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Commission on  
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING	)	VERIFIED ANSWER TO NOTICE OF
JUDGE EUGENE R. BISHOP,	)	FORMAL PROCEEDINGS [RULES OF
NO. 161.	)	THE COMMISSION ON JUDICIAL
_____	)	PERFORMANCE, RULE 119]

This is Judge Eugene R. Bishop's Verified Answer to the Notice of Formal Proceedings filed August 28, 2001.

1. Judge Bishop was a Judge of the Riverside County Municipal Court, and held that position from October 2, 1980 to March 27, 1985, and is a Judge of the Riverside County Superior Court, holding that position from March 27, 1985 to the present.

2. At all times during his tenure in office, Judge Bishop has attempted to act to the best of his ability in a manner consistent with the proper and efficient administration of justice and in a manner that is fair, non-prejudicial, and

[faxed]

responsible to all litigants, to the people in Riverside County, and to the people of the State of California.

**STATEMENT APPLICABLE TO ALL COUNTS**

3. The Notice of Formal Proceedings against Judge Bishop alleges that he made incorrect legal rulings in four cases. In three of the cases, his rulings and actions were reversed by the Court of Appeal. In the fourth case, the Court of Appeal suggested, without resolving conclusively, that Judge Bishop's rulings and actions might be incorrect.

4. The Notice of Formal Proceedings does not allege any facts suggesting that Judge Bishop's actions or rulings in these four cases were motivated by personal bias against or by ill will toward any of the parties or their attorneys. The Notice of Formal Proceedings does not factually allege that Judge Bishop intentionally or knowingly made incorrect rulings or violated anyone's rights or made any rulings contrary to the interests of justice.

5. The four cases all involve the interests of children whose status as dependents were before the Court. In each case, Judge Bishop made rulings and took actions that he thought were in the best interests of those children. Such an approach is the prime directive for a judge in a juvenile dependency case. In each case, lawyers who specialize in protecting the interests of dependent children and the lawyer representing the Riverside County Department of Public Social Services either agreed with Judge Bishop's action and rulings and/or actively

encouraged him to make those rulings. In one case, all of the lawyers and parties initially agreed with Judge Bishop's case disposition.

6. The American and California systems of government are founded upon the separation and balance of powers of the different branches of government. To the judicial branch, we have entrusted the resolution of legal disputes and the interpretation of laws.

7. Judicial independence has been essential to the stability and development of our nation and state since the early days of their existences. We have built a safeguard into judicial system to protect litigants from legal errors made by well-intentioned judges. That safeguard is the avenue of appeal. In California, the safeguard of appeal typically involves even more than one level of potential appellate review.

8. Periodically, another branch of government or a politically-motivated party have challenged judicial independence. Such a challenge implicitly questions whether the safeguard of appeal is sufficient to protect litigants and the interests of justice from a judge's legal errors. Typically, such a challenge arises from a legal error with unpopular results.

9. In the last decade, California has witnessed judicial misconduct proceedings and investigations, in at least four public matters, that have challenged judicial independence. Judge Howard Broadman faced ethical condemnation and punishment for controversial conditions of probation ordered in two criminal cases. Judges Bert Swift and James McGuire faced ethical



Shayne K., from her home without notice or a reasonable opportunity to be heard. Judge Bishop acted in his judicial capacity in this matter. Technically, the action was taken by the Court, not the individual judge. This distinction is important. Because Judge Bishop allegedly took no actions outside of his official position, and because there have been no allegations of any improper motives for his judicial actions, any action against Judge Bishop involves the judicial independence of the Court as a whole. Judge Bishop admits that the Court later found a due process violation in this matter. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

14. Judge Bishop admits that, on April 1, 1997, he 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 366.212(e). To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

15. Judge Bishop admits that, at the time of the hearing, Anna K. had two sons, Daniel and Shayne, who resided with her.

16. Judge Bishop admits that, at the time of the hearing, the attorney for Korah, who also represented Daniel and Shayne, requested that the two boys "be pulled from the home." Judge Bishop denies any implication that he approved of such language or characterization.

17. Judge Bishop denies that he or the Court simply granted any request that the boys "be pulled from the home." There was an extended discussion involving all counsel about the handling of the matter. The Court ordered that all three children be removed from the mother's custody and placed in foster care.

