

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING
JUDGE ROBERT B. FREEDMAN
NO. 179**

**VERIFIED ANSWER OF JUDGE
ROBERT B. FREEDMAN TO
FIRST AMENDED NOTICE OF
FORMAL PROCEEDINGS**

The Honorable Robert B. Freedman responds to the Amended Notice of Formal Proceedings now pending before the Commission on Judicial Performance as follows:

COUNT ONE

1. Judge Freedman admits that during the period from 2000 to 2004, he took matters under submission and did not issue ruling in some matters for in excess of 90 days.

2. Judge Freedman admits that during this period, two presiding judges spoke with or wrote to him about the fact that he had gotten behind with respect to certain matters. He moved expeditiously to decide the matters once notified.

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3. Judge Freedman denies that his conduct violated Code of Judicial Ethics Canons 1, 2A and 3A. He admits that he violated Canon 3B(8) only insofar as he failed to adjudicate matters with sufficient speed. He denies that he was unfair in deciding any matter.

4. With regard to *Alameda Restaurant Associates v. McCabe, Schwartz*, Case No. C-805366, Judge Freedman admits that he heard defendant's demurrer to the second amended complaint, or in the alternative, motion for judgment on the pleadings on March 23, 2000. He admits that he ruled on all causes of action before him with the exception of the fifth cause of action, which he took under submission. Judge Freedman further admits that his decision as to the motion on the fifth cause of action was signed and filed on April 16, 2001.

5. With regard to *Paula Insurance Co. v. Stone Candles*, Case Nos. 807669/808428, Judge Freedman admits that he heard a motion for summary judgment on November 20, 2000. He further admits that he signed his decision on March 16, 2001.

6. As to *Bellamy v. United Parcel Service*, Case No. C-815035, Judge Freedman admits that he heard a motion for summary judgment on November 29, 2000. He further admits that he took the motion under submission as to the punitive damage claims. Judge Freedman admits that his decision was signed on March 19, 2001 and filed on March 23, 2001.

7. With regard to *CSK, Inc. v. City of Berkeley*, Case No. C-833044, Judge Freedman admits that he heard argument on a petition for writ of mandate on or around January 5, 2001. He further admits that he thereafter took the matter under submission and that his decision was signed and filed on April 19, 2001.

8. With regard to *Walker v. Salume*, Case No. C-728344, Judge Freedman admits that on January 9, 2001, he heard a motion regarding costs. He took the matter under submission on or after that date. Judge Freedman further admits that his decision was filed more than 90 days later on April 13, 2003.

9. As to *County of Contra Costa v. Insurance Co. of the West*, Case No. C-827858, Judge Freedman admits that he heard a demurrer on January 11, 2001. Judge Freedman took the matter under submission on or around that date. He further admits that his decision was filed on April 16, 2001, 98 days later.

10. Judge Freedman admits that he heard a motion for summary judgment in *Semprimoznik v. Bay Area Rapid Transit District*, Case No. C-821892 on January 16, 2001. He confirmed the Court's tentative ruling as to the first cause of action and took under submission an issue related to the second cause of action. Judge Freedman admits that he filed his decision on April 19, 2001, 93 days after the hearing.

11. Judge Freedman admits that he presided over the court trial in *Slauson v. Arntz Builders*, Case No. C-823752. Sometime after May 6, 2002, Judge Freedman took the matter under submission. He further admits that he signed and filed his Notice of Intended Decision in that matter on January 31, 2003.

In February 2003, the parties requested a statement of decision. Judge Freedman admits that he presided over a hearing on that matter on March 18, 2003 and took the matter under submission after argument. Judge Freedman admits that his decision was signed on October 12, 2004 and filed on October 13, 2004.

12. With regard to *O'Toole v. University of California*, Case No. C-81077, Judge Freedman admits that he presided over the court trial and took the case under submission on or around July 2, 2002. He further admits that he signed and filed his decision on February 7, 2003. His decision was affirmed on appeal.

13. Judge Freedman admits that he presided over the re-trial of a damages issue in *Willard v. Stuart*, Case No. C-746169 and took the matter under submission on or around July 8, 2002. He further admits that he signed his decision on January 14, 2003, and that it was filed on January 15, 2003.

