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APR 19 1999

Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING FORMER
JUDGE LUIS CARDENAS,
NO. 155.

NOTICE OF FORMAL PROCEEDINGS

To Luis Cardenas, a judge of the Orange County Municipal Court from March 30, 1976 to January 12, 1980, and a judge of the Orange County Superior Court from January 12, 1980 to March 31, 1996, and thereafter a retired judge sitting on assignment in Orange County Superior Court until December 31, 1996:

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, improper action and dereliction of duty 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, and providing for barring a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court, to wit:

COUNT ONE

From approximately July 1993 through August 1996 you took judicial action in 23 criminal cases wherein defendants were represented by attorneys Leonard Basinger and/or Ginger Larson Kelley. You took action in these cases at the request of Basinger and/or Kelley although the cases were not assigned to you.

During that time, you had a social relationship and personal friendship with Basinger and his daughter, Kelley. For example: you were a friend of Basinger for more than 20 years; you testified as Basinger's witness at his disbarment and reinstatement hearings in 1987 and 1991, respectively; in 1993 and 1995, you, Basinger, and your spouses vacationed together in Europe; you presided at Kelley's wedding; you advised her as she began her legal career.

In the cases in which Basinger and/or Kelley requested that you take judicial action, you did not disclose your social relationship with them or disqualify yourself because of that relationship. The judicial actions that you took were favorable to the clients of Basinger and/or Kelley.

A. Ordering pre-arraignment O.R.'s

At all relevant times, Orange County had a procedure for handling bail setting and releases on recognizance (O.R.) through an office called the Detention Release Unit (DRU). Attorneys called DRU to have in-custody defendants released O.R. or to have their bail reduced. On routine matters, the DRU officers made the decision as to whether bail should be set according to the bail schedule or the defendants should be released on their own recognizance. DRU could act on its own or contact the on-call judge. Since 1990, Judge James Brooks was the on-call judge assigned to DRU; DRU officers referred matters requiring judicial review to him. The unit was staffed 24 hours a day, 7 days a week, in the Orange County Jail.

In 11 cases, Basinger and/or Kelley bypassed DRU and contacted you directly, and requested that you order the O.R. release of his or her client. You

were not the on-call judge, nor were the cases otherwise assigned to you. You then called DRU and ordered the release of the defendants on their own recognizance. These cases were:

1. On January 19, 1994, at the request of Basinger, you contacted DRU and ordered the O.R. release of Sally Kay Annette (case 94CF0102) from custody. Judge Brooks had previously authorized bail in the amount of \$50,000 on the charge of possession of a controlled substance for sale. Kelley later appeared as attorney for the defendant.

2. On June 4, 1994, Kiet Hao Lam was arrested on a warrant from the State of Texas arising out of an indictment for fraud. The bond on the warrant was \$50,000. On June 6, 1994, at the request of Kelley, you contacted DRU and ordered Lam released on O.R.

3. On October 24, 1994, at the request of Kelley, you contacted DRU and ordered an O.R. release for Linda Murguia, who was wanted on assault charges and had not yet been arrested.

4. On December 22, 1994, Darren Scott Bailey was arrested on a charge of driving under the influence. Bailey was additionally arrested on three outstanding warrants. Two warrants were from Riverside County, one of which was a "no bail" warrant. The other was a \$10,000 warrant in Orange County on a charge of failing to provide for a minor child. Shortly after midnight on December 23, 1994, at the request of Basinger, you contacted DRU and ordered Bailey released O.R. on all of his pending cases. DRU advised you of the "no bail" status of the Riverside County warrant before you ordered Bailey released.

5. On March 22, 1995, Marcia E. Smith (case 9513901) was arrested on a charge of possession of a controlled substance for sale. On March 22, at the request of Basinger, you contacted DRU and ordered Smith released on O.R.

6. On March 31, 1995, Kimberly Stanley was arrested on three traffic warrants (warrants 267875, 267617, 269959). At the request of Basinger, you contacted DRU and ordered Stanley released on O.R. on the warrants.

7. On May 20, 1995, Brett Telford (case 956182) was arrested for a violation of Penal Code section 273.5 (spousal battery). Bail was set at the scheduled amount of \$10,000. On Sunday, May 21, 1995, at the request of Basinger, you contacted DRU and ordered Telford released on O.R. DRU pointed out to you that Penal Code section 1270.1 requires a hearing in open court prior to any O.R. release of a person charged with domestic violence, and that the prosecutor is entitled to a two court-day written notice. Despite this, you ordered the O.R. release without a hearing.

