

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE ROBERT B. FREEDMAN,

NO. 179.

FIRST AMENDED
NOTICE OF FORMAL PROCEEDINGS

To Robert B. Freedman, a judge of the Alameda County Municipal Court from February 29, 1996 to July 22, 1998, and of the Alameda County Superior Court from July 23, 1998 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

California Constitution, article VI, section 19, provides that a judge may not receive a salary “while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.” The 90-day period is considered a “reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases.” (*Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477, fn. 4.) In the cases described below, from approximately 2000 through 2004, you took matters under submission and delayed making a ruling for more than 90 days. The delays ranged from a few days beyond 90 days to approximately 11 months beyond 90 days.

During this period, you were counseled by two presiding judges about delay in ruling on submitted matters. In mid-March 2001 and in April 2001, then Presiding Judge William McKinstry spoke to you regarding matters that you had under submission, including those under submission for more than 90 days. On April 11, 2001 and April 19, 2001, Judge McKinstry wrote to you regarding matters that you had under submission, including those under submission for more than 90 days, and raised the issue of executing salary affidavits (see count two below) while submitted matters were pending before you for more than 90 days.

Around the end of December 2002, then Presiding Judge Harry Sheppard spoke to you regarding matters that you had under submission, including those under submission for more than 90 days.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3A, and 3B(8).

A. *Alameda Restaurant Associates v. McCabe, Schwartz*, No. C-805366

On March 23, 2000, you heard defendant’s demurrer to the second amended complaint, or in the alternative, motion for judgment on the pleadings. On March 23, 2000, you made a ruling as to certain causes of action, and took

under submission defendant's motion as to the fifth cause of action. Your decision on the motion as to the fifth cause of action was signed and filed on April 16, 2001, over a year later.

B. *Paula Insurance Co. v. Stone Candles*, Nos. C-807669/No. C-808428

On November 20, 2000, you heard and took under submission a motion for summary judgment. Your decision was signed on March 16, 2001, and filed on March 19, 2001, almost four months later.

C. *Bellamy v. United Parcel Service*, No. C-815035

On November 29, 2000, you heard a motion for summary judgment, and took the motion under submission as to the punitive damages claims. Your decision was signed on March 19, 2001, and filed on March 23, 2001, approximately three and-a-half months later.

D. *CSK, Inc. v. City of Berkeley*, No. C-833044

On January 5, 2001, you heard and took under submission a petition for writ of mandate. Your decision was signed and filed on April 19, 2001, approximately three and-a-half months later.

E. *Walker v. Salume*, No. C-728344

On January 9, 2001, you heard and took under submission a motion regarding costs. Your decision was filed on April 13, 2001, over 90 days later.

F. *County of Contra Costa v. Insurance Co. of the West*, No. C-827858

On January 11, 2001, you heard and took under submission a demurrer. Your decision was filed on April 16, 2001, over 90 days later.

G. *Semprimoznik v. Bay Area Rapid Transit District*, No. C-821892

On January 16, 2001, you heard a motion for summary judgment, and took the motion under submission as to the second cause of action. Your decision was signed and filed on April 19, 2001, over 90 days later.

H. *Slauson v. Arntz Builders*, No. C-823752

You presided over the court trial of this matter and took the case under submission on May 6, 2002. Your Notice of Intended Decision was signed and filed on January 31, 2003, approximately nine months later.

In February 2003, the parties filed a request for a statement of decision as to various issues. You presided over a hearing on that matter on March 18, 2003. You stated at the hearing that you were taking the matter under submission. Your decision was signed on October 12, 2004, and filed on October 13, 2004, over a year and a half later.

I. *O'Toole v. University of California*, No. C-81077

You presided over the court trial of this matter and took the case under submission on July 2, 2002. Your decision was signed and filed on February 7, 2003, approximately seven months later.

J. *Willard v. Stuart*, No. C-746169

You presided over the retrial of a damages issue in this case and took the matter under submission on July 8, 2002. Your Notice of Decision and Order was signed on January 14, 2003, and filed on January 15, 2003, approximately six months later.

In January 2003, plaintiff Willard submitted two proposed forms of judgment and defendant Stuart filed a request for a statement of decision as to certain issues. No action was taken on either matter until May 2006, when you set

the case for a case management conference on May 31, 2006. You signed a judgment on May 31, 2006.

