

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

No. 65

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE FRANK J. CREEDE, JR.:

IT APPEARING THAT since February 28, 1973, and at all times herein, you have been a Judge of the Superior Court, County of Fresno; 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 said 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, conduct prejudicial to the administration of justice that brings the judicial office into disrepute and persistent failure or inability to perform your duties as a judge in the following particulars:

COUNT ONE

You are charged in Count One with wilful misconduct in office:

A. There have been submitted matters in your court which were ready for disposition but which remained undecided for excessive and unacceptable periods of time constituting inordinate delay. These matters include those cases identified by you in your letters to Attorney General John Van de Kamp dated 3/13/85, 3/15/85, 3/18/85, 3/20/85 and 4/2/85, and in your letters to the Commission on Judicial Performance dated 5/17/85 and 5/28/85, which letters are incorporated herein by reference and made a part of this Notice. The cases identified by you in your letters to Attorney General John Van de Kamp are listed and described on a chart prepared by the Administrative Office of the Courts, which chart is appended hereto as Attachment A.

B. During those periods when submitted cases in your court remained undecided in excess of ninety days, you have executed salary affidavits pursuant to Government Code section 68210.

C. You have received the salary for your judicial office while there were causes pending and undecided over ninety days after they were submitted for decision, in violation of California Constitution, Article VI, Section 19.

COUNT TWO

For a further and separate cause of action, you are charged in Count Two with conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

The allegations contained in Paragraphs A., B. and C. of Count One are incorporated by reference.

COUNT THREE

For a further and separate cause of action, you are charged in Count Three with persistent failure or inability to perform your judicial duties.

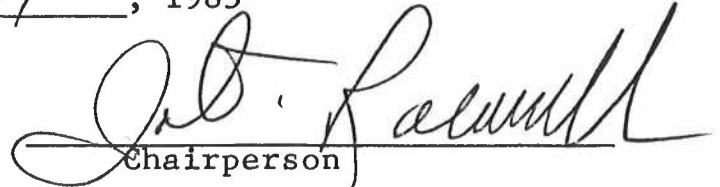
The allegations contained in Paragraph A. of Count One are hereby incorporated by reference.

You have the right to file a written answer to these charges within fifteen (15) days after service of this Notice upon you with the Commission on Judicial Performance, 3052 State Building, 350 McAllister Street, San Francisco, California 94102. Such answer shall be verified, shall conform in style to subdivision (c) of Rule 15 of the Rules

of Court, and shall consist of the original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: June 14, 1985


Chairperson

Case	Date of Submission	Date 90 Days After Submission	Date of Resubmission or other Activity	Date 90 Days After Resubmission or Other Activity	Date of Decision	"Effective" Date of Last Affidavit Before Decision or Resubmission ³	Number of Days Cause Pending at Time of Last Affidavit Before Decision or Resubmission	Stated Reason For Delay
1. <u>Women's International League for Peace and Freedom v. City of Fresno</u> (No. 265854-0) -- action for declaratory and injunctive relief to enjoin ordinance prohibiting "political" advertising ¹	10/5/81 ²	1/4/82	None	N/A	5/11/82 ²	4/30/82	207	Complex legal issues, delay in typing because of inadequate secretarial help; draft of decision prepared in January, 1982. ²
2. <u>Terzian v. Terzian</u> (No. 278488-2) - dissolution of marriage ²	9/4/84 ²	12/3/84	12/31/84 (Submission ordered vacated 12/31/84 because statement of decision prepared and delivered for typing) ⁴	3/30/85	1/25/85 ²	1) Original submission: 11/30/84 2) Resubmission: 12/31/84	1) Original submission: 88 2) Resubmission: 0 (case pending 119 days between original submission and 12/31/84)	Decision prepared in December 1984; secretarial workload problems; lengthy decision because of importance of issues to parties. ²