8. On May 31, 1995, Henry Calderon (case 959806) was arrested for a violation of Penal Code section 273.5 (spousal battery). Bail was set at \$50,000. On May 31, 1995, at the request of Kelley, you contacted DRU and ordered that Calderon be released on O.R. DRU pointed out to you that Penal Code section 1270.1 requires a hearing in open court prior to any O.R. release of a person charged with domestic violence, and that the prosecutor is entitled to a two court-day written notice. Despite this, you ordered the O.R. release without a hearing.

9. On June 19, 1995, at the request of Kelley, you contacted DRU and ordered that Paula Kay Wilson be released on O.R., with the condition that she be released only to Kelley. Wilson was in custody for a violation of Penal Code section 1203.2 (probation violation, Superior Court case no. 93AF0134), with a no-bail setting. Based upon what Kelley told you, you told DRU that Deputy District Attorney Jeff Ferguson had agreed to this O.R. release. DRU contacted Ferguson. Ferguson said that although he had spoken to Kelley about her client being placed into a drug rehabilitation program, he had not been advised that Wilson had been arrested, nor had he discussed an O.R. release with Kelley. Ferguson subsequently contacted you by telephone, and you thereafter called DRU and canceled your earlier O.R. release of Wilson.

10. On July 31, 1995, Jeffrey Alan Love (case 95NF1884) was arrested for possession of a controlled substance for sale. Bail was set at \$10,000. On August

1, 1995, at the request of Kelley, you contacted DRU and ordered that Love be released on O.R.

11. On December 13, 1995, defendant Patrick Arabaca (case 96SM18436) was arrested for possession of stolen property. Bail was set at \$10,000. On December 14, 1995, at the request of Basinger, you contacted DRU and ordered Arabaca released on O.R.

Your conduct violated the Code of Judicial Conduct (in effect until January 15, 1996), canons 1, 2, 2A, 2B and 3E.

B. Ordering pre-arraignment bail reduction

On March 1, 1996, Stephen Bass was arrested for possession of a controlled substance for sale (case 96SF0246). Bail was set at \$25,000; he had not yet been arraigned. On March 2, 1996, Basinger contacted you while you were on vacation in Hawaii and requested that you order a reduction of Bass' bail. Later that evening, you contacted DRU and ordered that Bass' bail be reduced to \$5,000.

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

C. Ordering bail reductions and O.R. releases after arraignment

In the following six cases, after arraignment and with the cases pending before judges other than you, you ordered O.R. releases or bail reductions based upon ex parte communication with Basinger and/or Kelley:

1. On April 14, 1993, defendant Andrea Jane Rambo pled guilty to four felony Penal Code violations in case number 93CF0996 before Judge Gary Ryan (case 93CF0996). Thereafter, a bench warrant (for failure to appear) was issued by Judge Ryan with bail set at \$50,000. Rambo later appeared before Judge Richard Stanford on May 28 and June 9, and bail remained at \$50,000. On July 7, 1993, Judge William Evans heard and denied Rambo's motion to reduce bail from \$50,000. On July 15, 1993, at the ex parte request of Kelley, you ordered the

release of Rambo from custody on O.R. "to her attorney Ginger Larson." The district attorney's office was not given notice of the request, nor an opportunity to be heard before you ordered Rambo released.

2. On April 15, 1994, Basinger appeared as attorney of record for parolee Brian Robert Carson, who was in custody charged with narcotics offenses (case number 93HF0840). The case was assigned to Judge Anthony Rackauckas. On May 20, 1994, Kelley moved to reduce bail on behalf of Carson; Judge Rackauckas denied the motion. Bail was set at \$100,000. Trial was set for August 8, 1994, before Judge Rackauckas. On Sunday, June 19, 1994, you contacted DRU and ordered Carson's bail reduced from \$100,000 to \$10,000 at the request of Kelley, who had called you at home that day. Despite being informed by DRU that Carson had a parole hold, you ordered bail reduced saying that the parole hold would be lifted soon. The district attorney's office was not given notice of Kelley's request, nor the opportunity to be heard before you ordered Carson's bail reduced.

3. On May 17, 1994, a preliminary hearing was held on a complaint charging Efraim Vargas with multiple violations of Penal Code sections 550 and 487.1 (insurance fraud and grand theft, case number 94CF0975). Judge Wendy Lindley held Vargas to answer on seven counts and set his bail at \$100,000. On June 10, 1994, Vargas and his attorney Roland Rubalcava appeared before Judge Kathleen O'Leary, to whom the case was assigned. Bail was discussed in chambers and Judge O'Leary declined to reduce the bail. Judge O'Leary set a trial date of August 8, 1994. On the evening of June 23, 1994, Basinger called you at home and requested that you order Vargas released on his own recognizance. Rubalcava was still attorney of record. You then contacted DRU and ordered Vargas released on O.R. The district attorney's office was not given notice of the request, nor the opportunity to be heard concerning the release of Vargas. When the district attorney's office learned of Vargas' release, the deputy in charge of the major fraud unit asked you to hold a hearing regarding bail; you declined to do so

and stated that the assigned judge should handle the matter. Judge O'Leary subsequently revoked the O.R. and reinstated the \$100,000 bail.

