

10/15/82

REC'D 10-18-82
12:15 PM RYAN +
ROGER MAN

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE)
)
No. 54)
_____)

FIRST AMENDED
NOTICE OF
FORMAL PROCEEDINGS

TO: JUDGE MARION E. GUBLER

IT APPEARING THAT since June 21, 1973, and at all times herein, you have been a Judge of the Burbank Municipal Court District, County of Los Angeles; and

Preliminary investigation having been made pursuant to the provisions of Rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission, as a result of said preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to Section 18 of Article VI of the California Constitution and in accordance with Rules 901-902, California Rules of Court, and pursuant to order of the Special Masters at a pre-hearing hearing on October 8, 1982, that the Notice of Formal Proceedings be amended.

NOW, THEREFORE, you are hereby charged with wilful misconduct in office, conduct prejudicial to the

administration of justice that brings the judicial office into disrepute, and violating your oath to well and faithfully discharge the duties of your office in the following particulars:

COUNT ONE

You are charged in count one with wilful misconduct in office:

A. You improperly exercised judicial authority in a case after a peremptory disqualification under Code of Civil Procedure section 170.6 had been filed against you, to wit:

1. That on or about August 27, 1980, Los Angeles Deputy Public Defender James Racusin filed an affidavit of prejudice against you in the case of People v. De Carolis, case Nos. Y66605, Y25325, and Y70795.

2. The case was then assigned to Commissioner Murphy, but he subsequently disqualified himself. That on or about September 2, 1980, you wrote a note to Commissioner Murphy in connection with the De Carolis case suggesting "\$500 for all PD's work. . . ."

B. You improperly ordered the issuance of a bench warrant for a defendant who was on his own recognizance release, to wit:

1. A complaint was filed against Ronald Kirkland in Case No. M53557 on or about October 18,

1979, and he was notified by letter dated October 17 to appear on October 25, 1979. Mr. Kirkland failed to appear for arraignment before Judge Kaufman. A declaration in support of issuance for an arrest warrant was filed. On November 7, 1979, an arrest warrant was issued with \$500 bail. On November 16, 1979, the warrant was recalled and defendant appeared for arraignment before Commissioner Murpny. Defendant was in pro per and was duly arraigned. Mr. Kirkland pled not guilty, and did not waive time for trial. Pretrial was set for December 27, 1979, and trial was set for January 8, 1980, and Mr. Kirkland was ordered to be present on both days. Mr. Kirkland was released on his own recognizance (O.R.).

2. That on or about November 19, 1979, you discovered that the trial date for Mr. Kirkland had not been set within the required 45-day statutory limit. That on or about November 19, 1979, without any request by the prosecution, you ordered a bench warrant for Mr. Kirkland, set bail at \$500, and vacated the pretrial and trial dates that had previously been set on November 16, 1979.

C. You improperly issued orders in contravention of the restrictions set forth in Penal Code section 12028 to the Burbank Police Department to release to

* * * * *

various police officers firearms confiscated from defendants, to wit:

1. That on or about July 18, 1979, you ordered the Burbank Police Department to release to Gordon Mangel a Colt .45 automatic, serial number 705C2780, and a colt .22 Magnum revolver, serial number G0238, that were confiscated in connection with the case of People v. Michael Andrew Diener, M51680. Mr. Diener allegedly sold these firearms to Mr. Mangel on or about July 9, 1979.

2. That on or about April 23, 1980, you ordered the Burbank Police Department to release to Gordon Mangel a Colt .32 caliber revolver, serial number 44143, that was confiscated in connection with the case of People v. George McDaniel, M55285. Mr. McDaniel allegedly sold this firearm to Mr. Mangel on or about April 23, 1980.

3. That on or about April 17, 1980, you ordered the Burbank Police Department to release to Rollin A. Hill, Jr., a K-Mart .22 Caliber rifle, serial number 23-887380, and a Ruger .22 Caliber pistol, serial number 10-73333, that were confiscated in connection with the case of People v. Rafael Sanchez Campos, M52073. Mr. Campos allegedly sold these firearms to Mr. Hill on or about April 17, 1980.

