STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE NO. 64	ANSWER TO NOTICE OF FORMAL PROCEEDINGS

COMES NOW, Respondent, Judge Robert H. Furey, Jr., and in answer to the Notice of Formal Proceedings herein, admits, denies and alleges as follows:

COUNT ONE

Respondent admits the allegations contained in paragraph A, subparagraph 1, commencing with, "On August 19, 1983, . . ." and ending with ". . . why she should not be held in contempt.", but alleges that he held Ms. Cuskaden in contempt for the language in the posted material and not because she remained silent when asked if that was her signature. Respondent further alleges that Ms. Cuskaden was ordered to appear before a Municipal Court judge in Long Beach so that Respondent would not be ruling on whether such posted material was in contempt of his court.

Respondent admits the allegations contained in the second and third paragraphs of paragraph A, subparagraph 1, commencing with, "You further informed . . .", and ending with, ". . . would constitute a direct contempt of court."

In answer to the allegations contained in the first paragraph of paragraph A, subparagraph 2, commencing with, "On September 12, 1983, . . ." and ending with ". . . continued for hearing to September 26, 1983.", Respondent has no information or belief on the subject matter contained therein sufficient to enable him to respond thereto and, placing his denial on that ground, Respondent denies said allegations.

Respondent admits the allegations contained in the second and third paragraphs of paragraph A, subparagraph 2, commencing with, "On September 23, 1983, . . ." and ending with, "and to pay an additional $500 fine.", but alleges that the Avalon ordinance referred to in no way could be used against Ms. Cuskaden, and applied only to a landlord, and that Respondent so advised Ms. Cuskaden.

In answer to the allegations contained in the fourth paragraph of paragraph A, subparagraph 2, commencing with, "On September 28, 1983, . . ." and ending with, ". . . The contempt orders were annulled.", Respondent admits that there was not a timely order prepared and signed by Respondent, pursuant to Code of Civil Procedure Section 1211. Further, Respondent alleges that the Superior Court at no time ruled on the substance of the contempt finding.

Respondent admits the allegations contained in paragraph A, subparagraph 3, commencing with "On October 6, 1983, . . ." and ending with ". . . to be served at the rate of $30 per day." Respondent alleges that, on his own motion, he appointed the Public Defender to represent Mr. Hamilton. Respondent specifically

denies that he abused his contempt power. Respondent further specifically denies that the acts alleged constituted wilful misconduct in office.

Respondent admits the allegations contained in the first paragraph of paragraph A, subparagraph 4, commencing with, "On June 15, 1984, . . ." and ending with, ". . . Ms. Cuskaden was wearing shoes", and commencing with, "Before court was in session, . . ." and ending with, ". . . Ms. Cuskaden remained in the courtroom." However, Respondent denies that Ms. Cuskaden's legs were covered. Further, Respondent alleges that Ms. Cuskaden's upper garment was not a "shirt" and that said upper garment revealed Mrs. Cuskaden's underwear.

Respondent admits the allegations contained in the second paragraph of paragraph A, subparagraph 4, commencing with, "When you entered the courtroom, . . ." and ending with, ". . . and ordered her remanded to custody." With respect to these allegations, Respondent alleges that he told Ms. Cuskaden that if she intended to attend court, she should go home and change into proper attire for court.

In further answer to the allegations contained in the second paragraph of paragraph A, subparagraph 4, commencing with, "You further ordered . . ." and ending with, ". . . (a copy of which is appended hereto as Attachment A).", Respondent has no information or belief on the subject matter contained therein sufficient to enable him to respond thereto and, placing his denial on that ground, Respondent denies the specified allegations.

Respondent admits the allegations contained in the third paragraph of paragraph A, subparagraph 4, commencing with, "Ms. Cuskaden was transported from . . ." and ending with, ". . . released from custody on her own recognizance."

