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FOR RELEASE  
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JUDICIAL PERFORMANCE COMMISSION ISSUES PUBLIC ADMONISHMENT OF  
JUDGE STEPHEN DREW

The Commission on Judicial Performance has publicly admonished Judge Stephen Drew of the Tulare County Municipal Court, Dinuba Division. The admonishment is attached.

The Commission is composed of six public members, three judges and two lawyers. The Chairperson is the Honorable William A. Masterson of the Court of Appeal, Second Appellate District in Los Angeles.

## PUBLIC ADMONISHMENT OF JUDGE STEPHEN DREW

The Commission on Judicial Performance has ordered Judge Stephen Drew publicly admonished for improper action pursuant to Article VI, Section 18(d) of the California Constitution. In determining that public admonishment and not a more severe sanction is the appropriate disposition in this matter, the commission has taken into account reports from individuals whose recent experiences with Judge Drew have led them to the view that there has been substantial improvement in his judicial performance, as well as Judge Drew's assurance that he will refrain from improper conduct in the future.

The facts and reasons giving rise to this public admonishment are as follows:

1. In 1992 Judge Drew denied a defendant his right to appointed counsel after using improper criteria for determining whether he was indigent. In November of 1992, in *People v. Lewis*, Judge Drew refused to appoint counsel for an unemployed construction worker who indicated that he was not working and was living with another person who was supporting him, on the ground that the defendant was potentially employable. Rather than appoint counsel, Judge Drew ordered Mr. Lewis to apply for work so that he might be able to retain private counsel. When Mr. Lewis later failed to appear in court for a scheduled pretrial conference, Judge Drew issued a bench warrant, and Mr. Lewis was remanded to custody. After Mr. Lewis was taken into custody, Judge Drew again improperly refused to appoint counsel for him.

Although judges have considerable discretion in the determination of a defendant's ability to hire private counsel, Judge Drew should have known that denying defendants appointed counsel based upon the ability of others to pay for their counsel, or upon the possibility of future employment, was improper. The constitutional right to counsel at all stages of criminal proceedings is fundamental and not subject to reasonable differences of opinion. Moreover, once a defendant is in custody, the ability to find employment ceases. (See *In re Smiley* (1967) 66 Cal.App.2d 606.)

Judge Drew's conduct was inconsistent with Canon 2A of the Code of Judicial Conduct, which at the time of the judge's conduct provided that a judge "should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

2. In 1992, Judge Drew acted unjudicially in handling peremptory challenges under Code of Civil Procedure Section 170.6.

For example, in December of 1992, in the *Lewis* case referred to above, the public defender appeared for Mr. Lewis after he was taken into custody; the public defender filed a peremptory challenge of Judge Drew under Code of Civil Procedure Section 170.6. Judge Drew refused to honor this disqualification and ordered it "unfiled" because he had not allowed appointment of the public defender, despite the public defender's authority to represent the in-custody defendant.

In *People v. Williams*, Judge Drew cited a private defense attorney for contempt based on failure to appear for confirmation of a misdemeanor jury trial, even though the attorney had another attorney appear on his behalf. The cited attorney filed a peremptory challenge under Code of Civil Procedure section 170.6 against Judge Drew to disqualify him from hearing the underlying criminal case. Judge Drew subsequently denied the challenge as untimely and dismissed the contempt charge, but ordered a hearing on sanctions against the attorney. The following day, the attorney obtained a stay order against Judge Drew proceeding with the underlying jury trial. While the stay was under review, Judge Drew had court staff attempt to contact the Superior Court judge who issued the stay regarding legal support for his actions. The same attorney subsequently filed a challenge for cause against Judge Drew pursuant to Code of Civil Procedure section 170.1. After a denial by Judge Drew, another judge granted the challenge and disqualified Judge Drew from hearing the case. Judge Drew, although he had no standing to do so, then improperly sought to disqualify the judge who had been assigned to hear the sanctions matter, thereby heightening the impression that he had become personally embroiled in the proceeding.

In *People v. Contreras*, after a peremptory challenge under Code of Civil Procedure Section 170.6 was filed against Judge Drew, the judge continued to handle the arraignment of the four defendants in the case over their objection. Judge Drew entered not guilty pleas before assigning the matter to another judge. Judge Drew's actions in the *Contreras* case interfered with the defendants' rights to seek a continuance and to file a demurrer to the complaint, and was subsequently vacated by a reviewing judge.

Judge Drew's actions as described above were contrary to Canon 3E of the California Code of Judicial Conduct, which at the time of the judge's conduct provided: "A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, or in a proceeding in which disqualification is required by law." (See also *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 797: "... it goes without saying that as a judge, petitioner should have known the proper method for handling a motion for disqualification."). In addition, Judge Drew's actions were contrary to Canon 2A of the California Code of Judicial Conduct, which at the time of the judge's conduct provided that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

3. In certain matters involving the filing of peremptory challenges, Judge Drew has departed from his usual practice of calling cases handled by private counsel at the beginning of the calendar, thus deliberately causing delays for attorneys who have filed challenges. For example, in *People v. Haupt*, Judge Drew accepted the filing of a peremptory challenge and thereafter presided in proceedings to set later hearings in the case. In handling these subsequent proceedings, Judge Drew delayed calling the case, contrary to the usual practice in his court, thus giving the impression that he was willfully retaliating for the filing of the challenge.

Judge Drew's actions, as described above, were contrary to Canon 2A, above, and Canon 3, which at the time of the judge's conduct provided that a judge "should perform the duties of judicial office impartially...." See also, California Judicial Conduct Handbook, 120.900 (citing 1989 Report of Commission on Judicial Performance, p.21, #H).

4. Judge Drew has displayed bias against attorneys who have filed preemptory challenges against him, and has appeared to retaliate against those attorneys, by barring them from areas of the courthouse near his chambers open to other attorneys. For example, in a case in which attorney Tom McGuire requested a continuance, Judge Drew indicated in an informal discussion with the attorney that he did not feel that the request was adequately supported and would not grant it. After the attorney filed a preemptory challenge against Judge Drew, which resulted in a new date being set for proceedings in the case, Judge Drew denied the attorney equal access to the area near chambers for several weeks when he appeared on other matters. Judge Drew's actions displayed bias and appeared to be retaliatory.

Judge Drew's conduct in this regard was contrary to Canon 2A, quoted above.

In mitigation, Judge Drew appears to have ceased any retaliatory practices and has assured the commission of his commitment to refrain from impropriety in handling and reacting to challenges.

5. Judge Drew has appeared to exhibit animosity toward the public defender's office and certain attorneys in that office.

Judge Drew, while not acting in a judicial capacity, has made improper, derogatory comments about the public defender's office and attorneys in that office. For example, in December of 1992, Judge Drew made disparaging remarks about a deputy public defender to another attorney, while watching the deputy public defender present argument to another judge in the *Lewis* case referred to above. In the same case, Judge Drew appeared to display personal embroilment and animosity toward the public defender's office by writing to the public defender and accusing his office of taking the case for improper reasons.

Judge Drew's conduct as described above constituted an improper display of personal animosity toward the public defender's office and embroilment in matters handled by that office. This conduct was contrary to Canon 2A of the California Code of Judicial Conduct.

6. In one matter involving the imposition of sanctions, Judge Drew acted in excess of his judicial authority, contrary to Canon 2A of the Code of Judicial Conduct.

This public admonishment is being issued with Judge Drew's consent.