* * * * *

4. That on or about August 13, 1980, you ordered the Burbank Police Department to release to Craig Ratliff a Smith and Wesson .38 caliber revolver, model 60, serial number R224731, that was confiscated in connection with the case of People v. Dane Andrew Boska, M55097. Mr. Boska's father allegedly sold this firearm to Mr. Ratliff on or about August 13, 1980.

D. You improperly penalized indigent defendants for the exercise of their constitutional right to counsel by requiring them to pay the court ordered attorney's fees at a date prior to the time set for the payment of their fines on the criminal cases because the costs for counsel, a civil obligation, was used to place an unreasonable obstacle to the satisfaction of the fine imposed on the criminal case, to wit:

1. That on or about December of 1979, you gave instructions to the clerk's office that if the fine and attorney's fees were due at the same time, the fees were to be collected first.

2. That on or about May 1979 through December 1980, your general practice was to require defendants to pay their court ordered attorney's fees at a date prior to the time set for the payment of their fines on the criminal cases. Examples of your practice in this regard include:

* * * * *

a. That on or about June 2, 1980, you ordered Robert Navarro, M55628, to pay \$50 in attorney's fees forthwith and to pay a total fine and penalty assessment of \$125 on or before July 16, 1980.

b. That on or about June 9, 1980, you ordered Jorge A. Orellano, M55588, to pay \$50 in attorney's fees forthwith and to pay a total fine and penalty assessment of \$125 on or before July 14, 1980.

c. That on or about January 28, 1980, you ordered Ana Fernandez, M51788, to pay \$50 in attorney's fees on or before February 29, 1980, and to pay a total fine and penalty assessment of \$380; \$300 forthwith from bail and \$80 on or before March 10, 1980.

d. That on or about November 13, 1979, you ordered Joseph Routenberg, M51995, to pay \$100 in attorney's fees on or before December 13, 1979, and to pay a total fine and penalty assessment of \$195; \$100 by December 13, 1979, and \$95 by January 14, 1980.

e. That on or about August 8, 1979, you ordered Martin Nachtman, M52278, to pay \$50 in attorney's fees on or about September 12, 1979, and to pay a total fine and penalty assessment of \$130

by October 10, 1979.

f. That on or about June 27, 1979, you ordered Lloyd Morris, M52426, to pay \$100 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$270 by August 27, 1979, or, in lieu thereof the fine, to perform 200 hours of free community service.

g. That on or about August 15, 1979, you ordered Eugene Bob Sparks, M52457, to pay \$35 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$130 by September 17, 1979.

h. That on or about September 7, 1979, you ordered Gyllian Stephenson, M52746, to pay \$50 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$130; \$75 forthwith and \$55 by November 1, 1979.

i. That on or about January 11, 1980, you ordered Randall Warner, M53524, to pay \$100 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$255 by January 18, 1980.

j. That on or about May 21, 1980, you ordered Raymond Rodriguez, Jr., M53597, to pay \$130 in attorney's fees on or before June 20, 1980, and to pay a total fine and penalty assessment of \$130 on or before July 21, 1980. On June 20, 1980, you

ordered a bench warrant for Mr. Rodriguez.

k. That on or about December 5, 1979, you ordered Charles Languasco aka Chuck, M53736, to pay \$50 in attorney's fees on or before January 4, 1980, and to pay a total fine and penalty assessment of \$130 on or before February 14, 1980.

l. That on or about December 20, 1980, you ordered Richard Studer, M53765, to pay \$100 in attorney's fees on or before January 21, 1980, and to pay a total fine and penalty assessment of \$290; \$145 by February 21, 1980 and \$145 by March 21, 1980.

m. That on or about December 18, 1979, you ordered Narilyn Jean Kszos, aka Susan Jean McDonnell, M54001, to pay \$50 in attorney's fees on or before January 18, 1980, and to pay a total fine and penalty assessment of \$100 by February 22, 1980.

n. That on or about January 31, 1980, you ordered Severiano Casas-Valdez, M54116, to pay \$100 in attorney's fees on or before February 14, 1980, and to pay a total fine and penalty assessment of \$350; \$175 by February 29, 1980, and \$175 by March 31, 1980.

o. That on or about March 3, 1980, you ordered Steven Evan, M54258, to pay \$300 in

attorney's fees on or before March 27, 1980, and to pay a total fine and penalty assessment of \$380 on or before April 24, 1980.