Respondent admits the allegations contained in the fourth paragraph of paragraph A, subparagraph 4, commencing with, "On July 17, 1984, . . ." and ending with, ". . . set aside your order of contempt of June 15, 1984." With respect to these allegations, Respondent alleges that he requested the Los Angeles County Counsel not to defend against the petition for habeas corpus, prior to the Superior Court evaluating the propriety of the finding of contempt on its merits.

Respondent admits the allegations contained in the first paragraph of paragraph A, subparagraph 5, commencing with, "On May 31, 1983, . . ." and ending with, ". . . 'Ten days forthwith, you are remanded.'" With respect to these allegations, Respondent alleges that he was carrying out the order of the judge who imposed sentence.

In further answer to the allegations contained in the first paragraph of paragraph A, subparagraph 5, commencing with, "As defendant Kabbaze . . ." and ending with, ". . . to be served consecutively and forthwith.", Respondent admits said allegations, except that Respondent denies defendant Kabbaze said, "tremendous". Further, Respondent alleges that defendant Kabbaze made a comment derogatory to the court, the exact words of which Respondent does not now recall.

In further answer to the allegations contained in the first paragraph of paragraph A, subparagraph 5, commencing with, "Defendant Kabbaze then made . . ." and ending with, ". . . to be served consecutively.", Respondent admits this allegation, except that Respondent alleges the "s-s-h" sound was concluded by defendant Kabbaze plainly stating, "shit".

Respondent admits the allegations contained in paragraph A, subparagraph 1, commencing with, "On May 31, 1983, . . ." and ending with, ". . . The matter was then trailed until 1:30 p.m." With respect to these allegations, Respondent alleges that he was carrying out the sentence imposed by another judge. Respondent further alleges that he had to tell Mr. Hatton three different times that he was to be present at 1:30 with his attorney.

Respondent admits the allegations contained in the second and third paragraphs of paragraph A, subparagraph 6, commencing with "At 1:30 p.m., . . ." and ending with, ". . . Hatton remained in custody.", except Respondent denies that he "refused to hear counsel." Respondent alleges that after hearing counsel, he trailed the matter until the following morning and then purged Mr. Hatton of contempt after Mr. Hatton stated to the court, "I apologize for what happened yesterday, Your Honor. I meant no disrespect to the court."

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count One, paragraph A, subparagraphs 1 through 6, and specifically denies that Respondent abused his contempt power. Respondent further specifically denies that the acts alleged in Count One, paragraph A, subparagraphs 1 through 6, constituted wilful misconduct in office.

In answer to paragraph B of Count One, alleging that Respondent offered unsolicited advice to other judges on cases where he had been disqualified, Respondent admits the allegations contained in subparagraph 1, commencing with, "On June 10, 1983, . . ." and ending with, ". . . transferred to Division 85 of the Los Angeles Judicial District, San Pedro Branch."

In answer to the second paragraph of paragraph B, subparagraph 1, commencing with, "Between June 10, 1983, . . ." and ending with, ". . . A copy of this note is appended as Attachment B.", Respondent admits the allegations contained therein, and alleges that the basis for the penalty he suggested was the information provided by the arresting officer concerning Hughes' bad attitude when arrested.

Respondent admits the allegations contained in the third paragraph of paragraph B, subparagraph 1, commencing with, "On July 7, 1983, . . ." and ending with, "on the motion of the People."

In answer to the allegations contained in the first paragraph of paragraph B, subparagraph 2, Respondent admits that an affidavit of prejudice was filed against him and Respondent recused himself from the case. Except as expressly admitted herein, Respondent has no information or belief on the subject matter contained therein sufficient to enable him to respond thereto and, placing his denial on that ground, Respondent denies the allegations contained in said paragraph.

Respondent admits the allegations contained in the second paragraph of paragraph B, subparagraph 2, commencing with,

"Sometime prior to May 14, 1984, . . ." and ending with, ". . . A copy of this note is appended hereto as Attachment C."