4. Daniel Mitsu Okinaka was arrested for a violation of Penal Code section 245(a)(1) (assault with a deadly weapon, case 95NM11675B). He was arraigned on December 4, 1995; Judge Martin Hairabedian, Jr. set bail at \$15,000. The public defender was appointed to represent Okinaka. A bail hearing was set for December 11, 1995. On December 7, 1995, based upon an ex parte request by Basinger, you contacted DRU and ordered Okinaka released on O.R. The district attorney's office was not advised of Basinger's request, nor given the opportunity to be heard regarding the own recognizance release.

5. Jorge Alvarez was in custody charged with two violations of Penal Code section 273.5 (spousal battery, case WEW95WF2450), with bail set at \$35,000. On January 4, 1996, based upon an ex parte request of Basinger, who was not attorney of record, you contacted DRU and ordered that Alvarez's bail be reduced to \$5,000 on both cases, stating that you had received additional information from the victim. The district attorney's office was not advised of Basinger's request, nor given the opportunity to be heard regarding the bail reduction. Penal Code section 1270.1 requires a hearing prior to bail reduction below the amount scheduled for this offense.

6. On January 17, 1996, Jana Adkins was in custody for failure to appear and failure to pay fines in connection with case no. 95C506343. Adkins' request for O.R. was denied by Judge James Stotler, and bail was set. On January 18, 1996, based upon an ex parte request of Basinger, you contacted DRU and ordered that Adkins be released on O.R. The district attorney's office was not advised of Basinger's request, nor given the opportunity to be heard regarding the request.

Your conduct violated the Code of Judicial Conduct (in effect until January 15, 1996), canons 1, 2, 2A, 2B, 3B(2), 3B(7) and 3E, and the Code of Judicial Ethics (in effect since January 15, 1996), canons 1, 2, 2A, 2B(1), 2B(2), 3B(2), 3B(7) and 3E.

D. Modifications of probation

In the following two cases, you modified conditions of probation in violation of Penal Code section 1203.3(b). Subsection (b)(1) thereof states: “Before any sentence or term or condition of probation is modified, a hearing shall be held in open court before the judge. The prosecuting attorney shall be given a two day written notice and an opportunity to be heard on the matter.” Subsection (b)(1)(A) requires that the judge state the reasons for the modification on the record, and subsection (b)(1)(B)(2) requires written notice to the probation officer of the intention to revoke, modify, or change a probation order. You acted ex parte and without a hearing, and thereby deprived the People of due process.

1. On February 20, 1996, defendant James William Warner pled guilty to possession for sale of a controlled substance, and an enhancement pursuant to Penal Code section 12022.1 (commission of felony while released on bail or own recognizance, case numbers 93CF2517 and 96CF0408). Judge Daniel J. Didier sentenced Warner to a four-year suspended prison sentence, with Warner to be confined for 365 days in the Orange County Jail and to be on felony probation for three years.

On February 27, 1996, at the ex parte request of Basinger, you issued an order modifying the conditions of Warner’s probation. You relieved the probation department of supervision and ordered the Sheriff of Orange County to release Warner from custody on or about March 1, 1996. Neither the district attorney’s office nor the probation office was advised of Basinger’s request. You modified Judge Didier’s sentence without holding a hearing.

2. On March 29, 1996, defendant Christine Higgins pled guilty to possession of a controlled substance in case number 95CF1019, and admitted that she was in violation of her probation in case number 93CF2679. On that date, Judge William Bedsworth suspended imposition of sentence and placed Higgins on three years probation. On March 29, 1996, at the ex parte request of Kelley,

you issued a minute order granting the defendant's motion to modify probation, relieving Higgins of supervised probation based on Kelley's representations that Higgins was planning to move to France. The district attorney's office was not advised of Kelley's request, nor given the opportunity to be heard concerning the modification of the probation. You did not hold a hearing in this matter.

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

COUNT TWO

In 1989, defendant Douglas Mark Thurber was ordered to complete a SB-38 drinking driver program as a condition of his probation in case number C77059. On November 10, 1993, attorney Paul Stark submitted to you an "ex parte application for judicial finding of completion of the SB-38 program." This application included a declaration by Stark stating that Thurber had informed Stark that Thurber completed the program at School Ten, and that the school was defunct. On November 10, 1993, you issued an order to the Department of Motor Vehicles making a judicial finding that Thurber had completed the SB-38 program. On April 4, 1994, you issued an "order of judicial finding" to the director of School Ten, finding that Thurber had completed the SB-38 program. You issued these orders without a hearing and without notice to the district attorney and when the case was not otherwise pending before you. In April 1994, you received a letter from the Executive Director of School Ten (which was not defunct). The letter advised that School Ten would not issue a Department of Motor Vehicles DL101 form verifying Thurber's completion of the SB-38 program because Thurber had never enrolled in the program. You directed that the letter be put in the file and took no further action in the matter. You did not correct or rescind your earlier orders in the case.

