STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE, No. 131	SECOND AMENDED NOTICE OF FORMAL PROCEEDINGS

TO JUDGE THOMAS FLETCHER:

IT APPEARING THAT from January 3, 1989, to December 31, 1994, you were a judge of the Sierra Justice Court and from January 1, 1995, to the present you have been a judge of the Madera County Municipal Court, Sierra Judicial District, 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 the 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 charged with willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The particulars of the charges are as follows:

COUNT ONE

You have frequently engaged in improper ex parte communications. In some instances, you have failed to disqualify yourself in cases in which your disqualification was required because of your ex parte communications. In addition, you have in some instances taken action which appeared unusually lenient toward defendants after engaging in ex parte communications. This conduct is exemplified by, but not limited to, the following:

One A

On or about August 2, 1994, in *People* v. *Richard Henderson*, 94S0249, a defendant charged with violating Health and Safety Code Sections 11350c and 11357b (possession of cocaine and marijuana) appeared before you. You asked the prosecutor and defense attorney to come into chambers to discuss the case. In chambers, you told the prosecutor and defense attorney that you had been contacted by the defendant's family, who had asked that he receive drug counseling as part of the disposition of the matter and had told you that he had an uncle who could counsel him. You discussed the possibility of formal or informal diversion. The defense attorney, who was aware that the defendant's uncle was a pastor, expressed the view that formal diversion would be more

appropriate. You referred the matter to the probation department for a report on the defendant's eligibility for formal diversion.

On September 6, 1994, the defendant was before you for a hearing as to whether he should be granted formal diversion. The report from the probation department stated that he was ineligible for formal diversion due to a prior conviction. The case was continued to September 20, 1994, for the prosecutor to obtain more information about the prior conviction.

On September 20, 1994, the defendant was again before you. The prosecutor stated that because the defendant's prior conviction was minor, he recommended that the defendant be granted formal diversion notwithstanding the probation department's recommendation against formal diversion. You granted the defendant formal diversion.

The minute order executed after the hearing, and sent to the probation department on October 26, 1994, states, "Formal diversion granted. Father to find counseling program." This order was unusual, because the probation department is the agency which administers formal diversion and which has the power to determine the appropriateness and acceptability of a counseling program for an individual placed on formal diversion.

One B

In 1991, defendant Peter Vanderputten was charged in four cases with disobedience of a court order, allowing a child to suffer, and violation of a protective order. In three of the cases, Mr. Vanderputten entered guilty pleas before you on September 17, 1991, and sentencing was continued four times, to October 6, 1992, when all charges were dismissed by the prosecution. In the fourth

case, Mr. Vanderputten entered a plea of not guilty before you on November 19, 1991, and the case was continued three times to October 6, 1992, when all charges were dismissed.

After September 17, 1991, and while the four cases were still pending before you for sentencing, you suggested to Mr. Vanderputten that he might benefit from attending a men's prayer breakfast group on Saturday mornings. Mr. Vanderputten did attend the meetings, which you led.

One C

In 1991, defendant Dennis Jonathan was charged with driving under the influence of alcohol with a prior conviction. You knew Mr. Jonathan, a local roofing contractor. You talked to Mr. Jonathan about an addition to the courthouse you wished to build. Mr. Jonathan said that he would provide materials and labor.

On July 30, 1991, you sentenced Mr. Jonathan in chambers. Neither the prosecutor nor the public defender was present. You sentenced Mr. Jonathan to probation with a suspended jail term and a suspended fine, and a condition of "community service in work on court building."

Later, after the county failed to approve the addition to the court building, you spoke to Mr. Jonathan about the necessity of having his sentence modified. Subsequently, you modified the sentence to replace the condition requiring work on the court building with conditions that Mr. Jonathan pay a fine and complete outpatient counseling.

One D

In 1991, Robert Oliver Reagan, Jr., a man you knew, approached you and said that he was charged with speeding and could not pay a fine. You told him that he could be given community service and might be able to attend traffic school. Mr. Reagan later appeared before you and was given a disposition of community service and traffic school despite a previous speeding offense. Later, after Mr. Reagan failed to perform the community service or attend traffic school, he appeared before you and said that he did not know what had happened. You gave him another opportunity to perform the community service.

One E

In 1990, defendant Steven Pearson entered a guilty plea before you on a charge of brandishing a weapon and was placed on three years court probation on conditions including counseling, with a report to be returned to the court. While on probation, Mr. Pearson began attending a men's Saturday morning prayer group you led. Subsequently, Mr. Pearson was charged in another case with a zoning violation; you presided over that case.