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count One, paragraph B, subparagraphs 1 and 2, and specifically denies that he offered unsolicited advice to other judges on cases from which he had been disqualified. Respondent further specifically denies that the acts alleged in Count One, paragraph B, subparagraphs 1 and 2, constituted wilful misconduct in office.

In answer to paragraph C of Count One, alleging that Respondent "denied defendants, or their attorneys, their full right to be heard according to law," Respondent denies generally and specifically said allegations, and answers the particular allegations as follows:

In answer to the allegations contained in the first paragraph of paragraph C, subparagraph 1, commencing with, "On February 14, 1984, . . ." and ending with, ". . . cited for contempt of court.", Respondent has no information or belief on the subject matter contained therein sufficient to enable him to respond thereto and, placing his denial on that ground, Respondent denies the specified allegations. Further, Respondent alleges that if such statements were made by the bailiff, it was not with Respondent's prior knowledge nor under his instruction.

In further answer to the allegations contained in the first paragraph of paragraph C, subparagraph 1, commencing with,

"After you took the bench, . . ." and ending with, ". . . over a minor traffic offense.", Respondent admits these allegations.

In answer to the allegations contained in the second paragraph of paragraph C, subparagraph 1, commencing with, "In the Anderson case, . . ." and ending with, ". . . and imposed a fine and penalty assessment.", Respondent admits these allegations. With respect to these allegations, Respondent alleges that Mr. Anderson began to read a section of the Vehicle Code to Respondent (with which Respondent was already familiar) and that Respondent stopped him. Thereafter, Mr. Anderson offered no testimony and was found guilty.

Respondent admits the allegations contained in the third paragraph of paragraph C, subparagraph 1, commencing with, "On October 17, 1984, . . ." and ending with, ". . . to make a closing argument."

In answer to paragraph C, subparagraph 2, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 6, as if fully set forth herein.

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count One, paragraph C, subparagraphs 1 and 2, and specifically denies that he denied defendants, or their attorneys, their full right to be heard according to law. Respondent further specifically denies that the acts alleged in Count One, paragraph C, subparagraphs 1 and 2, constituted wilful misconduct in office.

In answer to paragraph D of Count One, alleging that Respondent failed to conduct himself in court proceedings in a manner that promotes public confidence in the impartiality of the Judiciary, Respondent denies generally and specifically said allegations, except as expressly admitted herein, and answers the particular allegations as follows:

In answer to paragraph D, subparagraph 1, Respondent incorporates by reference his answer to the allegations contained in paragraph C, subparagraph 1, as if fully set forth herein.

In answer to paragraph D, subparagraph 2, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 1, as if fully set forth herein.

In answer to paragraph D, subparagraph 3, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 2, as if fully set forth herein.

In answer to paragraph D, subparagraph 4, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 4, as if fully set forth herein.

In answer to paragraph D, subparagraph 5, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 6, as if fully set forth herein.

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count One, paragraph D, subparagraphs 1 through 5, and specifically denies that he failed to conduct himself in court proceedings in a manner that promotes public confidence in the impartiality of the Judiciary. Respondent

further specifically denies that the acts alleged in Count One, paragraph D, subparagraphs 1 through 5, constituted wilful misconduct in office.

In answer to paragraph E of Count One, alleging that Respondent engaged in a vengeful and punitive pattern of conduct toward individual defendants, and, except as expressly admitted herein, Respondent denies generally and specifically said allegations, and answers the particular allegations as follows:

Respondent denies generally and specifically the allegations contained in paragraph E, subparagraphs 1.a. and 1.b.

Respondent admits the allegations contained in paragraph E, subparagraph 1.c.

In answer to the allegations contained in paragraph E, subparagraph 1.d., Respondent admits these allegations, except Respondent alleges that Ms. Cuskaden had established herself as a person who would intentionally disrupt the order and decorum of the court and would make it impossible to conduct the court's business.

