

PUBLIC ADMONISHMENT OF JUDGE PATRICK E. CONNOLLY

The Commission on Judicial Performance ordered Judge Patrick E. Connolly 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 Patrick E. Connolly has been a judge of the Los Angeles County Superior Court since 2009. His current term began in January 2015.

As set forth below, the commission found that Judge Connolly engaged in a course of conduct that reflected embroilment with a criminal defense attorney and abused his authority by setting multiple post-trial hearings, including an ex parte evidentiary hearing, relating to statements the attorney made during trial without citing the attorney for contempt or issuing an order to show cause (OSC) re contempt. Judge Connolly failed to give the attorney notice of the subjects of his inquiry prior to conducting an evidentiary hearing, improperly excluded the attorney from the hearing, and engaged in improper ex parte communications before the hearing.

Judge Connolly presided over the jury trial in *People v. Jackson*, No. TA110670, in July 2010. During trial, Judge Connolly called for a sidebar conference to ask the defense attorney, Freddie Fletcher, for an offer of proof for a question he asked the alleged victim. Mr. Fletcher's offer of proof included the statement that his courtroom observer had reported seeing the prosecutor signal a police officer witness by slowing shaking her head. Judge Connolly said he had been watching the attorneys closely and had not seen anything from the prosecution that would make him believe she was trying to give answers to anyone. He described Mr. Fletcher's statement as "outrageous" and said "we will take this up at a later time."

At the end of the trial, after instructing the jury, Judge Connolly said, "I am going to be ordering a transcript about the allegation Mr. Fletcher made against the DA, and we are going to be bringing that up after the verdict." Mr. Fletcher asked for permission to put on the record his allegations regarding the conduct of the prosecutor while his witnesses were in court. Judge Connolly said Mr. Fletcher could make a record, but the court would not be taking witness testimony until after the jury returned.

The jury acquitted Mr. Fletcher's client on July 30, 2010. The verdict was not received by Judge Connolly, but by another judge. After the jury was released, the prosecutor said she believed Judge Connolly had requested that a hearing be set. Mr. Fletcher told the judge that he had been cited for contempt during the trial. The judge set the matter for an OSC on August 19, 2010 before Judge Connolly.

On August 19, 2010, Judge Connolly began the hearing by saying that Mr. Fletcher had made allegations about the conduct of the prosecutor during trial, and "at the very least we're going to have a hearing as to that conduct. Because if the DA did do the things for which the defense made those accusations, obviously, the DA would be, at the very least, in contempt of court, if not worse. ¶ But as I stated to Mr. Fletcher, I hope those are not spurious allegations, because, if so,

the Court does find that that's contemptuous behavior also." Mr. Fletcher said he believed he had been cited for contempt for asking a certain question during trial. Judge Connolly said he was not proceeding as to the question, but as to the accusations Mr. Fletcher made.

Judge Connolly continued the hearing and said, "And then in the interim period of time I'm also going to be reviewing transcripts from Long Beach, as to contempt proceedings that are involving Mr. Fletcher." The Long Beach matter concerned a hearing before another judge in which it was alleged that Mr. Fletcher had challenged the conduct of a prosecuting attorney. A contempt hearing was placed on the court's calendar in December 2009, but no OSC re contempt was ever filed and the hearing never went forward. Mr. Fletcher objected to Judge Connolly's reviewing that matter and requested copies of any materials or transcripts the judge reviewed. Mr. Fletcher said he would provide affidavits from his observers in *People v. Jackson*, who said they had seen the prosecutor signal a witness.

On September 1, 2010, Judge Connolly called the case and said he was continuing it because, although he had spoken to the judge in Long Beach about the contempt matter pending there, he had not yet received the transcripts. He said, "So, what I'm going to do at this point in time is I'm going to set another date so that I can have those and review those."

