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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE EUGENE R. BISHOP,
NO. 161.

NOTICE OF
FORMAL PROCEEDINGS

To Eugene R. Bishop, a judge of the Riverside County Municipal Court from October 2, 1980, to March 27, 1985, and a judge of the Riverside County Superior Court from March 27, 1985, to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of Article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

In *In re Daniel K., et al.*, No. IJ-8816, as set forth below, you violated the due process rights of Anna K. by removing her children, Daniel and Shayne K., from her home without notice or a reasonable opportunity to be heard.

On April 1, 1997, you presided at the six-month review hearing for Anna K.'s daughter, Korah K., in case number IJ-8816, pursuant to Welfare and Institutions Code section 366.21(e). At the time of the hearing, Anna K. had two sons, Daniel and Shayne, who resided with her.

At the hearing, the attorney for Korah, who also represented Daniel and Shayne, requested that the two boys "be pulled from the home." You granted the request and ordered that Daniel and Shayne be removed from Anna K.'s home and be placed in a foster home. You did so without notice to Anna K. that such a request would be considered at the hearing. Welfare and Institutions Code sections 332(e), 335(a), 337(c) and 387 require that such notice be given. Because no supplemental petition had been filed prior to your order, and no noticed hearing on such a petition took place, your order violated Welfare and Institutions Code section 387.

On March 4, 1998, the Court of Appeal for the Fourth Appellate District (hereafter "Court of Appeal" or "court") found that you "violated the mother's right to basic due process under the federal and state constitutions and violated several statutes by removing the boys from their mother's physical custody at the six-month hearing without a supplemental petition[] being filed or prior notice."

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT TWO

In *In re Anthony B.*, No. IJ-9898, as set forth below, you violated the due process rights of William B., the father of Anthony B., by proceeding with

hearings on July 28, 1997, September 25, 1997, and February 3, 1998, without adequate notice or a reasonable opportunity to be heard.

On July 25, 1997, the Riverside County Department of Public Social Services (hereafter "DPSS") filed a petition in *In re Anthony B.*, No. IJ-9898, alleging Anthony to be a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g). The petition alleged that the father of Anthony B. was William B., and listed William B.'s address as Tehachapi State Prison. William B. was a state prisoner in California from on or about May 29, 1997, to on or about September 16, 1998.

On July 28, 1997, you presided over a detention hearing in the case. You appointed counsel for Anthony and for Anthony's mother, but not for William B. At the hearing, you ordered the detention of Anthony. William B. was not present at the hearing and no attorney appeared on his behalf. No notice of the petition or of the hearing was provided to William B. Welfare and Institutions Code sections 302(b), 311(a), 335(a) and 337(a), and California Rules of Court, rule 1407(e)(3), require that such notice be given. In addition, you failed to determine whether notice was "given as required by law," or to "make an appropriate finding [regarding notice] noted in the minutes," as required by rule 1412(k) of the California Rules of Court.

On September 25, 1997, you presided over a combined jurisdictional and disposition hearing in the case. William B. was not present at the hearing and did not waive his right to be present, and no attorney appeared on his behalf. At the hearing, you found that Anthony was a dependent child of the court and ordered that he be placed in foster care. This action violated Penal Code section 2625(d), which provides that "no petition to adjudge the child of a prisoner a dependent child of the court" pursuant to Welfare and Institutions Code section 300(b) may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, or a waiver by the prisoner. Although the minute order of the September

25, 1997, hearing indicates that the "COURT FINDS notice has been given/attempted by law[,]” notice was not given to William B. at least five days in advance of the hearing, as required by Welfare and Institutions Code section 337(a).

On February 3, 1998, you presided over a six-month review hearing, pursuant to Welfare and Institutions Code section 366.21(e). William B. was not present at the hearing and no attorney appeared on his behalf. Notice of the hearing was not provided to William B. Welfare and Institutions Code section 302(b) requires that unless their parental rights have been terminated, both parents shall be informed of all proceedings involving the child. You failed to determine whether notice was "given as required by law,” or to "make an appropriate finding noted in the minutes,” as required by rule 1412(k) of the California Rules of Court. You found that William B. had not complied with the requirements for reunification services, and terminated reunification services.

