

PUBLIC ADMONISHMENT OF JUDGE HARVEY H. HIBER

The Commission on Judicial Performance has ordered Judge Harvey H. Hiber publicly admonished pursuant to Article VI, section 18(d) of the California Constitution and rules 115 and 116 of the Rules of the Commission on Judicial Performance.

PROCEDURAL HISTORY

On August 28, 1998, the Commission on Judicial Performance issued a Notice of Intended Public Admonishment pursuant to rule 115 of the Rules of the Commission on Judicial Performance. Judge Hiber, through counsel, sought an appearance before the commission pursuant to rule 116(b) of the Rules of Commission on Judicial Performance, and waived his right to formal proceedings under rule 118.

On October 7, 1998, Judge Hiber, through counsel James R. Rogers, appeared before the commission.

STATEMENT OF FACTS AND REASONS

1. In mid-1994, Judge Hiber asked a female court employee to become his permanent courtroom clerk. She became Judge Hiber's clerk in September 1994. From approximately September 1994 through May 1995, as described below, Judge Hiber engaged in a pattern of inappropriate conduct towards his courtroom clerk.

In August 1994, while he was on vacation and before the clerk started working for him, Judge Hiber wrote to her four times during a one-week period. In that correspondence, he made personal comments about her and referred to his preparation of a "sexual harassment waiver" that would be ready for her signature before she started working for him. The clerk and the judge had had a platonic social relationship in 1994, and the clerk was concerned by the insistent tone of the judge's letters. When the judge returned from vacation, she told him that she wanted to keep their relationship on a professional level. Judge Hiber assured her that it would be.

In September 1994, Judge Hiber presented the clerk with a large two page scroll written in calligraphy, which he had authored, entitled, "Absolute, Unconditional and Total Waiver of Harassment." The scroll measured approximately 30 inches by 40 inches. The scroll, which contained sexual innuendoes, included sections that (1) sought to have the clerk waive any and all objections to whatever verbal or physical advances the judge might make, and (2) cast the judge as the clerk's protector against anyone else making any advances toward the clerk. The scroll had signature lines at the bottom for the clerk and the judge. The clerk refused to sign the scroll.

During the following months, Judge Hiber continued the pattern of insistent and unwelcome behavior. He repeatedly asked the clerk to spend time with him outside of court hours. On one occasion, he called her at home on a weekend. On another occasion,

he kissed her on the mouth after taking her to her car near the courthouse, for which he apologized. On two occasions, he passed her notes from the bench which contained jokes of a sexual nature. On at least one occasion, he brought flowers to her home when she was ill. The judge mailed or gave the clerk numerous letters, notes and greeting cards. The judge frequently interrupted her while she was working to discuss non-work-related matters.

During the time period in question, the clerk did not write to the judge, telephone him at home or invite him to spend time with her outside of courtroom hours. She sometimes accepted the judge's lunch invitations. When she refused or attempted to refuse the judge's offers to go to lunch, he argued with her at some length, and persisted in inviting her to lunch and asking her to spend time with him outside of court hours. In a letter from the judge to the clerk dated November 1994, the judge acknowledged that she "had rejected everything I've suggested for doing something or spending time together for Thursday, Friday and or Saturday - with no feedback or alternatives suggested by you."

Judge Hiber also gave the clerk gifts, including clothing, an expensive pen, a lamp, a computer keyboard, and in May of 1995, an exercise machine. In a letter from the judge to the clerk dated September 1994, the judge referred to a gift of clothing and admitted that he knew that his gift was "contrary to our understanding regarding our professional relationship and our friendship," and stated that in "retrospect neither the gift nor the timing was proper. . . . It won't happen again!" The judge gave the clerk a number of gifts after he wrote and delivered the September 1994 letter. The only gift the clerk gave to the judge was a Christmas gift from her and other court staff.

The judge's pattern of conduct towards the clerk was unjudicial and contrary to the following canons of the former Code of Judicial Conduct, which was in effect during the relevant time period: canon 1, which provides that a judge shall uphold the integrity of the judiciary; canon 2, which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; and canon 3B(5), which provides that a judge shall not manifest bias in the performance of his judicial duties by words or conduct, the commentary to which provides that a judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.

2. In late September 1994, Judge Hiber gave his clerk \$250 in cash and asked her to donate the money in her name to the campaign of a candidate for nonjudicial office. The clerk did as the judge requested. The judge's conduct created the appearance that the judge was attempting to conceal that he was the source of a political contribution, in violation of canon 2 of the former Code of Judicial Conduct.

The judge's conduct constituted, at a minimum, improper action, within the meaning of Article VI, section 1 8(d) of the California Constitution.

In mitigation, the commission notes that Judge Hiber cooperated with the commission and has acknowledged that his actions towards his clerk were inappropriate.

The vote of the commission on issuance of the Public Admonishment was 10 ayes and 0 noes. There is currently one vacancy.

This decision and order shall constitute the order of public admonishment.

Dated: October 23, 1998

Robert C. Bonner
Chairperson