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**COMMISSION ON
JUDICIAL PERFORMANCE**

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE EDMUND W. CLARKE, JR.,

No. 197

NOTICE OF FORMAL PROCEEDINGS

To Edmund W. Clarke, Jr., a judge of the Los Angeles County Superior Court from June 2007 to the present:

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 May 6, 2014, you presided over the jury selection process in *People v. Alejandro Diaz, Ivan Escobedo, Emmanuel Lopez, and David Banuelos*, Case No. BA389610. The defendants were charged with murder and gang allegations. The trial estimate was four weeks. During the morning and afternoon court sessions on May 6, you heard the hardship requests of approximately 82 prospective jurors who were seeking to be excused from jury duty.

During the afternoon court session, you heard the hardship request of Prospective Juror 7122, who had written on her hardship form that she was suffering from severe anxiety, worked as a waitress making minimum wage, and was planning a wedding in two months. After discussing the hardship request with Prospective Juror 7122, you stated, "I'm going to excuse you, and you can go. And good luck." (R.T. 83:12-13.) Prospective Juror 7122 then asked if she could add something and the following occurred:

PROSPECTIVE JUROR 7122: I would just like to add that, you know, everyone here in the jury has sacrificed a lot to even be here today. And, you know, anxiety is real. And the woman who is checking us in, I'm sure it's a very stressful job. The way she's treated everyone today has just been really disrespectful and --

THE COURT: You can stay then and tell me about that at the end of the day.

PROSPECTIVE JUROR 7122: I got to go.

THE COURT: No, you're staying. You're staying. You're staying on. I've been a judge for seven years. No one's ever complained about my clerk. But I'll be happy to hear your complaint at the end of the day. So go to the hall and stay and come in, act like an adult and you can face her and tell me everything she did wrong.

PROSPECTIVE JUROR 7122: Yes, sir.
(R.T. 83:20-84:8.)

Prospective Juror 7122 went into the hallway as you had ordered. Approximately 45 minutes to an hour later, near the end of the afternoon session, you called Prospective Juror 7122 back into the courtroom. The following occurred:

THE COURT: All right. We now have back juror 7122. [¶] Why don't you come right up to the front row there where I can hear you.

PROSPECTIVE JUROR 7122: Sure.

THE COURT: Now, what did you want to tell me about the way you've been treated today?

PROSPECTIVE JUROR 7122: First of all, I apologize for upsetting you, or upsetting the clerk. That wasn't my intentions [*sic*]. You know, we just take a lot of time out of our day to come here. And I know everyone is really stressed out here, and it's a big job. But, you know, there was a comment made about my anxiety and it kind of, you know, really affected me. And, you know, I should have kept my mouth shut, obviously.

THE COURT: Tell me what my clerk said that caused you to personally go after her like that.

PROSPECTIVE JUROR 7122: Well, like I said, I know -- I know she has a hard job and everything, but the way that people are being talked to out there is just a little, you know --

THE COURT: Such as what? Was there some language used that you thought was inappropriate?

PROSPECTIVE JUROR 7122: No. I mean, just demanding people around kind of rudely. Like I said, I know there's a lot of people coming in here. We don't know where -- what we're doing. That was --

and then there was just like -- I told her I was having anxiety, which is very real and very true. And then she made it -- I don't know if it was a joke about anxiety, "Well, I have anxiety too. You guys back up." And I felt that was personal to me. [¶] And I know -- you know, I figured this is the place where we can have freedom of speech and exercise what is right, and that's all I was trying to do. I really didn't mean to offend or upset you in any way. I apologize for that.

THE COURT: So because she didn't respond to your claim of anxiety with appropriate sensitivity, you attacked her in open court in front of a judge with your criticism?

PROSPECTIVE JUROR 7122: I mean, I guess.

THE COURT: I guess that's exactly what you did. [¶] Now, you say you work as a waitress; right?

PROSPECTIVE JUROR 7122: Yes, sir.

THE COURT: So if I came into your establishment and criticized you loudly and in front of your manager, in front of other employees, and it wasn't fair, how would you feel about that?

PROSPECTIVE JUROR 7122: I would be pretty upset. I would probably pull you aside and talk to you about it?

THE COURT: Privately. So she should have talked to you privately about your anxiety?

PROSPECTIVE JUROR 7122: Yes.

THE COURT: Where?

PROSPECTIVE JUROR 7122: I don't know, away from everyone.

