

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE  
No. 108

THIRD AMENDED NOTICE  
OF FORMAL PROCEEDINGS

TO JUDGE HOWARD R. BROADMAN:

IT APPEARING THAT from May 16, 1986 to July 25, 1988, you were a judge of the Visalia Municipal Court District, Tulare County, and that from July 25, 1988 to the present, you have been a judge of the Superior Court, Tulare County, your current term beginning in January 1991; and

Preliminary investigation having been made pursuant to the provisions of Rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission, as a result of the preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to section 18 of Article VI of the California Constitution and in accordance with Rules 901-922, California Rules of Court;

NOW THEREFORE, you are hereby charged with wilful misconduct in office and conduct prejudicial to the administration of

justice that brings the judicial office into disrepute, in disregard of your oath to well and faithfully discharge the duties of your office and in disregard of the standards set forth in the California Code of Judicial Conduct. The particulars of the charges are as follows:

COUNT ONE

It is charged that you have abdicated your duty to respect and comply with the law by taking judicial actions in knowing or reckless disregard of constitutional and other mandates. Your conduct in this regard includes but is not limited to:

A. On January 2, 1991, in People v. Johnson (No. 29390), you imposed on the indigent defendant, as a condition of probation, the use of the Norplant contraceptive (a surgically implanted prescription drug) and on January 10, 1991, you denied a motion for reconsideration as to that condition. You denied that motion in gross disregard of the defendant's constitutional right of privacy. Your action also was punitive and in gross disregard of the rehabilitative goals of Penal Code § 1203.1. The facts before you on January 10, 1991 included evidence that Norplant is contraindicated for women with defendant's medical problems.

B. On September 14, 1990, in People v. Zaring (No. 29063), you prohibited the indigent defendant from becoming pregnant as

a condition of probation. You took this action in gross disregard of the defendant's constitutional right of privacy.

C. On November 19, 1990, in People v. Zaring (No. 29063), when Ms. Zaring arrived approximately 22 minutes late for an appearance and stated that she had to take her children to school, you summarily revoked her probation and remanded her to custody. You took this action in gross disregard of the defendant's constitutional right to due process of law. On November 27, 1990, after Ms. Zaring testified as to her babysitter's unexpected absence on the 19th, you found that she "willfully violated" a purported probation condition requiring her appearance at precisely 8:30 a.m. On November 29, 1990, you terminated her probation based on the alleged "violation" and sentenced her to prison for 2 years and 4 months. The foregoing conduct was in gross disregard of Penal Code § 1203.2(b) and was a gross abuse of your judicial power.

D. On January 5, 1995, in People v. Hooks (No. 34911), you procured a waiver of time for sentencing without specifying its purpose, although defense counsel inquired. You then disclosed its purpose (to research whether you had authority to order that Hooks, apparently HIV-positive, be denied medical treatment for that condition while incarcerated) and, when counsel asked to withdraw the waiver, denied his request. Your actions were deceptive and a gross abuse of your judicial power.

E. On November 7, 1990, in Carter v. City of Porterville (No. 124345), you conditioned the plaintiffs' right to proceed to trial on February 25, 1991 on payment by their counsel, Arthur Kralowec, of a sanction or, in the alternative, on their filing a substitution of attorney by February 4. You took this action although it was undisputed that the plaintiffs were entitled to a preferential trial date under Code of Civil Procedure § 36. Your conduct was in gross disregard of that statute and was a gross abuse of your judicial power. It caused the elderly plaintiffs unnecessary hardship.

COUNT TWO

It is charged that you have made public comments about pending or impending cases that you knew or should have known violated the California Code of Judicial Conduct and have used the media as a forum to defend certain of your judicial actions. Your conduct in this regard includes but is not limited to:

A. You made public comments about People v. Johnson (No. 29390), in which you imposed the Norplant probation condition, while that case was pending before you and while it was pending on appeal, in violation of former Canon 3A(6) (now 3B(9)). Such comments included interviews with major television networks and newspapers in which you addressed your reasons for imposing the

condition and defended your action. See the commission's preliminary investigation letter of March 18, 1991 (attached hereto and incorporated by reference).

