judge of the San Mateo County Superior Court for 18 years. His current term began in January 2015.

The commission found that, despite having been warned by the court about his behavior, Judge Bergeron treated certain women at court inappropriately, and thereby failed to maintain high standards of conduct, to act in a manner that promotes public confidence in the judiciary, and to be patient, dignified and courteous to those with whom he deals in an official capacity, as follows:

1. On August 28, 2014, a courtroom clerk was assigned to work in Judge Bergeron's courtroom. She was not regularly assigned to his courtroom. Judge Bergeron presided over two specially set criminal matters. After the first matter concluded, the clerk stood up to retrieve the file from the bench where Judge Bergeron was presiding. He asked the clerk whether she played baseball and, before she could respond, tossed a crumpled calendar at her, which hit her in the chest and fell to the floor. The clerk, who was taken aback, responded, "I guess not." After the second matter concluded, the judge again tossed a crumpled calendar at the clerk, which hit her in the chest and fell to the floor. Judge Bergeron acknowledges that his actions made the clerk feel angry and uncomfortable and that they were discourteous and undignified.

2. On October 7, 2014, a different courtroom clerk was assigned to work in Judge Bergeron's department. She was not regularly assigned to his courtroom. She arrived at his courtroom at 8:00 a.m. Judge Bergeron had not yet arrived at court. A jury panel was scheduled to arrive at 9:00 a.m. or 9:15 a.m. At some point that morning, the judge telephoned the clerk's station while the clerk was on the telephone regarding the jury. He left a voicemail message stating that he did not know who his clerk would be that day, that he would arrive at court between 9:30 a.m. and 9:45 a.m., and that the jurors should not be sent to his courtroom. In his voicemail message, he asked the clerk to call him back, but because he did not leave a telephone number in his voicemail message, the clerk did not call him back. When Judge Bergeron arrived at court, he called the clerk's supervisor from his chambers and complained about the clerk in a very stern, very loud voice, yelling words to the effect of, "She didn't call back. She didn't even pick up the message. You are putting people in here who can't follow instructions." The judge's complaints about the clerk were so loud that she and others in the courtroom, but not jurors, heard them. Judge Bergeron acknowledges that he raised his voice and overreacted to the situation.

3. On December 18, 2014, Judge Bergeron was presiding over the in-custody pretrial calendar in a fourth floor courtroom that was not his regular courtroom. A female deputy district attorney came in to the department's conference room to pretry a criminal matter, joining another deputy district attorney, who had a cup of coffee with her. As the female deputy district attorney

was leaving, Judge Bergeron asked her if her office was across the hall. When she said it was, the judge inquired about the availability of coffee there in a manner that conveyed that he would like her to bring him coffee; the facts about how he inquired, including the point at which he handed her his empty coffee mug, are in dispute. She responded by asking the judge, in a sarcastic manner intended to convey the impropriety of his request, what kind of coffee he would like and whether he would like cream and sugar. He responded, "I'll make it easy for you" and said he would take his coffee black. As she was leaving, he said, "If I had cash [or money], I'd give you a tip." She returned with his cup of coffee and said, again intending to convey with sarcasm the impropriety of his request, "Here is your coffee. Is there anything else I can do for you, Your Honor? Can I iron your shirts?" The judge remarked, "Well, at noon if it's still raining outside I can give you my keys, and you can go get my car." She responded, again sarcastically, "That may be a man's job," and left.

The commission found that the judge's conduct violated canon 1 of the Code of Judicial Ethics (judges shall personally observe high standards of conduct and uphold the integrity of the judiciary), canon 2A (judges shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and canon 3B(4) (judges shall be patient, dignified and courteous to those with whom they deal in an official capacity).

Judge Bergeron's conduct as described above was, at a minimum, improper action.

In determining to impose public discipline in this matter, the commission took into account the following aggravating factors:

First, in October 2013, less than one year before the August 2014 incident, Judge Bergeron was informed by the court's presiding judge and the court executive officer that six female court employees had complained that he treated them in a rude, abrasive and condescending manner. They told him that it was imperative that he alter his behavior and prevent future complaints.

Second, in April 2014, four months before the August 2014 incident, Judge Bergeron received a private admonishment from the commission for embroilment and abuse of authority. An attorney in a matter pending before him had come to his courtroom and had an encounter with his clerk, the facts of which were disputed. Among other things, the clerk alleged that the attorney grabbed her arm. Judge Bergeron summoned the attorney to a proceeding to address the attorney's actions and conducted that proceeding without having jurisdiction to do so, failed to advise the attorney of the nature of the proceeding or of his rights, relied on the unsworn testimony of a third party without affording the attorney the opportunity to be heard, questioned the attorney and asked him if he wanted to testify, and asserted that the attorney had committed a crime while the incident was still under investigation by law enforcement. The commission found that Judge Bergeron's actions violated canon 1 (judges shall uphold the integrity of the judiciary and personally observe high standards of conduct) and canon 2A (judges shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary). Further, in December 2004, Judge Bergeron received an advisory letter for violating canon 3B(7)'s prohibition against ex parte communications by failing to place on the record prior to meeting with deliberating jurors a stipulation reflecting counsel's consent to his meeting with

jurors and for meeting with jurors after counsel objected to some of the judge's prior meetings with jurors and stated that all communication with the jury should be made in open court.

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Ms. Mary Lou Aranguren; Ms. Patty A. Kasparian; Hon. Thomas M. Maddock; Dr. Michael A. Moodian; Nancy E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Mr. Richard Simpson; Ms. Sandra Talcott; and Mr. Adam N. Torres voted to impose a public admonishment.

Dated: January 25, 2016