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**Commission on
Judicial Performance**

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE FRED L. HEENE, JR.,
NO. 153.

NOTICE OF FORMAL PROCEEDINGS

To Fred L. Heene, Jr., a Judge of the San Bernardino County Municipal Court, from December 1992 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with 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 providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

People v. Fullerton

On the morning of July 30, 1996, you presided over the preliminary hearing in the rape case of *People v. Fullerton*. The alleged victim (referred to as Ms. Doe) testified inconsistently with what she had told police. Ms. Doe testified that she had given the police information that was not true. At the conclusion of her testimony, you ordered that she be taken into custody, stating:

Okay, ma'am, you are not allowed to leave. The bailiff is ordered to take her into custody and I am going to set bail in the amount of \$25,000 and ask that charges be filed ... She has admitted to this Court a crime.

Deputy District Attorney Friedman, who was prosecuting the preliminary hearing, asked that you take a recess before taking the witness into custody; you refused. When Friedman noted that there were no charges pending against Ms. Doe, you stated that she had admitted a crime in court and again ordered her remanded. Shortly thereafter, Deputy District Attorney Hansen, Friedman's supervisor, appeared in court and expressed concern that the witness had been taken into custody under such circumstances. You again stated that the witness had admitted a crime. When Hansen noted that the district attorney's office had not made a determination as to whether a crime had been committed, you responded that Ms. Doe had admitted on cross-examination that she had filed a false police report.

Shortly thereafter, you released Ms. Doe from the custody of the bailiff to her attorney upon the condition that she was not free to leave the courthouse. The preliminary hearing was thereafter concluded. After the lunch recess, you had Ms. Doe brought into the courtroom, and told her that you were ordering a transcript to be prepared for the district attorney's office to review to possibly file criminal

charges. You stated that you were going to order a day for Ms. Doe to return to court, then withdrew that order at Friedman's request. You then told Ms. Doe that she was free to leave.

You improperly ordered the witness into custody. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(4) and 3B(7).

COUNT TWO

People v. Reis

On February 10, 1997, you presided over the court trial on a speeding ticket in the case of *People v. Reis*. After the police officer testified, you asked defendant Reis, who was representing himself, to tell his side of the story. The following then occurred:

MR. REIS: Do I get to cross-examine the officer?

THE COURT: No, sir. You tell me your side of the case.

MR. REIS: Oh. I thought - - I misunderstood. I thought we got to cross-examine the officer also.

THE COURT: Sir, it is early on Monday morning.

MR. REIS: I don't want to offend you.

THE COURT: Okay. All right. I asked you to tell me your side of the case.

THE COURT: Okay.

THE COURT: Now, for the third time, would you please tell me your side of the case?

After the defendant spoke, you imposed a fine.

You denied the defendant the right to cross-examination. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(7) and 3B(8).

COUNT THREE

People v. Boykin

On December 1, 1997, you presided over the case of *People v. Boykin*. Defendant Boykin was charged with the infraction of driving a vehicle with expired registration. Boykin had entered a not guilty plea on November 13, 1997, and the matter was set for a court trial on December 15, 1997. Boykin appeared on December 1, 1997, because he had been unable to pay the \$200 bail set on November 13. Boykin was representing himself.

You ordered Boykin to sell his car by December 11, and threatened that if he did not do so, you would put him in custody, as follows:

THE COURT. Okay. Tell you what. Get rid of the car, that will get you some money, and then we will get rid of the ticket, okay? Then you will solve my problem because you won't be driving. You will solve everybody else's problem because the car is gone and you will have some money; right?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

THE DEFENDANT: Hopefully I can get some money now that I am working.

THE COURT: Be back here December 11, okay, December 11th showing that the car is sold, okay.

THE DEFENDANT: Well, if I can't sell it by then, I mean, I can't make people buy it, sir. I don't - -

...

THE COURT: Do you know how to determine the sale price of something?

THE DEFENDANT: No, sir.

THE COURT: You start at a nickel and you work up. And when you are down to the last person, then that's the sale price. All right? I guarantee you, offer that thing up for a hundred dollars, you are going to have some buyers, aren't you?

THE DEFENDANT: Not necessarily on the car, if you seen the car.

THE COURT: Then a tow company will buy it.

THE DEFENDANT: For 20 dollars or so.

THE COURT: Right. You be back here with that car gone on December 11th. Because one of the two of you is going to be gone on December 11th, all right? All right. We have been playing around with this since July. Make it happen. December 11th you are here, either you have a sale that's been registered with DMV showing the car is gone, or we will give you some vacation time to think about it.

THE DEFENDANT: What if I get it registered by then?

THE COURT: Did you hear me? Was I not clear? Make the car gone on December 11th or you will get some vacation time. Is that clear?

THE DEFENDANT: Yes, sir.

Defendant Boykin appeared on December 11 and stated that he had sold his car.

You improperly ordered the defendant to sell his property or go to jail. Your conduct violated the Code of Judicial Ethics canons 1, 2A, 3B(2), 3B(4) and 3B(8).

COUNT FOUR

People v. Lopez

On December 30, 1997, you presided over the misdemeanor case of *People v. Lopez*. Defendant Lopez had been previously ordered by another judge to do community service in lieu of a fine, as part of a sentence for driving on a suspended license and two vehicle code infractions. Lopez had not completed the community work before the due date of December 13, 1997, and came to the courthouse on December 30, 1997, to request an extension. Lopez had not been scheduled to appear in court on December 30. She was sent to your department. She appeared without an attorney. You inquired whether she had completed the community service or paid the fine, and she said that she had not. The following occurred:

THE COURT: Have a seat right there ma'am (pointing). All right. Ms. Lopez, stand up, please. This Court has tried 16 different - - well, three different ways to try to help you get it paid. It is \$1,314, we divide that by 30, and that's 44 days in the county jail. You will be remanded into custody. Okay. Good luck to you.