One F

You have frequently telephoned victim witnesses and/or law enforcement personnel from court during pretrial proceedings to obtain their views and information concerning matters before you. Although on some occasions you use a speaker telephone, on others you do not use a speaker telephone, allowing those present in court to hear only your side of the conversation. An example of

this conduct was the case of *People* v. *Eddie Riegle*, 93S0353, in which on August 3, 1993, you telephoned a law enforcement officer from court to obtain his views on a proposed disposition. You made this call in court, not using a speaker telephone.

One G

On numerous occasions in approximately early 1992, you telephoned defendants, including defendants you knew, for whom bench warrants had been issued to advise them to come to court.

COUNT TWO

You have failed to disqualify yourself in cases in which your disqualification was required by considerations other than ex parte communication. This conduct is exemplified by, but not limited to, your failure to disqualify yourself in the cases of the following defendants:

Two A

On April 4, 1992, in *People v. Scott Butcher* (case no. 92S0038), you accepted a no contest plea with the understanding that Mr. Butcher would be sentenced by another judge, because of your personal knowledge of the defendant and the case. Mr. Butcher was sentenced by another judge. However, on July 21, 1992, despite your purported disqualification, you heard and denied Mr. Butcher's motion to withdraw his plea.

Two B

In the summer of 1991, Bonnie Williams, owner of the Bass Lake Marina, employed two of your sons. In July of 1991, Ms. Williams received nine citations for unregistered vehicles. Ms. Williams complained to the court, and wrote a letter to the court stating that as to seven of the nine citations, she had sent registration fees to the Department of Motor Vehicles. You dismissed those charges and continued the two remaining citations for proof of correction. Ms. Williams paid fines on those citations in September 1991.

COUNT THREE

You directed the alteration of an original minute order in a case which was the subject of inquiry by the commission. This is evidenced by the original and altered minute orders.

The case was *People* v. *Richard Robert Henderson*, No. 94S0249. (See, Count 2a, supra) In the commission's preliminary investigation letter dated October 25, 1994, the commission advised you that it had been reported that in July or August of 1994, you proposed to counsel in chambers that the defendant, charged with drug possession, be placed on informal diversion with counseling by his uncle, who was a pastor; you reportedly stated that you had been contacted by a relative of the defendant's, who said that the uncle could counsel him.

On approximately October 26, 1994, the probation department received from your court a copy of an original minute order dated September 20, 1994, the date the defendant ultimately was

placed on formal diversion. The original minute order stated, "Formal diversion granted. Father to find counseling program."

Between October 26, 1994, and December 30, 1994, the date of your response to the commission's preliminary investigation letter, you directed alteration of the minute order by directing the addition of the words "per Dan Pursell," referring to Deputy District Attorney Dan Pursell, under "Father to find counseling program." You also directed that the words "Judge Fletcher disqualifies himself for any violation of diversion proceedings" be added to the minute order. The transcript of the hearing held October 20, 1994, contains no mention of your disqualifying yourself from future hearings.

COUNT FOUR

In the small claims case that began in approximately October of 1992 as *Hertwig* v. *Henderson*, Case No. 10663, you made Ben Savage, who had appeared as a witness for the plaintiff, a defendant without allowing him proper notice and opportunity to be heard, and entered judgment against him, on or about February 24, 1994, in an amount of $1,357.93, plus $265.00. You then engaged in an improper ex parte communication with Ben Savage about your ruling.

COUNT FIVE

You have engaged in inappropriate discussions of religion with court employees and with an attorney who regularly appeared before you. In these discussions, you have exerted pressure on the court employees and attorney, and have made inappropriate and disparaging comments about their religious beliefs. This conduct is exemplified by, but not limited to, the following:

Five A

In approximately late 1992, while you were on the bench after the conclusion of court proceedings, you made a disparaging reference to Christian Scientists in a conversation with attorney Kim Fletcher, who served the court under contract as a public defender. Ms. Fletcher mentioned that she was a Christian Scientist. While still on the bench, you made emotional comments to the effect that Mary Baker Eddy was "a whore and a prostitute" who had been married seven times and who never wrote the book for which she was credited. Ms. Fletcher told you that she disagreed with you, but did not react angrily. At the end of the conversation, you told Ms. Fletcher that you and your wife "would be praying for her."