On October 7, 2010, Judge Connolly again continued the matter. On October 28, Mr. Fletcher appeared with counsel, who filed a Request for Specification of Grounds for Contempt the same day. Judge Connolly said, "Who is representing Mr. Fletcher[?] Charges will be filed by the Court by November 22nd. We'll have both of you back here on December 28th." Judge Connolly also ordered Mr. Fletcher's witnesses back to court at his attorney's request.

On December 28, 2010, Mr. Fletcher appeared again with counsel. Judge Connolly continued the matter again, this time setting a hearing as to whether Mr. Fletcher's accusations against the prosecutor were well founded. Mr. Fletcher's attorney said he did not know what charges Mr. Fletcher was facing. Judge Connolly said, "There are no charges at this time. We are going to have a hearing as to whether or not the allegation that he made against [the prosecutor] were [*sic*] well-founded or not." Mr. Fletcher's attorney asked whether it was a contempt hearing, and Judge Connolly replied, "At this point, it is not. It's an evidentiary hearing to decide whether or not either side is in contempt."

On February 3, 2011, Mr. Fletcher appeared in pro per and an attorney from the District Attorney's office appeared to represent the prosecutor in *People v. Jackson*. Before the hearing, Judge Connolly met ex parte in his chambers with the attorney from the District Attorney's office. They reportedly discussed witness and hearing logistics. The substance of their discussion was not disclosed to Mr. Fletcher.

Judge Connolly began the February 3, 2011 hearing by stating that it was "an order to show cause as to whether or not any party in this matter should be held in contempt" and announcing that "these are separate proceedings." He recounted that during trial, in July of the previous year, "I believe on either the 27th or 28th of July, Mr. Fletcher made some statements on the record as to conduct that he alleged towards [the prosecutor]. ¶ If those allegations are correct, that would be contemptuous behavior, and we are to determine whether or not there was a basis for those

allegations.” Judge Connolly then asked the prosecutor in *People v. Jackson* and the DDA representing her to step outside the courtroom.

Mr. Fletcher filed three written motions on February 3, 2011: 1) objections to the court’s jurisdiction to conduct an OSC re whether there was evidence to charge either of the attorneys in *People v. Jackson* with contempt, 2) a motion to disqualify Judge Connolly, and 3) notice that Mr. Fletcher was invoking his Fifth Amendment right not to appear as a witness in the hearing. Judge Connolly ruled that these motions were untimely.

Throughout the portion of the hearing in which Mr. Fletcher was permitted to participate, he objected to the court’s jurisdiction. He also objected that the court had not provided him with transcripts of the statements at issue. Mr. Fletcher did not testify or present witness testimony, other than the declarations submitted with his motions, maintaining that the court did not have authority to conduct the hearing. Ultimately, Judge Connolly asked Mr. Fletcher to leave the courtroom so that he could conduct the second portion of the hearing, in which the District Attorney’s office would participate. Mr. Fletcher objected strongly to being asked to leave the courtroom, but eventually left on Judge Connolly’s order.

During the portion of the hearing in which the District Attorney’s office participated, and from which Mr. Fletcher was excluded, Judge Connolly called as a witness his court reporter, who testified that she had been watching the prosecutor during the officer’s testimony and did not see the prosecutor signal to the officer. The District Attorney’s office called the police officer witness and the investigating officer, who both testified that they did not see the prosecutor signal to the officer. Mr. Fletcher did not have an opportunity to hear the testimony of these witnesses or to cross-examine them.

Judge Connolly had provided to the District Attorney’s office, but not to Mr. Fletcher, excerpts of the trial transcript pertaining to two occasions on which Mr. Fletcher had arguably questioned the integrity of the prosecutor: the alleged signaling incident, and another incident in which Mr. Fletcher questioned the prosecutor’s statement that she did not know of an outstanding bench warrant for the alleged victim. Judge Connolly informed the DDA’s that he was inquiring into both issues, but said, “Well I have not made any true allegation. This is an order to show cause. I made both sides aware of that.”

