JEROME SAPIRO, JR., STATE BAR NO. 40068
THE SAPIRO LAW FIRM
711 Van Ness Avenue, Suite 440
P.O. Box 649015
San Francisco, California 94164-9015
Telephone: (415) 771-0100

RICHARD M. EWANISZYK, STATE BAR NO. 104153
14310 California Avenue, Suite 210
Victorville, CA 92392
Telephone: (760) 245-7332

Attorneys for Respondent
Judge John B. Gibson

FILED
JAN 29 1999
Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE JOHN B. GIBSON, NO. 152.	VERIFIED ANSWER

To: Robert C. Bonner
Chairperson
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105

Respondent, the Honorable John B. Gibson, Judge of the Superior Court for the State of California in and for the County of San Bernardino, answers the Notice of Formal Proceedings dated November 25, 1998, as follows:

PREAMBLE

1. The Honorable John B. Gibson was appointed a judge of the Municipal Court of the State of California in and for the County of San Bernardino in September, 1990. As a result of consolidation of the San Bernardino trial courts, he is now a judge of the Superior Court. After law school, Judge Gibson was

a clerk and a staff attorney in the Legal Aid Society in San Diego County; then he was employed in private practice; his next employment was as an attorney for Project Jove, representing ex-convicts in such matters as employment law disputes. Judge Gibson then served for over nine years as a deputy district attorney in San Bernardino County until he was appointed to the bench.

2. Judge Gibson denies that he is guilty of "willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, improper action and dereliction of duty within the meaning of Article VI, section 18 of the California Constitution" as alleged in the Notice of Formal Proceedings, page 1.

Count One

3. Judge Gibson admits that:

a. On August 6, 1996, Yvonne Valenzuela and Feliberto Payan, were arrested and charged with crimes; on August 9, 1996, those defendants were arraigned and entered pleas of not guilty; bail was set and dates for pre-preliminary and preliminary hearings were set for August 21 and 23, 1996, respectively; on August 21, 1996, a deputy district attorney and attorneys for each defendant announced that they were prepared to proceed with the preliminary hearing as previously set; on August 21, 1996, Judge Gibson confirmed the date for the preliminary hearing on August 23, 1996, and set the matter to commence at 8:30 a.m.; on August 23, 1996, a deputy district attorney and counsel for each defendant appeared for the preliminary hearing; on that date, the deputy district attorney

informed the court for the first time that a witness who is a deputy sheriff had been subpoenaed by the office of the District Attorney of San Bernardino County to appear in two different court proceedings, both of which were scheduled for 8:30 a.m., on August 23, 1996, one subpoena commanding the deputy sheriff's appearance in the People v. Valenzuela and Payan preliminary hearing, and the second to appear in a misdemeanor trial of boating under the influence, which trial was represented to be beginning that morning in Needles, California; the deputy district attorney who appeared before Judge Gibson had no proof of service of a subpoena on the deputy sheriff and presented no evidence to support his representations; the deputy district attorney, instead, merely represented that, on August 22, 1996, the deputy sheriff had been told to call in by telephone to state whether he was actually "going to be needed in Needles" and, on August 23, 1996, had called the deputy district attorney at 8:58 a.m., and said that he was "needed" and that the trial was "starting" at 9:00 a.m.; when Judge Gibson asked, the deputy district attorney could not tell the court what stage the trial in Needles was actually in or whether or not the deputy sheriff was actually needed at 8:30 a.m., nor how long his testimony in Needles was expected to last.

b. Therefore, Judge Gibson denied the motion of the deputy district attorney to continue the preliminary hearing, found that the deputy district attorney had failed to show good cause for a continuance, and did not find that the People exercised due diligence to compel the appearance of an allegedly needed witness; the deputy district attorney informed Judge

Gibson that the People were not prepared to proceed with the preliminary hearing; Judge Gibson therefore dismissed the action and ordered the defendants discharged from custody.

c. Thereafter, the People filed a motion under Penal Code section 871.5 to reinstate the complaint as to defendants Valenzuela and Payan; the motion was granted by another judge; Judge Gibson was ordered to resume proceedings in that action on September 26, 1996, at 8:30 a.m.

