

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER
CONCERNING COMMISSIONER
ALAN FRIEDENTHAL**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Commissioner Alan Friedenthal, a commissioner of the Los Angeles County Superior Court. Commissioner Friedenthal and his attorney, Edith Matthai, appeared before the commission on March 20, 2012, to object to the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Commissioner Friedenthal and his 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

Commissioner Friedenthal has been a commissioner of the Los Angeles County Superior Court since 2005.

The commission has determined that Commissioner Friedenthal should be severely publicly admonished for committing misconduct and violating the California Code of Judicial Ethics in five family law cases over which he presided between June 2007 and January 2009, as described below. In February 2009, the Los Angeles County

Superior Court reassigned Commissioner Friedenthal to a department where he no longer presides over family law matters.

Commissioner Friedenthal's misconduct included making discourteous, undignified, gratuitous and denigrating remarks to litigants, attorneys and related parties, and attempting to engage in humor at the expense of litigants; engaging in conduct that reflected embroilment and conveyed the appearance of bias; engaging in improper ex parte communications; and failing to disclose on the record information that was reasonably relevant to the question of disqualification.

The commission stated the following in the *Inquiry Concerning Judge Bruce Van Voorhis*, 48 Cal.4th CJP Supp. 257 (2003):

When a judge lashes out in anger or frustration or personally attacks an attorney or becomes embroiled in a matter, the judge abandons his or her judicial role. This is not to suggest that judges do not become frustrated or angry. The California Code of Judicial Ethics, however, restrains the way a judge may manifest anger or frustration. For example, canon 2A states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," and canon 3B(4) provides that a judge "shall be" patient, dignified and courteous. Although any evaluation of a judge's conduct should consider the context in which the conduct took place, the canons apply even when a judge is angry or frustrated. (48 Cal.4th CJP Supp. at p. 274.)

The public looks to judges to set the tone of judicial proceedings. When a judge mistreats staff, belittles counsel or gives vent to his or her anger or frustration, the audience is not only concerned about the result in the specific matter before the court, but worries that other parties, lawyers, jurors and employees will be subjected to similar mistreatment. (48 Cal.4th CJP Supp. at pp. 312-313.)

The commission recognizes that the family law matters described herein were highly contentious and that some of the litigants were challenging. Nevertheless, Commissioner Friedenthal was required to comport himself at all times in accordance with the Code of Judicial Ethics.

Commissioner Friedenthal's misconduct also includes repeated remarks during court proceedings about complaint letters from litigants or a family member of a litigant sent to the supervising family law judge. Such comments not only reflect embroilment, but may inappropriately discourage a litigant from exercising the right to file a complaint against a commissioner with the superior court and give the appearance that the commissioner will be biased against the litigant who filed the complaint in future rulings.

I. *T.R. v. A.J.*¹

This case involved two teenage parents, T.R. and A.J., and their child, C.R. The child's father, T.R., lived at home with his mother and her boyfriend (who became T.R.'s stepfather during the proceedings), R.A. The child's mother, A.J., lived at home with her mother, T.J.

Around March 2008, attorney Carol Sternberg began representing the child's father T.R. She appeared by telephone on March 28, 2008, and in court on April 18, 2008. Commissioner Friedenthal failed to disclose at either proceeding that he had provided character testimony on behalf of Ms. Sternberg at a 2007 State Bar proceeding and that he had attended her husband's funeral in 2007.

In his written objections to the imposition of a public admonishment, Commissioner Friedenthal contends the fact that he was subpoenaed to testify at the State Bar proceedings by Ms. Sternberg's counsel is relevant to his duty to disclose. The commission disagrees. A judge may testify as a character witness, "provided the judge does so only when subpoenaed." (Canon 2B(2)(a).) Canon 2B(2)(c) provides a judge may provide *factual* information in State Bar disciplinary proceedings and "shall provide information responsive to a subpoena." Thus, the commissioner could only offer

¹ Case names and the identities of certain persons have been redacted to protect the privacy rights of minors.

character testimony pursuant to a subpoena. Most importantly, disclosure was required because the commissioner testified on Ms. Sternberg's behalf, regardless of whether the testimony was pursuant to subpoena. Commissioner Friedenthal's failure to disclose this information violated canon 3E(2), which requires judicial officers to disclose on the record information that is reasonably relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