MS. LOPEZ: Your Honor, can I say something?

THE COURT: Sure. What do you want to say?

MS. LOPEZ: I just had a baby. And when I was pregnant, I was on bed rest from two months on and I couldn't do my community service.

THE COURT: Did you come into court and tell them that?

MS. LOPEZ: No, I didn't, your Honor.

THE COURT: Okay. Good luck

MS. LOPEZ: I have a seven day old baby at home.

THE COURT: Ma'am, you should have thought about that a long time ago.

You failed to give the defendant proper notice that you were conducting a violation of probation hearing. You sentenced the defendant to jail without affording due process. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(4), 3B(7) and 3B(8).

COUNT FIVE

People v. Hillmann

In January 1998, you presided over a jury trial in the case of *People v. Hillmann*. The trial was completed and the jury began deliberations. On January 13, 1998, a juror was late to court. He was replaced with an alternate juror. When the late juror appeared, you asked for his explanation for being late without citing him for contempt, then found him in contempt and remanded him.

You failed to follow proper contempt procedures. You failed to give the juror proper notice that you were conducting a contempt hearing. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(4), 3B(7) and 3B(8).

COUNT SIX

People v. MacLeod

On February 19, 1998, a defendant charged with speeding and a related misdemeanor for failure to attend traffic school appeared before you for arraignment on the misdemeanor, in the case of *People v. MacLeod*. Defendant MacLeod appeared without an attorney. She had not entered a plea on the traffic ticket; criminal proceedings had been stayed pending the completion of traffic school. MacLeod had not entered a guilty or no contest plea on the misdemeanor. The following occurred:

THE COURT: ...What seems to be the problem?

THE DEFENDANT: Well, I came to court once and I got an extension to January 1st.

THE COURT: Yeah, I know that. You got actually two extensions.

THE DEFENDANT: And I did lose my job. I wasn't able to pay the fine in full.

I do have the original money for the original fine, I just don't have the additional fine.

THE COURT: Well, ma'am, it is \$589 at the present time.

THE DEFENDANT: Uh-huh.

THE COURT: Okay. Can you pay that today?

THE DEFENDANT: No, I only have \$329, the original - -

THE COURT: Well, it will be \$589 or 20 days in the county jail. Okay. You are remanded into custody. Good luck to you.

The defendant then paid the fine of \$589.

You sentenced the defendant in the absence of a plea of guilty or no contest or conviction at trial. You denied the defendant due process. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(2), 3B(4), 3B(7) and 3B(8).

COUNT SEVEN

On March 24, 1998, you presided over a pretrial hearing in the misdemeanor case of *People v. Howell*. Defendant Howell appeared without an attorney and requested that the public defender be appointed. Howell stated that he had been unemployed since February 1998, and had almost depleted his other resources. The following occurred:

THE COURT: How do you expect to eat next week?

THE DEFENDANT: I just received an income tax return of one thousand dollars.

THE COURT: Okay.

THE DEFENDANT: And in the meantime I expect to be looking for employment.

THE COURT: Okay. Now we are getting to the real crux of the situation. When was the last time that you filled out an employment application for work?

THE DEFENDANT: That would be prior to my employment with the City of Chino Hills.

THE COURT: Yeah. Okay. I strongly suggest, sir, that (a) you use that tax return money to get an

attorney; and (b) that you go out and find a job right away, okay?

THE DEFENDANT: I intend to do that.

THE COURT: The Court will not appoint the Public Defender at this point in time. You are an able-bodied person. You can get a job, okay? There is lot [sic] of jobs out there. I would suggest you go find one. All right. Now based on all of that, you want to go back and talk to the D.A. in earnest about the case?

THE DEFENDANT: Yes, sir.

THE COURT: Good. Okay.

You denied the defendant the right to appointed counsel. You also interfered with the defendant's right to retained counsel by suggesting that the defendant talk to the prosecutor without counsel after the defendant indicated that he would attempt to retain counsel. Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

COUNT EIGHT

People v. Anderson

On May 6, 1998, you presided over a probation revocation hearing in the misdemeanor case of *People v. Anderson*. Defendant Anderson appeared without an attorney. Without advising Anderson of his constitutional rights regarding revocation of probation (e.g., the rights to an attorney, a hearing, and to subpoena and examine witnesses), you reinstated and modified the terms of Anderson's probation by adding 30 days to the jail sentence, and remanded him.

You denied the defendant due process. Your conduct violated the Code of Judicial Ethics, canons 1, 2, 3B(2), 3B(4), 3B(7) and 3B(8).

COUNT NINE

People v. Aguilar

On May 6, 1998, you presided over a probation revocation hearing in the misdemeanor case of *People v. Aguilar*. Defendant Aguilar appeared without an attorney. Without advising Aguilar of her constitutional rights regarding revocation of probation (e.g., the rights to an attorney, a hearing, and to subpoena and examine witnesses), you reinstated and modified the terms of Aguilar's probation by imposing community service hours in lieu of a fine.

You denied the defendant due process. Your conduct violated the Code of Judicial Ethics, canons 1, 2, 3B(2), 3B(4), 3B(7) and 3B(8).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice of formal proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This notice of formal proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: Feb. 26, 1999


CHAIRPERSON

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Judicial Performance

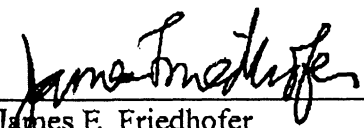
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ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, James E. Friedhofer, on behalf of my client, the Honorable Fred L. Heene, Jr., hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 153 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Heene has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 8 March 1999


James E. Friedhofer
Attorney for Judge Fred L. Heene, Jr.,
Respondent