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3. <u>Mount La Salle Vineyards v. City of Fresno</u> (Nos. 308155-1 and 308173-4) ²	8/?/84 ²	11/?/84	12/3/84 (resubmitted in order to give priority to pending criminal matters in Inyo and San Luis Obispo Superior Courts, where Judge Creede sat by assignment) ²	3/2/85 (counsel granted opportunity after resubmission to comment on recent case; letters from counsel to court on December 21, 26, and 31, 1984; ² resubmission may have been delayed by date of last letter) ⁵	?	1) Original submission: 11/30/84 2) Resubmission: 2/28/85 or 3/31/85	1) Original submission: more than 90 days 2) Resubmission: ?	Pending criminal matter given priority; request to comment on recently decided case; expected decision to be filed by 4/1/85. ²	
4. <u>Bakman v. City of Fresno</u> (No. 163345-1) -- inverse condemnation ²								Matter commenced trial in January 1980; determined as to substantive issues; numerous procedural events concerning findings of fact and conclusion of law, new trial, and motion to tax costs. Motion to tax	Issue of costs overlooked. ²
5. <u>Kvien v. Kvien</u> (No. 289789-0) -- dissolution of marriage ⁶	3/5/84 ⁶	6/4/84	None	N/A	7/27/84 ⁶	6/30/84	117	Draft decision completed in June 1984, not typed until July 27, 1984. ⁶	
6. <u>King v. Herring</u> (No. 281849-0) -- dissolution of marriage ⁶	2/16/84 ⁶	5/13/84	None	N/A	6/21/84 ⁶	5/31/84	108	Draft completed in May 1984; typing delay until June 21, 1984. ⁶	
7. <u>Strunk v Strunk</u> (No. 238652-2) -- dissolution of marriage ⁶	5/16/84 ⁶	8/14/84	None	N/A	9/21/84 ⁶	8/31/84	107	Numerous and complicated issues; decision completed in August; typing of multiple drafts carried over into September 1984. ⁶	

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8. <u>Skaggs v. Skaggs</u> (No. 304270-2) -- dissolution of marriage ⁶	8/8/84 ⁶	11/7/84	None	N/A	12/11/84 ⁶	11/30/84	113	Decision completed in November; cor- rected final deci- sion not filed until December 1984. ⁶
9. <u>Estate of Anna Georger</u> (No. 94598-8) -- petition to set aside affidavit of death of joint tenant and for conveyance of community property interest ⁷	9/14/84 (date oral argument completed after close of brief- ing) ⁶	12/12/84	None	N/A	1/30/85 ⁶	12/31/84	110	Completed in December 1984; final of multiple corrected drafts not ready until 1/29/85. ⁶
10. <u>Gallagher v. Gallagher</u> (No 249361-7) -- child custody motion ⁸	7/27/84 (Submitted on attorney fees and other limited issues) ⁸	10/25/84	None	N/A	11/8/84 (Supplemental memo prepared in February 1985 in re- sponse to re- quest for clarification, still to be typed; clari- fication given by minute order --no date) ⁸	10/31/84	96	Memorandum of decision prepared in October 1984; delay in typing. ⁸
11. <u>In re Richard Morgan</u> (Nos. 308318-5 and 316580-0) -- habeas corpus petition concerning jail overcrowding ⁸	10/2/84 ⁸	12/31/84	None	N/A	3/27/85 ⁸	2/28/85	149	Inadequate secretarial personnel; decision prepared in January. ⁸
12. <u>Kilgore v. Clovis Stone & Supply, Inc.</u> ⁸	9/13/84 ⁸	12/11/84	None	N/A	Still pending -- final draft being typed	3/31/85	200	Intended to vacate submission to give priority to pending criminal matters; failed to do so by oversight. ⁸