Thereafter, you engaged Ms. Fletcher in approximately eight conversations regarding her religion. You attempted to convince her that her religious beliefs were wrong. You gave Ms. Fletcher books and cassette tapes of a religious nature and then quizzed her about her reaction to the books and cassettes. You repeated several times that you and your wife "would be praying for her." Ms. Fletcher finally terminated these conversations by telling you that she did not wish to engage in further discussions about her religious beliefs.

Five B

In approximately 1991 or 1992, you engaged in conversations with part-time court clerk Pat Merriman, a Christian Scientist, regarding her religious beliefs. You gave Ms. Merriman books of a religious nature and then questioned her about her reaction to the books. In conversations with Ms. Merriman, you exerted pressure, and repeatedly referred to Christian Science in a derogatory fashion, including references to the religion as a "cult."

Five C

In approximately early 1992, you questioned court clerks Victoria Doggett and Vickie Von Wagner about how they knew God was their father or how they knew they were born again. When they gave answers, you told them that they had failed the test. Thereafter, you gave Ms. Doggett a negative work evaluation. You terminated Ms. Von Wagner's employment. You and Ms. Von Wagner had been on opposing sides of a dispute in a church you both attended.

COUNT SIX

You have used court facilities and personnel for private religious purposes. This conduct is exemplified by, but not limited to, the following:

Six A

For approximately three months in 1992, you led meetings of a men's prayer breakfast group in the courthouse on Saturday mornings.

Six B

At the courthouse, during normal working hours, court clerk Victoria Doggett, using court facilities and equipment, typed a personal letter at your request. This four page letter was dated May 21, 1991, addressed "TO ALL MEN OF THE LITTLE CHURCH IN THE PINES", and signed by you. The stated intent of the letter was to fill vacant positions on your church's Elder Board.

COUNT SEVEN

You have made inappropriate comments of a religious nature in the course of court proceedings. These comments include, but are not limited to, the following:

Seven A

After hearing a civil case involving a landlord-tenant dispute, you made a statement from the bench to the effect that "the devil did his work."

Seven B

You have said to defendants appearing before you on driving under the influence charges words to the effect that they "wouldn't have these problems if they had God in their lives."

COUNT EIGHT

You have made statements indicating bias and prejudgment in cases before you. This conduct is exemplified by, but not limited to, the following:

On November 1, 1994, during a preliminary hearing on charges of felony driving under the influence in *People* v. *Aaron Moses Wickham*, Case No. 94S0054, the defendant's counsel requested that the matter be continued to the next day so that he could present the testimony of Jon Fishburn Fry; the defendant had testified that Mr. Fry, and not the defendant, had been driving. You suggested that the matter be continued to November 8, 1994, and asked, "What's wrong with the 8th?" Defense counsel replied, "He has to sit in custody until then when he's got a guy to come in to say that he wasn't driving." You responded that a preliminary hearing was not a "full-blown trial" and that it was "for a jury to decide who is telling the truth and whether this is sufficient grounds to find him guilty or not under the standard beyond a reasonable doubt."

You then said that you had "dealt with Jon Fishburn many, many times, and his credibility is not too high." You stated, "I'm just warning counsel that he has come into this court and he's been before this court many times. And he's broken many promises to this court and has many failures to

appear in court. And I hope you don't expect the court to regard his testimony like any other citizen in the community." You went on to say of Laura Sear, an absent prosecution witness whose hearsay statement that the defendant was driving had been admitted and who was the only witness to the defendant's alleged driving, "I don't believe Laura Sear would have much more credibility in this court than Jon Fishburn. They're both recovering alcoholics that are working hard to try to stay out of trouble."

You then continued the preliminary hearing to November 8, 1994. The defense witness did not appear on that date.

COUNT NINE

You have made inappropriate and disparaging comments indicating bias in conversations with court staff. These remarks include, but are not limited to, the following:

Nine A

In 1994, you have made comments indicating a bias against homosexuals.

Nine B

In discussing cases involving testimony or reports by psychologists and psychiatrists, you have referred to psychologists and psychiatrists as "evil."

COUNT TEN

You made derogatory and inappropriate remarks about attorney Nancy C. Staggs in open court on October 18, 1994.