p. That on or about February 28, 1980, you ordered Dale Runyan, M54319, to pay \$100 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$290 on or before March 28, 1980.

q. That on or about May 12, 1980, you ordered Ruben Garcia, M54657, to pay \$40 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$130 on or before June 12, 1980.

r. That on or about April 15, 1980, you ordered Edgar Gallant, M054972, to pay \$50 in attorney's fees on or before May 15, 1980, and to pay a total fine and penalty assessment of \$350 on or before June 16, 1980.

s. That on or about May 23, 1980, you ordered Gary Pyne, M055277, to pay \$100 in attorney's fees on or about June 23, 1980, and to pay a total fine and penalty assessment of \$195 on or before July 24, 1980.

t. That on or about June 2, 1980, you ordered Henry Bowling, M055627, to pay \$50 in attorney's fees on or before June 23, 1980, and to

pay a total fine and penalty assessment of \$130 on or before July 2, 1980.

u. That on or about November 24, 1980, you ordered Randolph Torres aka Randy Torres, M056007, to pay \$200 in attorney's fees on or before December 22, 1980, and to pay a total fine and penalty assessment of \$445; \$225 due January 19, 1981, and \$220 due February 23, 1981.

v. That on or about September 15, 1980, you ordered Glenn Wolfe, M056136, to pay \$100 in attorney's fees payable as \$50 forthwith and \$50 on or before September 22, 1980, and to pay a total fine and penalty assessment of \$320; \$160 on October 22, 1980, and \$160 on November 21, 1980.

w. That on or about August 19, 1980, you ordered Joseph Calabrase, M056349, to pay \$45 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$100 on or before August 29, 1980.

x. That on or about July 13, 1979, you ordered Jaime Chavez, M52435, to pay \$100 in attorney's fees forthwith from bail, and to pay a total fine and penalty assessment of \$350; \$275 forthwith from bail and \$75 payable September 5, 1979.

* * * * *

y. That on or about July 22, 1980, you ordered Irma Leal, M54404, to pay \$100 in attorney's fees on or before August 4, 1980, and to pay a total fine and penalty assessment of \$130 by September 8, 1980.

z. That on or about March 4, 1980, you ordered Michael Wesson, M53392, to pay \$300 in attorney's fees; \$500 forthwith and \$250 by April 4, 1980, and to pay a total fine and penalty assessment of \$755 on or before May 17, 1980.

aa. That on or about December 20, 1979, you ordered Ronald Ayers, M53806, to pay \$100 on or before January 31, 1980, and to pay a total fine and penalty assessment of \$100 on or before February 21, 1980.

bb. That on or about February 27, 1980, you ordered Eleni Tsarouhas, M54142, to pay \$100 in attorney's fees forthwith, and to pay a total fine and penalty assessment of \$205 by March 27, 1980.

cc. That on or about July 1, 1980, you ordered Frederick Thompson, M055820, to pay \$50 in attorney's fees forthwith on or before July 16, 1980, and a total fine and penalty assessment of \$130 on or before August 29, 1980.

E. You improperly extracted money from defendants' posted bail to satisfy the defendants' obligation for

attorney's fees, in contravention of former Penal Code section 1297, to wit:

1. That on or about May 1979 through December 1980, your general practice was to extract from a defendant's posted bail the amount of money needed to satisfy the assessed attorney's fees. As an example of this practice:

a. That on or about September 22, 1980, Randolph Hock posted bail of \$440 in case No. N56512. That on or about November 17, 1980, you ordered Mr. Hock to pay \$100 in attorney's fees forthwith from cash bail. Additionally, you ordered Mr. Hock to pay a total fine and penalty assessment of \$440; payable \$340 forthwith from cash bail and the balance of \$100 on January 5, 1981.

b. That on or about June 4, 1979, Jaime Chavez posted bail of \$375 in case M52435. That on or about July 13, 1979, you ordered Mr. Chavez to pay \$100 in attorney's fees forthwith from bail. Additionally, you ordered Mr. Chavez to pay a total fine and penalty assessment of \$350; \$275 forthwith from bail and \$75 payable September 5, 1979.

c. That on or about December 5, 1979, Thomas Munden posted bail of \$100 in case M52614. That on or about March 18, 1980, you ordered the

