

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE JEFF FERGUSON**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Jeff Ferguson, a judge of the Orange County Superior Court. Judge Ferguson and his attorney, Paul S. Meyer, appeared before the commission on May 10, 2017, to object to the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Judge Ferguson has waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by Judge Ferguson and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based on the following statement of facts and conclusions.

STATEMENT OF FACTS AND CONCLUSIONS

Judge Jeff Ferguson has been a judge of the Orange County Superior Court for two years. His current term began in January 2015.

As set forth below, the commission found that Judge Ferguson violated the Code of Judicial Ethics by posting a statement about a candidate for judicial office on Facebook with knowing or reckless disregard for the truth of the statement, and by being Facebook friends with attorneys who were appearing regularly before him in court.

1. Post on Local Bar Association Facebook Page

Deputy District Attorney Karen Schatzle was a candidate for judicial office in 2016. Judge Ferguson supported her opponent, Judge Scott Steiner, who was publicly censured by the commission in 2014 for conduct that included sexual activity in the courthouse. On April 26, 2016, Ms. Schatzle posted on the North Orange County Bar Association (NOCBA) Facebook page: “Scott Steiner uses his office for sex and yet so many aren’t concerned, crazy politics!” Judge Ferguson posted in response: “Karen Shatzle [*sic*] has sex with defense lawyer whike [*sic*] shw [*sic*] is a DA on his cases and nobody cares. Interesting politics.”

The Facebook page was open to all NOCBA members. Judge Ferguson removed his post after Ms. Schatzle responded to it.

The commission found that Judge Ferguson’s post claiming that Ms. Schatzle was having sex at the time, or had sex in the past, with a defense attorney while she was a prosecutor on his cases was made with knowing or reckless disregard for the truth. Ms. Schatzle and the defense attorney referred to in Judge Ferguson’s post deny any intimate involvement while they were appearing on the same cases. In his response to the preliminary investigation letter from the commission, Judge Ferguson stated that many years ago Ms. Schatzle was a frequent subject of discussion for her intimate relationship with the defense attorney, and when he saw her post, he “immediately thought of this commonly known information, and without thought repeated it.” Judge Ferguson could provide no factual support for his reference to “commonly known information” that Schatzle and the defense attorney appeared on the same cases during the time they were in an intimate relationship. He submitted a declaration from one attorney who purportedly had knowledge of the relationship. The attorney admitted having no evidence that Ms. Schatzle and the defense attorney were working on opposite sides of cases while involved in an intimate relationship. Judge Ferguson acknowledged that he was wrong to write the post, recognized that it fell outside the bounds of professionalism and the decorum expected of a bench officer, and apologized for his conduct.

The commission found that Judge Ferguson's conduct violated canon 1 of the Code of Judicial Ethics (a judge shall personally observe high standards of conduct so that the integrity and independence of the judiciary is preserved), canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), canon 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), canon 4A(2) (a judge shall conduct all of the judge's extrajudicial activities so that they do not demean the judicial office), and canon 5 (a judge shall not engage in political activity that may create the appearance of impropriety).

2. Failure to Disclose That Attorneys Were Facebook Friends

For a period of time after becoming a judge, Judge Ferguson was Facebook friends with Orange County criminal defense attorneys Jeffrey D. Kent, Ray Dinari and Bob Hickey while they had cases pending and appeared regularly before him in court. The judge did not disclose that he was Facebook friends with these attorneys.

The commission noted that California Judges Association Ethics Opinion No. 66 regarding "Online Social Networking" (Nov. 23, 2010, pp. 10-11) provides the following guidance to judges:

While it may be permissible for a judge to interact on a social network site with an attorney who *may* appear before the judge, it is not permissible to interact with attorneys who have matters pending before the judge. When a judge learns that an attorney who is a member of that judge's online social networking community has a case pending before the judge the online interaction with that attorney must cease (i.e. the attorney should be "unfriended") and the fact this was done should be disclosed Regardless of the nature of the social networking page, maintaining online contacts while a case is pending creates appearance issues that cannot be overcome through disclosure of the contacts. [Italics in original.]

Judge Ferguson stated he agrees with the CJA opinion and that he unfriended the attorneys promptly after being contacted by the commission concerning this matter.

The commission found Judge Ferguson's conduct violated canon 2 of the Code of Judicial Ethics (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), canon 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and canon 2B(1) (a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge).

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

DISCIPLINE

Judge Ferguson asserts that his misconduct is mitigated by his corrective action in unfriending the attorneys who were appearing before him and in removing the post from the NOCBA Facebook page as soon as he realized it was inappropriate. In the commission's view, the judge's corrective action in removing the post is undermined by the fact that he did so after Ms. Schatzle stated in response to his post, "I'm sure The Judicial Commission of Performance (sic) would love to know about your blogging!!" In mitigation, the commission has considered that Judge Ferguson acknowledged the impropriety of his conduct related to his post and his failure to disclose, and that he took corrective action in unfriending attorneys appearing before him who were his Facebook friends. (Policy declaration 7.1(2)(a)(c).) However, in the commission's view, these mitigating factors do not outweigh the seriousness of his misconduct in accusing a judicial candidate of ethical impropriety with a reckless disregard for the truth. The judge's post was not only potentially injurious to the candidate, but also undermined public respect for the judiciary and the integrity of the electoral process. (Policy declaration 7.1(1)(b),(f),(h).) For these reasons, the commission has determined that a public admonishment is the appropriate discipline.

Commission members Hon. Ignazio J. Ruvolo; Mr. Richard Simpson; Ms. Mary Lou Aranguren; Hon. Michael B. Harper; Nanci E. Nishimura, Esq.; and Mr. Adam N. Torres voted to impose a public admonishment. Commission members Ms. Pattyl A. Kasparian and Hon. Erica R. Yew would have imposed a private admonishment. Anthony P. Capozzi, Esq. and Ms. Sarah Kruer Jager were not present. Commission member Dr. Michael A. Moodian was recused from this matter, pursuant to commission policy declaration 6.1.

Dated: May 31, 2017



Hon. Ignazio J. Ruvolo
Chairperson