The case of *People* v. *Randy L. Williams*, Case No. 94S0552, was on calendar in your court for the afternoon of October 18, 1994. The defendant's attorney, Nancy C. Staggs, had previously filed an affidavit pursuant to C.C.P. § 170.6 to disqualify you, after the defendant's arraignment. Ms. Staggs' expectation, based upon her knowledge and experience of the usual practice in such circumstances, was that the case would be transferred to Madera and that she would next appear in Madera after the transfer. Ms. Staggs transmitted a letter by fax to your court on October 17, 1994, to confirm that her appearance was not required on October 18. Having received no response to this letter, Ms. Staggs telephoned your court on the morning of October 18, 1994; she was then advised that no judge would be present in the afternoon, and that she would receive a minute order.

On the afternoon of October 18, 1994, you called the *Williams* case. Ms. Staggs was not present. You stated that you had "never heard of an attorney that disqualifies the judge and then doesn't appear." Deputy District Attorney Dan Pursell offered that this "sounded like contempt to him." You telephoned Ms. Staggs' office from court and were told that the court had advised that Ms. Stagg's presence was not required. Your clerk stated that she had not told Ms. Stagg's office that she need not appear. Your clerk then spoke with Ms. Staggs' office. You told your clerk to tell Ms. Staggs' office that you were going to issue a warrant for the defendant and hold the warrant two weeks for Ms. Staggs to appear.

You then made certain derogatory and inappropriate remarks about Ms. Staggs to Deputy District Attorney Pursell in open court and on the record. You stated, "She shouldn't be handling criminal cases. Here's another example of a civil attorney who shouldn't be handling criminal cases." You then stated, "She probably had something more important to do today, like go to a PTA meeting." You went on to say, "She has a whole bunch of kids. She's been having kids ever since I've known her."

COUNT ELEVEN

You have reacted angrily and inappropriately when attorneys have attempted to disqualify you after you have made statements which appeared to indicate bias. This conduct is exemplified by, but not limited to, the following:

Eleven A

In *People* v. *Eddie Riegle*, supra, the prosecution had offered defendant Eddie Riegle the opportunity to plead guilty to a misdemeanor violation and be placed on probation on conditions including eight days of community service. You did not believe that the proposed disposition was appropriate. The defendant, who apparently had not been represented by counsel, asked attorney Kim Fletcher for assistance. Ms. Fletcher determined that the defendant was financially qualified for representation and began to speak on his behalf. After some discussion of the case with the prosecutor and Ms. Fletcher, you telephoned a law enforcement officer from court, and thereafter reiterated that you would not accept the proposed disposition.

At that point, Ms. Fletcher stated that she would be moving to disqualify you. You then questioned whether she was properly appearing for the defendant, although you had never before questioned one of Ms. Fletcher's determinations regarding financial eligibility. When Ms. Fletcher requested that further proceedings in the matter be on the record, you denied the request, although after repeated requests, some of the later proceedings apparently were placed on the record. You stated that you were going to appoint conflict counsel in the matter because Ms. Fletcher was "emotionally embroiled." When Ms. Fletcher objected to this, you threatened her with contempt. Conflict counsel was appointed.

Eleven B

In *People* v. *Marc Nicholas Halstead*, Case No. 90S0313, in July of 1994,a defendant who had served as a camp counselor was charged with physical aggression toward one of the campers. The prosecution, upon investigation, apparently had concluded that the defendant's conduct was not egregious and had agreed to a disposition involving probation on conditions including eight days of community service and the defendant's return to England, his native country. You refused to accept the disposition and stated that you wanted a psychiatric report because you felt that the defendant might engage in future sexual molestation and physical violence and "could become a killer." Defense counsel Kim Fletcher stated that she wished to disqualify you based upon your comments indicating bias. You became enraged and yelled at counsel that every time she didn't like what you did she tried to disqualify you.

Eleven C

In the criminal theft case of *People* v. *Tippets*, on September 14, 1993, during settlement discussions, defense attorney Kim Fletcher told you that she was going to move to disqualify you under C.C.P. § 170.6 for what she perceived to be your animosity and your prejudicial statements against her client. You reacted angrily, raising your voice and arguing with Ms. Fletcher.

Eleven D

In approximately 1993, in *People* v. *Beau Campbell*, a defendant charged with municipal code and building code violations appeared before you with counsel, Linda Thompson. After some discussion of the case, defense counsel stated that she wished to disqualify you based upon a perception of bias against her client. You became angry, and shouted, "That's the last time I give you an indicated sentence!"

COUNT TWELVE

You displayed embroilment and overstepped your judicial role in the case of *People* v. *Toschi*. You also failed to disqualify yourself after engaging in action which necessitated your disqualification.