\$100 in posted bail to be applied to the satisfaction of attorney's fees.

d. That on or about September 19, 1979, Fred Callaway posted bail of \$250 in case M53114. That on or about March 18, 1979, you ordered Mr. Callaway to pay \$100 in attorney's fees on or about March 21, 1980, with bail to be assigned and applied to legal fees.

e. That on or about January 15, 1980, Rosa Garcia posted bail of \$500 in case M54326. That on or about March 24, 1980, you ordered Ms. Garcia to pay \$100 in attorney's fees from bail.

f. That on or about March 24, 1980, you ordered Margarita Reynosa in case M54381 to pay \$100 in attorney's fees forthwith from the posted bail in case M54326.

g. That on or about April 8, 1980, you ordered Mark Stephens in case M055141 to pay \$100 in attorney's fees forthwith from the posted bail in case M55142.

F. You improperly threatened to issue a warrant for the arrest of a defendant who paid only his fine on instruction from his attorney in contravention of your order to the clerk's office that attorney's fees were to be collected first when such fees and a fine were due together, to wit:

1. That on or about December 11, 1979, Judge Kaufman ordered Mervin Anderson, M52694, to pay a total fine and penalty assessment of \$65 by January 14, 1980. That on or about January 15, 1980, Mr. Anderson attempted to pay his fine at the clerk's office and was informed that you had given instructions that if fees and the fine were due at the same time, the fees had to be paid first. On instruction from his attorney, Deputy Public Defender Edward Van Gelder, Mr. Anderson wrote "fine only" on his check for \$65 and gave it to the clerk's office. On or about the following day you told Deputy Public Defender Van Gelder to contact Mr. Anderson and have him pay his fees or you would issue a warrant for Anderson's arrest and assess him \$200 to \$250 in attorney's fees.

G. You improperly based the amount of assessed attorney's fees for public defender services on the number of appearances made and the rates charged by private counsel rather than the actual cost to Los Angeles County, to wit:

1. That on or about May 1979 through December 1980, your general practice was to assess attorney's fees for public defender services on the number of appearances made and the rates private counsel would charge rather than the actual time spent on the case by counsel and the cost to Los Angeles County. Some examples of your practice in this regard include:

a. That on or about June 3, 1980, you ordered Alejandra Rueda, M55499, to pay \$100 in attorney's fees without inquiring about the amount of time the public defender actually spent on the case.

b. That on or about November 17, 1980, you ordered Randolph Hock to pay \$100 in attorney's fees after Deputy Public Defender James Racusin informed you that only 30 minutes had been spent on the case.

c. That on or about June 2, 1980, you ordered Robert Navarro to pay \$50 in attorney's fees without inquiring about the amount of time the public defender actually spent on the case.

d. That on or about June 9, 1980, you ordered Jorge Orellano to pay \$40 in attorney's fees without inquiring about the amount of time spent on the case by the public defender.

e. That on or about August 8, 1979, you ordered Martin Nachtman, M52278, to pay \$50 in attorney's fees without inquiring about the amount of time spent on the case by the public defender.

H. You improperly and arbitrarily assessed attorney's fees that were neither reasonable nor compatible with the defendant's financial ability to pay, to wit:

* * * * *

1. That on or about May 1979 through December 1980, your general practice was to assess attorney's fees that were neither reasonable nor compatible with the defendant's financial ability to pay. Examples of your practice in this regard include:

a. That on or about June 3, 1980, you ordered Alejandra Rueda to pay \$50 in attorney's fees on June 18, 1980, and to pay her fine of \$125 on August 4, 1980. When Deputy Public Defender Racusin objected to the date for the fees being before the date for the fine, you vacated your order for \$50 in fees and ordered her to pay \$100 in fees. The financial declaration filed by Mrs. Rueda showed \$400 net income per month, \$20 cash on hand, a daughter age 3, and \$325 in expenses per month.

b. That on or about June 9, 1980, you ordered Jorge Orellano to pay \$40 in attorney's fees forthwith and a fine and penalty assessment of \$125 by July 14, 1980. Mr. Orellano's financial declaration listed his take home pay as \$119 a month and his expenses as \$150 a month.