That letter specifically referenced Canon 3A(6) and the pending appeal in the Fifth District and alleged that your comments "undermined public confidence in the objectivity and impartiality of the judiciary." Following its receipt, you continued to make public comments about People v. Johnson while it was pending on appeal, including:

1. In early April 1991, you discussed People v. Johnson in an interview with journalist Ed Bradley of CBS 60 Minutes (aired subsequently).

2. In early May 1991, you discussed People v. Johnson in an interview with journalist Michael Ryan (published in Parade Magazine on September 1, 1991).

B. On May 16, 1991, the commission sent you an advisory letter (attached hereto and incorporated by reference), which stated that your public comments about People v. Johnson violated Canon 3A(6), "detracted from the appearance of impartiality and fairness during the pendency of proceedings," and "gave rise to a perception that you actively sought the publicity about your decision." Following receipt of that letter, you continued to make public comments about People v.

Johnson while it was pending on appeal, including an interview with journalist Janice Castro (published in Time Magazine on March 9, 1992).

C. You also made public comments about another case, People v. Zaring (No. 29063), while it was pending on appeal, in violation of former Canon 3A(6) (now 3B(9)). Such comments included an interview with journalist Kathy Holub (published in West Magazine on July 7, 1991). During that interview, the article stated, you quoted defendant Linda Zaring (who is African-American) while "mimicking a black accent."

#### COUNT THREE

It is charged that, since Arthur Kralowec became counsel to your former law client Darleen Woods in an action against you that alleges in part fraud and deceit, conspiracy to violate Ms. Woods' rights under the Bankruptcy Act, breach of fiduciary duty, and professional negligence (Woods v. Broadman, No. 145964), you have failed, in matters involving Mr. Kralowec, to conduct yourself in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Your conduct in this regard includes but is not limited to:

A. In February and March 1995, during trial of a legal malpractice suit against Mr. Kralowec before another Tulare County Superior Court judge (Metzger v. Kralowec, No.

93-162564), you offered to assist plaintiff's counsel Thomas Anton, met with Mr. Anton in your chambers at your invitation to discuss the case, attended the trial when Mr. Kralowec was testifying, and asked Mr. Anton about the case in the court hallway. Your conduct showed disregard for the integrity of the bench and for your judicial obligation to display fairness and impartiality regarding cases in which you are not a litigant.

B. On August 22, 1994, upon Mr. Kralowec's entering your courtroom with attorney Peter Wilke to obtain a trial date from court employee Cynthia Logan, you told him to leave and, after he gestured toward Ms. Logan, told him to leave immediately. The attorneys left without obtaining a trial date. Your conduct showed a lack of judicial temperament and impartiality.

Your conduct as charged in this Notice constitutes wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of the California Constitution, Article VI, section 18. Your conduct also was in disregard of Canons 1, 2, 2A, 2B, 3, 3B(2) (former 3A(1)), 3B(4), and 3B(9) (former 3A(6)) of the California Code of Judicial Conduct.

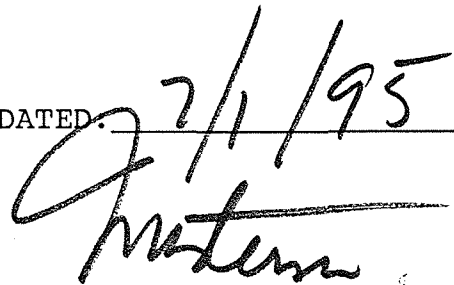
You have the right to file a written answer to the charges against you within fifteen days after service of this notice

upon you. The answer must be filed with the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer must be verified, must conform in style to California Rules of Court, rule 15, subdivision (c), and must consist of an original and eleven legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE.

DATED

2/1/95



CHAIRPERSON





State of California  
Commission on Judicial Performance  
1390 Market Street, Suite 304  
San Francisco, CA 94102  
(415) 557-2503  
Fax (415) 557-3901

March 18, 1991

Personal and Confidential

Honorable Howard R. Broadman

[Address]

Dear Judge Broadman:

This is to advise that the Commission on Judicial Performance has ordered a preliminary investigation. This investigation is on the Commission's own motion. (See California Rules of Court, rules 904 and 904.2.)