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Further, although Judge Freedman does not have present sufficient knowledge to admit or deny that Willard submitted two proposed forms of judgment in January 2003 he notes that the DOMAIN register of actions reflected a judgment entered as of January 14, 2003. There are no such documents in the court's paper file and they do not appear on the DOMAIN register of actions. Judge Freedman admits that the court record reflects that a document titled "Issues After Tentative Decision" was filed on January 30, 2003 on behalf of Mr. Stuart. He denies that the document came into his possession at that time or required that he take any action or caused the matter to remain under submission.

Judge Freedman admits that, because he believed the matter was concluded, he took no further action until May 2006, when he was contacted by plaintiff and promptly set the case for a case management conference on May 31, 2006. He admits that he signed the "Judgment of Amendment to Amended Judgment of June 5, 1997," submitted by plaintiff at the May 31, 2006 hearing, on May 31, 2006.

14. As to *Nwokoro v. Okereke*, Case No. C-785575, Judge Freedman admits that he heard a motion for distribution of proceeds of a sale of partnership property and a motion to stay proceedings on June 23, 2003. He further admits that a letter brief ordered on that date was filed on July 2, 2003. Judge Freedman admits that his decision in that matter was signed and filed on September 7, 2004.

15. With regard to *Morgan Lincoln v. Wah On Asian Foods Corp.*, Case No. 2000-025136, Judge Freedman admits that he heard a motion to compel enforcement of a settlement agreement on September 4, 2003. He further admits that on or around September 11, 2003, he took the matter under submission. Judge Freedman further admits that his decision in that matter was signed and filed on August 22, 2004.

16. As to *Levy v. Rubin, Palache & Associates*, Case No. C-808701, Judge Freedman admits that he presided over the court trial of this matter that ended on July 21, 2003. He further admits that post-trial briefing was completed on or about November 25, 2003. He denies that no action was taken on the case for the next nine and a half months.

Judge Freedman admits that plaintiff filed a “request for judicial decision of matters pending after court trial” on September 13, 2004. He also admits that he subsequently ordered oral argument and additional briefing. Judge Freedman further admits that his decision was signed on November 2, 2004 and filed on November 3, 2004.

17. Judge Freedman admits that he heard a motion for attorneys’ fees and costs in *Mar/Dan v. Wells Fargo*, Case No. 2001-022315 on December 16, 2003 and took it under submission at or around that time. He further admits that his decision in that matter was signed and filed on August 26, 2004. An appeal of the underlying judgment (after court trial) was pending when the fee motion was filed and heard. The judgment was affirmed in full.

18. Judge Freedman admits that he presided over the jury trial in *Bell v. Beasley*, Case No. C-822820, in the fall of 2003. He admits that the jury reached a verdict on November 7, 2003 and that it made a number of damage awards in favor of cross-complainant Beasley. Further, Judge Freedman admits that Bell objected to the proposed judgment submitted by Beasley and that he presided over a hearing concerning the judgment on December 5, 2003. Judge Freedman admits that post-judgment briefing was completed on December 22, 2003 and that he signed a judgment on July 2, 2004.

19. With regard to *Kasoff v. National Health Laboratories*, Case Nos. C-749626/RG03123643, Judge Freedman admits that he heard a motion regarding attorneys’ fees and costs, a motion to vacate a renewed judgment, and for sanctions on January 8, 2004. He further admits that his decisions were signed and filed on August 31, 2004. His decision was affirmed on appeal.

20. With regard to *Weaver v. Big Dog Holdings*, Case No. 2001-035505, Judge Freedman admits that he heard a motion for attorney’s fees on March 4, 2004. Judge Freedman further admits that the last supplemental declaration was filed in that matter on or around March 17, 2004. He also admits that his decision was signed and filed on September 9, 2004.

21. Judge Freedman admits that he presided over the court trial of *Nat Nat v. Valdez*, Case No. 2002-063090 on March 2, 2004. He further admits that the last closing brief was filed on March 17, 2004. Judge Freedman admits that his decision in that matter was signed and filed on August 24, 2004. His decision was affirmed on appeal.

