

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

No. 46

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE HUGO M. FISHER

IT APPEARING THAT since December 30, 1966, and at all times herein, you have been a Judge of the San Diego Superior Court, County of San Diego; 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 conduct prejudicial to the administration of justice that brings the judicial office into disrepute and persistent failure or inability to perform the judge's duties. All of the acts and omissions with which you are charged occurred in connection with your participation in the cases of: In the Matter of the Conservatorship of the Estate of Carole McCune, Conservatee, San Diego Superior Court No. 99967; In the Matter of the Guardianship of the Persons and Estates of Michele McCune, Lance McCune, Brent McCune and Paige McCune, Minors, San Diego Superior Court No. 97803; and other cases consolidated therewith and related thereto.

COUNT ONE

You are charged with conduct prejudicial to the administration of justice that brings the judicial office into disrepute:

1. You imposed and maintained said conservatorship and guardianship for approximately six years on the ostensible premise that they were necessary for the preservation and protection of the estates of Carole McCune and her minor children, although you were at all times well aware that said conservatorship and guardianship were neither necessary nor appropriate for that purpose, but were instead detrimental to those interests and to the civil and property rights of the conservatee and the minors; and although you knew that the

conservatorship and guardianship were conceived and operated by various attorneys as part of a scheme to deprive Carole McCune of control over her assets and to cause said assets to be transferred to themselves as attorneys' fees.

2. In your management and supervision of the said conservatorship and guardianship, you regularly made orders which were neither necessary nor appropriate for the preservation or protection of the estates, or for the interests of Carole McCune and her minor children, but were instead detrimental to those interests and to the civil and property rights of the conservatee and the minors, and were in many instances contrary to the law and to the spirit and purpose of the laws pertaining to conservatorships and guardianships. During the period when the conservatorship and guardianship estates were under your control and subject to your orders, the value of the estates diminished from an approximate minimum value of four million dollars in 1973 to approximate value of one million dollars at present; but during the same period of time, the lawyers and administrators who were purportedly responsible for the management of the estates received approximately two million dollars in legal fees, costs, and administration fees for their activities. In this connection, among other things:

a) You presided over and ordered the termination of a temporary conservatorship of the Estate of Carole McCune,

but did not require the temporary conservator, Emmett Morava, or his attorney, Joseph Gluecksman, to conduct an inventory of the assets of the conservatorship estate, as required by law.

b) You ordered a permanent conservatorship of the Estate of Carole McCune on April 7, 1972, in the absence of a properly filed petition; without proper notice; outside the presence of the proposed conservatee without a showing of lawful cause for her absence; without appropriate justification; without findings as required by law; and based in part upon a conditional nomination previously signed by the proposed conservatee which was purportedly modified in open court with scissors and tape, and then filed;

c) On October 24, 1972, and thereafter, you sua sponte, and without any formal motion or request therefor in open court, directed the conservator of the estate of Carole McCune and the guardian of the estates of the minor children to create an irrevocable trust to receive and hold significant assets of the estates; you approved said trust on September 17, 1973, and thereafter resisted the conservatee's attempts through personal counsel to have this trust set aside; and thereby purported to deprive Carole McCune and her minor children in perpetuity of any control over their assets, even though you knew that the conservatorship might be dissolved at any time for a variety of legal and factual reasons, as a result of which

(absent the irrevocable trust) they would be restored to control over their assets;

d) You prevented the conservatee from prosecuting a well-founded and potentially profitable civil action by ordering the guardian ad litem, whom you had appointed for her, to dismiss the action of McCune v. Vista Hill Hospital, et al., Los Angeles Superior Court No. C48833;

e) You ordered the conservatee to vacate her residence, and purported to direct where she might reside;

f) You authorized and directed the settlement of the case of McCune v. Sackin, Los Angeles Superior Court No. WEC 18143, on behalf of the conservatorship estate; the settlement so authorized by you netted more for the allegedly malpracticing attorney and trustee, Louis Sackin, and for the attorneys involved in the litigation, than for the estate; as a result, a lawsuit which had been valued by attorneys for the executor as being worth more than one million dollars to the estate, and a settlement which was purportedly valued by attorneys for the conservator to be worth more than a quarter million dollars to the estate, netted the estate less than one hundred thousand dollars;