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13. <u>Ewing v. Duval</u> (No. 301908-0) -- motion for summary judgment ⁸	12/31/84 ⁸	3/1/85	None	N/A	4/1/85 -- order denying motion filed (statement of decision to be typed) ⁸	3/31/85	90	None ⁸
14. <u>Pathhurst v. Western SI Administrators</u> (No. 310326-4) -- small claims appeal ⁸	8/8/84 ⁸	11/6/84	12/3/84 (Submission vacated be- cause of priority of criminal cases) ⁸	3/3/85	1/22/85 ⁸	1) Original Submission: 11/30/84 2) Resubmission: 12/31/84	1) Original Submission: 114 2) Resubmission: 22	Issue of state court jurisdiction and supremacy clause. ⁸
15. <u>Producers Cotton Oil Co. v. Amstar Corp.</u> (No. 291697-1) -- contract action ⁸	7/?/84 (last doc- ument filed; oral argu- ment held 6/84) ⁸	10/?/84	None	N/A	2/26/85 ⁹	1/31/85	At least 153 days	Decision in case had wide implica- tions; draft pre- pared within 90 days but its size (80 pages) caused typing delay; placed behind other matters for typing because of error concerning submission date. ⁸
16. <u>Levenson v. Personnel Commission</u> (No. 290672-5) -- petition for writ of mandate ⁸	8/8/83 -- last brief filed (case heard 6/15/83) ⁸	11/8/83	None	N/A	5/23/84 ⁸	4/30/84	243	No submission order or submission slip; also did not appear on list of decision given in October 1983 that required decision. ⁸

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17. <u>California State University Fresno v. Hollins</u> (No. 294198-7) -- small claims appeal*	6/14/83*	9/12/83	None	N/A	11/23/83*	11/15/83	162	See footnote ¹⁰ below

10/ The reasons for the delay in deciding this and the next 24 cases (numbers 17 through 42) are presented in Judge Creede's letter of March 15, 1985, to Attorney General Van de Kamp. (A copy of the letter is appended as attachment "B.") In summary, the judge states that the cases were inadvertently passed over during his term as presiding judge. They were among 2,500 to 3,000 cases calendared and decided in his department. Several had no minute orders showing submission or indicating they were heard in the judge's department until counsel brought them to his attention. He was advised about the cases in October 1983 and states he did not draw a salary until the decisions were "prepared." The judge's salary affidavit shows that the October 1983 salary affidavit was not signed until November 15. (See attachment "F." The date of execution appears to be either November 10 or November 15. All further discussion assumes that the date indicated is November 15, 1983.)

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18. <u>Weber Financial Inc. v. Jonker</u> (No. 289056-4) -- small claims appeal ⁸	2/16/83 ⁸	5/17/83	None	N/A	11/10/83 ⁸	9/30/83	226	Footnote 10
19. <u>Nelson v. Winter</u> (No. 2800400-3) -- small claims appeal ⁸	6/25/82 ⁸	9/23/82	None	N/A	11/16/83 ¹¹	11/15/83	508	Footnote 10
20. <u>Heredia v. Awad</u> (No. 280917-6) -- small claims appeal ⁸	7/9/82 ⁸	10/7/82	None	N/A	11/10/83 ⁸	9/30/83	448	Footnote 10
21. <u>Lempel v. Mendoza</u> (No. 281083-6) -- small claims appeal ⁸	7/8/82 ⁸	10/6/82	None	N/A	11/7/83 ⁸	9/30/83	399	Footnote 10
22. <u>Sanborn & Sanborn v. Griffin</u> (No. 288439-3) -- small claims appeal ⁸	1/19/83 ⁸	4/19/83	None	N/A	11/7/83 ⁸	9/30/83	254	Footnote 10
23. <u>Allanlian v. Howrey</u> (No. 289025-9) -- small claims appeal ⁸	2/17/83 ⁸	5/18/83	None	N/A	11/18/83 ⁸	11/15/83	271	Footnote 10
24. <u>Saleh v. Bragg</u> (No. 281667-6) -- small claims appeal ⁸	7/22/82 ⁸	10/21/82	None	N/A	11/8/83 ⁸	9/30/83	435	Footnote 10
25. <u>Taylor v. Baptista</u> (No. 281614-8) -- small claims appeal ⁸	7/23/82 ⁸	10/21/82	None	N/A	12/14/83 ⁸	11/15/83	480	Footnote 10