THE COURT: Where? Did you see how many hundred people were in the hallway this afternoon?

PROSPECTIVE JUROR 7122: Yes, sir.

THE COURT: The world does not circulate around any one of us. Not you and not me. When we no longer can see that other people are struggling and doing their best, we run the risk of looking immature and selfish and not contributing to the society that we're supposed to support. And I see jurors potentially who do that every day in every case. [¶] You've been in the jury room. You've heard people talking. You've heard them gossip. I hear their stories in every trial. Every trial there's someone who tries to lie to me. There's a lot of good people, but there's plenty of liars. [¶] So if you came here thinking that this was going to be Disneyland and you were getting an E Ticket and have [a] good time, I'm afraid you have no sense of what is going on in this building. [¶] Now, seven years ago the first clerk that was assigned to me, she's still here. The only clerk I've ever had. One juror, in all that time, out of thousands, has ever complained about her. That's you. [¶] You can leave now knowing that's what you accomplished. Good night. We'll be in recess for 15 minutes.

(R.T. 102:14-105:14.)

Your conduct toward Prospective Juror 7122, including ordering her to remain in the hall after she was excused from jury duty, violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5).

COUNT TWO

During the morning court session on May 6, you heard the hardship request of Prospective Juror 4688, who had asserted on her hardship request form that she could not speak or understand English. The following occurred:

THE COURT: [N]ext is 4688, number 100 on the random list. [¶] Good morning.

PROSPECTIVE JUROR [4688]: Buenos dias. Good morning.

THE COURT: Good morning.

PROSPECTIVE JUROR [4688]: Good morning.

THE COURT: All right. So you answered in English and then you got down to the reason and -- I know enough Spanish to know what you wrote here. You said "I don't speak and I don't understand English."

PROSPECTIVE JUROR [4688]: Correct.

THE COURT: Correct. Thank you. How long have you been in this country?

PROSPECTIVE JUROR [4688]: 25.

THE COURT: 25 years, yes. And you studied for citizenship in English, yes?

PROSPECTIVE JUROR [4688]: (Answers in Spanish.)

THE COURT: Don't try and fool me now, ma'am, you'll be here a lot longer. Most people that have been in this country for ten years have picked up enough English. 20 or so, they're moving right along. And 25 years is -- so you better have a different reason why you want to be excused than that. Otherwise you'll be around here a while. [¶] Do you want to come back tomorrow and talk to me about this more?

PROSPECTIVE JUROR [4688]: (No audible response.)

THE COURT: We'll get your jury form to see what you wrote on "Do you understand basic English," and if you wrote "Yes." [¶] You can stay in the hallway please, we'll get back to you. Stay in the hallway. [¶] Can you get her juror form? 4688.

(R.T. 34:12-35:16.)

Later, near the end of the afternoon court session, you recalled Prospective Juror 4688. (This was immediately before Prospective Juror 7122 (see Count One) was called back into the courtroom.) The following occurred:

THE COURT: Good afternoon.

PROSPECTIVE JUROR 4688: Good afternoon.

THE COURT: Remind me of your number?

PROSPECTIVE JUROR 4688: Six eight -- no. 4688.

THE COURT: 4688. Okay. So I found your form and someone put "yes" for understanding English.

PROSPECTIVE JUROR 4688: No.

THE COURT: And then they switched it.

PROSPECTIVE JUROR 4688: No, I understand no English. I'm sorry.

THE COURT: Yes. I'm telling you I have it right here that you signed it and it says yes, and then someone moved it over to another side and put n-s on it. So here's -- if you understand me, I'm giving you a hint. If you start being honest with me you'll go home. If I think you're still trying to fool me, you might be back here tomorrow while I investigate this further. Because the jury form says that someone already evaluated you for English and you said to them that you didn't speak English, and they already checked you. So they put a mark next to your number. [¶] So I don't care if you don't want to be here, but I do care if you're trying to fool me and you think that that's fair. So did you want to tell me how this all happened, or do you want to just come back tomorrow, I'll get a Spanish interpreter here and have that person help me communicate with you.

PROSPECTIVE JUROR 4688: I'm sorry. I -- I don't understand nothing. No [en]tiendo.

THE COURT: We can get an interpreter here this afternoon. You can wait in the hallway, we will get an interpreter here. [¶] As soon as we deal with this juror

[Prospective Juror 7122] we'll take a break and I'll figure out what we do with our time, if any.

(R.T. 101:4-102:10.)