g) In March 1972, during the pendency of the temporary conservatorship, at a time when you believed the estate to be technically bankrupt, you awarded attorney fees to attorneys Joseph Gluecksman and Paul Bonn, which fees

represented an unliquidated claim against the estate, allegedly arising out of legal services performed by said attorneys for Carole McCune prior to the imposition of the conservatorship;

h) You awarded attorneys' fees, costs of litigation, and costs and expenses of administration of the estate, and authorized payments therefor from the conservatorship estate, without an accurate accounting or knowledge of the true worth of the assets of the estate;

i) You awarded attorneys' fees from the estate to various attorneys in amounts aggregating approximately two million dollars, which amount was a wholly unreasonable sum for legal services in light of all the circumstances;

j) Included in the said amount of two million dollars for legal expense, were awards which you made to attorneys for non-legal work performed, including simple administrative tasks;

k) On September 14, 1973, you entered an order allowing "additional compensation" to attorneys Joseph Gluecksman and Paul Bonn in the amounts of \$190,000 and \$175,000, respectively, which amounts were in addition to regular hourly fees which had been awarded to these attorneys; this award was made without an accurate accounting or knowledge of the true value of the assets of the estate, although the award was purportedly based in part on this factor;

1) You awarded fees for hourly work to attorney Joseph Gluecksman, based on purported monthly billings by Gluecksman claiming work in excess of 100 hours per month and in many instances for work in excess of 190 hours per month; these awards were made although no substantiation other than Gluecksman's assertion was received in support of these claims, and although it was unreasonable and not in the best interests of the estate to pay for services of this character if in fact they were rendered;

m) You awarded extremely large fees, in addition to those awarded to Gluecksman and Bonn, to attorneys Beardsley and Joseph Wyatt of Los Angeles, and their law firms, although many of said services were not necessary for the protection or preservation of the estates;

n) In November 1977, you ordered the guardian ad litem, whom you had appointed to represent the conservatee, not to file an appeal from the order you made approving the settlement of the case of McCune v. Sackin, Los Angeles Superior Court No. WEC 18143, thereby preventing review of your own order.

3. In your management and supervision of the said conservatorship and guardian estates, you regularly made orders and determinations which had the effect of transferring a substantial portion of the assets of said estates to various attorneys purporting to represent said estates, and

the conservatee and minors, which orders were patently unreasonable in the light of all the circumstances. In this connection, among other things, you did all those acts described in the foregoing sub-paragraphs 2(g) through 2(n), inclusive.

4. You appointed attorney Joseph Gluecksman as special counsel for the conservatorship estate, although you knew of his conflict with and hostility toward the conservatee and her interests and the conservatorship estate; and you continued that appointment with knowledge of attorney Gluecksman's conflict of interest, and of his unprofessional and unethical conduct toward the conservatee and the conservatorship estate. In that connection, among other things:

a) You knew that attorney Gluecksman, at a time when he was Carole McCune's personal attorney, not only failed to take action to prevent the imposition of a temporary conservatorship of her person and estate which he knew was against her will; but in fact arranged the conservatorship and undertook to represent the temporary conservator for his own personal benefit;

b) You knew that attorney Gluecksman and his secretary forcibly entered and searched Carole McCune's residence in order to find assets, within hours after she had been involuntarily committed at Gluecksman's instance;

c) You knew that attorney Gluecksman secured the appointment of his mother-in-law, Jean Moltier, as temporary guardian or custodian of the conservatee's minor children during the pendency of the temporary conservatorship; and you sanctioned this appointment notwithstanding your awareness that Moltier was not a suitable person for such an appointment;

d) You knew that at the time of the imposition of the temporary conservatorship, and at the time you appointed attorney Gluecksman as special counsel to the permanent conservator, that he had outstanding claims for legal fees against the conservatee and the conservatorship estate, and was, therefore, in conflict with the conservatee and the conservatorship estate;

e) You knew that attorney Gluecksman's service as counsel to the temporary conservator and as special counsel to the permanent conservator was motivated by attorney Gluecksman's desire to manage the conservatee's affairs contrary to the wishes of the conservatee, in order to secure past and anticipated attorney fees for himself.