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26. <u>Silva v. Alcantar</u> (No. 232510-8) -- hearing on default ⁸	6/30/83 ⁸	9/28/83	None	N/A	11/8/83 ⁸ (Submission vacated; or- dered off calendar to be reset on filing of proof of service) ⁸	9/30/83	92	Footnote 10
27. <u>Quitoriano de la Vega</u> <u>v. Aguilar</u> (No. 288459-1) --small claims appeal ⁸	1/20/83 ⁸	4/20/83	None	N/A	12/20/83 ⁸	11/30/83	314	Footnote 10
28. <u>Tap Plastics, Inc.</u> <u>v. Municipal Court</u> (No. 283221) -- petition for writ of mandate ⁸	8/4/82 ⁸	11/2/82	None	N/A	11/16/83 ⁸	11/15/83	468	Footnote 10
29. <u>Kelton v. Star</u> <u>Transportation and</u> <u>Warehouse</u> (No. 286095-5) -- writ of attachment ⁸	12/22/82 (claim of exemption ordered to be filed on 12/22/82; none filed) ⁸	3/22/82	None	N/A	10/21/83 ⁸	9/30/83	282	Footnote 10
30. <u>Marriage of Ortega</u> (No. 288476-5) -- dissolution of marriage (reserved issues of at- torney fees, debts, and remaining property) ⁸	6/21/83 ⁸	9/19/83	None	N/A	12/2/83 ⁸	11/30/83	162	Footnote 10
31. <u>Marriage of Akin</u> (No. 208015-8) --decision on attorney fees ⁸	3/25/83 ¹²	6/23/83	None	N/A	11/3/83 ⁸	9/30/83	189	Footnote 10

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32. <u>Marriage of Oxborough</u> (No. 260975-8) -- dissolution of marriage ^a	10/17/83 (last brief filed 5/11/83 but not delivered to court before 10/17/83; case tried March 15-16, 1983) ^a	1/15/84	None	N/A	12/2/83 ^a	11/30/83	44	Footnote 10
33. <u>Marriage of MacNamera</u> (No. 287176-2) -- dissolution of marriage ^a	6/8/83 ^a	9/6/83	None	N/A	11/30/83 ^a	11/15/83	160	Footnote 10
34. <u>Aguilar v. Mash</u> (No. 267130-3) -- minor's compromise ^a	Cause heard 12/2/82. Counsel directed to furnish current medical report on minor. None furnished. Petition denied without prejudice 11/8/83. ^a							Footnote 10
35. <u>Niro Atomizer, Inc. v. State of California</u> (No. 284006-4) -- petition for writ of mandate ^a	8/12/82 ^a	11/10/82	None	N/A	11/23/83-- order denying petition (memorandum decision signed 2/2/84) ^a	11/15/83	414	Footnote 10

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36. <u>S & M Trucking Co., Inc. v. United Food and Commercial Workers Union Local 126</u> (No. 291655-9) -- preliminary injunction ⁸	3/11/83 (Stipulated preliminary injunction read into record 3/11/83. Decision on reserved issue of picket of residence filed 11/16/83.) ⁸	6/9/83	None	N/A	11/16/83 ⁸	11/15/83	303	Footnote 10
37. <u>Matter of Kevin McCarty</u> (No. 289152-1) -- minor's compromise ⁸	Current medical report requested at hearing of 12/21/82. Report filed, but did not come to judge's attention until later. Report dated January 1983. ¹³				11/10/83 ¹³	9/30/83	?	Footnote 10

