

PUBLIC ADMONISHMENT OF JUDGE HARVEY GISS

The Commission on Judicial Performance has ordered Judge Harvey Giss publicly admonished pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Judge Giss has been a judge of the Los Angeles County Superior Court since April 2001. His current term began in January 2009.

A criminal case was transferred to Judge Giss for trial in July 2010. The prosecutor and counsel for the co-defendants appeared in Judge Giss's courtroom. Counsel were discussing, off the record, the prospects for a plea agreement. The defendants were in a holding cell but a family member of one of the defendants was present in the courtroom.

According to Judge Giss, he perceived that counsel wished him to intercede and explain the potential benefits of the plea offer to the defendants, which the judge did not believe he could do. Judge Giss made a remark to the effect that he guessed that the only thing that would make the defendants plead was for the judge to come out in a white sheet and a pointy white hat, which the judge indicated he would not do. His remark referenced the Ku Klux Klan and the fact that both defendants were African-American.

Two days later, the defense requested that Judge Giss recuse from the case on the basis of his remark and the defendants' concern regarding his impartiality. While conceding it was a "bad statement," the judge also remarked: "People don't have a sense of humor anymore." The judge's comment referencing the Ku Klux Klan eventually resulted in his recusal from the case.

Judge Giss should have known that his insensitive courtroom reference to a history of violence towards persons of the defendants' ancestry, whether intended to make a valid point regarding his role as a judge or in jest, was offensive and inappropriate. A judge's "subjective intent is not at issue," "[a]s a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary." (*Gonzalez v. Commission on Judicial Performance* (1983), 33 Cal.3d 359, 376.)

The commission determined that the judge's remark constituted a failure to refrain from speech that would reasonably be perceived as bias or prejudice, as required by canon 3B(5) of the California Code of Judicial Ethics; a failure to be dignified and courteous to litigants, lawyers and others with whom the judge deals in an official capacity, as required by canon 3B(4); and a failure to avoid impropriety and the appearance of impropriety, and act at all times in a manner that promotes public confidence in the impartiality of the judiciary, as required by canon 2.

Judge Giss's conduct described above was, at a minimum, improper action pursuant to article VI, section 18(d)(3) of the California Constitution.

Commission members Hon. Judith D. McConnell, Hon. Frederick P. Horn, Mr. Anthony P. Capozzi, Mr. Peter E. Flores, Jr., Ms. Barbara Schraeger, Mr. Lawrence Simi, Ms. Maya Dillard Smith, Ms. Sandra Talcott, Mr. Nathaniel Trives, and Hon. Erica R. Yew voted to impose a public admonishment. Commission member Mr. Samuel A. Hardage did not participate.

Dated: March 16, 2011

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 March 16, 2011, I served the attached:

PUBLIC ADMONISHMENT OF JUDGE HARVEY GISS

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

Via U.S. Mail and Facsimile

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

- (BY 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 2003(3) and the transmission was reported as complete and without error. Pursuant to Rule 2003(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 2008(e)(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 March 16, 2011 at San Francisco, California.

Judith R. Starks