



State of California
Commission on Judicial Performance
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February 28, 1995

Honorable Thomas M. Kelly
Judge of the Justice Court
Alpine Judicial District
P. O. Box 515
Markleeville, CA 96120-0515

Dear Judge Kelly:

The Commission on Judicial Performance has determined that you should be publicly reprovred for the following conduct:

"In 1987, before justice court judges were prohibited from practicing law by California Constitution Article VI §17 and Government Code §71607, Judge Kelly became attorney of record for the plaintiff in Okoye v. Citicorp, Los Angeles Superior Court Case No. C 683268. Judge Kelly signed a complaint prepared by a Nevada attorney whose law library and office Judge Kelly sometimes used. Judge Kelly accommodated the Nevada attorney without receiving a fee or promise of fee, and without expecting a fee. The attorney had told Judge Kelly that he intended to handle the case and would file a motion to appear pro hac vice, seeking the court's permission to appear as an out-of-state attorney with Kelly, a California attorney, associated as counsel. However, within a month after the complaint was filed, the Nevada attorney abandoned his plan to file the application, and so advised Judge Kelly.

Because Kelly was counsel of record in Okoye v. Citicorp, the defendant's counsel communicated with Judge Kelly at the Nevada counsel's address. A demurrer to the complaint was filed. Judge Kelly and the Nevada attorney discussed the matter and agreed to stipulate to the demurrer. A first amended complaint was filed; a demurrer to that complaint was sustained, as well. No second amended complaint was filed.

During the spring and summer of 1987, defense counsel contacted Judge Kelly four times to schedule the plaintiff's deposition. Although Judge Kelly informed the Nevada attorney, Judge Kelly did not notify the plaintiff. On one occasion, Judge Kelly told defense counsel that he could not attend a deposition because he was scheduled on a judicial assignment.

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No discovery pertinent to the merits of the case was provided to the defense. On July 8, 1987, a motion to compel production of documents was heard. There was no appearance for plaintiff. The court ordered production of the requested documents and ordered sanctions against Judge Kelly and the plaintiff, which were later paid by the Nevada attorney. Judge Kelly never notified the plaintiff.

On August 25, 1987, Judge Kelly appeared at a hearing on defendant's motion to dismiss. This was the first occasion on which the plaintiff and Judge Kelly met with each other. The court ordered the case dismissed for failure to file a second amended complaint, and imposed sanctions of \$2,500 on both Judge Kelly and the plaintiff.

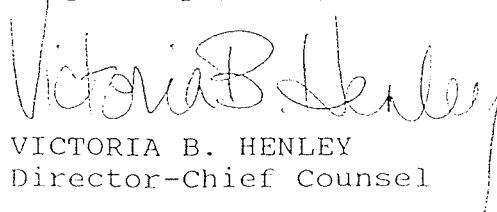
A federal complaint signed by Judge Kelly also was filed on behalf of the plaintiff, in April of 1987. It was dismissed for lack of prosecution, and the motion to set the dismissal aside was dismissed without hearing in December 1987.

The plaintiff sued Judge Kelly and the Nevada attorney for breach of contract, fraud, and legal malpractice in their representation of him in the Okoye v. Citicorp case. After a court trial, the court found Judge Kelly and the Nevada attorney liable on the cause of action for legal malpractice. The Nevada attorney was also held liable for breach of contract. Both were ordered to pay a judgment of \$351,000. The judgment was affirmed on appeal.

The trial court determined that Judge Kelly, by agreeing that the Nevada attorney would handle the management of the lawsuits in the absence of a court order permitting the Nevada attorney to appear as counsel, after signing the complaints prepared by the Nevada attorney, unlawfully aided and abetted the unauthorized practice of law, contrary to Business and Professions Code § 6126(a) and Code of Professional Responsibility Rule 3-101. The commission finds that by his conduct in the case, including abandoning, for all intents and purposes, a client for whom he was attorney of record, Judge Kelly committed a breach of fiduciary duty and committed legal malpractice. Judge Kelly's conduct constitutes conduct prejudicial to the administration of justice that brings the judiciary into disrepute."

This public reproval is being issued with your consent.

Very truly yours,


VICTORIA B. HENLEY
Director-Chief Counsel