On June 4, 1998, you presided over a selection and implementation hearing in the case. At that hearing, you terminated the parental rights of William B. Counsel for William B., whom you appointed on April 21, 1998, appeared at the hearing. However, your order terminating parental rights was based on your findings at the six-month review hearing that you conducted on February 3, 1998, without notice to William B., or an appearance by William B. or counsel on his behalf.

On March 10, 1999, the Court of Appeal reversed your order terminating parental rights and remanded the case for a new jurisdictional hearing. (*In re Anthony B.*, No. E023029.) The court found that "egregious due process violations” rendered the proceedings in the juvenile court "fundamentally unfair.” The Court of Appeal found that due process violations in the case included the failure to provide adequate notice to William B. of the filing of the petition, the detention hearing, the jurisdictional hearing, and the six-month review hearing.

The court also found that by the time you appointed counsel for William B., prior to the selection and implementation hearing:

... it was too late because [you] relied on the findings of the earlier [six-month review] hearing as the basis for [your] order terminating parental rights. Such reliance is proper only when the parent has had notice and the opportunity to appear at the earlier hearing. [Citation.]

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT THREE

In *In re Shawn P.*, No. IJ-10363, as set forth below, you violated the due process rights of Penelope P. and abused your authority by ordering that the legal custody of her child, Shawn P., be transferred to Shawn's father, without giving Penelope P. notice or a reasonable opportunity to be heard, and without making a finding of dependency.

In approximately January 1998, Penelope P. received legal and physical custody of Shawn in family law court. On February 3, 1998, the DPSS filed a petition in *In re Shawn P.*, No. IJ-10363, alleging Shawn to be a dependent child of the court pursuant to Welfare and Institutions Code section 300.

On February 4, 1998, you presided at a detention hearing in the case. At the hearing, you appointed separate counsel for Shawn, Shawn's mother, and Shawn's father. Shawn's attorney requested that custody of Shawn be given to Shawn's father. Penelope P.'s attorney objected to the request and stated, correctly, that his client was unaware that such action was going to take place that day. You ordered that Shawn would go to the custody of the father, and dismissed the case without making a finding of dependency.

Because you issued your order without notice to Penelope P. that there would be a hearing at which it could be decided that custody of Shawn could be transferred to the father, your order violated due process. Because you lacked jurisdiction to make a custody order without first finding Shawn to be a dependent child of the court, your custody order exceeded your jurisdiction and constituted an abuse of authority.

On March 5, 1999, the Court of Appeal reversed your order. The court found that you “violated the mother’s basic rights and exceeded [your] jurisdiction in giving custody to the out-of-custody parent....” (*In re Shawn P.*, No. E022375.)

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT FOUR

In *In re Emily D.*, No. IJ-11166, as set forth below, you violated the due process rights of the parents and maternal grandparents of Emily D. when you ordered, without notice or a reasonable opportunity to be heard, that Emily, who was residing with her grandparents, be placed in a non-relative foster/adoptive home and that there be no visitation by the parents or grandparents.

On August 17, 1999, you presided at the six-month review hearing in *In re Emily D.*, No. IJ-11166, pursuant to Welfare and Institutions Code section 366.21(e). At the time of the hearing, Emily was approximately eight months old and had resided with her maternal grandparents, Cindy and John H., since she was approximately three days old. The grandparents were not present at the hearing. Emily’s two older siblings, Jordan and Megan, resided with their parents, Molly and Michael D., and were also in dependency proceedings.

At the hearing, the DPSS recommended that the dependency of Jordan and Megan be terminated, with custody of both children given to the parents. The DPSS also recommended that family reunification services be terminated with

regard to Emily, based on the parents' waiving their right to further reunification services with her. The parents wanted Emily to be adopted by the maternal grandparents, Cindy and John H.

Emily's attorney expressed concern as to Emily's placement. She stated: "I think as the child that's not wanted, it's going to be very difficult for her to be adopted by the grandparents and live close to her siblings knowing that she's ... an unwanted child."