d. On September 26, 1996, Judge Gibson took the bench at approximately 8:30 a.m.; the defendants, the defense attorneys, and the prosecutor were not present; no court reporter was present; Judge Gibson does not recall the words that he said; the clerk prepared a minute order for each defendant which stated, "There being no appearance by the People, the case is dismissed." Judge Gibson denies that he intended to dismiss the case.

e. On a date subsequent to September 26, 1996, chief deputy district attorney Dennis Christy and Judge Gibson had a conversation in chambers about staffing and procedural matters relating to his department; the Valenzuela and Payan case; on October 4, 1996, Judge Gibson instructed the clerk to prepare minute orders for each defendant in the Valenzuela and Payan case in which the nature of the proceedings was described as a correction to the minute order dated September 26, 1996; the minute orders dated October 4, 1996, stated, "there being no appearance by the People -- This case should be dismissed"; on or about October 4, 1996, Judge Gibson called a meeting with the attorneys in the Valenzuela and Payan case and told them that the

matter had not been dismissed and that Judge Gibson had stated in substance that the case "should be dismissed;" and issued bench warrants for the defendants, to be held until October 18, 1996.

f. Defendant Valenzuela filed a motion to dismiss People v. Valenzuela, on the ground that the court lacked jurisdiction to proceed after the order of dismissal dated September 26, 1996; on February 21, 1997, a hearing on the motion was held before the Honorable Robert Law, Judge; during that hearing, Judge Gibson testified under oath regarding the events in the Valenzuela case on and after September 26, 1997.

4. Except as expressly admitted herein, Judge Gibson denies the allegations contained in Count One of the Notice of Formal Proceedings.

Count Two

5. Judge Gibson has known Ms. Joan Huntsman since at least 1985, when Ms. Huntsman was a senior employee of the office of the Municipal Court Clerk, and Judge Gibson was a deputy district attorney. Ms. Huntsman was a very warm and personable individual, and she and Judge Gibson got along very well. In addition, the daughter of Ms. Huntsman was a clerk in the office of the San Bernardino County District Attorney. Ms. Huntsman, Judge Gibson's wife, and Judge Gibson had a very cordial relationship even before Judge Gibson became a judge. For example, in 1990, Judge Gibson and his wife took Ms. Huntsman to a Frank Sinatra concert in Orange County. During or about 1993, Judge Gibson took his wife, his mother, and Ms. Huntsman to Las Vegas to see another Frank Sinatra show. Ms. Huntsman organized two bus trips to Las Vegas for court personnel, and

Judge Gibson and his wife participated. When they were socializing, the relationship between Ms. Huntsman, Mrs. Gibson, and Judge Gibson was cordial, friendly, and often humorous. Ms. Huntsman would often tell jokes that were innocent but which, when taken out of context, could be represented to have sexual innuendos.

6. When Judge Gibson became a judge, Ms. Huntsman was the chief clerk of the Victorville branch of the Municipal Court. She was in charge of logistics for the court, including such responsibilities as staffing, supplies, and directing cases to particular departments.

7. Before Judge Gibson was appointed to the bench, an intense rivalry had developed between the clerks in the Municipal Court and the clerks in the Superior Court in San Bernardino County. Both Ms. Huntsman and the late Judge Anthony Piazza told Judge Gibson that they felt they were being treated as inferior persons by the staff of the Superior Court.

8. After the death of Judge Anthony Piazza, Judge Gibson was the only Municipal Court judge regularly assigned to Victorville, and the Honorable Stanley Hodge, of the Superior Court, was the supervising judge. As court consolidation developed, it became clear that the offices of the clerks of the Municipal and Superior Courts would have to be consolidated. Ms. Francine Collier was the chief clerk of the Superior Court, and Ms. Huntsman was the chief clerk of the Municipal Court in Victorville. The County Clerk and the Clerk of the Municipal Court decided to appoint Ms. Collier the chief clerk of the consolidated courts, rather than appointing Ms. Huntsman.