22. With regard to *Tibbs v. V&V Auto Repair*, Case No. 2002-054418, Judge Freedman admits that he presided over the court trial of that matter. He took the case under submission on or around May 6, 2004. Judge Freedman further admits that his decision was signed and filed on August 30, 2004, 116 days later.

23. Judge Freedman admits that he presided over a hearing on an application for a restraining order in *Caswell v. Cunningham*, Case No. HF04140845 on May 18, 2004. He took the matter under submission on or around May 18, 2004. Judge Freedman admits that he signed the decision on September 5, 2004 and filed it on September 7, 2004, 110 days later.

24. As to *Teixiera v. Caragan*, Case Nos. HF04143409/HF03129039, Judge Freedman admits that he presided over a hearing regarding two restraining orders on May 12, 2004 and June 2, 2004. He further admits that the last evidence was submitted to him on June 10, 2004, at which time the case was under submission. Judge Freedman admits that his decision was signed on September 6, 2004, and filed on September 7, 2004, 89 days later.

COUNT TWO

25. Judge Freedman admits that the 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.”

26. Judge Freedman admits that 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.”

27. Judge Freedman admits that during the periods of approximately June 2000 through April 2001, August 2002 through February 2003, June 2003 through August 2004, and in October 2004, he executed state and county salary affidavits while he had matters pending and undetermined before him for more than 90 days. Judge Freedman admits that he erred in executing certain of the affidavits, many of which were prospective in nature, but denies that he executed them knowing that they were incorrect or inaccurate.

28. Judge Freedman denies that his conduct violated Code of Judicial Ethics, Canons 1 and 2(a).

COUNT THREE

29. Judge Freedman admits that during the first half of 2004, when he was the supervising judge in Hayward, he was unable to act within applicable deadlines on over 200 fee waiver applications in civil and family law matters. Judge Freedman admits that in February 2005, the court ordered the refund of \$9,894 in fees in over thirty of those cases.

30. Judge Freedman admits that his failure to timely act on the fee waiver applications violated Canon 3B(8) to the extent that they were untimely. He denies that his conduct violated Code of Judicial Ethics Canons 1, 2(a) and 3(a) or that the decisions he rendered were unfair under Canon 3B(8).

CONCLUDING REMARKS

Judge Freedman is a conscientious judge who strives to arrive at the right decision in all matters that come before him. When Judge Freedman takes a matter under submission, he does so because he believes that the matter requires the type of careful reading and analysis of the record that litigants should be able to expect occurs prior to a

judge rendering a decision in their case. Judge Freedman has tried to maintain his personal standards for judging in the face of a tremendous docket.

Judge Freedman understands that he has a duty to not only decide matters properly, but also within the 90-day period set by statute. Sometimes, when his workload has been particularly heavy, Judge Freedman fell behind. For example, Judge Freedman fell behind in many of the matters identified above during a four-month period when he covered not only his own Department (there were approximately 300 cases under his management at the time), but also the Law & Motion Department while another judge was sitting pro tem on the First District Court of Appeal. On a daily basis, between 25 and 45 Law & Motion matters required consideration.

Judge Freedman regrets not only that he was untimely in rendering decisions in several cases, but also in processing fee waiver applications. At the time Judge Freedman became the Supervising Judge of the Hayward Courthouse in November 2003, approximately 200 fee waiver applications were filed monthly with the court. In order to improve the manner in which the applications were processed, Judge Freedman assumed complete responsibility for the 200 fee waiver applications filed each month. By statute, the applications were to have to been decided within five days. Though the vast majority of the applications were timely decided, many were not.

During the period that Judge Freedman acted as Supervising Judge of the Hayward Hall of Justice and processed the fee waiver applications, that is, from November 2003 through October 2004, approximately 3,535 matters were assigned to his calendar. The 3,535 matters reflected on the Scheduled Appearance List do not include, among other things, the fee waiver applications or the high volume of other miscellaneous *ex-parte* applications including applications for temporary restraining orders in domestic violence, civil harassment and elder abuse cases, unlawful detainer eviction stay applications, posting orders, and void filing orders.