In *Toschi*, in 1989, the prosecutor and defense counsel had agreed that upon the defendant's plea of guilty in a felony case in superior court, a driving under the influence case pending in

municipal court would be dismissed. The defendant did enter a guilty plea in the felony case. However, when the driving under the influence case came before you, you refused to accept the proposed disposition. You directed the prosecution to file an amended complaint charging two previously uncharged prior convictions. The defendant was arraigned on the amended complaint, and the matter was set for trial.

Concerned that the prosecutor intended to obtain a dismissal by not presenting any evidence at trial, you had a court clerk subpoena the witnesses yourself. When defense counsel learned of this and objected to it, you defended your actions. Defense counsel filed a motion to disqualify you for cause which was granted by the judge appointed to hear it.

COUNT THIRTEEN

You have attempted to use the prestige of your office to instigate criminal investigations for personal purposes. This conduct is exemplified by, but not limited to, the following instances:

Thirteen A

In February 1992, you went to the Sheriff's Office and urged that a criminal investigation against a court employee or court employees be commenced into the supposedly unlawful installation and use of a telephone in the employee break room at the Bass Lake courthouse.

Thirteen B

In approximately 1992 or 1993, you went to Sergeant Milt Gauthier of the Sierra County Sheriff's Department and told him that you wanted an investigation of the assistant pastor of the Little Church of the Pines regarding possible criminal liability for counseling without a license. Sergeant Gauthier performed an investigation and provided you with the report. You were engaged in a dispute with the pastor, and sought or appeared to seek the investigation for purposes of supporting your own position in this dispute.

COUNT FOURTEEN

In approximately April 1994, you summoned the attorneys and court staff serving your court and told them that you wanted to have a photograph of everyone taken. You did not tell any of the individuals that you wished to use this photograph for your reelection campaign. Thereafter, on or about May 26, 1994, the photograph appeared in the Sierra Star as a paid political advertisement.

COUNT FIFTEEN

In the summer and fall of 1994, defendant Steven Von Lawne appeared before you on three criminal cases. On August 14, 1994, he entered a guilty plea to a charge of driving under the influence and was placed on court probation for five years with certain conditions. On August 15, he

also entered a plea of no contest on a charge of impersonating an officer. He was released on his own recognizance on certain conditions, and the case was continued to February 13, 1995, with the understanding that the charge would be dismissed if he met the conditions of probation on the driving under the influence case. On September 19, 1994, Mr. Von Lawne appeared before you on a charge of driving on a suspended license, which was dismissed.

In October 1994, Mr. Von Lawne approached you outside of court and offered to give you a pony, stating that he would give you the pony if you bought the pony's tack for $200. After conferring with your wife as to whether another family member might want the pony, you took Mr. Von Lawne's telephone number and told him that you would have your campaign people contact him if they wanted to use the pony at an upcoming campaign picnic. Mr. Von Lawne later came to court to ask you when he should bring the pony to the picnic; you gave him the date.

Your campaign distributed a flyer advertising an auction and raffle to be conducted at the campaign picnic and listing a "small chocolate brown pony with $200 brand new tack" as one of the attractions. At the picnic, children bought rides on the pony. The pony was then auctioned, as promised in the flyer.

Count Sixteen

You improperly reacted to the filing of a peremptory disqualification. On April 3, 1990, Deputy District Attorney Capel filed a Peremptory Challenge (Code Civ. Proc., § 170.6) against you in the case of *People v. Rivas* (case no. 90M00115). On April 4, 1990, despite the preemptory challenge and your knowledge thereof, and despite the ongoing objection of Mr. Capel, you conducted a hearing on *Rivas*, during which you inquired into the contested matter of whether the defendant's right to a speedy preliminary hearing had been violated.

On April 6, 1990, the Superior Court of Madera issued a writ ordering you to accept the preemptory challenge or to show cause why you should not be so ordered. That writ further prohibited you from presiding in the *Rivas* case until further order. Later on April 6, 1990, despite the writ and your knowledge thereof, and despite the objection of Deputy District Attorney Bender, you presided over another court session in *Rivas*, during which you criticized the prosecutors and the Madera Court on the record, and you advised the defendant how to pursue a legal remedy.

Count Seventeen

On August 12, 1992, you were in your chambers for the apparent purpose of conducting a personnel interview with Vickie Von Wagner regarding the termination of her employment as a clerk. When Ms. Von Wagner attempted to invoke her right to have a union representative present, you ordered her to sit down and talk to you. When Ms. Von Wagner left your chambers to telephone her union, you loudly told her that if she did not return to your chambers she would be held in contempt. You improperly attempted to use your judicial powers.