9. Thereafter, Ms. Collier told Judge Gibson that Ms. Huntsman was attempting to undermine the authority of Ms. Collier. Ms. Collier and the County Clerk transferred Ms. Huntsman to another branch court to attempt to eliminate the friction. Some years later, Ms. Huntsman was told that, for budgetary reasons, her position was being eliminated and that she would have to choose between stepping down to a lower position or leaving the office of the clerk. Ms. Huntsman elected to leave. Judge Gibson did not participate in making the decision that Ms. Huntsman be demoted or leave. However, he did try to lobby to get Ms. Huntsman rehired. He was unsuccessful in that attempt.

10. Ms. Huntsman incorrectly believes that Judge Gibson and other judges caused Ms. Huntsman to be transferred from the Victorville branch court and ultimately to be given the choice of demotion or termination. The allegations by the Commission relate to allegations made by Ms. Huntsman in an unsuccessful civil suit filed against Judge Gibson and other judges from San Bernardino County in retaliation for the adverse personnel decisions made concerning Ms. Huntsman.

11. Judge Gibson admits that, during or about September, 1991, Judge Gibson sent to Ms. Huntsman an interoffice memorandum quoted at pages 3 and 4 of the Notice of Formal Proceedings. However, the circumstances have been taken out of context by the Commission. The memorandum lists reasons why Judge Gibson could not meet with Ms. Huntsman on a certain day. He intended the humor in the memorandum to be self-deprecating and meant no improper innuendo or offense to anyone. No one

complained about the memorandum at the time. If Judge Gibson had intended any improper innuendo, he would not have sent a copy of the memorandum to another judge.

12. Judge Gibson has no recollection regarding an interoffice memorandum entitled "Death of Joan Huntsman." A note on a copy of the memorandum does appear to be in Judge Gibson's handwriting. However, Judge Gibson has no recollection of the memorandum whatsoever. The memorandum was clearly written in jest and likely was authored by Judge Gibson. The memorandum dates from a time when the relationship between Judge Gibson and Ms. Huntsman was very cordial and clearly relates to something entirely innocuous.

13. In response to the last paragraph on page 4 of the Notice of Formal Proceedings, Judge Gibson admits that a remark similar to that attributed to Judge Gibson was made. However, the remark has been taken entirely out of context. Both before and after Judge Gibson became a judge, Ms. Huntsman bragged to Judge Gibson and to other attorneys about her own physique. For example, on one occasion, Ms. Huntsman bragged to Judge Gibson about the fact that another court employee came to Ms. Huntsman and asked for advice about shaping up the derriere of the other employee. On another occasion, Ms. Huntsman boasted to Judge Gibson that another employee had obtained breast implants, but Ms. Huntsman would never need them. From Ms. Huntsman's self-laudatory remarks like these, Judge Gibson knew that Ms. Huntsman was quite proud of her own anatomy, particularly her derriere and legs. One day, Judge Gibson was meeting with a friend in chambers, and Ms. Huntsman came in. After the conversation with

Ms. Huntsman was over, as she was about to leave, Judge Gibson did make the remark attributed to him in the Notice of Formal Proceedings. Ms. Huntsman laughed. She never complained to Judge Gibson about the remark. However, notwithstanding the background of the voluntary conversations initiated by Ms. Huntsman with Judge Gibson about her own anatomy, Judge Gibson realized that the remark was misappropriate and regretted making it as soon as he said it. He did not make any similar remark on any other occasion.