The attorney for the DPSS pointed out that "it is the law to request placement of the children with relatives first if possible." You replied:

Well, I understand that, but this is weird here. There's got to be something wrong with their heads as I see it. They want to keep two but don't want the third one? They want to give the third one to Grandma and Grandpa. All sounds kind of ridiculous to me.

You also stated: "Why don't we just take all of them, keep them all together, and find an adoptive home for all three of them and they can live together."

When the DPSS attorney stated that the DPSS was recommending that custody of the two older children be returned to the parents, you stated: "But they are going to have to decide whether they want all three or none. Not going to do this."

Following a recess, Emily's attorney requested that Emily be placed immediately in a non-relative foster/adoptive home. The attorney for Emily's mother, Molly D., stated that the mother "will reluctantly agree to that since it's the best alternative that seems to be available at this time." The father's attorney also expressed the father's agreement with the request. You ordered that Emily be placed in a non-relative foster/adoptive home, and that there be no visitation by the parents or grandparents.

The hearing took place without notice to Emily's parents or to her custodial grandparents that an order removing Emily from the physical custody of the

grandparents and placing her in a foster home would be considered at the hearing. Welfare and Institutions Code section 387 provides that “[a]n order changing or modifying a previous order by removing a child from the physical custody of a ... relative ... and directing placement in a foster home ... shall be made only after noticed hearing upon a supplemental petition.” Notice of the hearing must be given to the parents and the present custodian of the minor pursuant to Welfare and Institutions Code sections 332(e), 335(a), 337(c) and 387(b), and California Rules of Court, rule 1431(c). Because no supplemental petition was filed and no noticed hearing on such a petition took place, your order violated Welfare and Institutions Code section 387.

The failure to provide notice circumvented the rights of Emily’s parents, and of Emily’s grandparents as custodians, to request that the clerk of the juvenile court issue subpoenas requiring the testimony of witnesses and the production of papers at the hearing, pursuant to Welfare and Institutions Code section 341 and California Rules of Court, rule 1408(d).

The failure to provide notice to the grandparents that you would consider issuing an order to remove Emily from their home also precluded them from applying to you for recognition as Emily’s “de facto” parents, pursuant to rule 1412(e) of the California Rules of Court. A de facto parent has the right to be present, to be represented by counsel, and to present evidence at hearings at which the status of the dependent child is at issue.

Following your order, Molly D. filed a petition for writ of mandate in the Court of Appeal in *Molly D. v. Superior Court*, No. E025658. On September 30, 1999, the court invited the DPSS to file an informal response, stating:

Based on our preliminary review of the petition and record, this court is concerned that the trial court abused its discretion in ordering that the minor be immediately removed from the care of her maternal grandparents and placed in a non-relative foster home. The Department of Public Social Services has

not sought such an order, and the parents could not have anticipated such an action being taken by the court. Their reluctant agreement to the placement was prompted only by the trial court's threat to remove all three children, and we conclude that they did not waive objections to the court's order. At a minimum, the due process rights of the parents were violated because of the failure to afford them adequate notice and a hearing on the matter. Moreover, this procedure deprived the grandparents, who may well be entitled to de facto parent status, of an opportunity to appear and be heard in this matter.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal, contained in the California Rules of Court. The notice of formal proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

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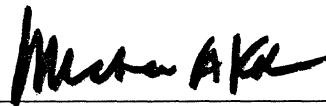
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This notice of formal proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 8/22/01



MICHAEL A. KAHN
CHAIRPERSON

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Commission on
Judicial Performance

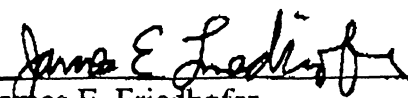
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JUDGE EUGENE R. BISHOP,
NO. 161.

ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, James E. Friedhofer, on behalf of my client, Judge Eugene R. Bishop, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 161 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Bishop has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 5 Sept 01


James E. Friedhofer
Attorney for Judge Eugene R. Bishop,
Respondent