On May 29, 2008, Commissioner Friedenthal presided over a hearing at which A.J.'s mother, T.J., was not present. Attorney Alan Goldberg represented A.J. who was seeking a change of custody. After Commissioner Friedenthal referred to complaints T.J. had made about him to the supervising family law judge, Commissioner Friedenthal made a number of improper remarks about T.J., including the following:

THE COURT: Now I want to interject something else for the record. It's been my understanding or my view or perception that, number one, notwithstanding the involvement of maternal grandmother, who to this day is still not a guardian ad litem for [A.J.], okay – there's a compliment coming there that Mr. Goldberg has always been, at least in court – and you're adding to that – he's always been helpful in resolving these out-of-court issues, and *Mr. Goldberg has always been a calming influence in the middle of Hurricane [T.J.]*, and I don't mean that pejoratively. I think the record in this case supports my using that term.

(R.T. 6:6-17, italics added.)

THE COURT: And again, I am going to make a statement on the record. *Please make sure whichever one is your client orders a copy of the transcript for the next letter she's going to write. That the person stirring the pot is consistently [T.J.], not [A.J.]*, and certainly not Mr. Goldberg.

(R.T. 7:4-9, italics added.)

THE COURT: *Much has been made of this in the April 24th, 2008, letter in an attempt to get me to go off this case, and I am going to tell you, Mr. Goldberg, it's never going to happen.*

(R.T. 14:13-16, italics added.)

THE COURT: Finally, I want to make a record I was advised at the last hearing by my staff that one [D.V.] [T.J.'s boyfriend] obtained a copy – I'm not sure if it was a transcript or final decision from the State Bar Court [regarding Ms. Sternberg], *though I don't agree with that decision* – and was parading that and shoving that in Ms. Sternberg's face, and I'm using the word "shove" more figuratively than literally because if it was shoved, *I would hope she'd get a restraining order, which I think is inappropriate contact, and feel free to share that with [D.V.], and if he comes to further hearings, I will exclude him.* He is not a guardian ad litem. [¶] ... [¶] *I just think that is conduct unbecoming an officer, and if it doesn't stop, then maybe with that very language someone will write a letter to the [police] department for which he works.*

(R.T. 14:20-15:3 and 15:21-24, italics added.)

[S]he [T.J.] has no right to lie [in the complaint letters], and if I wasn't a semi-public figure, I would seriously contemplate suing her for defamation.

(R.T. 16:11-13, italics added.)

... I'm convinced ... that [A.J.]'s an empty vessel and that Mom is a marionette manipulator, and that [A.J.] is one of her marionettes

(R.T. 18:24-28, italics added.)

... [T.J.]’s relationship with veracity and truth is severely impaired. I would call it a dysfunctional relationship

(R.T. 19:9-11, italics added.)

[S]he’s toxic and detrimental to the best interests of [the child], and I make that as a finding.

(R.T. 24:21-22, italics added.)

I don’t know why she’s refused to come. She’s told Judge Steinberg she’s afraid of me, *which I think is hysterical, this pudgy little judicial officer she’s afraid of.* [¶] ...

Tell her I have been defanged, and I no longer have rabies.

(R.T. 26:20-27:9.)

THE COURT: By the way, just for the record, because I’m really in to making a record today – sorry, Debra – *[T.J.] carried on mercilessly, unprofessionally, and I can’t think of – and despicably in dealing with the staff downstairs when they wouldn’t let her see the file. ... I got a report from the clerical staff downstairs. She carried on like a banshee because they told her, “You’re not a party, you’re not a guardian ad litem, you can’t see this.”* [¶] ... The only people who can see them are the lawyers and the parties. So just I’m (*sic*) throwing that in just before we recess to let everybody know it’s not just me that’s got an issue with [T.J.]. It’s the staff downstairs.

(R.T. 28:24-29:11.)

I am going to address it on the record because I know I am going to hear whatever I say come back to me in a letter from [T.J.].

(R.T. 35:15-17, italics added.)