Count Eighteen

You became personally embroiled in the affairs of a criminal defendant, interfered with the effect of restraining orders, continued to preside over cases involving that defendant, and gave the appearance of participating in ex parte communication.

On February 5, 1992, Madera County Superior Court Judge Paul Martin issued an injunctive order in a child custody case (no. 38579) between Scott Butcher (the defendant referenced in Count Two (A) above) and his estranged wife, Vickie. That order granted Vickie custody pending final hearing and restrained Mr. Butcher from disturbing the peace of persons under Vickie's custody, i.e. the children.

On February 11, 1992, Judge Martin issued a temporary restraining order (case no. 46625) prohibiting Scott Butcher from being within 100 yards of Mary Butcher and members of her household, which formerly included the children of Scott and Vickie Butcher.

On Sunday, February 22, 1992, the Butcher children had been brought to the Little Church in the Pines by Chris Books, a friend of Vickie's, and were in a Sunday School class. Ms. Books went to Pastor Bjorklund in his office and told him that she had learned that Scott was also present in the church and she was afraid that he would abduct or bother the children. The pastor found Mr. Butcher in the adult Sunday School class at the church, sitting next to you.

Pastor Bjorklund asked Mr. Butcher to come out of class. He told Mr. Butcher that he would have to leave because of the restraining order. Mr. Butcher said he would leave, but went

back into class, supposedly to pick up his brief case. When he did not come back out, Pastor Bjorklund found him back in class, again sitting next to you.

The pastor had Mr. Butcher step out of the class again. As the pastor was again explaining to Mr. Butcher that he was violating the restraining order, you came out of the class and interrupted them. When the pastor continued to explain to Mr. Butcher that he should leave, you became verbally abusive, telling the pastor that he was disturbing the class and that he had no right to do what he was trying to do. Pastor Bjorklund then left.

The next week, on February 27, 1992, Vickie Butcher obtained a permanent restraining order against Mr. Butcher from Judge Martin (case no. 38579). This order specifically prohibited Mr. Butcher from being at the Little Church in the Pines.

Despite your interaction with Mr. Butcher, you continued to preside over criminal cases in which Mr. Butcher was a defendant. As referenced in Count Two (A) above, you presided over case no. 92S0038, on April 4, 1992, and July 21, 1992. You presided over case no. 89S0716, which was pending from January 28, 1992, when a dismissal was conditioned upon restitution within a year. You presided over case no. 92S0231, from June 15, 1992, through July 21, 1992. You presided over case no. 92S0495, from September 29, 1992, through October 20, 1992. Additionally, you met with Mr. Butcher in the courthouse without attorneys present, on more than one occasion, while Mr. Butcher had cases pending before you, thereby giving the appearance of ex parte communication.

Count Nineteen

During a break in a jury trial on October 27, 1994, you made disparaging remarks to court reporter Leslie Kamman regarding Ms. Kamman's father campaigning for your judicial election opponent Jim Watkins. Ms. Kamman informed you that she did not want to discuss the matter. Although at one time during that day you apologized, at the end of that court day, while still at the courthouse, you again made unsolicited political comments to Ms. Kamman, including referring to Mr. Watkins and his supporters, which included Ms. Kamman's father, in derogatory terms. Later that day you asked Ms. Kamman to prepare a transcript of a criminal case in which Mr. Watkins appeared before you as counsel.

Over the next two days, by telephone with Ms. Kamman, you canceled the transcript order, then reordered it. Then on October 29, 1994, you had a telephone conversation with Ms. Kamman regarding that case involving Mr. Watkins. You advised Ms. Kamman that the matter was confidential. After Ms. Kamman had gone over her notes for you, you made statements to the effect that a judge has to be able to trust his court reporter and you hoped that neither Ms. Kamman nor her father would do anything to jeopardize her State certification. Ms. Kamman felt embarrassed, threatened and intimidated by your remarks.

It is asserted that your conduct as charged in this notice constitutes willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of the California Constitution, Article VI, section 18, subdivision (d) (formerly subdivision (c)).

The filing and service of this notice does not foreclose the Commission on Judicial Performance from bringing additional charges against you at a later date by amendment.

You have the right to file a written answer to the charges against you within fifteen (15) days after service of this notice upon you.. The answer must be filed with the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer must be verified, must conform in style to California Rules of Court, rule 15, subdivision (c), and must consist of an original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED 8/30/95

CHAIRPERSON