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COMMISSION ON
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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING FORMER
JUDGE ALFONSO D. HERMO, No.

PROPOSED DISPOSITION
(RULE 127, DISCIPLINE
BY CONSENT)

Pursuant to Rules of the Commission on Judicial Performance, rule 127, respondent and trial counsel submit this proposed disposition of Inquiry Concerning Former Judge Alfonso D. Hermo, No. .

The parties have agreed to submit this matter to the commission for disposition upon stipulated facts and findings, without a hearing or briefing before either the commission or special masters.

The parties have agreed that the commission, upon acceptance of this stipulated proposal, shall impose a public censure and bar from receiving an assignment, appointment, or reference of work from any California state court.

Judge Hermo understands that in its decision and order of discipline the commission may articulate the reasons for its conclusions of law and imposition of discipline. Judge Hermo has agreed to accept any such explanatory language that the commission deems appropriate.

FACTUAL STIPULATIONS

The factual stipulations upon which the commission may base the imposition of discipline are as follows:

Judge Hermo became a municipal court judge in 1968. He retired from the bench on March 31, 1998.

On January 21, 1998, Judge Hermo presided in Division One of the Whittier Municipal Court. On that day, defendant Frederico Felix was scheduled to appear in Division One at 9:00 a.m. for arraignment in case number 8WH00327 on a misdemeanor charge of driving on a suspended license (California Vehicle Code section 14601.2(a)), and on alleged probation violations in four other misdemeanor cases (case numbers 95M04965, 6WH04117, 6WH05063, and 6WH01367). Judge Hermo called the five *Felix* cases at approximately 9:55 a.m. that day. Mr. Felix failed to appear, and, as a result, Judge Hermo ordered warrants for Mr. Felix's arrest issued in each of the five cases and set bail at \$20,000.

At some time during the afternoon on January 21, 1998, Mr. Felix appeared before Judge Hermo in connection with the above-referenced cases. Mr. Felix was without counsel and he conversed with Judge Hermo through a Spanish language interpreter. At that time, Judge Hermo issued an order recalling the arrest warrants, arraigned Mr. Felix, and scheduled a pretrial conference for February 9, 1998. Judge Hermo then told Mr. Felix, "I'm going to set bail in this case, so have a seat over there," pointing toward the jury box. Judge Hermo then ordered bail set at \$25,000 and appointed the public defender's office to represent Mr. Felix.

Pursuant to Judge Hermo's order, Los Angeles County Sheriff's Deputy Al Garces, who had been Judge Hermo's bailiff for 24 years, directed Mr. Felix to sit in a chair in front of the jury box and next to a door in the courtroom leading to an adjacent holding area. Shortly thereafter, Judge Hermo adjourned the proceedings for the afternoon recess. After the recess was called and after Judge Hermo had left the bench, Mr. Felix ran out of the courtroom. Deputy Garces briefly pursued Mr. Felix and ordered him to stop, but Mr. Felix ran out of the building and avoided capture. Deputy Garces returned to the courtroom and proceeded to Judge Hermo's chambers, where he informed Judge Hermo that Mr. Felix had escaped. Judge Hermo responded by ordering that a warrant issue for Mr. Felix's arrest in each of the five pending cases and that bail be set at amounts totaling \$175,000. Judge Hermo then wrote a note in one of the *Felix* case files, on a document labeled "Record of Proceedings in Court," stating, "def[endant] ran out of [the] courtroom."

Deputy Garces did not report Mr. Felix's escape to the Sheriff's Department. Instead, at approximately 9:30 a.m. the following morning, January 22, 1998, Deputy Garces falsely told his supervisor at the Whittier courthouse that Judge Hermo had ordered Mr. Felix released on his own recognizance. Later that morning, Deputy Garces approached Judge Hermo while he was on the bench and handed him the *Felix* files. Deputy Garces engaged Judge Hermo in a private conversation, during which the deputy advised Judge Hermo that he would be suspended from the Sheriff's Department for three weeks without pay for allowing Mr. Felix to escape.

Judge Hermo responded to Deputy Garces' statements during the bench conversation by ordering the recall of the warrants issued for Mr. Felix's arrest, and further ordering that Mr. Felix be released on his own recognizance. Judge Hermo also ordered reinstatement of the February 9, 1998, pretrial conference date. Judge Hermo marked a line through the handwritten notation "B35,000" (shorthand for \$35,000 bail) and wrote "OR" (shorthand for own recognizance) on a "Record of Proceedings in Court" form pertaining to the pending *Felix* cases. On the same form, Judge Hermo also wrote "warrant recalled OR," and marked this entry with his initials, "AH." These entries, while made on January 22, 1998, appear near file date stamps reading "Jan 21 1998." Judge Hermo directed his courtroom clerk to immediately notify both the district attorney and public defender offices that Mr. Felix's status had been changed from bail to own recognizance. Neither Mr. Felix nor his counsel was present in the courtroom during the above-described events on January 22, 1998.