18. Judge Bishop denies that he knowingly or intentionally made any ruling or took any action in this case with proper notice being given. Judge Bishop admits that the Court concluded that this action had been taken without proper notice being given. To the extent that this allegation of the Notice (as well as citation to state statutes) involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

19. Judge Bishop admits that the Fourth District Court of Appeal, Division Two, issued an opinion in this case that included the language quoted in the Notice. Judge Bishop has made a reasonable inquiry into this matter, and is unable to admit or deny at this time the exact date that the Court of Appeal issued this opinion.

20. Judge Bishop denies that his conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7), and/or 3B(8). At worst, Judge Bishop committed a legal error that is not judicial misconduct and cannot be the basis for judicial discipline.

## COUNT TWO

21. Judge Bishop denies that, in *In re Anthony B., et al.*, No. IJ-9898, he 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 reason to be heard. As in Count One, the action was taken by the Court, not the individual judge. Judge Bishop admits that the Court later found a due process violation in this matter. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

22. Judge Bishop admits that on July 25, 1997, the Riverside County Department of Public Social Services (hereafter "DPSS") filed a petition in *In re Anthony B.*, alleging Anthony to be a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g). Judge Bishop is informed and believes, that the petition alleged that the father of Anthony B. was William B., and listed William B.'s address as Tehachapi State Prison. After reasonable inquiry into this matter, Judge Bishop does not have sufficient information at this time to admit or deny that William B. was a state prisoner in California from on or about May 29, 1997, to on or about September 16, 1998.

23. Judge Bishop admits that on July 28, 1997, he presided over a detention hearing in the case. Judge Bishop admits that the court record indicates that he appointed counsel for Anthony and for Anthony's mother, but not for William B. Judge Bishop admits that the court record indicates that at the hearing, he ordered the detention of Anthony. Judge Bishop admits that William B. was not present at the hearing and no attorney appeared on his behalf.

24. Judge Bishop believed at the time that William B. had received proper notice of the proceedings by mail. Judge Bishop notes that the petition alleges that William B was incarcerated at Tehachapi State Prison, while it appears that he actually was incarcerated at Sierra Conservation Center at Jamestown, California. Judge Bishop believes that the court file in this matter contains one or more proof of service form(s) indicating that William B. had been sent notices at the Sierra Conservation Center address. Despite this apparent fact, William B. does not appear to have contacted the Court about this matter prior to February 3, 1998.

25. Judge Bishop admits that the Court later determined that no proper notice of the petition or of the hearing was provided to William B. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

26. Judge Bishop admits that on September 25, 1997, he presided over a combined jurisdictional and disposition hearing in the case. Judge Bishop admits that William B. was not present at the hearing. Accordingly, William B. was not present to waive his right to be present, and he did not do this in writing. While Judge Bishop admits that no attorney appeared on William B.'s behalf, he notes that William B. never contacted the Court to request that counsel be appointed and that no party or agency ever made a showing to the Court that William B. qualified for such appointment of legal counsel. Judge Bishop contends that he was



proceeding in this case under the understanding that William B. had received notice about this proceeding and had expressed no interest in the matter.

27. Judge Bishop admits that at that hearing, he found that Anthony was a dependent child of the court and ordered that he be placed in foster care.

28. Judge Bishop admits that on February 3, 1998, he presided over a six-month review hearing, pursuant to Welfare and Institutions Code section 366.21(e). Judge Bishop admits that William B. was not present at the hearing and no attorney appeared on his behalf. Judge Bishop admits that the Court later concluded that notice of the hearing was not provided to William B. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

29. Judge Bishop admits that on June 4, 1998, he presided over a selection and implementation hearing in the case. At that hearing, he terminated the parental rights of William B. Counsel for William B., whom Judge Bishop appointed on April 21, 1998, appeared at the hearing. William B., through his appointed counsel, agreed that there was a statutory basis for denial of reunification and for proceeding with adoption. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

30. Judge Bishop admits that on or about March 10, 1999, the Court of Appeal reversed the Court's order terminating parental rights and remanded the case for a new jurisdictional hearing. (*In re Anthony B.*, No. E023029.) Judge

Bishop admits that the Court found that "egregious due process violations" rendered the proceedings in the juvenile court "fundamentally unfair," but Judge Bishop denies that the Court's opinion held that he as the juvenile court judge was solely responsible for such violations. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

31. Judge Bishop denies that his conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7), and/or 3B(8). At worst, Judge Bishop committed a legal error that is not judicial misconduct and cannot be the basis for judicial discipline.