As detailed below, you reportedly made public comments about a pending matter. (See Canon 3A(6) of the California Code of Judicial Conduct.) The matter which you discussed publicly was People v. Johnson (No. 29390), in which, at a hearing on January 2, 1991, you reportedly required the use of the contraceptive "Norplant" as a condition of probation.

It is alleged that the matter attracted national media attention and your comments were widely reported, for example in newspapers, on television, and in People magazine. Your comments allegedly addressed your reasons for imposing the probation condition and defended your action.

Such alleged comments reportedly included the granting of interviews to television stations and major newspapers. For example:

-- You allegedly granted an interview to a television reporter that was conducted in your chambers shortly after January 2, 1991 and telecast on CNN Headline News, on Saturday, January 5, 1991 between 12 noon and 1 p.m. PST or around that time period.

-- You allegedly granted an interview to the San Francisco Daily Journal that led to a lengthy front-page story,

Honorable Howard R. Broadman  
March 18, 1991  
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accompanied by a large photograph, on January 30, 1991.

-- You allegedly may have granted an interview to the New York Times that led to a report that appeared on page A12 on January 11, 1991.

-- You allegedly may have granted an interview to the NBC Today Show that was taped but preempted by the Persian Gulf situation.

-- You allegedly may have granted an interview to the CBS This Morning Show that was telecast on or about February 11 or February 12, 1991.

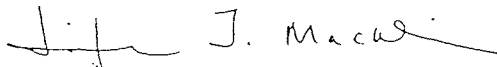
-- You allegedly may have granted an interview to 20/20 and/or 60 Minutes that was scheduled for taping sometime during March 1991.

It is further alleged that other interviews, which produced additional publicity, also may have been granted.

Your comments publicized prior to January 10, 1991 (when you heard a motion to reconsider the Norplant condition) allegedly created the appearance of prejudgment as to any potential post-sentencing proceedings in your court. Your comments publicized thereafter allegedly created the appearance of seeking to influence the decision in any appeal that might be lodged and undermined public confidence in the objectivity and impartiality of the judiciary. (An appeal was noticed in the Fifth District on January 30, 1991.)

The foregoing may constitute engaging in improper action within the meaning of California Constitution, article VI, section 18(c). You are now being afforded an opportunity to present in writing such matters as you may choose. Monday, April 8, 1991 has been set as a reasonable time for your response to be received in the commission office, unless there is cause for an extension.

Very truly yours,



Jennifer L. Machlin  
Administrative Counsel

JLM:ng

CERTIFIED MAIL

PRESIDING JUSTICE ARLEIGH M. WOODS  
CHAIRPERSON



VICTORIA B. HENLEY  
DIRECTOR-CHIEF COUNSEL

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State of California  
Commission on Judicial Performance

1390 Market Street, Suite 304

San Francisco, CA 94102

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May 16, 1991

PERSONAL AND CONFIDENTIAL

Honorable Howard R. Broadman

[Address]

Dear Judge Broadman:

Under dates of March 18, 1991 and April 4, 1991, you and commission staff have corresponded concerning your statements to the media about the Norplant probation condition in the case of People v. Johnson. The subject of that correspondence came before the commission at its May 1991 meeting. The commission concluded that, with reference to the matter of your statements to the media, the facts do not constitute grounds for proceeding further and determined to close its preliminary investigation of your statements to the media and issue this advisory letter. (The commission still has under consideration matters regarding your conduct that are at issue in Woods v. Broadman.)

In making this determination, the commission asked me to express its strong reservations concerning your conduct in commenting to the media on a pending case and granting interviews in which you discussed your decision, resulting in nationwide coverage. Your comments in that national coverage were not confined to procedural explanations, in violation of Canon 3A(6) of the Code of Judicial Conduct, which narrowly restricts comment on cases pending or impending in any court.

Regardless of your intent in making such comments, it is the commission's view that your conduct detracted from the appearance of impartiality and fairness during the pendency of proceedings and gave rise to a perception that you actively sought the publicity about your decision. In this regard, the commission directs your attention to Canon 2 of the Code of Judicial Conduct, which addresses the appearance of impropriety, in addition to Canon 3A(6).

Very truly yours,

VICTORIA B. HENLEY  
Director-Chief Counsel