Judge Hermo took these actions to help Deputy Garces avoid being suspended without pay for allowing Mr. Felix to escape. Judge Hermo understood at the time that Deputy Garces was supporting a family and had numerous debts.

On March 17, 1999, a Los Angeles County grand jury indicted Judge Hermo and Deputy Garces in connection with the foregoing events. The indictment charged Judge Hermo and Deputy Garces with one felony count of "conspiracy to obstruct justice or the due administration of the law," in violation of California Penal Code section 182(a)(5). The indictment alleged that on or about January 22, 1998, Judge Hermo and Deputy Garces "did willfully and unlawfully conspire together to obstruct justice, and pervert the due administration of the laws...." The indictment further alleged that Judge Hermo

participated in the conspiracy by means of the following overt acts: he “issued an order recalling the five arrest warrants for escapee Frederico Felix”; “wrongly issued an ‘own recognizance’ (OR) release for the escaped prisoner Frederico Felix on each of [his] five pending criminal cases”; “wrote ‘OR’ in each of the five active files for Frederico Felix and signed each entry with his initials, ‘AH,’ without legal cause”; and “failed to perform his duty to re-issue arrest warrants for escaped prisoner Frederico Felix.”

On November 30, 1999, pursuant to plea agreements with the Los Angeles County District Attorney’s office, Judge Hermo and Deputy Garces each pleaded no contest to aiding and abetting a person’s escape after remand to the custody of a sheriff, a violation of Penal Code section 836.6(a), a misdemeanor.¹ On January 19, 2000, the court suspended imposition of sentence and placed both Judge Hermo and Deputy Garces on two years informal court probation. Among the terms of probation imposed on Judge Hermo and Deputy Garces were that each perform 40 hours of volunteer work and pay a \$1,000 fine.

STIPULATED DISCIPLINE

Because Judge Hermo is now retired from judicial office, he is not subject to removal. However, under Article VI, section 18, subsection (d) of the California Constitution, the commission may “censure . . . a former judge . . . for action that constitutes willful misconduct in office . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Pursuant to the same provision, the commission may also “bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court.”

The parties stipulate that Judge Hermo’s actions on January 22, 1998, regarding the *Felix* cases as set forth above constitute willful misconduct in office under Article VI, section 18(d) of the California Constitution. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal. 4th 1079, 1091-1092.) Judge Hermo’s conduct was in violation of the California Code of Judicial Ethics, canon 1 (“a judge shall uphold the integrity and independence of the judiciary”), canon 2 (“a judge shall avoid impropriety

¹ Penal Code section 836.6 (a) provides, in pertinent part: “It is unlawful for any person who is remanded by a magistrate or judge of any court in this state to the custody of a sheriff, marshal, or other police agency, to thereafter escape or attempt to escape from that custody.”

and the appearance of impropriety in all of the judge's activities"), and canon 2A ("a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"), and therefore unjudicial. Judge Hermo's actions were committed in bad faith; his orders recalling the bench warrants and orders for manufactured after-the-fact OR releases were without legal authority, created a misleading record, and were done for the improper purpose of doing a personal favor for his long-time bailiff rather than for the faithful discharge of his judicial duties. Judge Hermo, by making these orders, necessarily was acting in a judicial capacity.

The parties further stipulate that Judge Hermo's conduct warrants a public censure and bar from receiving any assignment, appointment, or reference of work from any California state court. The purpose of a commission disciplinary proceeding is not punishment, "but rather the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity of the judicial system." (*Broadman v. Commission, supra*, 18 Cal.4th at p. 1112, citing *Adams v. Commission on Judicial Performance* (1995) 11 Cal.4th 866, 912.)

In California and elsewhere, judges have been removed from office for misconduct that included intentionally altering a court record or creating an inaccurate record. (See *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d. 615, 643-645; *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 886-891; and *In re Sterlinske* (Wis.1985) 365 N.W.2d. 876, 977-878.) In *Wenger v. Commission, supra*, the California Supreme Court removed the judge for misconduct that included directing a clerk to backdate a document entitled, "Affidavit in Support of Hearing on Contempt." The court concluded:

[The backdating] was . . . done deliberately; and [the judge] knew or should have known that it would create a false impression that he had signed [the affidavit] on the earlier date. We infer that whatever petitioner's purpose it was not the faithful discharge of judicial duties. Backdating the affidavit was willful misconduct.