THE COURT: *Your mother [T.J.], [A.J.], has no boundaries. Hear some new stuff, if you don't know – doesn't matter whether she's dealing with this court's staff, downstairs in the clerk's office, or whether she's dealing with my supervising judge in terms of thinking she's going to get me kicked off this case. As much as you may go to bed every night praying at the edge of your bed that the good lord will take me from this earth or take me from this case, it's not going to happen, and it's all precipitated by your mother. Okay. Your mom has no concept of boundaries.*

MR. GOLDBERG: Your Honor, we are trying –

THE COURT: *Transcript's available for ordering.*

(R.T. 63:18-64:2, italics added.)

[A.J.]: [T.J.] doesn't hate him [T.R].

THE COURT: *Yes, she does. I don't care – she certainly hates me. I don't care if [D.V.] doesn't care for me, doesn't care for Ms. Sternberg, or doesn't care for [T.J.]. I could make an order, notwithstanding the fact he is a peace officer, that [the child] will not live in the home if [D.V.] is there. Now let's see what your mom thinks about that. [¶] I can make an order that [the child] will not live with you if your mom is in the house. I wish she were in here to hear this. But I'm sure you'll tell her, and she's free to order the transcript so she can write another complaint letter to Judge Steinberg, and I know she's planning a lawsuit against me, and tell her I'm waiting for it.*

[A.J.]: Can you not bring that up with me though? I am not my mother.

(R.T. 73:8-24, italics added.)

Commissioner Friedenthal's remarks during the May 29, 2008 proceeding reflected embroilment, created the appearance of bias in violation of canons 1 and 2A, and constituted a failure to be dignified, patient and courteous in violation of canon 3B(4). Canon 1 states in relevant part that "[a] judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Canon 2A states that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Advisory Committee Commentary to canon 2A states in relevant part that a judge "must avoid all impropriety and appearance of impropriety." Canon 3B(4) states that a "judge shall be patient, dignified, and courteous to litigants, ... lawyers, and others with whom the judge deals in an official capacity,"

In his written objections to the public admonishment, Commissioner Friedenthal contends that T.J.'s conduct was relevant to T.R.'s request for change of custody. Even so, the commissioner could have expressed his concerns about T.J.'s conduct in a manner that did not violate his duty to be patient, dignified and courteous.

At a hearing on June 5, 2008, Commissioner Friedenthal again referred to T.J.'s complaints about him to the court, stating to A.J., "*Remember what I said last week ... I said if your mother, [T.J.], doesn't absent herself from the conflict – and I'm not talking about the conflict, apparently, she and I have, okay, or she has with Judge Steinberg about me. I'm not talking about that.*" (R.T. 16:10-16, italics added.)

Commissioner Friedenthal's remarks during the June 5, 2008 proceeding reflected embroilment, created the appearance of bias in violation of canon 2A, and constituted a failure to be dignified, patient and courteous in violation of canon 3B(4).

On June 18, 2008, at a hearing at which T.J. and R.A. (who later became T.R.'s stepfather) were present, Commissioner Friedenthal brought up the fact that D.V. (T.J.'s boyfriend) had filed a complaint against him with the court, and said, "I want to say something else that I hope you will carry back to [D.V.]." Commissioner Friedenthal

went on to address the interaction between D.V. and Ms. Sternberg that Commissioner Friedenthal had referred to on May 29, which Commissioner Friedenthal did not observe. When attorney Goldberg asked, "Let's move on, Your Honor, please," Commissioner Friedenthal remarked to T.J.:

THE COURT: No. *The letters of complaint are going nowhere so I don't know why you dealing (sic) with [D.V.] and you are persisting in pursuing the matter. But it's your right to do so. And if you got nothing (sic) better to do than do that.*

(R.T. 57:10-14, italics added.)

Commissioner Friedenthal's remark that the "letters of complaint are going nowhere" appeared to suggest that complaints about him would serve no purpose, thereby undermining public confidence in the integrity of the judicial system, contrary to canons 1 and 2A, and the remainder of his remark constituted embroilment and violated canon 3B(4).

Later in the proceeding, Commissioner Friedenthal admonished the two teenage parents that if they could not control their parents in the use of certain county agencies as an "offensive weapon to gain an advantage in the litigation, *I will take the child away. I will have DCFS pick up [C.R.] and he will go into a placement.*" (R.T. 59:23-28, italics added.)

