

PUBLIC ADMONISHMENT OF JUDGE PAMELA LEE ILES

The Commission on Judicial Performance has ordered Judge Pamela Lee Iles 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 Iles was appointed to the Orange County Municipal Court in January 1983, and elevated to the Orange County Superior Court in August 1998 upon unification of the trial courts. Her current term began in January 2007.

Judge Iles engaged in conduct that violated canon 2A of the Code of Judicial Ethics, which requires that judges respect and comply with the law, and canon 3B(2), which requires that judges be faithful to the law.

In February 2002 in *People v. Alhusainy*, Orange County Superior Court case no. 02SF0130, Judge Iles accepted a plea agreement proposed by the defendant and his counsel whereby sentencing would be postponed and the defendant released on his own recognizance on condition he leave and remain outside of California. The defendant had been charged with making criminal threats, child abuse causing great bodily harm, and assault with a deadly weapon arising from a domestic violence incident. An essential term of the plea agreement was that the defendant would not be sentenced as long as he stayed outside of California. Although Judge Iles gave the defendant the option to appear for sentencing, she made it clear that he could avoid imposition of sentence if he did not appear. Judge Iles also agreed that when the defendant failed to appear for sentencing, the bench warrant issued would specify that it could be served only in California. The plea was taken on March 28, 2002, without objection from the District Attorney. At that hearing, Judge Iles ordered the defendant to cooperate with the public defender's investigator, who would transfer him to the airport in Los Angeles, where the defendant would take a flight directly to Detroit, where he had family who had offered to assist him. She then continued sentencing to May 1, 2002:

The Court: Do you understand that I'm going to continue the sentencing in this case until May the 1st, 2002?

Defendant: Yes.

The Court: If you fail to appear for sentencing, the Court will issue a bench warrant, but it will only be able to be served within the State of California. It will not be served in Michigan or any other State in the United States.

Defendant: Yes.

The Court: Okay. But once you re-enter California by our agreement today you empower me to sentence you anywhere up to 6 years and 8 months in the State Prison.

Defendant: I will not come back.

The Court: It is up to you, but I'm telling you what's gonna happen if you do.

RT 6:13-7:3.

When the defendant failed to appear at the continued sentencing hearing, Judge Iles issued a bench warrant. Thereafter, Judge Iles continued sentencing from year to year through 2005. The defendant returned to California in 2006 and was arrested under the outstanding warrant. He thereafter filed a motion to withdraw his plea (which Judge Iles denied) and a motion to disqualify Judge Iles under Code of Civil Procedure section 170.1 (which she struck as untimely). He then filed a petition for a writ of mandate. The Court of Appeal granted the writ, holding among other things that the plea agreement was unconstitutional and void as overbroad, uncertain as to duration, and contrary to public policy. (*Alhusainy v. Superior Court* (2006) 143 Cal.App.4th 385, 392.)

When asked by the commission about her approval of the plea agreement that the Court of Appeal had found constitutionally invalid, Judge Iles explained that she approved the plea, in part, because of the immigration status of the defendant, who could have been subject to deportation to Iraq if she had sentenced him. Conviction of a crime of domestic violence is a basis for deportation. (8 U.S.C. § 1227(a)(2)(E).) Before a conviction exists for immigration purposes, a plea or finding of guilt must be made *and* some punishment imposed. (*Id.* at § 1102(a)(48)(A).) Judge Iles stated that she was advised that there was an outstanding death warrant for the defendant in Iraq, and she was assured by counsel that deportation would result in torture and likely execution, which was never subject to dispute as between the parties. It was the reason defendant's counsel proposed the plea bargain, and the reason that Judge Iles felt the plea bargain could be accepted. She stressed that the defendant voluntarily agreed to the plea bargain. Judge Iles stated that she was unwilling to leave the defendant's family in danger of further violence, or allow him to have assaulted them with impunity, but was unaware of any alternative that would have avoided the "very real specter of torture or death following deportation." She did not believe that his relocation to Michigan would subject citizens of that state to any risk because she believed the only people likely to be harmed by him were his wife and children. Since the maximum sentence she was entitled to impose for the crimes charged was six years and eight months, Judge Iles was unwilling to impose a sentence that would lead to torture and/or death. She believed the plea bargain was an appropriate solution under the circumstances.