### COUNT THREE

32. Judge Bishop denies that, in *In re Shawn P.*, No. LJ-10363, he violated the due process rights of Penelope P. and abused his 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. As in Counts One and Two, the action was taken by the Court, not the individual judge. Judge Bishop admits that the Court later found a due process violation in this matter. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

33. Judge Bishop admits, on information and belief, that in approximately January 1998, Penelope P. received legal and physical custody of

Shawn in family law court. Judge Bishop admits that 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.

34. Judge Bishop admits that on February 4, 1998, he presided at a detention hearing in the case. At the hearing, he 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 that his client was unaware that such action was going to take place that day. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

35. Judge Bishop admits that, upon the recommendations of the lawyer for Shawn and the lawyer for the DPSS, he ordered that Shawn would go to the custody of the father, and dismissed the case without making a finding of dependency.

36. Judge Bishop admits that the Court later found a due process violation in this matter and reversed the action. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date. Judge Bishop admits that he and the Court committed a legal error in this case, but that such an error was remedied by the Court of Appeal as intended by the California Constitution. The

reversal was supported by a two-member majority in the Court of Appeal's opinion. (*In re Shawn P.*, No. E022375.)

37. Judge Bishop denies that his conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7), and/or 3B(8). At worst, Judge Bishop committed a legal error that is not judicial misconduct and cannot be the basis for judicial discipline.

#### COUNT FOUR

38. Judge Bishop denies that in *In re Emily D.*, No. IJ-11166, he violated the due process rights of the parents and maternal grandparents of Emily D. when he ordered, pursuant to stipulation of all of the counsel involved, that Emily be placed in a non-relative foster/adoptive home. As in Counts One, Two, and Three, the action was taken by the Court, not the individual judge. Judge Bishop admits that the Court later found a due process violation in this matter. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

39. Judge Bishop admits that on August 17, 1999, he 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). After reasonable inquiry, Judge Bishop has insufficient knowledge on which to either admit or deny that, 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. Judge Bishop admits that the grandparents were not present at the hearing.

Upon information and belief, Judge Bishop believes that the grandparents knew about the hearing and did not attempt at that time to seek the legal status of *de facto* parents or try to intervene in the proceedings at that time.

40. Judge Bishop admits that Emily's two older siblings, Jordan and Megan, resided with their parents, Molly and Michael D., and were also in dependency proceedings.

41. Judge Bishop admits that at the hearing, the DPSS initially recommended that the dependency of Jordan and Megan be terminated, with custody of both children given to the parents. The DPSS also initially recommended that family reunification services be terminated with regard to Emily, based on the parents' waiving their right to further reunification services with her. Judge Bishop believes that the parents initially favored Emily being adopted by the maternal grandparents, Cindy and John H.

42. Judge Bishop admits that the parties' initial positions changed after Emily's attorney expressed concern as to Emily's placement. Judge Bishop admits that Emily's attorney 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."

43. Judge Bishop admits that the attorney for the DPSS initially pointed out that "it is the law to request placement of the children with relatives first if possible." Judge Bishop admits that he replied at one point:

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.

44. Judge Bishop contends that this statement was not his ruling on any motion or request, but rather his expression of concern for Emily's well-being. Judge Bishop also admits that in this vein he 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."

45. Judge Bishop admits that the DPSS attorney initially stated that the DPSS was recommending that custody of the two older children be returned to the parents. Judge Bishop admits that he also stated: "But they are going to have to decide whether they want all three or none. Not going to do this." Judge Bishop denies that this was any final ruling on any matter. Judge Bishop denies that any motion regarding the disposition of Emily's case was before the Court at that time.

46. Judge Bishop contends that the father's attorney asked for a recess so that he, his client, and other counsel could discuss the matter. Judge Bishop granted that request.

47. Following a recess, the attorney for Emily, the attorney for Emily's mother, and the attorney for Emily's father informed the Court that they had reached a stipulation 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 and volunteered that he was “willing to sign relinquishment papers to facilitate that.” Based on this apparent oral stipulation among counsel for all of the interested parties before the Court, the Court ordered that Emily be placed in a non-relative foster/adoptive home. In the reporter’s transcript of this matter, the Court’s order upon the stipulation does not appear to have addressed visitation matters.

48. Judge Bishop contends that any notice requirement needed for this order was necessarily waived by the counsels’ voluntary stipulation. Judge Bishop was of the opinion at that time that no other persons, Emily’s grandparents in particular, were parties before the Court at that time that were entitled to any notice.