On November 18, 1996, Judge David O. Carter presided over an order to show cause hearing in which Thurber sought to have School Ten held in contempt

for not issuing a completion certificate based on your judicial finding. Judge Carter found that the orders you issued on November 10, 1993 and April 4, 1994, were invalid.

Your conduct violated the Code of Judicial Conduct (in effect until January 15, 1996), canons 1, 2, 2A, 2B, 3B(2) and 3B(7).

CONDUCT OCCURRING AFTER RETIREMENT, WHILE SITTING ON ASSIGNMENT

You are hereby placed on notice that the following additional allegations, which occurred while sitting on assignment after retirement from judicial office, will also be at issue in these formal proceedings. These allegations reflect that the pattern of misconduct while in judicial office, as alleged above, has continued after your retirement from judicial office. These allegations generally go to the issue of discipline, should misconduct during your judicial term of office be found, and specifically go to the issue of whether you should be barred from receiving an assignment, appointment, or reference of work from any California state court, should censure be imposed.

1. On April 30, 1996, defendant Salome Aguilar was arraigned before Judge Donna Crandall on two counts of sale or transportation of a controlled substance in case number 96CF1236. Judge Crandall set bail at \$10,000 and appointed Ed Eisler of the alternate defender's office to represent Aguilar. On approximately May 2, 1996, you contacted DRU after Basinger made an ex parte request of you that Aguilar be released on his own recognizance; you were told by DRU that Aguilar was not eligible for own recognizance release because he had been in the country for only a brief time; you then ordered Aguilar's bail reduced to \$5,000. The district attorney's office was not advised of Basinger's request, nor given the opportunity to be heard concerning the reduction of Aguilar's bail. At the time you reduced bail, the case was pending in municipal court. Your only judicial assignment was to hear civil matters in superior court.

2. On June 14, 1996, Hung Quoc Do was charged with two counts of unlawful possession of a firearm by a felon in case number 96CF1700. A warrant was issued for Do's arrest by Judge Marjorie Laird Carter, and bail was set at \$100,000. On August 13, 1996, at the ex parte request of Kelley, you recalled the warrant and reduced Do's bail to \$25,000. The district attorney's office was not advised of Kelley's request, nor given the opportunity to be heard concerning the recall of the warrant and reduction of bail. At the time you reduced bail, the case was pending in municipal court. Your only judicial assignment was to hear civil matters in superior court.

3. On August 27, 1996, Theodore Lewis Berner was arrested for violation of Vehicle Code section 23152(a) (driving under the influence, case 96HM06204). On that date, Basinger contacted you and requested that you order Berner released on his own recognizance. You then contacted DRU and ordered that Berner be released on O.R. This release occurred pre-arraignment. At the time you ordered an O.R. release, the case was pending in municipal court. Your only judicial assignment was to hear civil matters in superior court.

4. On October 23, 1996, you received a telephone message from your wife's sister, Orange County Deputy Public Defender Holly Zebari, advising you that your wife's cousin, Jim Steenbergen, was in custody on a \$15,000 arrest warrant issued by a Long Beach Municipal Court judge for a traffic violation. You called DRU and ordered Steenbergen released on O.R. At the time you ordered an O.R. release, the case was pending in municipal court. Your only judicial assignment was to hear civil matters in superior court.

A retired judge sitting on assignment is a judicial officer, and shall comply with the Code of Judicial Ethics (see article VI, section 18(m); canon 6B). Your conduct violated canons 1, 2A, 2B(1), 2B(2), 3B(2), 3B(7) and 3E.

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: March 24, 1999


CHAIRPERSON

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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

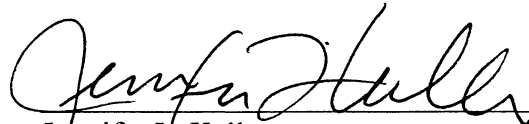
INQUIRY CONCERNING FORMER
JUDGE LUIS CARDENAS,
NO. 155.

ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, Jennifer L. Keller, on behalf of my client, former Judge Luis Cardenas, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 155 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that former Judge Cardenas has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: _____

4-12-99



Jennifer L. Keller
Attorney for former Judge Luis Cardenas,
Respondent