(*Wenger v. Commission, supra*, at pp. 644-645.)

In *Fletcher v. Commission, supra*, 19 Cal.4th 865, the California Supreme Court removed the judge for misconduct that included directing a court clerk to alter a minute

order that the judge subsequently submitted to the Commission on Judicial Performance, in its altered form, in the course of its investigation of the judge. The court found that Judge Fletcher “committed willful misconduct in his handling of the minute orders” when he “directed the clerk to alter a minute order and, contrary to court policy, not to indicate she had changed the order.” (*Id.* at p. 887.) The court noted that, “[b]y forwarding only the altered order, [Judge Fletcher] presented the Commission with a grossly incomplete and misleading response.” (*Id.* at p. 888.)

In *In re Sterlinske*, *supra*, 365 N.W.2d., the Wisconsin Supreme Court found that a judge, who retired during pending disciplinary proceedings, had engaged in multiple acts of misconduct that, but for his retirement, would have warranted his removal and that did make him ineligible to serve temporarily as a “reserve” judge. The judge’s misconduct included dictating and signing, more than three months after the conclusion of a criminal trial, a “certificate” falsely attesting that a conference on proposed jury instructions and a proposed verdict had been held in his chambers. (*Id.* at p. 877.) The “certificate” also falsely attested that the attorneys for the parties had agreed to the proposed instructions and verdict. The judge also directed his court reporter to backdate the “certificate” to the date of the trial, and caused the reporter to file-stamp the “certificate” and alter the case docket to indicate falsely that the “certificate” had been filed on that date. (*Id.*) The court concluded:

The “certificate” materially misrepresented what actually had occurred during the trial, and it was inserted in the record at the direction of the [judge] with the intention of misleading others regarding those proceedings. The judge took those actions without notice to the defendant, her counsel, or the district attorney....

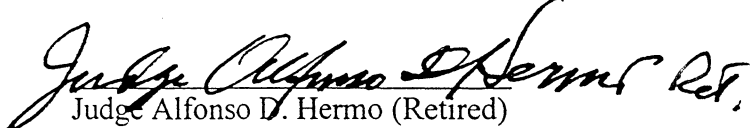
(*Id.* at p. 878.)

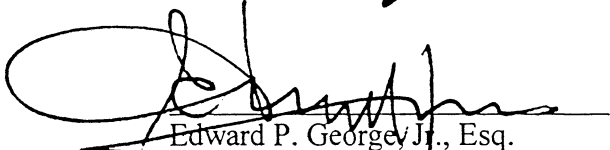
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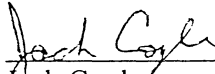
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Based on the foregoing, the parties hereby stipulate that former Judge Alfonso D. Hermo be publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court.


Judge Alfonso D. Hermo (Retired)
Respondent
Dated: 18th Jan 2001


Edward P. Georgey Jr., Esq.
Counsel for Respondent
Dated: Jan 18, 2001


Jack Coyle
Trial Counsel for the Commission
on Judicial Performance
Dated: 1-19-01

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INQUIRY CONCERNING
FORMER JUDGE ALFONSO D.
HERMO, No.

AFFIDAVIT OF CONSENT
FOR PUBLIC CENSURE AND BAR


Pursuant to Rules of the Commission on Judicial Performance, rule 127(d), former Judge Alfonso D. Hermo submits the following affidavit of consent in Inquiry

No. :

1. I consent to the imposition of discipline of public censure and bar from receiving any assignment, appointment or reference of work from any California state court.
2. My consent is freely and voluntarily rendered.
3. I admit the truth of the facts and conclusions as set forth in the Proposed Disposition/Discipline by Consent form executed in this matter pursuant to Commission Rule 127.
4. I waive notice of institution of formal proceedings as contemplated by Commission Rule 118, and understand that the commission may institute formal proceedings in order to proceed to impose discipline by consent. I waive a formal hearing before the commission and/or special masters as contemplated by Commission Rules 121 and 126. I waive briefing and appearance before the commission as contemplated by Commission Rules 130 and 132. I waive review by the Supreme Court.

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

18 day of Jan., 2001.


Judge Alfonso D. Hermo (Retired)