K. Nwokoro v. Okereke, No. C-785575

On June 23, 2003, you heard a motion for distribution of proceeds of sale of partnership property and motion to stay proceedings; a letter brief ordered on that date was filed on July 2, 2003. Your decisions were signed and filed on September 7, 2004, approximately 14 months later.

L. Morgan Lincoln v. Wah on Asian Foods Corp., No. 2001-025136

On September 4, 2003, you heard a motion to compel enforcement of a settlement agreement; on September 11, 2003, you took the motion under submission. Your decision was signed and filed on August 22, 2004, approximately 11 months later.

M. Levy v. Rubin, Palache & Associates, No. C-808701

On July 21, 2003, you presided over the court trial of this matter. Post-trial briefing was completed on November 25, 2003. Over the next nine and-a-half months, no action was taken on the case. On September 13, 2004, plaintiff filed a "Request for Judicial Decision of Matters Pending After Court Trial." You subsequently ordered oral argument and additional briefing. Your decision was signed on November 2, 2004, and filed on November 3, 2004, approximately 11 months after post-trial briefing originally was completed.

N. Mar/Dan v. Wells Fargo, No. 2001-022315

On December 16, 2003, you heard and took under submission motions for attorneys' fees and costs. Your decisions were signed and filed on August 26, 2004, approximately eight months later.

O. *Bell v. Beasley*, No. C-822820

In the fall of 2003, you presided over the jury trial of this matter. The jury reached a verdict on November 7, 2003. The jury made a number of damage awards in favor of cross-complainant Beasley. Plaintiff Bell objected to the proposed judgment submitted thereafter by cross-complainant Beasley. On December 5, 2003, you presided over a hearing regarding the judgment. Post-hearing briefing was completed on December 22, 2003. You signed a judgment on July 2, 2004, approximately six months later.

P. *Kassoff v. National Health Laboratories*, Nos. C-749626/RG03123643

On January 8, 2004, you heard and took under submission a motion regarding attorneys' fees and costs, a motion to vacate a renewed judgment, and for sanctions. Your decisions were signed and filed on August 31, 2004, approximately seven months later.

Q. *Weaver v. Big Dog Holdings*, No. 2001-035505

On March 4, 2004, you heard a motion for attorneys' fees. On March 16, 2004, the last supplemental declaration was filed. Your decision was signed and filed on September 9, 2004, approximately five and-a-half months later.

R. *Natnat v. Valdez*, No. 2002-063090

On March 2, 2004, you presided over the court trial of this matter; the last closing brief was filed on March 17, 2004. Your decision was signed and filed on August 24, 2004, approximately five months later.

S. *Tibbs v. V&V Auto Repair*, No. 2002-054418

You presided over the court trial of this matter and took the case under submission on May 6, 2004. Your decision was signed and filed on August 30, 2004, over 90 days later.

T. *Caswell v. Cunningham*, No. HF04140845

On May 18, 2004, you presided over a hearing on an application for a restraining order and took the matter under submission. Your decision was signed on September 5, 2004, and filed on September 7, 2004, over 90 days later.

U. *Teixiera v. Caragan*, Nos. HF04143409/HF03129039

On June 2, 2004, you presided over a hearing regarding two restraining orders, and took the matters under submission. Your decision was signed on September 6, 2004, and filed on September 7, 2004, over 90 days later.

COUNT TWO

As set forth above in count one, California Constitution, article VI, section 19, provides that a judge may not receive a salary “while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.” Government Code section 68210 provides that no judge shall receive his salary unless he executes “an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision.”

During the periods of approximately June 2000 through April 2001, August 2002 through February 2003, June 2003 through August 2004, and in October 2004, you executed state and county salary affidavits while you had submitted matters pending and undetermined before you for more than 90 days. Those affidavits were false.

Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

COUNT THREE

During the first half of 2004, while you were the supervising judge in Hayward, you failed to act within applicable deadlines on over 200 fee waiver applications in civil and family law matters. As a result of your conduct, in

February 2005, the court ordered the refund of \$9,894 in fees in over 30 cases where you had acted on the fee waiver application after the applicable deadlines.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3A, and 3B(8).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (b) of rule 14 of the California Rules of Court. The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: August 30, 2006

/s/
MARSHALL B. GROSSMAN
CHAIRPERSON