Respondent denies generally and specifically the allegations contained in paragraph E, subparagraph 1.e., and specifically denies that he attempted to influence the disposition of Ms. Cuskaden's case by another judge. Respondent further specifically denies that his communication with another judge about Ms. Cuskaden was improper.

Respondent denies generally and specifically the allegations contained in paragraph E, subparagraph 1.f.

In answer to the allegations contained in paragraph E, subparagraph 1.g., Respondent admits that, in a social conversation with the persons named, he inferred that the people of Catalina would be better off if Ms. Cuskaden chose to leave. Except as expressly admitted herein, Respondent denies generally and specifically the allegations contained in paragraph E, subparagraph 1.g.

In answer to the allegations contained in paragraph E, subparagraph 1.h., Respondent admits that he refused to accept Ms. Cuskaden's motion for his disqualification under Code of Civil Procedure section 170.6 because it was untimely and not proper. Except as expressly admitted herein, Respondent denies generally and specifically the allegations contained in paragraph E, subparagraph 1.h.

In answer to paragraph E, subparagraph 1.i., Respondent incorporates by reference his answer to paragraph A, subparagraph 1, of Count One, as if fully set forth herein.

Respondent denies generally and specifically the allegations contained in paragraph E, subparagraph 2.a.

Respondent admits the allegations contained in paragraph E, subparagraphs 2.b. and 2.c.

In answer to the allegations contained in paragraph E, subparagraph 2.d., commencing with, "After Defendant Hatton's attorney . . ." and ending with, ". . . medical condition", and commencing with, ". . . revoked probation . . ." and ending with, ". . . 'Something substantially more than a mere perfunctory letter from a physician.'", Respondent admits these allegations.

As to the allegations that Mr. Hatton "was being treated at the Veterans Administration Hospital for a past stroke which had paralyzed his right side, as well as several other medical conditions, including high blood pressure", Respondent has no information or belief sufficient to enable him to respond to said allegations and, placing his denial on that ground, Respondent denies the specified allegations. Respondent alleges that on February 11, 1983, Deputy City Attorney Michael Klekner recommended to Respondent that "the court summarily revoke probation [and] that a probation hearing be scheduled", and that Respondent acted upon said recommendation.

Respondent admits the allegations contained in paragraph E, subparagraph 2.e., but alleges that the defendant and his attorney were present and advised in open court that a probation violation hearing was being set on March 15, 1983, and they were thus given over four weeks to prepare for said hearing. Under the circumstances, it appeared to Respondent that no written notice of the probation revocation hearing was required.

In answer to the allegations contained in paragraph E, subparagraph 2.f., Respondent admits that he asked Mr. Hatton, "Did you hear this Court order you specifically to come in with something more than a perfunctory letter from the doctor?" Except as expressly admitted herein, Respondent has no information or belief sufficient to enable him to respond to said allegations and, placing his denial on that ground, Respondent denies the allegations contained in paragraph E, subparagraph 2.f.

In answer to the allegations contained in the first paragraph of paragraph E, subparagraph 2.g., Respondent admits that he remanded Mr. Hatton to county jail for 180 days. Except as expressly admitted herein, Respondent has no information or belief sufficient to enable him to respond to the remaining allegations contained in the first paragraph of paragraph E, subparagraph 2.g., and, placing his denial on that ground, Respondent denies said allegations.

In answer to the second paragraph of paragraph E, subparagraph 2.g., Respondent admits that the opinion of the Appellate Department of the Los Angeles County Superior Court contained the language set forth in said paragraph.

In answer to paragraph E, subparagraph 3.a., Respondent incorporates by reference his answer to the allegations contained in paragraph B, subparagraph 1, as if fully set forth herein.

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count One, paragraph E, subparagraphs 1 through 3, and all subsections thereof, and specifically denies that he engaged in a vengeful and punitive pattern of conduct toward the individual defendants named therein. Respondent further specifically denies that the acts alleged in Count One, paragraph E, subparagraphs 1 through 3, and all subsections thereof, constituted wilful misconduct in office.

