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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE
HOWARD R. BROADMAN,
No. 145.

NOTICE OF FORMAL PROCEEDINGS

To Howard R. Broadman, a judge of the Tulare County Superior Court,
from April 7, 1986, to the present and at all relevant times therein:

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

On June 24, 1997, you met with Presiding Judge Conn and Assistant Presiding Judge Kalashian in Judge Kalashian's chambers. The meeting was called by Judge Conn to discuss your treatment of jury coordinator Peggy McKinzie in open court the previous day. Judge Conn told you that your conduct was inappropriate and requested your assurance that it would not be repeated. You refused to assure Judge Conn that you would refrain from such conduct in the future. Judge Conn indicated that he might have to report your conduct to the Commission on Judicial Performance. You threatened Judge Conn that if he reported you to the Commission, you would report him to the Commission for conduct in the past, which you did not identify.

Your threat to report Judge Conn if he reported you violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), and 3C(1).

COUNT TWO

On November 21, 1996, you presided over a purported court trial of a quiet title action entitled *King v. Wood*, case no. 96-173094. Plaintiff Genice King was not represented by an attorney. Defendant Sandra Wood was represented by attorney James Johnson. You entered judgment against plaintiff (finding that she had no legal or equitable interest in the real property) without taking sworn testimony subject to cross examination. You merely elicited the positions of the parties and accepted documents from them. The proceedings were not recorded. You did not obtain the consent of the parties to conduct the proceedings in that manner.

You deprived the parties of fundamental rights to a trial and due process and interfered with their ability to effectively appeal, and violated the Code of Judicial Ethics, canons 1, 2A, 3B(7) and 3B(8).

COUNT THREE

On August 28, 1996, you presided over a civil contempt hearing in the case of *Smith v. Smith*, case no. 95-169027. The contempt proceeding arose out of a June 1996 order by you which gave custody of the Smiths' children to Mr. Smith. The 15 year-old daughter of the Smiths was called as a witness on behalf of respondent Mrs. Smith. You interrupted the testimony of the minor witness as follows:

The Court: I need to do something. I need to ask a couple of questions. Do you understand what I mean when I say do you believe in the rule of law?

The Witness: Yes.

The Court: What do you understand that to mean?

The Witness: That you're the judge and you decide for people what should happen.

The Court: Can you tell me why I should believe a single word you say since you clearly do not act like you believe in the rule of law?

Mr. Thomas [counsel for respondent]: Your Honor, I apologize, Your Honor, and I mean this with the --

The Court: You can object.

Mr. Thomas: I mean, with the greatest of respect to the Court, I would not allow that to be done to my child, and I think it's an inappropriate question. I think it's abusive to this child. I have said that. My objection is on the record.

The Court: Do you understand my question?

The Witness: Yes, I do.

The Court: Are you going to help me. I'm not yelling or I have a calm voice, you'll readily agree to that, I presume. I'm asking in a

calm manner. I don't want there to be any kind of implication that I'm screaming at this lady or doing anything like that.

Mr. Thomas: It is not the volume of the question, Your Honor, it is the nature of the question and the age of the child that I am concerned about.

The Court: You're fifteen, right?

The Witness: Yes.

The Court: Can you help me in that because I'm sitting here, and I know this is abusive to you, but I have a problem because you're telling me important things, seemingly, but you're someone who's acted in direct contradiction to all of the evidence I've heard so far in the rule of law. See, I'm having a little bit of difficulty in my own mind giving a little bit of credibility in your own behalf?

The Witness: No. I understand.

The Court: Can you help me?

The Witness: With what?

The Court: How can I reconcile those two things?

The Witness: I don't understand what you mean, "help you."

The Court: Well, I have to decide what the right thing to do here is. One of the things is I have to decide when the people are telling the truth or are not telling the truth. Do you understand that?

The Witness: Yes.