c. That on or about November 17, 1980, you ordered Randolph Hock to pay \$100 in attorney's fees forthwith and a balance of \$100 on a fine of \$440 by January 5, 1981. Mr. Hock's financial

declaration showed he was not presently employed, had \$5 cash on hand, and child support payments of \$100 per month.

d. That on or about July 22, 1980, you ordered Irma Leal, M54404, to pay \$100 in attorney's fees on or before August 4, 1980, and a fine of \$130 to be paid by September 8, 1980. Mrs. Leal's financial declaration showed her income as 0; her husband's income as \$600 net per month; and the family expenses as \$560 a month.

e. That on or about January 21, 1980, you ordered Alicia Torres, M53683, to pay \$100 in attorney's fees forthwith, and a fine of \$140 which was payable from posted bail. Ms. Torres financial declaration showed she was unemployed, had no cash on hand, and had monthly expenses of \$140 per month.

f. That on or about March 4, 1980, you ordered Michael Wesson, M53392, to pay \$300 in attorney's fees; \$50 forthwith and \$250 by April 4, 1980, and to pay a total fine and penalty of \$755 on or about May 19, 1980. Mr. Wesson's financial declaration showed his income as a net "\$250" and his monthly expenses as \$200. His declaration also lists \$200 as income from child support payments. However, the form indicates that Mr. Wesson was

divorced and that no children were living with him.

g. That on or about May 21, 1980, you ordered Raymond Rodriguez, Jr., M53597, to pay \$100 in attorney's fees on or before June 20, 1980, and to pay a fine and penalty of \$130 on or before July 21, 1980. That on June 20, 1980, the docket reflects the issuance of a bench warrant. Mr. Rodriguez's financial declaration showed he was unemployed with monthly expenses of \$130.

h. That on or about December 20, 1979, you ordered Ronald Ayers, M53806 to pay \$100 in attorney's fees on or before January 31, 1980, and to pay a total fine and penalty of \$100 on or before February 21, 1980. Mr. Ayers' financial declaration listed his take home pay as between \$100-\$200 for part time work. His expenses were listed as approximately \$163.50 per month.

i. That on or about February 27, 1980, you ordered Eleni Tsarouhas, M54142, to pay \$100 in attorney's fees forthwith, and to pay a fine and penalty of \$255; \$50 forthwith and \$205 by March 27, 1980. Mr. Tsarouhas' financial declaration showed he was unemployed, owed a bank \$10,000, had monthly expenses of \$800, and had \$10 cash on hand.

* * * * *

j. That on or about March 24, 1980, you ordered Margarita Reynosa, M54381, to pay \$100 in attorney's fees forthwith from posted bail in case M54326, and to pay a fine and penalty of \$130 from the posted bail in case M54326. Ms. Reynosa's financial declaration showed she was unemployed with four children, receiving \$480 in AFDC, and had monthly expenses of \$450.

k. That on or about July 1, 1980, you ordered Frederick Thompson, M055820, to pay \$50 in attorney's fees on or about July 16, 1980, and to pay a fine and penalty of \$130 on or before August 29, 1980. Mr. Thompson's financial declaration listed his gross monthly income as \$550 and his monthly expenses as \$330 with an anticipated increase to \$580.

l. That on or about August 8, 1979, you ordered Martin Nachtmann, M52278, to pay \$50 in attorney's fees even though Mr. Nachtmann was unemployed and so listed that fact on his financial declaration.

m. That on or about January 21, 1980, you ordered Walter Liscano, M53985, to pay \$100 in attorney's fees on or before February 22, 1980, and to pay a fine and penalty of \$350; \$175 by February 29, 1980 and \$175 by April 14, 1980.

Mr. Liscano's financial declaration indicated that he was unemployed with zero income and zero assets.

COUNT TWO


For a further and separate cause of action, you are charged in count two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In support of this cause of action, paragraphs A through H of count one are hereby incorporated by this reference as though fully set forth herein.

You have the right to file a written answer to the charges against you within 15 days after service of this notice upon you with the Commission on Judicial Performance, Room 3052, State Building, 350 McAllister Street, San Francisco, California 94102. Such answer must be verified, must conform in style to subdivision (c) of rule 15 of the Rules on Appeal, and must consist of an original and 11 legible copies.

BY Order of the Commission on Judicial Performance.

DATED: _____

10/15/82



Presiding Special Master