

## PUBLIC ADMONISHMENT OF JUDGE JOHN L. FIELDER

The Commission on Judicial Performance has ordered Judge John L. Fielder 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 John L. Fielder has been a judge of the Kern County Superior Court for 33 years. His current term began in January 2013.

As set forth below, the commission found that Judge Fielder engaged in improper conduct when interacting with a member of court administration regarding the reassignment of another judge's courtroom clerk and, on a different occasion, when interacting with an attorney regarding the filing of a motion and supporting papers with the court.

I. On April 3, 2013, Judge Fielder and Judge Cory Woodward met with Deputy Chief Court Executive Officer for Court Operations Marie Castaneda regarding court administration's decision to reassign Judge Woodward's courtroom clerk. Judge Fielder concedes that, during the meeting, he improperly displayed considerable irritation toward the court administrator and engaged in a discussion that was too aggressive, too heavy-handed, and could have been intimidating to court administration. He acknowledges that he was unnecessarily forceful in his statements and that his conduct was inappropriate.

During the meeting, Judge Fielder accused court administration of being "in violation" of court protocol for moving a clerk from a judge's courtroom and stated that court administration should not be "messing around" with judges' courtrooms. He stated words to the effect that before they would allow court administration to move courtroom clerks around, the judges "would get together and fire" the court executive officer. Judge Fielder acknowledges that making a statement to an administrative officer about firing that individual's supervising administrator was "out of line" for a judicial officer.

Judge Fielder also spoke on behalf of Judge Woodward's clerk, stating that she "was getting the shaft," that there was "no significant or valid reason" to move the clerk, that the complaint about the clerk "should be something more significant," and that if the complaint was coming from another clerk, that clerk was the one who should be moved. Judge Fielder acknowledges that court administration is ultimately responsible for decisions that are made about staffing. As noted in the California Judicial Conduct Handbook:

Interference with discipline or other actions by administrators. It is not a judge's role to become the advocate for staff in their interactions with administrators. A staff member who is in conflict with administrators may seek your support and intervention. It is not inappropriate to hear the staff member out, but it is a mistake to promise help or to be perceived as actively intervening.

(Rothman, Cal. Judicial Conduct Handbook (2007 3d ed.) § 6.27, p. 280.)

The commission found that Judge Fielder's conduct violated 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 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), canon 2B(2) (a judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the personal interests of the judge or others), canon 3B(4) (a judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity), and canon 3C(2) (a judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business).

II. On May 28, 2013, Judge Cory Woodward presided over a trial in *Erin E. Posey v. Jerrold C. Posey*. Attorney Michael Kilpatrick represented Ms. Posey. Judge Woodward ruled against Ms. Posey on June 12, 2013. On July 1, 2013, Mr. Kilpatrick filed a motion for a new trial, which was set for hearing on August 28, 2013.

On July 5, 2013, Mr. Kilpatrick's associate Andrew Smith presented to Judge Fielder on Mr. Kilpatrick's behalf an ex parte application for a temporary stay of enforcement of Judge Woodward's June 12, 2013 order pending the hearing on Mr. Kilpatrick's motion for new trial. Because the application for a stay was being made ex parte, Judge Fielder's approval as supervising judge was required before the clerk would file and set the application for hearing. Mr. Kilpatrick's application included a statement of disqualification of Judge Woodward for cause pursuant to Code of Civil Procedure section 170.1. The ex parte application and statement of disqualification presented by Mr. Smith were accompanied by a declaration signed by Mr. Kilpatrick that included statements questioning Judge Woodward's ability to hear the case, including references to recent "allegations of perhaps substantial inappropriate behavior and/or misconduct between Judge Woodward and his staff" resulting in "tremendous pressure placed upon Judge Woodward, Judge Woodward's family and other issues." The declaration also contained a statement that Judge Woodward was to have been in the Metropolitan District hearing family matters for 2013 and 2014, but that "he has now been quietly swept aside and returned to the East Kern Branch."

After Judge Fielder reviewed the ex parte application and accompanying declaration presented by Mr. Smith, he called Mr. Smith into his chambers and told him, among other things, that Mr. Kilpatrick's declaration about Judge Woodward and the court should be toned down before it was filed. Judge Fielder concedes that he was concerned that "the flamboyant statements" in the declaration "unnecessarily implicated our court administration in improper acts and cast aspersions on Judge Woodward's family." He believed the statement that the court was "sweeping aside" Judge Woodward was "an inaccurate overstatement" and that the references to Judge Woodward's family were "mean-spirited and unnecessary." He says he may have asked the attorney if he thought Judge Woodward's family "deserved this kind of treatment in a public document." Judge Fielder told the commission that he did not think he said to Mr. Smith that he would not allow the documents to be filed. As a result of Judge Fielder's statements to Mr. Smith, however, Mr. Smith concluded that the declaration needed to be modified before Judge Fielder would permit it to be filed. Mr. Smith returned to his office,

modified the declaration, and resubmitted it the same day. Judge Fielder acknowledges that Mr. Smith might have taken the judge's statements as not allowing him to file the documents unless the content was changed.

The only issue before Judge Fielder was whether a request for stay of enforcement of judgment could be filed as an ex parte application. The merits of the request for stay of enforcement of judgment and the disqualification of Judge Woodward for cause were not before Judge Fielder for decision, as evidenced by his concession to the commission that when the revised papers were presented later that day, they were filed "without review or comment."

The commission concluded that Judge Fielder abused his authority by summoning an attorney into his chambers and suggesting in any way that the declaration not be filed as presented due to his stated concerns about the court's reputation and Judge Woodward's family.

The commission found that Judge Fielder's actions violated 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 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), and canon 2B(2) (a judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the personal interests of the judge or others).

The commission found that Judge Fielder's conduct was, at a minimum, improper action.

Judge Fielder's prior discipline was a factor in determining the level of discipline. In 1992, the judge received an advisory letter for accepting guilty pleas from an in-custody defendant who had entered not guilty pleas on three charges the previous day, without inquiring whether some action had been taken the previous day regarding affording counsel for the defendant on those charges. In 1994, the judge received an advisory letter for treating a witness in an unduly harsh and intimidating manner. In 1997, the judge received a private admonishment for conduct that appeared to be coercive in connection with guilty and no contest pleas, failing to advise unrepresented defendants of their right to counsel at arraignment, and reading police reports without the consent of an unrepresented defendant.

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Ms. Mary Lou Aranguren; Hon. Thomas M. Maddock; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Mr. Lawrence J. Simi; Mr. Richard Simpson; Ms. Maya Dillard Smith; Ms. Sandra Talcott and Mr. Adam N. Torres voted to impose a public admonishment.

Dated: May 14, 2015