After you finished with the matter involving Prospective Juror 7122, you recalled Prospective Juror 4688. A Spanish interpreter was present. The following occurred:

THE COURT: Is the interpreter here? Did you want to try and talk to this lady? Maybe we can get her on her way. [¶] Good afternoon, ma'am.

PROSPECTIVE JUROR 4688: Good afternoon.

THE COURT: So now we have a certified Spanish language interpreter assisting you. Tell me --

PROSPECTIVE JUROR 4688: Thank you so much.

THE COURT: When you just cried, why did you cry?

PROSPECTIVE JUROR 4688: I felt ashamed.

THE COURT: Why ma'am?

PROSPECTIVE JUROR 4688: Because I am a citizen and I really do need to speak English and I don't know how to speak English.

THE COURT: I'm sorry if you feel embarrassed about that.

PROSPECTIVE JUROR 4688: I feel that way too.

THE COURT: So I assume you studied long ago to take the test; right?

PROSPECTIVE JUROR 4688: No. My father was German, may he rest in peace. And he had me naturalized as a citizen when I was two years old. And then he sent me to Mexico. And when I came back here I was already a grownup.

THE COURT: All right. So as a citizen, some day we would like to have you serve as a juror. Now, I am not fluent in any other language, so I won't criticize someone who only knows one language. For citizenship here you should make an effort. People would like to have someone with your background, someone with your knowledge, someone with your understanding hearing their case. So if you have time to work on your English, the next time you come in maybe you can stay to serve.

PROSPECTIVE JUROR 4688: Well, I would have to -- I've got two jobs. I would have [to] quit one of my jobs.

THE COURT: I'm not ordering you to do anything. I'm hoping you have the time to do it.

PROSPECTIVE JUROR 4688: Okay. I'll try. Of course I will.

THE COURT: Many people come and they say they don't understand English, and they actually can. And this has caused me to mistrust you, and now I feel that I should have trusted you more.

PROSPECTIVE JUROR 4688: Well, I want to thank you. I would not lie to you if I really could understand and if I really knew.

THE COURT: All right. So now you're free to go. You don't have to go study anything, but I think everybody here would like to see you participating, if you can find the time and if you can.

PROSPECTIVE JUROR 4688: Of course. Thank you.

THE COURT: Good luck. Thank you.

PROSPECTIVE JUROR 4688: Thank you so much. Thank you.

THE COURT: All right. Now we're in recess.
(R.T. 105:18-107:16.)

Your conduct toward Prospective Juror 4688, including accusing her of trying to deceive you, suggesting you might require her to wait around for an extended period of time and/or return to court the next day, and ordering her during the morning session to wait in the hall and not recalling her until late in the afternoon session, violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3B(4).

COUNT THREE

During the afternoon court session on May 6, you considered the hardship request of Prospective Juror 7132, who had written on her hardship form that she had \$25 in her bank account. The following occurred:

THE COURT: Next up, 7132. That's 137 on the random list. [¶] Hello.

PROSPECTIVE JUROR 7132: Hello.

THE COURT: You actually told me how much you have in your checking account.

PROSPECTIVE JUROR 7132: I can show you too.

THE COURT: No. No. It's an impressive and convincing figure.

PROSPECTIVE JUROR 7132: Thank you for not sharing it.

THE COURT: Well, every one of these lawyers spent more than that on lunch today.

PROSPECTIVE JUROR 7132: Great.

THE COURT: Probably. [¶] But, yes, I know some wait staff make a lot of money. Sounds like you're not

in that category yet, so I'm going to excuse you.
Thank you.

PROSPECTIVE JUROR 7132: Thank you.

THE COURT: That's 137, 7132. She has \$25 in her checking account. I know you all eat for less than \$25. Sometimes we don't. That's cutting it close.

(R.T. 77:4-25.)

Prospective Juror 7132 had exited the courtroom when you revealed the amount in her checking account.

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

COUNT FOUR

During the afternoon session on May 6 (approximately 30 minutes after the matter referred to in Count Three), you considered the hardship request of Prospective Juror 5868, who had written on his hardship form that he had \$33 in his checking account. The following occurred:

THE COURT: 5868 is the next juror. And that looks like 132 on the random list. [¶] And is that you, sir?

PROSPECTIVE JUROR 5868: Yes, it is.

THE COURT: Okay. No vacations. No business trips. And if you had to stay on this case you would not get paid?