Commissioner Friedenthal's threat to take the child way constituted a threatened abuse of authority and contravened canons 1 and 2A.

In August 2008, T.R.'s attorney filed a civil harassment restraining order application following an incident that allegedly occurred at T.R.'s workplace, a Mexican fast food restaurant, involving A.J. and T.J. At a hearing on September 19, 2008, regarding the restraining order, Mr. Goldberg argued that he was entitled to present evidence regarding (father T.R.'s stepfather) R.A. as a defense to the harassment charge, saying that it was "in the statute." Commissioner Friedenthal responded, "*Let me write that*

down. The next time I get mad at somebody who pushes the taco-burrito combo through the window to me, I'll say it was because of [R.A]." (R.T. 18:16-19, italics added.)

Commissioner Friedenthal's remark, which appeared to be sarcastic, violated canon 3B(4).

T.J. posted a number of comments about Commissioner Friedenthal on an online forum concerning court matters and on a Myspace page. While Commissioner Friedenthal was presiding over this case, he reviewed those posts, which violated canon 3B(7), which prohibits judges from considering ex parte communications concerning a pending proceeding. In his written objections to the intended admonishment, Commissioner Friedenthal states that he believed he could monitor these postings and postings by other litigants to determine if there was a threat to himself or his family. If a judicial officer has safety concerns, the appropriate steps are to alert judicial security and ask them to monitor the posts rather than to review ex parte communications.

II. *T.J. v. R.A.*

In September 2008, T.J. filed a request in the Chatsworth courthouse for a temporary civil harassment restraining order against R.A. (T.R.'s stepfather), which was granted. Commissioner Friedenthal then had the case transferred to his department in the San Fernando courthouse.

On October 3, 2008, counsel appeared before Commissioner Friedenthal concerning an ex parte motion made by attorney Carol Sternberg, who was representing R.A. in connection with the restraining order. Before that hearing, Commissioner Friedenthal conducted independent investigation of R.A., which included checking online records and having his clerk bring him R.A.'s divorce file and other files involving R.A. and T.J. The commissioner's independent investigation of litigants violated canon 3B(7), which prohibits judges from initiating or considering ex parte communications concerning a pending proceeding. The Advisory Committee Commentary to canon 3B(7) states in relevant part, "A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law." The commis-

sioner's independent investigation also reflected embroilment and created the appearance of a lack of impartiality, contrary to canon 2A.

During the proceeding on October 3, 2008, Commissioner Friedenthal made the following two remarks regarding T.J. When referring to previous statements he had made about R.A. and C.R., he remarked to T.J.'s attorney, in reference to T.J.'s complaints against him, "*You can order the transcripts again because evidently there's a bottomless pit of money to order transcripts.*" (R.T. 15:5-7, italics added.) Later, when Mr. Goldberg argued that T.J. was not solely responsible for the heightened conflict in the custody case, Commissioner Friedenthal stated, "*It's never [T.J.] It's not [T.J.] who let the registered sex offender live in the back house, as I was told.*" (R.T. 30:20-22, italics added.) These gratuitous remarks reflected embroilment and violated canon 3B(4).

At the next hearing, on October 17, 2008, A.J. and T.R., the parents of C.R., were present. In the morning, Commissioner Friedenthal made a number of comments about complaints that had been made against him to the court by T.J. and her boyfriend D.V., some of which addressed the facts alleged in those complaints. At one point, Commissioner Friedenthal commented on a complaint T.J. had made to the Commission on Judicial Performance, saying, "*It would give it more credibility if Mr. Goldberg joined it. I'm not worried about it, Mr. Goldberg.*" (R.T. 22:28-23:2, italics added.) The commissioner's comment reflected embroilment and appeared to suggest that filing complaints about him would serve no purpose, thereby undermining public confidence in the integrity of the judicial system, contrary to canon 2A.

In the afternoon, Commissioner Friedenthal referred to T.J.'s online postings about him, noting after beginning a story about himself that "*I know I'm going to hear about this later probably on some website, some posting on a website.*" (R.T. 65:23-25, italics added.) The commissioner's comment reflected embroilment.

During the afternoon of October 17, Commissioner Friedenthal took over the examination of (T.R.'s stepfather) R.A. and questioned him extensively about his background, which created the appearance of embroilment.