Canon 2A of the Code of Judicial Ethics requires that judges respect and comply with the law. Canon 3B(2) requires that judges be faithful to the law. The case law makes clear that sending felons to other states is prohibited by public policy. (*Alhusainy*,

143 Cal.App.4th at p. 392; *State v. Charlton* (Ct.App. 1992) 115 N.M. 35, 846 P.2d 341, 344 (“Banishment ‘would tend to incite dissension, provoke retaliation, and disturb that fundamental equality of political rights among the several states which is the basis of the Union itself.’ [Citation.] ‘To permit one state to dump its convict criminals into another is not in the interests of safety and welfare; therefore, the punishment by banishment to another state is prohibited by public policy.’ [Citation.]. See also *Commonwealth v. Pike* (1998) 428 Mass. 393, 701 N.E.2d 951, 960 (“[i]t is against constitutional principles of interstate comity to ‘make other states a dumping ground for our criminals,’ [citation], [as it is] our solid waste. [Citation.];” *State ex rel. Halverson v. Young*, 278 Minn. 381, 154 N.W.2d 699 (1967); *State v. Doughtie*, 237 N.C. 368, 74 S.E. 2d 922 (1953); *People v. Baum*, 251 Mich. 187, 231 N.W. 95, 96 (1930); *Rutherford v. Blankenship* (W.D. Va. 1979) 468 F.Supp. 1357, 1360 (defendant’s agreement in plea to leave the state unenforceable as against public policy).)

Judge Iles had the obligation to evaluate and determine the legality of the plea agreement. (*Alhusainy*, 143 Cal.App.4th at p. 394; *People v. Andreotti* (2001) 91 Cal.App.4th 1263, 1275.) The law is clear that sending felons out of state is contrary to public policy, and there is no legal support for the proposition that this policy can be abrogated on a case by case basis by a trial court based on the parties’ agreement. As a consequence of the plea agreement, and pursuant to Judge Iles’ order that defendant go to the airport under the supervision of the public defender’s investigator, and fly to Detroit, the defendant went to Michigan. There is no evidence that Michigan agreed to take him. It is not clear how permitting the defendant to go to Michigan protected women living there, or that he was incapable of victimizing others there. The impropriety of approving a plea agreement whereby the defendant is transferred to another state in contravention of public policy is not subject to a reasonable difference of opinion. Accordingly, the commission finds that Judge Iles’ approval of the plea agreement reflects a purpose other than the faithful discharge of judicial duty, and was at minimum improper action within the meaning of article VI, section 18, subd. (d)(3) of the California Constitution.

In issuing this Public Admonishment, the commission took into consideration Judge Iles’ history of discipline by the commission. Judge Iles received an advisory letter in 1988 for failing to strictly abide by statutory requirements in imposing sanctions on a litigant. She received another advisory letter in 1997 for telling a defendant that his probation would be violated if the victim contacted him, denying him bail pending appeal although he was statutorily entitled to it, and participating in settling the record on appeal after having been disqualified, which gave rise to the appearance of embroilment and abandonment of her role as a neutral judicial officer. She received a private admonishment in 2004 for personally contacting a prosecutor and suggesting that he investigate an attorney for perjury, asking witnesses to prepare declarations for the district attorney’s office, and repeatedly contacting prosecutors about their investigation while it was ongoing. She received a public admonishment in 2006 for summarily incarcerating an unrepresented defendant in disregard of his fundamental rights.

Commission members Hon. Judith D. McConnell, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Ms. Patricia Miller, Mr. Jose C. Miramontes, Ms. Barbara Schraeger, Mr. Lawrence Simi and Ms. Maya Dillard Smith voted to impose a public admonishment. Hon. Frederick P. Horn was recused. Hon. Katherine Feinstein did not participate. There is one vacancy on the commission.

Dated: November 15, 2007

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 November 15, 2007, I served the attached:

DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT

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 November 15, 2007 at San Francisco, California.

Judith R. Starks