14. Judge Gibson denies the allegations contained in the first paragraph on page 5 of the Notice of Formal Proceedings.

15. Judge Gibson admits that, during or about early 1992, Judge Gibson spoke with Ms. Huntsman about the attire of another female court employee. At that time, Judge Gibson was the only Municipal Court judge regularly sitting in Victorville, California. Ms. Huntsman was then the Senior Deputy Clerk assigned to the Victorville branch court. Judge Gibson discussed with Ms. Huntsman the inappropriateness of attire worn by female employees in the Clerk's office. After he expressed his concerns to Ms. Huntsman, she said she would dictate a policy statement regarding appropriate attire. In that context, Judge Gibson appropriately discussed the clothing of Judy Thurzo with Ms. Huntsman. As a Small Claims Court supervisor, Ms. Thurzo frequently worked in contact with the public, for example when she worked behind the counter at the desk of the Small Claims Court Clerk. Judge Gibson pointed out to Ms. Huntsman that the attire of Ms. Thurzo was not appropriate for someone who is a

spokesperson for the court in contact with the public. Judge Gibson did not ever comment to Ms. Huntsman that he was excited by Ms. Thurzo or about the size of her bra. To the contrary, Judge Gibson's sole concern was about inappropriate attire for a court employee.

16. Judge Gibson denies the allegations contained in the third and fourth paragraphs on page 5 of the Notice of Formal Proceedings.

17. Judge Gibson admits the allegations contained in the fifth paragraph on page 5 of the Notice of Formal Proceedings. Judge Gibson had known Probation Officer Susan Gradillas for many years. The relationship between them had been totally professional in all respects. In the incident described in the fifth paragraph on page 5 of the Notice, Judge Gibson did not intend to offend Ms. Gradillas in any way. Instead, Judge Gibson was pleased that the pregnancy of Ms. Gradillas was successful and that Ms. Gradillas seemed elated, and he wished her nothing but happiness after she left the employ of the County Probation Department. Shortly after the incident, Judge Gibson's staff told him that Ms. Gradillas had been highly offended by the incident. Judge Gibson therefore sought out Ms. Gradillas the following day and apologized for his conduct. Judge Gibson told Ms. Gradillas that he did not mean to offend her. Judge Gibson believes that Ms. Gradillas accepted his apology, which was sincerely given.

18. Judge Gibson admits that the statements he acknowledges he made to Ms. Huntsman and his conduct toward

Ms. Gradillas were inappropriate, and he is remorseful for that conduct.

19. Except as admitted above, Judge Gibson denies the allegations contained in Count Two of the Notice of Formal Proceedings.

FIRST AFFIRMATIVE DEFENSE

20. The basis of the charges by the Commission in Count One are unconstitutionally vague and violate the due process and equal protection guarantees of the constitutions of the State of California and of the United States.

SECOND AFFIRMATIVE DEFENSE

21. These proceedings are in violation of the guarantees to Judge Gibson of due process specified in California Rule of Court 904.2 in that the Commission failed to provide to Judge Gibson the name of any person making a verified statement regarding any allegation of wrongdoing by Judge Gibson or, alternatively, that the investigation was commenced on the Commission's own motion, to allow Judge Gibson to be afforded a reasonable opportunity to present matters in opposition. The process of the Commission further violates the due process rights of Judge Gibson because of lack of substantial procedural safeguards available to Judge Gibson.

THIRD AFFIRMATIVE DEFENSE

22. The Notice of Formal Proceedings violates the due process and equal protection guarantees of the constitutions of the State of California and of the United States by failing to

state with specificity in Count One the testimony which the Commission alleges was untruthful.

Dated: January 29, 1999

THE SAPIRO LAW FIRM

By: _____
Jerome Sapiro, Jr.

Attorneys for Respondent
Judge John B. Gibson

VERIFICATION

I, Judge John B. Gibson, declare as follows:

1. I am Respondent in this matter. I have read the Verified Answer and know the contents thereof, and the same is true to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on January 27, 1999, at Nightwood, California.

Judge John B. Gibson

(1005.1:20:vy)

PROOF OF SERVICE BY HAND DELIVERY

I am over the age of eighteen years and not a party to the above-entitled action. My business address is 711 Van Ness Avenue, Suite 440, P.O. Box 649015, San Francisco, California 94164-9015. On January 29, 1999, I served the within VERIFIED ANSWER, by personally delivering to and leaving at the offices of the following persons a true copy of said document:

Jack Coyle, Esq.
William Smith, Esq.
Office of Trial Counsel
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105

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

Dated: January 29, 1999

Nicholas Zwart

(1005.1:20:vy)