A.J. was called as a witness later that afternoon. When she was describing R.A.'s angry demeanor during an incident in support of T.J.'s harassment claim, she said that R.A.'s face was red and that he was shaking. Commissioner Friedenthal remarked, gratuitously and apparently sarcastically, "*In June everybody's face is red.*" (R.T. 86:22, italics added.) His comment violated canon 3B(4).

T.J. posted a number of comments about Commissioner Friedenthal on an online forum concerning court matters and on a Myspace page. While Commissioner Friedenthal was presiding over this case, he reviewed those posts, thereby violating canon 3B(7).

III. *M.T. v. M.C.*

This matter concerned the minor son of father M.T. and mother M.C.

On June 2, 2008, at a hearing to review visitation, M.C. accused minor's counsel of making untrue statements about her, including that she was a lesbian. Minor's counsel denied making that statement, and M.C. apologized. Commissioner Friedenthal responded by stating, "*She called you a Martian, and that was substantiated?*" (R.T. 7:8-9, italics added.) This gratuitous and discourteous remark violated canon 3B(4).

At a hearing on August 14, 2008, Commissioner Friedenthal twice referred to the possibility of M.C. complaining about him to the court. When M.C. interrupted minor's counsel, Commissioner Friedenthal said, "Don't interrupt. *Remember, by the way, when you're filing a complaint against me with Judge Steinberg, she's going to see the transcript. If she sees you interrupting me all the time, she's going to go – (indicating). Okay?*" (R.T. 10:23-27, italics added.) Later in the same hearing, when the court reporter asked M.C. to slow down and said, "I missed half of what she said," Commissioner Friedenthal remarked, "*She [the court reporter] lost it. It's not in the record when she [M.C.] wants to send it to Judge Steinberg.*" (R.T. 23:16-23, italics added.) These remarks created the appearance of embroilment.

At the same August 14 hearing, after M.C. said she didn't want to "bag on" Commissioner Friedenthal (meaning insult or offend Commissioner Friedenthal, according to her), Commissioner Friedenthal remarked, "*Bag on me? Is that a legal*

term?” (R.T. 16:6-7, italics added.) This remark, which appears to be sarcastic, violated canon 3B(4).

During a discussion of the inappropriateness of voicemail messages M.C. had left for M.T., which had been listened to in court, Commissioner Friedenthal asked M.C., who was attending nursing school, whether she thought the way she had dealt with M.T. was something she “had taken away from” a court-ordered parenting class. When she said no, Commissioner Friedenthal responded, “*Good. So you flunked. I hope you do better in nursing school.*” (R.T. 17:6-7, italics added.) This remark, which is denigrating to the litigant and appears to be sarcastic, violated canon 3B(4).

Near the end of the hearing, M.C. expressed her objection to her visitation with her child being monitored. When Commissioner Friedenthal noted, “I guess you didn’t hear the tapes,” M.C. asked, “So what do tapes have to do with anything?” Commissioner Friedenthal then said, “*That’s what Tina said to Ike*” (referring to the Tina Turner song, “What’s Love Got to Do with It?”). (R.T. 30:10-12, italics added.) This apparent attempt at humor at the litigant’s expense violated canon 3B(4).

In October 2008, M.T. was awarded custody of the minor son, and it was ordered that M.C. not have contact with him before a trial date in February 2009. A few days later, M.C. left a voicemail message for M.T. that included a highly offensive remark about Jewish people, which may have referred to persons affiliated with the court case. M.T. then sought a restraining order against M.C., which was heard on November 19, 2008.

During the November 19 hearing, Commissioner Friedenthal asked M.C. numerous times who she was referring to in her voicemail message and otherwise referred to her anti-Semitic comment. At one point Commissioner Friedenthal told her “*You’re going to raise a little Nazi.*” (R.T. 16:9-18.) At another point, he asked M.C., “*Do you want the nursing school administration to see the text of what you said to [M.T. and his wife]?*” M.C. said she had already talked to a “few people at school” about it. Commissioner Friedenthal responded, “*They’re pleased that one of their star nursing students is an anti-Semite.*” (R.T. 17:6-12, italics added.) Commissioner Friedenthal’s

remarks at this hearing, in addition to exhibiting improper demeanor, reflected embroilment.