PROSPECTIVE JUROR 5868: No, I wouldn't. I'm actually using my vacation days for today. And if I could stay, I could only use like five vacation days. So if it was shorter, I wouldn't mind.

THE COURT: All right. That's nice of you to say that. I'm not going to keep you. Although you did also put down what you have in your checking. A little bit more than the other gal. 33 bucks. You are

putting her in the shade with that big account. So good luck on getting paid and being able to bring that number up a little bit better.

PROSPECTIVE JUROR 5868: Luckily my parents spot me every once in a while.

THE COURT: Good. Maybe next time you'll be able to serve for us. You are excused. You can go right to the jury assembly room.

PROSPECTIVE JUROR 5868: Thank you.

(R.T. 96:21-97:16.)

Your remark about "the other gal" who was put "in the shade" by Prospective Juror 5868's bank balance was a reference to Prospective Juror 7132.

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

COUNT FIVE

During the afternoon session on May 6, you considered the hardship request of Prospective Juror 1968, who had written on her hardship form that she was shooting a film May 23-28, was going to Miami for her father's 90th birthday June 14-22, and that her earnings as a restaurant server were based wholly on tips. The following occurred:

THE COURT: Next is 1968. And that --

MS. PENSANTI: 144.

THE COURT: Thank you. 144 on the random list.
[¶] Vacation in June.

PROSPECTIVE JUROR [1968]: Hi.

THE COURT: Hello.

PROSPECTIVE JUROR [1968]: How are you?

THE COURT: Well, as it gets later in the day not as well as I started, but I'm hanging in there. Thank you for asking. [¶] Shooting a film --

PROSPECTIVE JUROR [1968]: Yes.

THE COURT: -- in May. And does that mean you're behind the camera or you're a director or you're a performer?

PROSPECTIVE JUROR [1968]: I'm in front of the camera.

THE COURT: You're in front of the camera?

PROSPECTIVE JUROR [1968]: I hope.

THE COURT: And is this the name of the film? I'm the only one who is going to know about it.

PROSPECTIVE JUROR [1968]: Yes, it is.

THE COURT: This is the name of the film that's coming up? All right. You're going to Florida in June, but that would be -- that would be done by then. But it's nice what you wrote about your dad there. I think I'm going to have to excuse you so that this project can go forward. This would be too long a case, I think. So you can go right to the jury assembly room and turn in your badge.

PROSPECTIVE JUROR [1968]: Thank you.

THE COURT: It sounds like a nice PG project, by the way, for those of you letting your minds run a little bit.

(R.T. 95:15-96:20.)

Prospective Juror 1968 had exited the courtroom when you made the comment, "It sounds like a nice PG project, by the way, for those of you letting your minds run a little bit."

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

It is further alleged that your conduct as set forth in the above counts constituted a pattern of discourteous, undignified, and inappropriate treatment of members of the public.

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, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 8.204(b). 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: 12/9/15



Honorable Erica R. Yew
Chairperson

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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

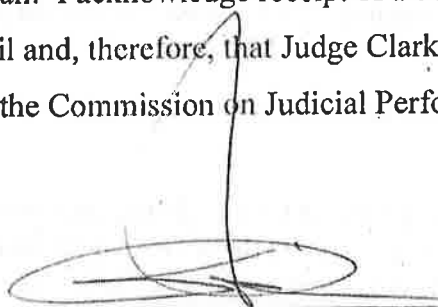
INQUIRY CONCERNING
JUDGE EDMUND W. CLARKE, JR.,

No. 197

ACKNOWLEDGMENT OF SERVICE
OF NOTICE OF FORMAL
PROCEEDINGS

I, Edith R. Matthai, on behalf of my client, Judge Edmund W. Clarke, Jr., hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 197 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 Clarke has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 12/24/15



Edith R. Matthai
Attorney for Judge Edmund W. Clarke, Jr.
Respondent

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 500 South Grand Avenue, Suite 1500, Los Angeles, California 90071.

On December 24, 2015, I served the foregoing document described as **ACKNOWLEDGMENT OF SERVICE OF NOTICE OF FORMAL PROCEEDINGS** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Sei Shimoguchi
Assistant Trial Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

VIA MAIL: As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I delivered such envelope by hand to the above addressee(s).

VIA OVERNIGHT COURIER: I am "readily familiar" with the firm's practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.

BY E-SERVICE: I caused the aforementioned document(s) to be electronically served on all counsel of record.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 24, 2015, at Los Angeles, California.



PATRICIA DAVID