The Court: Some of the people have testified truthfully. Some people I don't think have testified as truthfully as others, but when I have somebody who flaunts the rule of law, do you understand what that means, flaunts the rule of law?

The Witness: Break it.

The Court: Does it with more than just breaking the law but throws it in your face, kind of thing to a police – if you walked by and threw a beer bottle at a policeman that would be more flaunting the law, than if you threw a beer bottle a mile away from the policeman. Do you understand?

The Witness: Yes.

The Court: I know this is abusive for you, and I know I've brought you in here – I didn't bring you in here. Your mother and father brought you in here, but I still have to do my job. My job is to try and find the truth here, and I have problems believing a witness who does not believe in the rule of law because if you don't believe in the rule of law then why should I believe your testimony? Do you understand?

The Witness: I didn't say I did not believe in the law.

The Court: Well, the evidence has been thus far that you haven't acted as if you believe in the law.

Mr. Thomas: Your Honor, just for the record, again, there is obviously no way to answer that question, and I would object to the question as being argumentative. Again, I am not trying to interfere and I'm not trying to be disrespectful.

The Court: I understand I have this problem, and I've never had this problem. I've never had this situation. I've been a judge for ten years. I've never had this situation before, and I'm asking for – you're part of the problem, and I'm asking you to help me and figure out the answer. I wouldn't ask it if somebody wasn't smart enough to answer, but you appear to be a bright young woman. If you can't answer it, just say, I can't answer it.

The Witness: What's your question?

The Court: Can you help me to resolve that dilemma?

The Witness: How could I help you. What do you want me to do? Do you want me to go with my dad because I said I wasn't going to and I'm not going to.

The Court: Continue – young lady that is probably a direct contempt of this Court. Do you know what the ramifications for that are?

The Witness: No.

The Court: We'll be in recess. Call the public defender's office.

Your treatment of the minor witness violated the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT FOUR

On August 29, 1996, in the *Smith v. Smith* contempt proceeding referenced in Count Three, above, you found Mrs. Smith guilty of contempt of court. On September 5, 1996, Edward Thomas, counsel for Mrs. Smith, filed an application for a writ of habeas corpus, alleging, among other things, due process violations and judicial misconduct by you. On February 4, 1997, without reaching the issue of judicial misconduct, the Court of Appeal annulled the findings of contempt on due process grounds.

The next time that Mr. Thomas appeared before you was on March 28, 1997, on the family law matter of *Artis v. Artis*, case no. 95-171218. Mr. Thomas represented respondent Artis. You recused yourself from hearing the *Artis* case and made the following statement in open court, on the record:

The Court: I cannot be – I'm afraid I cannot be fair in this case with Mr. Thomas representing the party. And I do not want to be accused of taking anyone unawares or of shirking my obligations to hear matters. Therefore, I'm stating my reasons why.

It is my opinion that Mr. Thomas is unethical and dishonest. And my feelings are so strong that I'm afraid that I cannot be fair in this matter, so long as he's representing one of the parties.

Expressing your opinion that the attorney was “unethical and dishonest” was unnecessary to effect your recusal and violated the Code of Judicial Ethics, canons 1, 2A and 3B(4).

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, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. 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.

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: December 29th, 1987

Walt. Brown
CHAIRPERSON

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

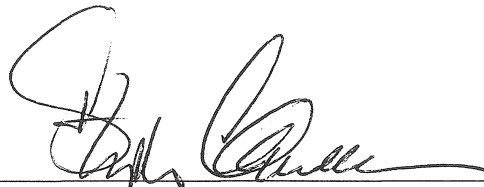
INQUIRY CONCERNING JUDGE
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ACKNOWLEDGEMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, Stephen R. Cornwell, on behalf of my client, the Honorable Howard R. Broadman, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 145 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 Broadman has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated:

January 20, 1998



Stephen R. Cornwell, Esq.
Attorney for Judge Howard R. Broadman,
Respondent