After Judge Connolly took witness testimony on February 3, 2011, he called Mr. Fletcher back into the courtroom and provided him with a copy of the transcript of “the trial testimony that the court was considering as far as contempt.” He stated that he was “going to have contempt proceedings against Mr. Fletcher.” Judge Connolly said he would file an OSC re contempt on February 23, 2011. Mr. Fletcher renewed his objection to the proceedings. The hearing concluded with Judge Connolly ordering Mr. Fletcher back to court on February 23, 2011.

On February 23, 2011, Judge Connolly said, “Mr. Fletcher, today I’m taking it off calendar, but checking into the Long Beach matter that you have still before you, as to perhaps consolidation and proceeding under 177.5.” In response to Mr. Fletcher’s question, Judge Connolly explained, referring to Code of Civil Procedure section 177.5, “It’s lesser than actual contempt, it’s just whether or not there should be any type of sanctions as far as monetary sanctions and such.”

The commission determined that Judge Connolly's handling of these proceedings reflected embroilment, which is "the process by which the judge surrenders the role of impartial factfinder/decisionmaker, and joins the fray." (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 2.01, p. 37.) After the defendant was acquitted in *People v. Jackson*, Judge Connolly set six hearings over the course of more than six months relating to a statement Mr. Fletcher made at a sidebar conference during trial. At the outset of this series of hearings, Judge Connolly contacted a judge in a different courthouse to obtain information and transcripts relating to another possible contempt matter concerning Mr. Fletcher, which also involved statements that reflected negatively on a prosecutor. Judge Connolly continued the post-trial hearings in *People v. Jackson* at least twice to obtain transcripts from this unrelated case. These actions gave the appearance that Judge Connolly was not acting as an impartial factfinder, but was conducting an independent investigation into Mr. Fletcher's conduct, and was embroiled in the matter and biased against Mr. Fletcher. In his response to the commission's investigation, Judge Connolly acknowledged that his contact with a judge in an unrelated case was improper embroilment, and that his handling of this matter could be perceived as reflecting bias and an abuse of power. The commission found that by this conduct Judge Connolly violated his duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), and to refrain from speech or other conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

The commission further found that Judge Connolly abused his authority by setting a series of post-trial hearings regarding Mr. Fletcher's statements during trial without citing either attorney for contempt or issuing an OSC re contempt, and conducting an ex parte evidentiary hearing for the apparent purpose of obtaining evidence that could be used in future contempt proceedings. Ordering a person to appear in court when no matter requiring his attendance is pending is a serious misuse of the judicial office. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 857.) If Judge Connolly was exercising his contempt power when he set these hearings, as he asserted before the commission, he was obliged to follow the procedures for imposing contempt.

Contempt proceedings, whether indirect, direct, or "hybrid", are properly initiated with notice to the alleged contemnor that the court is considering a contempt charge and notice of the nature and facts of the specific charge. (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 4.21, p. 163, § 4.30, p. 177, § 4.01, pp. 153–154.) This notice may take the form of a verbal contempt citation in cases of direct or "hybrid" contempt, and, in cases of indirect contempt, requires an affidavit or a statement of facts by a judicial officer. (See Code of Civ. Proc., § 1211.)

Judge Connolly did not initiate a contempt proceeding by citing Mr. Fletcher for contempt or issuing an OSC re contempt. He stated generally that Mr. Fletcher had made "allegations as to the conduct of the DA" during trial, not specifying which allegations or when, and said that if those allegations were "spurious" the court found them to be contemptuous. On several occasions Judge Connolly told Mr. Fletcher that he would be filing "charges" or an OSC on a future date. But he did not do so. Instead, on February 3, 2011, he conducted what might be characterized as a "pre-contempt" evidentiary hearing.

