

PUBLIC ADMONISHMENT OF JUDGE JAMES M. BROOKS

The Commission on Judicial Performance has ordered Judge James M. Brooks 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 Brooks has been a judge of the Orange County Superior Court since 1998. His current term began in January 2005. Previously, he was a judge of the Orange County Municipal Court from 1987 to 1998.

1. In 2004, Judge Brooks presided over the case of *Palacio Del Mar Homeowners Association v. McMahan*, case number 01CC14684.

On October 20, 2004, Judge Brooks presided over an order to show cause hearing regarding Elizabeth McMahan's alleged contempt for failure to appear for her deposition. During that hearing, Judge Brooks made statements to Arnold and Elizabeth McMahan that were sarcastic, demeaning, and intimidating. The following colloquy took place at the beginning of that hearing:

ARNOLD MCMAHON: My deposition was set for October 15. I woke up about 3:30 on the morning of October 14, with a very intense pressure in my chest. I went over to my doctor and they did an EKG and found abnormalities in it. So he asked me to immediately go to the nearest hospital.

THE COURT: Gee. I wonder what's going to happen when we put you in jail, Mr. McMahan. Your little ticker might stop, you think?

Then, after ordering Elizabeth McMahan to appear for her deposition on a new date, Judge Brooks stated the following to her counsel: "[T]ell her to bring a check for \$5,000. That's the sanctions I'm imposing for her contempt and contemptuous conduct towards the court and Mr. Kim. First, \$5,000 . . . she pays to him. If she doesn't show up on the 27th it will be [\$]10,000 payable to the court. I'd mention jail but it might give her a heart attack." Judge Brooks's conduct violated canon 3B(4) of the California Code of Judicial Ethics, which requires that a judge be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity.

Judge Brooks issued a minute order embodying his oral ruling on contempt, which stated, in part: "IN THE EVENT THAT [ELIZABETH MCMAHON] DOES NOT APPEAR FOR DEPOSITION AS ORDERED[,] SANCTIONS WILL BE IMPOSED IN THE SUM OF \$10,000.00 PAYABLE TO CLERK OF THE COURT."

On May 31, 2005, the Court of Appeal of the State of California, Fourth Appellate District, issued a nonpublished opinion, *McMahon v. Superior Court*, case number G034741, that, in part, affirmed Judge Brooks's order adjudging Elizabeth McMahan guilty of contempt and imposing \$5,000 in sanctions. However, the Court of Appeal also found that Judge Brooks had improperly threatened to impose sanctions of \$10,000 against Elizabeth McMahan, and issued an order directing Judge Brooks to vacate the portion of his October 20, 2004 order threatening to impose those sanctions. In its opinion, the Court of Appeal stated, with regard to Judge Brooks's conduct:

On the other hand, no authority exists for the court to threaten sanctions of \$10,000 should Elizabeth again fail to appear for deposition. The court plainly could not adjudicate Elizabeth in contempt for failure to appear in the future without first holding another contempt trial, pursuant to the procedures described above.

. . . The Association's declarations in support of their sanctions requests do not itemize the attorney fees and costs incurred therein, which presumably do not total the entire \$5,000 sanctions already imposed, let alone the threatened \$10,000. Thus, the court lacked substantial evidence to threaten Elizabeth with sanctions of \$10,000 for her contempt.

Judge Brooks's conduct violated canon 2A, which provides that a judge "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Judge Brooks's conduct also violated canon 3B(7), which provides that a judge shall accord every person who has a legal interest in a proceeding full right to be heard according to the law.

2. In 2005, Judge Brooks presided over the case of *Vinci Investments Co., Inc. v. Joher, et al.*, case number 04CC04522, a contract action seeking specific performance and damages for the defendants' failure to transfer ownership of certain property. During a hearing after trial in the matter on June 15, 2005, while issuing his tentative ruling against the defendants, Judge Brooks stated:

THE COURT: Mrs. Joher, the mother, Sosha or whatever her name is, she's the one that Joe, among others, has turned everything over to, put everything in her name; a lady that probably doesn't know where the restaurant is; a lady that, in her own country - I put a question mark; I know it's Syria, Iraq, Iran, Lebanon -probably a very nice lady, probably doesn't know how much she owns, I don't think.

(R.T. 16:21 – 17:1.)

In a supplement to his tentative ruling in that case, Judge Brooks stated that the defendant transferred "much of the business/property into the name of defendant 'Joe' Joher's wife, who, in her native Syria (?) probably wouldn't be allowed to own property."

Judge Brooks's comments in the *Joher* case violated canon 3B(5), which requires judges to refrain from speech that would reasonably be perceived as bias or prejudice. Judge Brooks's conduct also violated canon 2A, which requires judges to act in a manner that promotes public confidence in "the integrity and impartiality of the judiciary" as well as canon 3B(4) which requires judges to be "patient, dignified and courteous" toward those with whom they deal in an official capacity.

Judge Brooks's conduct described above was, at a minimum, improper action pursuant to article VI, section 18(d)(3) of the California Constitution.

In determining that a public admonishment was appropriate, the commission noted that Judge Brooks has previously been disciplined for conduct similar to that set forth above. In 1996,

Judge Brooks received an advisory letter addressing, in part, the judge's comments reflecting ethnic bias: referring to Hispanic defendants as "Pedro"; issuing a bench warrant for an Asian defendant for "ten thousand dollars or twenty thousand yen"; and stating to an undocumented Hispanic defendant, "[y]ou have more names than the Tijuana telephone book." In 1999, Judge Brooks received another advisory letter for remarks to a defendant at the conclusion of a preliminary hearing about how the judge would have handled an assault on a member of his own family: "I would go down and punch [the defendant's] lights out," and that instead of calling the police, it would be, "touch them, you die." In 2003, Judge Brooks received a private admonishment for conduct including referring to the parties in a case, the operators of a mobile home park, as "Nazis" and analogizing their actions to that of the Nazis during the Holocaust. In another matter also included as a basis for the private admonishment, in the course of denying plaintiff's motion to exclude reference to his status as an undocumented alien, Judge Brooks made remarks conveying his stereotypes of undocumented aliens, including that they place burdens on taxpayers by receiving benefits to which they are not entitled. The judge referred to the defendant as "this good doctor." The appellate court reversed Judge Brooks's ruling in that case, and based its reversal in part on the appearance of bias. *Hernandez v. Paicius* (2003) 109 Cal.App.4th 452.

Commission members Mr. Marshall Grossman, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, and Mr. Lawrence Simi voted to impose a public admonishment. Commission members Mr. Michael Kahn and Mr. Jose Miramontes concurred with the imposition of a public admonishment. Commission member Judge Frederick P. Horn was recused. Commission member Ms. Barbara Schraeger did not participate.