In hindsight, Judge Freedman's assumption of responsibility for all Hayward fee waiver applications was, at best, overly optimistic. At the point he embarked on the system change, however, he was unaware of the magnitude of the overall workload he had assumed. He learned from his mistakes and did his best to improve the system through the creation of a judicial rotating Work Queue.

Judge Freedman has a demonstrated long time professional commitment to assisting indigent litigants and persons of limited means gain access to justice. He was a director of the Alameda County Bar Foundation and became its President in 1995. The Foundation's mission was to raise funds and support services for indigent litigants in civil matters.

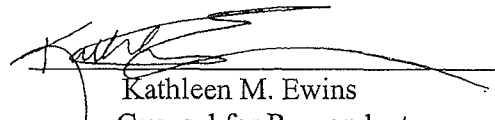
Judge Freedman is also committed to improving his court and the legal and judging communities in general. He was a founding director of Consumer Group Legal Services, a pioneer group legal services program associated with the now defunct Consumer's Coop of Berkeley; a member of the Board of Directors of the Alameda County Bar Association and its President in 1988; a member for approximately eight years of the Judicial Council's Civil and Small Claims Advisory Committee and is currently chair of its Case Management Subcommittee; past chair of the ADR and Legislation Subcommittees; Chair of the Working Group on Ethical Standards for Mediators in Court Annexed Mediation which developed California Rules of Court Rules 1620 et seq. adopted effective Jan 1, 2003; Chair of the State Bar of California Task Force on Accreditation of Internet Only Law Schools; Co-chair of the Judicial Council's Temporary Judges Working Group responsible for developing the new California Rules of Court for temporary judges adopted by the Judicial Council in December 2005 and now found inter alia at CRC 6.740, 6.743 etc. effective July 1, 2006; Trustee (and Past President) of the Bernard E. Witkin Alameda County Law Library; and a founding director of Bay Area Lawyers for the Arts (BALA), predecessor of the current California Lawyers for the Arts.

Judge Freedman was recently selected by his Presiding Judge to serve as one of two complex litigation department judges in Alameda County (one of approximately 25 in the state). He was also asked to chair the court's Direct Calendar Task Force.

Respectfully submitted,

Dated: October 2nd, 2006

LONG & LEVIT LLP



Kathleen M. Ewins
Counsel for Respondent
Judge Robert F. Freedman

VERIFICATION

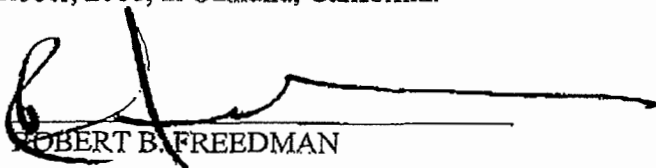
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I, ROBERT B. FREEDMAN, DECLARE that:

I am the respondent judge in the above-entitled proceeding. I have read the foregoing Answer of Judge Robert B. Freedman to First Amended Notice of Formal Proceedings, and all facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 2 day of October, 2006, at Oakland, California.



ROBERT B. FREEDMAN

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, 5th Floor, San Francisco, CA 94104.

On October 2, 2006, I served the documents named below on the following attorney(s) of record and/or interested parties in the case of INQUIRY CONCERNING JUDGE ROBERT B. FREEDMAN NO. 179, Commission on Judicial Performance.

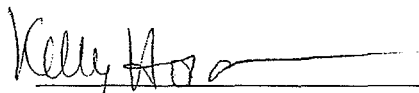
VERIFIED ANSWER OF JUDGE ROBERT B. FREEDMAN TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS
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SERVED UPON:

Marshall B. Grossman
Jay Linderman
Andrew Blum
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

- ☒ (BY HAND DELIVERY) I personally hand delivered via SpinCycle Messenger Service to the address listed above.
- ☐ (BY FACSIMILE) I caused the document(s) described herein to be transmitted from facsimile number (415) 397-6392 to the facsimile number(s) for each party indicated above.
- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 2, 2006, at San Francisco, California.



Kelly Horak