The commission found that the evidentiary hearing Judge Connolly conducted on February 3, 2011, and the ex parte manner in which it was conducted, constituted an abuse of authority. No cause was pending before Judge Connolly when he invited testimony from Mr. Fletcher and his

witnesses, or when he called and questioned his court reporter and heard testimony from and questioned police witnesses called by the prosecution. Neither attorney had been cited with contempt, no OSC's re contempt had been issued, and the underlying case had concluded months earlier. Judge Connolly's determination to proceed with an evidentiary hearing gave the appearance that he was conducting an independent investigation into the attorneys' conduct, which was beyond the scope of his authority. (See *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 630-631.)

Having undertaken an evidentiary hearing with no cause pending before him, Judge Connolly further violated Mr. Fletcher's procedural rights by excluding him from the hearing over his objection with no legal basis, and failing to give him notice of the specific subjects of his inquiry. Judge Connolly acknowledged in his response to the commission that he should not have excluded either Mr. Fletcher or the prosecution from any hearing. He asserted, however, that prior to the February 3, 2011 hearing, he provided verbal notice on the record to Mr. Fletcher that his accusations about the prosecutor were the subject of potential contempt proceedings. But this notice did not describe with any specificity what Judge Connolly was considering as a basis for contempt proceedings. Judge Connolly provided Mr. Fletcher with transcripts of the remarks he was considering as a basis for contempt at the end of the hearing on February 3, 2011, only after conducting both portions of the ex parte evidentiary hearing.

The commission further noted that the statement underlying this series of unauthorized hearings does not appear to have constituted contempt of court. The remark does not appear to have actually interfered with court proceedings because it was made at a sidebar conference in response to a request for an offer of proof. (See Code of Civ. Proc., § 1209, subds. (a)–(b).) While it is contemptuous to intentionally make a false statement to a court, (*In re Aguilar* (2004) 34 Cal.4th 386, 394), an attorney may argue prosecutorial misconduct to the court, and must do so, to preserve the issue on appeal. (*People v. Harmon* (1948) 89 Cal.App.2d 55, 61.) If Mr. Fletcher's trial observers said they saw the prosecutor signal a witness, Mr. Fletcher's duties to his client may have compelled him to report the matter to the court.

The commission also found that Judge Connolly engaged in improper ex parte communications by meeting in chambers with the DDA representing the prosecutor in *People v. Jackson* before the February 3, 2011 hearing, and failing to disclose the substance of the communication to Mr. Fletcher. Even if this meeting concerned only scheduling or administrative matters, it would not be permissible unless the judge reasonably believed that no party would gain a procedural or tactical advantage as a result of the ex parte communication, and the judge made provision promptly to notify all other parties of the substance of the ex parte communication and allowed them an opportunity to respond. (Canon 3B(7)(b), formerly 3B(7)(d).) In his response to the commission, Judge Connolly acknowledged that he should not have had ex parte contact with either the prosecution or Mr. Fletcher. The ex parte meeting in chambers and the failure to disclose the substance of the meeting to Mr. Fletcher violated canon 3B(7) and gave rise to an appearance of impropriety and bias. (Canons 2A, 3B(5).)

The commission found that Judge Connolly's conduct in these proceedings reflected embroilment and constituted an abuse of authority. Judge Connolly violated his duty to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity

and impartiality of the judiciary (canon 2A), to be faithful to the law (canon 3B(2)), to perform judicial duties without bias or prejudice and refrain from speech or other conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)), to refrain from improper ex parte communications (canon 3B(7)), and to maintain high standards of conduct (canon 1).

Judge Connolly's conduct as described above was, at a minimum, improper action.

In imposing this public admonishment, the commission considered as an aggravating factor Judge Connolly's prior discipline. In 2010, Judge Connolly received a private admonishment for his use of profanity in a judicial profile interview and in chambers discussions with attorneys.

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Ms. Mary Lou Aranguren; Ms. Patti A. Kasparian; Hon. Thomas M. Maddock; Dr. Michael A. Moodian; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Ms. Sandra Talcott; and Mr. Adam N. Torres voted for the Notice of Intended Public Admonishment. Mr. Richard Simpson did not participate.

Date: March 23, 2016