5. Prior to the commencement of the conservatorship and guardianship proceedings, you had a long-standing close personal relationship with attorney Joseph Wyatt for many years, and also had a relationship with attorney Joseph Gluecksman which developed into a close personal one during

the course of the proceedings. You knew that the fact of these relationships would afford a ground for your disqualification from the conservatorship and guardianship proceedings as a whole, or at least from any contested proceedings in which claims or contentions were being advanced by Wyatt or Gluecksman, either for their own fees or on other matters; and you knew that the fact of these relationships was unknown to the parties and attorneys opposing Wyatt and Gluecksman; but you failed to disclose the fact of these relationships, and also failed to disqualify yourself from presiding over contested proceedings in which Wyatt and Gluecksman participated.

6. You were in fact biased and prejudiced in favor of Wyatt and Gluecksman and against the conservatee and her attorneys; and in your conduct of the proceedings you frequently manifested and gave effect to such bias by accepting claims and contentions of Wyatt and Gluecksman, and other attorneys associated with them, despite their lack of foundation and their arbitrary and unreasonable character; and frequently rejected, peremptorily and arbitrarily, the reasonable claims and requests made by or on behalf of the conservatee.

7. In an affidavit you signed and filed with the Court on March 28, 1974, in response to an attempt on behalf of the conservatee to disqualify you pursuant to section 170 of the Code of Civil Procedure, you claimed that you had made full

disclosure with respect to any and all grounds for your disqualification, and asserted that there were no legitimate grounds for your disqualification; this sworn representation by you was false, and was known by you to be false, as you did not disclose in said affidavit or otherwise either your close personal relationships with attorneys Wyatt and Gluecksman, or your bias in their favor and against the conservatee and her attorneys.

8. On numerous occasions throughout the course of the proceedings you received ex parte communications from attorney Gluecksman, and met with attorney Gluecksman ex parte, outside the courtroom, and outside the presence of the conservatee or her attorneys. Some of these ex parte meetings occurred at a public restaurant; others occurred at dinners attended by you and your wife and attorney Gluecksman and his wife; and others occurred at the home of attorney Gluecksman in Los Angeles. On one or more of these occasions, you received and considered ex parte communications from Gluecksman concerning matters pending before you for decision.

COUNT TWO

As a further and separate cause of action, you are charged with persistent failure or inability to perform the judge's duties. Paragraphs one through eight of Count One are hereby incorporated by reference and made a part hereof, as

though fully set forth herein. In addition, it is alleged that:

9. In 1972, you took over and maintained control of the assets and estates of Carole McCune and her minor children, over her strenuous objection and against her will. The ostensible and purported justification for said assumption of control by you over their property was to protect and preserve the said estates from the anticipated dissipation which would result from Carole McCune's alleged inability to manage her own affairs and those of her minor children and her alleged susceptibility to imposition by artful and designing persons. For approximately six years, over Carole McCune's continuing and repeated objections and against her will, you retained control of her property, made all significant legal and business decisions affecting the said estates, and ordered and directed numerous disbursements of their funds to other persons for services allegedly rendered by them for the benefit of the estates. As a result of your management of the estates, they have not been protected and preserved, but instead have dwindled from an approximate value of at least four million dollars in 1973 to a present value of approximately one million dollars; and in addition, two million dollars have been dissipated in legal and administration fees and expenses to persons who caused, permitted or facilitated this dissipation of the estate.

10. You have not had or employed that degree of competence or prudence in the management of the conservatorship and guardianship estates of Carole McCune and her minor children which a reasonable man would exercise in the management of his own affairs, and which is required of a judicial officer who assumes control over the property and assets of such estates.

You have the right to file a written answer to the charges against you within 15 days after service of this notice upon you with the Commission on Judicial Performance, Room 3180, State Office Building, 350 McAllister Street, San Francisco, California 94102. Such answer must be verified, must conform in style to subdivision (c) of Rule 15 of the Rules on Appeal, and must consist of an original and 11 legible copies. By order of the Commission on Judicial Performance.

Dated: September 22, 1980


Chairman