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38. <u>In the Matter of the Arbitration Between IFG Leasing Co. and Richard P. Moulthrop</u> (No. 287465-9) -- petition to confirm award ⁸	1/1/83 (Petitioner ordered to file proof of service within 30 days after hearing of 12/2/82. Response filed 12/30/82. Submission as uncontested matter vacated 11/3/83 because no proof of service filed; matter ordered reset for further hearing.) ⁸	3/1/83	None	N/A	11/3/83 ⁸	9/30/83	306	Footnote 10
39. <u>Smoyer v. Farm Financial, Inc.</u> (No. 269747-2) -- motion for production of documents ⁸	6/20/82 (Issue of request for production of joint tax returns submitted on filing of supplemental declarations; none filed.) ¹⁴	9/18/82	None	N/A	11/7/83 ⁸	9/30/83	102	Footnote 10

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40. <u>Penny Candy v. Norris</u> (No. 291771-4) -- injunction ⁸	5/18/83 ⁸	8/16/83	None	N/A	12/15/83 ⁸	11/30/83	196	Footnote 10
41. <u>Siroonian v. Schuchmann</u> (No. 285547-6) -- breach of contract ⁸	4/5/83 ⁸	7/4/83	None	N/A	12/20/83 ⁸	11/30/83	239	Footnote 10
42. <u>Frost v. Frost</u> (No. 273186-7) -- motion to enforce settlement agreement and for injunction. ⁸	4/15/83 ⁸	7/14/83	None	N/A	10/7/83 ⁸	9/30/83	168	Footnote 10

- 1/ Statement of Decision, May 10, 1982.
 - 2/ Letter of March 13, 1985, from Judge Frank J. Creede, Jr., to Attorney General John K. Van de Kamp (attachment "A").
 - 3/ See attachment "E" (affidavits).
 - 4/ Minute Order, December 31, 1984.
 - 5/ Letters of December 21, 26, and 31, 1984, from counsel (attachments "G", "H," and "I.").
 - 6/ Letter of March 18, 1984, from Judge Frank J. Creede, Jr., to Attorney General John K. Van de Kamp (attachment "C").
 - 7/ Statement of Decision, January 29, 1985.
 - 8/ Letter of April 2, 1985, from Judge Frank J. Creede, Jr., to Attorney General John K. Van de Kamp (attachment "D").
 - 9/ Statement of Decision, February 26, 1985.
 - 10/ The reasons for the delay in deciding this and the next 25 cases (numbers 17 through 42) are presented in Judge Creede's letter of March 15, 1985, to Attorney General Van de Kamp. (A copy of the letter is appended as attachment "B.") In summary, the judge states that the cases were inadvertently passed over during his term as presiding judge. They were among 2,500 to 3,000 cases calendared and decided in his department. Several had no minute orders showing submission or indicating they were heard in the judge's department until counsel brought them to his attention. He was advised about the cases in October 1983 and states he did not draw a salary until the decisions were "prepared." The judge's salary affidavit shows that the October 1983 salary affidavit was not signed until November 15. (See attachment "F." The date of execution appears to be either November 10 or November 15. All further discussion assumes that the date indicated is November 15, 1983.)
 - 11/ Judgment and Minute Order, November 16, 1983.
 - 12/ Order and Memorandum of Decision of November 3, 1983, refers to a hearing held on March 1, 1983, and a child support order of March 25, 1983. Letter of April 2, 1985, from Judge Creede (attachment "D") gives the date of the hearing as March 25, 1983, which appears to be the date of submission.
 - 13/ A January 1983 medical report is referred to in the Memorandum of Decision Approving Minor's Claim, filed November 10, 1983. (See also letter of April 2, 1985, from Judge Creede to Attorney General Van de Kamp, attachment "D.")
 - 14/ The matter was heard on June 15, 1982. (Letter of April 2, 1985, from Judge Creede to Attorney General John Van de Kamp, appended as attachment "D.") Order and Memorandum of Decision, signed November 7, 1983, states that the parties were given five days to submit supplemental declarations, presumably following an order of June 15, 1982, and that no declarations were filed.
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