

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE TARA M. FLANAGAN**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Tara M. Flanagan, a judge of the Alameda County Superior Court. Judge Flanagan and her attorney, Edith R. Matthai, appeared before the commission on March 22, 2017, to object to the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Judge Flanagan has waived her 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 Flanagan and her 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 Tara M. Flanagan has been a judge of the Alameda County Superior Court since 2013. Her current term began in 2013.

Judge Flanagan was a candidate for judicial office in 2012. Her campaign committee was titled Tara Flanagan for Superior Court Judge 2012. The election was held on June 5, 2012. Judge Flanagan was elected.

In March or April of 2012, Judge Flanagan's campaign manager and treasurer (treasurer) made a loan to candidate Flanagan in the form of a cashier's check in the amount of \$10,000. The loan was for the campaign, but the check was made payable to

candidate Flanagan personally, not to her campaign. On April 30, 2012, the check was deposited into candidate Flanagan's business account for her law office. On May 2, 2012, the same amount of money was withdrawn by candidate Flanagan from this account and deposited into the campaign bank account held by Tara Flanagan for Superior Court Judge 2012.

In mid-May 2012, the treasurer made another loan to candidate Flanagan in the form of a check in the amount of \$15,000. The loan was for the campaign, but the treasurer wrote "Personal Loan" on the check and made it payable to candidate Flanagan personally, not to her campaign. On May 14, 2012, the check was deposited into candidate Flanagan's personal bank account. On or about May 19, 2012, candidate Flanagan wrote a personal check to her campaign committee from the same account and for the same amount of money, which cleared the bank on or about May 21, 2012.

On or about May 23, 2012, candidate Flanagan and her treasurer caused to be filed a pre-election campaign statement on behalf of Tara Flanagan for Superior Court Judge 2012 for the reporting period of March 18, 2012 through May 19, 2012. The loans were reported, but instead of reporting her treasurer as the true source of the loans, candidate Flanagan disclosed the contributions as personal loans from herself to her campaign committee. No mention was made of her treasurer. The loans together comprised approximately 23 percent of reported receipts for candidate Flanagan's 2012 campaign committee. Both loans were campaign contributions because they were made for political purposes within the meaning of Government Code section 84216. Candidate Flanagan did not inform her treasurer that the treasurer was required to file campaign reports for making contributions of \$5,000 or more.

Candidate Flanagan's failure to disclose her treasurer as the true source of the \$25,000 in loans violated Government Code sections 84211(f) and (g) and 84216, requiring accurate reporting of information about the sources of campaign contributions. Judge Flanagan entered into a stipulation with the California Fair Political Practices Commission (FPPC) which included payment of a penalty in the amount of \$4,500 for this violation. Additionally, use of a cashier's check for the \$10,000 loan was a violation

of Government Code section 84300(c), which prohibits campaign contributions in the form of cashier's checks. Depositing the \$10,000 cashier's check into her business account and the \$15,000 check into her personal bank account constituted commingling of campaign contributions and personal funds in violation of Government Code section 84307. Candidate Flanagan's failure to inform her treasurer of the campaign treasurer's reporting responsibilities was a violation of Government Code section 84105.

These violations of law constituted improper political activity in violation of canon 5 of the Code of Judicial Ethics, applicable to candidates for judicial office, and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In determining to issue a public admonishment, the commission considered the impact of the judge's conduct on public confidence in the integrity of the judiciary and the administration of justice. (Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(h).) Candidate Flanagan failed to report the true source of a significant contribution to her campaign, and commingled personal, business and campaign funds. An express purpose of the Political Reform Act is to ensure that "[r]eceipts and expenditures in election campaigns ... [are] fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." (Gov. Code, § 81002(a).) When this is not done, the public is deprived of important information that has the potential to affect how votes are cast. When a judicial candidate violates financial reporting laws and wins the election, public respect for the judiciary is undermined.

The commission also took into consideration that the FPPC found the violations to be unintentional. (Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(e).) Judge Flanagan maintained that it did not occur to her that the loans were reportable; she made logical assumptions that she had no responsibility to report the loans, and was shocked when notified of the violation. She explained that she made the contribution in her name because she was concerned the campaign account would have insufficient funds at the end of the race to repay her treasurer; whereas, she signed promissory notes to repay the loans to her treasurer. Nonetheless, regardless of her motivations, she had an

obligation to report the true source of the loans. Particularly as an attorney, she should have known to familiarize herself with the applicable reporting requirements before submitting an official campaign statement. Judge Flanagan acknowledged at her appearance that she was aware the FPPC had a website which would have informed her of her reporting responsibilities; but that she never looked at the regulations on the website.

Judge Flanagan asks the commission to take into consideration that neither she nor her treasurer had prior campaign experience. The commission has taken this into consideration, but does not consider it to be mitigating. Without an experienced treasurer or campaign manager, it was all the more incumbent upon candidate Flanagan to inform herself about the applicable statutes and instruct her treasurer to do the same. Ignorance of the law is an aggravating factor for a judicial candidate. As the commission has stated:

The FPPC has primary responsibility for enforcing the Act, including as to candidates for judicial office. That agency may consider it mitigating when a candidate violates the Act through inadvertence due to lack of familiarity with the intricacies of the law. However, because of the additional constraints imposed by the canons on a candidate for judicial office, we consider a claim by a judicial candidate of “ignorance of the law” as a defense to a wide-ranging violation of the law, such as here, to aggravate the violation itself. It is axiomatic that candidates for judicial office are obligated to know the requirements of the law and to conduct their election campaigns in strict accordance with it.

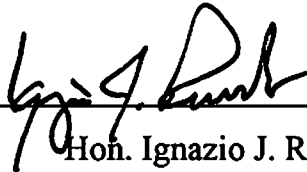
(Inquiry Concerning Hall (2006) 49 Cal.4th CJP Supp. 146, 163.)

In mitigation, the commission has taken into consideration that Judge Flanagan cooperated with the FPPC and the commission, and that she has expressed regret for her errors and fully acknowledged that she had the responsibility to know the law and comply with it, but failed to do so. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(a)(b).)

Weighing the forgoing factors, the commission determined that a public admonishment is the appropriate discipline in order to maintain public confidence in the integrity of judiciary and the administration of justice.

Commission members Hon. Ignazio J. Ruvolo; Mr. Richard Simpson; Anthony P. Capozzi, Esq.; Hon. Michael B. Harper; Ms. Pattyl A. Kasparian; Dr. Michael A. Moodian; and Mr. Adam N. Torres voted for the Public Admonishment. Ms. Mary Lou Aranguren and Ms. Sarah Kruer Jager were not present. Commission members Nanci E. Nishimura, Esq. and Hon. Erica R. Yew were recused from this matter, pursuant to commission policy declaration 6.1.

Dated: April 11, 2017



Hon. Ignazio J. Ruvolo
Chairperson