During a hearing on January 15, 2009, at which minor's counsel sought a restraining order against M.C., M.C. complained about not being able to see her son, with whom she had had no contact for several months. She said, "You still have not told me where my son is. Don't –". Commissioner Friedenthal interrupted and said, "*Hold on. [Minor's counsel], didn't I order you to implant the GPS in his blood?*" (R.T. 40:9-13, italics added.) Commissioner Friedenthal's attempt at humor constituted a failure to be dignified and courteous to a litigant, contrary to canon 3B(4).

IV. *L.L. v. T.L.*

This case involved the minor child of mother L.L. and father T.L. Mother L.L. posted a number of comments about Commissioner Friedenthal on an online forum concerning court matters. While Commissioner Friedenthal was presiding over this case, he reviewed those posts, thereby violating canon 3B(7)'s prohibition against ex parte communications.

L.L.'s posts included references to her belief that Commissioner Friedenthal had not properly disclosed certain ownership interests in real property and that he might own property with minor's counsel in the case, and a suggestion that those concerned about Commissioner Friedenthal should call the District Attorney's Judicial Integrity Unit. One of the posts also referred to what Commissioner Friedenthal's "German-Jewish ancestors might think." At a hearing on January 21, 2009, Commissioner Friedenthal made comments about L.L.'s posts, as follows:

Take good notes. I look forward to reading your summary.

(R.T. 2:14-15, italics added.)

First, I don't know why you can't find my statement of economic interest for 2007, but if you keep looking, you'll find it, okay, and you won't find anything untoward. Okay.
[¶] Second, I don't have any investments or partnerships or any interest in any property owned by Ken Sherman or his

family. I have no interest in any property or interest in or any investments with [T.L.] or James [L.], who I assume is a member of his family. So you can continue this witch hunt to your heart's desire. Okay. Knock yourself out. I rule on the facts. I'm not blind. You can call the D.A.'s Judicial Integrity Unit all you want. It's not going anywhere. I've never committed a crime. I am not about to start in this case or any other case. [¶] So thank you for the defamation. Keep that in mind, that it is defamation, and my German-Jewish ancestors would be very proud of me. So thank you very much.

(R.T. 4:13-5:3, italics added.)

In addition to constituting a failure to be patient, dignified and courteous, in violation of canon 3B(4), Commissioner Friedenthal's comments to L.L. created an appearance of bias and embroilment.

V. *M.M. v. M.M.*

This case involved the custody of a minor child, J.M. The mother had remarried. On June 8, 2007, Commissioner Friedenthal presided over a hearing on an ex parte application that included an allegation that the stepfather, W.R., had hit J.M. when J.M. attempted to stop W.R. from kissing his mother. The following exchange occurred when Commissioner Friedenthal was addressing the mother:

THE COURT: Okay. If any of this bears out, you know he may be living with his dad. [Mother's counsel] advised you of that, I assume?

[MOTHER]: Yes.

THE COURT: So you better have a real good heart to heart with [W.R.], or I will put you in the position of making a choice, [W.R.] or [the child] – smoochie, smoochie, or [the child] – got it?

[MOTHER]: Yes.

(R.T. 24:1-9, italics added.)

Commissioner Friedenthal's undignified and gratuitous remark, made to a mother in a custody dispute, violated canon 3B(4).

At a hearing on July 3, 2007, arrangements were made for the minor child to return by airplane to his father's residence from his mother's residence in another state pending a custody hearing set for August 3, 2007. A supplementary custody evaluation had been ordered. Commissioner Friedenthal ordered the father to pay over \$4,000 in fees for minor's counsel and the supplemental custody evaluation. When the father raised his hand to address the issue of payment, Commissioner Friedenthal responded by threatening to place the child with grandparents, as follows:

[FATHER]: I'm not refusing to pay. I owe a lot of people money –

THE COURT: *Okay. This needs to be grandparent placement because he can't afford to pay the rates for the child. [¶] Where do the [grand]parents live?*

[FATHER'S COUNSEL]: Mexico.

THE COURT: [Mother]?

[¶] ... [¶]

[MOTHER]: My parents are in Mexico.

THE COURT: You have brothers?

[MOTHER]: I have a brother in Moorpark.