49. Judge Bishop admits that following the Court’s 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-adopt 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.

50. Judge Bishop recused himself from the case after the Court of Appeal requested further briefing, and the Court later returned Emily to the custody of her grandparents. Accordingly, the Court of Appeal writ proceedings apparently were dismissed as moot. To the extent that this allegation of the Notice involves legal conclusions, Judge Bishop reserves his right to brief and/or amend his legal contentions at a later date.

51. Judge Bishop denies that his conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7), and/or 3B(8). At worst, Judge Bishop committed a legal error that is not judicial misconduct and cannot be the basis for judicial discipline.

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Lack of Subject Matter Jurisdiction)**

1. Judge Bishop asserts the Commission lacks subject matter jurisdiction to bring all or some of the Counts or their sub-parts, as such concern matters of pure legal error or of purely administrative matters exclusively reserved for the judicial branch of State government.



## **SECOND AFFIRMATIVE DEFENSE**

### **(Failure to Allege Charges Involving Violations of Judicial Ethics)**

2. Judge Bishop alleges that the charges brought against him, even if proven to be factually correct, fail to allege violations of the Code of Judicial Ethics, California statutes, or California constitutional provisions. As such, this inquiry constitutes an unlawful inquiry.

## **THIRD AFFIRMATIVE DEFENSE**

### **(Vagueness of Charges)**

3. Judge Bishop alleges that some or all of the charges or their sub-parts are vague to the point of denying Judge Bishop the opportunity to adequately defend against the charges. Moreover, no pleading vehicle exists whereby Judge Bishop may move for a more definite statement. This violates Judge Bishop's due process rights.

## **FOURTH AFFIRMATIVE DEFENSE**

### **(Violation of Due Process)**

4. Judge Bishop alleges that the Commission's procedure whereby it investigates the charges on its own motion, drafts the charges against the judge, determines if evidence supports the charge, prosecutes the charge, and imposes discipline on the judge with the judge being given no right of mandatory appellate review, violates federal and State due process guarantees. Judge Bishop further asserts that ex parte communications between the Examiners and the Commission and/or its staff violate the investigated judge's due process rights. Judge Bishop

believes and thereon alleges that a material witness in this case, a member of the Commission staff, has given testimony to the Commission in secret, that not all aspects of this testimony have been produced to Judge Bishop, and that the fact of this testimony violates due process. Judge Bishop further asserts that the Commission's act of withholding any portion of its file on the investigated judge denies the judge an opportunity to fully defend against the charges and, accordingly, violates that judge's due process rights.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **(Improper Denial of Discovery Rights)**

5. Judge Bishop alleges that the rules enacted by the Commission governing discovery in a judicial misconduct case are legally insufficient and discriminatory. He alleges the discovery procedures that are allowed are insufficient to permit an adequate opportunity to defend against the charges. He alleges such rules that give the Commission a "work product" privilege not available to the judge violate the equal protection clause of federal and State constitutions. He alleges that a listing of potential witnesses not interviewed during the investigation violates due process.

#### **SIXTH AFFIRMATIVE DEFENSE**

##### **(Violation of Separation of Powers Doctrine and "The Principle of Check")**

6. Judge Bishop alleges that rules giving the Commission (with its non-judge, non-lawyer majority) the power to discipline a judge, with the judge having

no right of mandatory appellate review, violate the State separation of powers doctrine and the "principle of check."

**SEVENTH AFFIRMATIVE DEFENSE**

**(Mitigation)**

7. Judge Bishop alleges that other matters not pled as facts in the Notice of Formal Proceedings render the charges invalid and/or serve to mitigate against any act that could otherwise be characterized as judicial misconduct.

Dated: September 17, 2001

**CORRELL, GARCHIE & EDWARDS LLP**  
JAMES E. FRIEDHOFFER

By: 

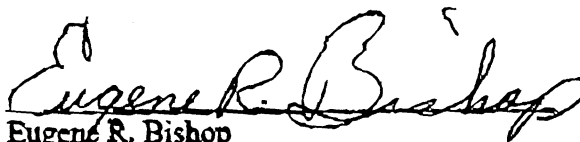
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Attorneys for Respondent,

THE HONORABLE EUGENE R. BISHOP

**VERIFICATION**

I, Eugene R. Bishop, have read the foregoing Answer to Notice of Formal Proceedings in Inquiry No. 161 and know its content. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Indio, California, on September 17, 2001.



Eugene R. Bishop  
Judge of the Superior Court