. . .

. . .

COUNT TWO

Respondent denies that he conducted himself in a manner "prejudicial to the administration of justice that brings the judicial office into disrepute", and answers the particular allegations as follows:

In answer to paragraph A, Respondent incorporates by reference his answer to the allegations contained in paragraphs A through E of Count One, as if fully set forth herein.

In answer to paragraph B, except as expressly admitted herein, Respondent denies that he has acted with unwarranted impatience, discourtesy or hostility toward unrepresented defendants in his court.

In answer to paragraph B, subparagraph 1, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 1, of Count One, as if fully set forth herein.

In answer to paragraph B, subparagraph 2, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 2, of Count One, as if fully set forth herein.

In answer to paragraph B, subparagraph 3, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 3, of Count One, as if fully set forth herein.

In answer to paragraph B, subparagraph 4, Respondent incorporates by reference his answer to the allegations contained

in paragraph A, subparagraph 4, of Count One, as if fully set forth herein.

In answer to paragraph B, subparagraph 5, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 5, of Count One, as if fully set forth herein.

In answer to paragraph B, subparagraph 6, Respondent incorporates by reference his answer to the allegations contained in paragraph A, subparagraph 6, of Count One, as if fully set forth herein.

Except as expressly admitted herein, Respondent denies each and every allegation contained in Count Two, paragraphs A and B, and all subparagraphs thereof, and specifically denies that he has acted with unwarranted impatience, discourtesy or hostility toward unrepresented defendants in his court. Respondent further specifically denies that the acts alleged in Count One, paragraphs A and B, and all subparagraphs thereof, constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

COUNT THREE

Respondent denies generally and specifically the allegations contained in Count Three, alleging his "persistent failure or inability to perform the judge's duties, and incorporates by reference his answers to the allegations contained in paragraphs A through E of Count One, and paragraph B of Count Two, as if fully set forth herein.

Except as expressly admitted herein, Respondent denies generally and specifically that the acts alleged in Counts One through Three of the Notice of Formal Proceedings constituted wilful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and persistent failure or inability to perform his duties as a judge.

WHEREFORE, Respondent, Judge Robert H. Furey, Jr., prays that:

1. The Notice of Formal Proceedings be dismissed; and,

2. Such other and further relief be granted as the Commission on Judicial Peformance deems just and proper.

DATED: August 8, 1985

Robert H. Furey, Jr.
JUDGE ROBERT H. FUREY, JR.
Respondent

Attorneys for Respondent:

EDWARD P. GEORGE, JR., INC.
and ALBERT C. S. RAMSEY
3728 Atlantic Avenue
P. O. Box 7068
Long Beach, California 90807-0068

Telephone: (213) 426-2171

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, JUDGE ROBERT H. FUREY, JR., am the Respondent in the above entitled proceeding. I have read the foregoing ANSWER TO NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED at Long Beach, California, on this 8th day of August, 1985.

Robert H. Furey, Jr.

JUDGE ROBERT H. FUREY, JR.

DECLARATION OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I, Kay L. Marcum, hereby declare:

I am, and was at all times herein mentioned, a citizen of the United States, and employed in the County of Los Angeles; over the age of eighteen years; and not a party to the within proceeding. My business address is 3728 Atlantic Avenue, Long Beach, California 90807.

On August 8, 1985, I served the within ANSWER TO NOTICE OF FORMAL PROCEEDINGS in this action on the Attorney General for the State of California, by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Long Beach, California, addressed as follows:

JOHN VAN DE KAMP, Attorney General
For the State of California
SUSAN D. MARTYNEC,
Deputy Attorney General
3580 Wilshire Blvd., 6th Floor
Los Angeles, California 90010

I declare, under penalty of perjury, that the foregoing is true and correct.

EXECUTED at Long Beach, California, on this 8th day of August, 1985.

Kay L. Marcum

KAY L. MARCUM