[¶] ... [¶]

THE COURT: I want [minor's counsel] to talk to the brother in Moorpark. [¶] Will you provide that information?

[FATHER'S COUNSEL]: My client is simply saying he'd like to have a payment arrangement. On that basis, you are going to order –

THE COURT: Marsha Wiley is going to do this evaluation. If I have to stand on my head and walk on my hands all the way down McKay –

[FATHER]: I'm asking for three payments, sir.

[FATHER'S COUNSEL]: Rather than –

[MOTHER'S COUNSEL]: Miss Wiley does not accept that. Most evaluators request –

THE COURT: She wanted 2,500?

[MINOR'S COUNSEL]: No; 3,500 which is very modest.

THE COURT: Follow my order. That's it. No more discussion. [¶] What is your brother's name in Moorpark?

[¶] [Mother's counsel] is to provide his name and number to [minor's counsel] for appropriateness of some shared custody.

(R.T. 15:5-16:10.)

Commissioner Friedenthal's threat to award custody of the child to other family members in response to the father's statements that he was not refusing to pay fees but wanted a payment plan constituted a threatened abuse of authority and violated canons 1, 2A and 3B(4). At his appearance before the commission, the commissioner maintained that his statement concerning a grandparent placement was based on his concerns about the father's parenting abilities. This assertion is refuted by the fact that the commissioner had already ordered a supplemental custody evaluation report and scheduled a custody hearing for the following month, as well as by the commissioner's own words: "This needs to be a grandparent placement *because he can't afford to pay the rates for the child.*" (Italics added.)

Commissioner Friedenthal's conduct in the matters described above was, at a minimum, improper action.

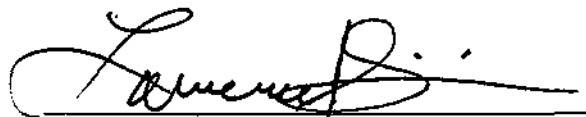
In deciding to issue a public admonishment, the commission took into consideration the number of acts of misconduct and the nature and seriousness of the

misconduct. Commissioner Friendenthal describes his misconduct as “momentary lapses” in response to difficult litigants. In the commission’s view, his misconduct was not momentary or isolated. He made multiple denigrating and undignified comments toward multiple litigants and related parties in multiple proceedings reflecting a pattern of poor demeanor and embroilment. In addition, his misconduct includes inappropriately commenting on complaints made against him, viewing web posts of litigants concerning matters pending before him, independently investigating facts, and failing to disclose on the record information that was reasonably relevant to the question of disqualification.

For the foregoing reasons, and to preserve public confidence in the integrity and impartiality of the judiciary, the commission has determined to issue this this public admonishment.

The vote of the commission to impose a public admonishment was 9 ayes and one no. Commission members Mr. Lawrence Simi, Ms. Mary Lou Aranguren, Anthony P. Capozzi, Esq., Hon. Frederick P. Horn, Hon. Judith D. McConnell, Nanci E. Nishimura, Esq., Ms. Sandra Talcott, Mr. Adam N. Torres, and Mr. Nathaniel Trives voted for a public admonishment. Commission member Hon. Erica R. Yew would have issued a private admonishment. Commission member Ms. Maya Dillard Smith did not participate.

Dated: April 3, 2012

A handwritten signature in black ink, appearing to read "Lawrence Simi", written over a horizontal line.

Lawrence Simi
Chairperson

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. My business address is 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102. I declare as follows:

On April 3, 2012, I served the attached:

PUBLIC ADMONISHMENT OF COMMISSIONER ALAN FRIEDENTHAL

on all interested parties in this matter, by delivering a true copy as follows:

Edith R. Matthai, Esq.
Robie & Matthai
500 South Grand Avenue, 15th Floor
Los Angeles, CA 90071-2609
Fax: (213) 624-2563

- (BY U.S. MAIL)** I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service, that this mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.
- (BY FACSIMILE TRANSMISSION)** I caused such document to be transmitted to the addressee's facsimile number noted. The facsimile machine I used complied with Rule 2.301(3) and the transmission was reported as complete and without error. Pursuant to Rule 2.301(6), I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration as required by Rule 2.306(g)(4).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on April 3, 2012, at San Francisco, California.


Nancy Gilmore