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Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE, No. 137.	NOTICE OF FORMAL PROCEEDINGS

To: JUDGE ALAN E. KLEIN, a judge of the Kern County Municipal Court, Bakersfield Judicial District, from June 11, 1981, to the present, and at all relevant times therein:

Preliminary investigation pursuant to California Rules of Court, rules 904 and 904.2 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 wilful 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, to wit:

COUNT ONE

It is charged that you engaged in improper ex parte meetings and communications with a represented defendant, whose case was pending before you, for personal reasons other than the faithful discharge of your duties and resulting in apparent leniency by you in your disposition of the case; you have also conducted improper ex parte contact with police officers involved in the same case, and an improper contact with a second defendant, in an unrelated case, as follows:

Specification 1. It is alleged that on March 13, 1995, you approached represented female defendant Lashay Munoz, age 19, who had been charged with lewd conduct (P.C. 647A) and public nudity (M.C.9.12.030) for dancing with certain parts of her body exposed at a lounge selling alcoholic beverages. Ms. Munoz had appeared in your court on an earlier date on the charges and was represented by a deputy public defender. In the hallway outside your court prior to a scheduled appearance in your court on March 13, 1995, you approached Ms. Munoz and discussed with her, outside the presence of her attorney, aspects of the charges against her, and concerns she had about her representation. You also indicated that it might be possible to meet later with Ms. Munoz. You did not disclose your discussion with Ms. Munoz to her attorney, because you did not want that attorney to know you were discussing the case without that attorney being present. It occurred to you then that, if there were another meeting with Ms. Munoz, she "might make me an offer I can't refuse."

Specification 2. It is alleged that following your hallway contact with Ms. Munoz on March 13, 1995, you conducted a series of investigative, ex parte contacts with police officers involved in the defendant's case, by initiating telephone discussions regarding the pending case against Ms. Munoz.

Specification 3. It is alleged that you telephoned Ms. Munoz twice on March 23, 1995, to suggest that she meet you on Sunday, March 26, 1995, to discuss her case, and gave Ms. Munoz the private telephone number to your chambers. On March 24 or 25, 1995, you called Ms. Munoz a third time to confirm your meeting.

Specification 4. On Sunday, March 26, 1995, pursuant to your prior suggestion to Ms. Munoz, you met Ms. Munoz in a parking lot near the courthouse. You then escorted Ms. Munoz through a secured door into your chambers. You met privately in your chambers with Ms. Munoz for approximately one-half hour. Prior to your meeting with Ms. Munoz in your chambers on March 26, 1995, you viewed a police photo of Ms. Munoz, and commented to the Deputy District Attorney who provided the photo to you: "Thank you for giving me my jollies today," or words to that effect. Prior to your meeting with Ms. Munoz in your chambers, you thought that Ms. Munoz might be willing to undress and perform a nude dance for you in your chambers. Although you denied that any physical contact or dancing occurred at your private meeting with Ms. Munoz in your chambers, you admitted to Deputy Attorney General Jo Graves and Special Agent Michael Stanford that you "probably would have let" Ms. Munoz undress and dance for you, had she indicated a willingness to do so.

During your meeting in chambers, you discussed Ms. Munoz's dancing career and aspects of her pending case, including a possible reduction of the charges against her. You indicated that the District Attorney would probably reduce the charge. During your meeting, you indicated to Ms. Munoz that she was very attractive. At that point, either you or Ms. Munoz suggested that she dance for you. You expressed interest in having her dance for you, saying that it would be "fun" or "interesting," or words to that effect, if she danced for you. At the end of the meeting, you became concerned that Ms. Munoz might file legal proceedings against you. During and immediately after the meeting, you pleaded with Ms. Munoz not to mention your meeting to anyone.

Specification 5. It is alleged that the events described above relating to your contacts with Ms. Munoz resulted in your actual or apparent favoritism or leniency toward Ms. Munoz, as follows: At the defendant's next appearance in your court on March 27, 1995, following your private meeting with her on March 26, 1995, you failed to disqualify yourself as required by Code of Civil Procedure section 170.1, and presided over the *Munoz* case despite your ex parte contacts, as alleged and described above. You appeared anxious to

resolve the *Munoz* case, according to observers. You first suggested a reduced charge of public intoxication, then of disturbing the peace. After you obtained the agreement of the inexperienced prosecutor, who felt pressured by you to agree to a reduced charge, Ms. Munoz entered a plea of guilty to the reduced charge of disturbing the peace (P.C. 415). Of the other three women arrested with Ms. Munoz and charged with either public nudity or lewd conduct, or both, two pled guilty as charged, with no similar reduction in their charges. One defendant, who like Ms. Munoz was charged with both lewd conduct and public nudity, failed to appear in court.

Specification 6. It is alleged that after disposition of the *Munoz* case on March 27, 1995, you telephoned Ms. Munoz at her home to tell her you were "really sorry" and would not telephone her again, and you assured her she had gotten "a good deal," or words to that effect, in your court that day.

Specification 7. It is alleged that in March of 1995, you met in your chambers with traffic defendant Leslie Susann Jensen, advised her regarding legal procedures and offered to talk to the judge assigned to her case. Later that day, you told Ms. Jensen you had spoken with Judge Stuebbe, and that he would reduce her fine from $560 to $200 if she obtained a driver's license before the court hearing. It is further alleged that on, or sometime shortly after, April 26, 1995, Ms. Jensen contacted you about a second citation, and you advised her to obtain a continuance in order to obtain a valid license. On the date for Ms. Jensen's appearance at the courtroom on the second citation, you spoke with a court official, who handed Ms. Jensen's case file to the hearing judge out of order, for an earlier consideration.

COUNT TWO

It is charged that you made deliberate and material misrepresentations of fact in an official interview with representatives of the Attorney General's office concerning your role in the *Munoz* case, as follows:

Following the disposition in the *Munoz* case, you were questioned about your meeting with Ms. Munoz by representatives of the California Department of Justice as part of an

official investigation; it is alleged that you made misrepresentations of fact to them during an interview conducted on April 18, 1995. Examples of your misrepresentations include, but are not limited, to the following:

On April 18, 1995, you told Deputy Attorney General Jo Graves and Special Agent Mike Stanford that you had not talked with defendant Munoz outside the presence of her attorney. You said you had not telephoned Ms. Munoz, and that you had not met with her in chambers. After being informed of circumstantial evidence to the contrary, you insisted that you were not lying and that the meeting did not happen. Ms. Graves informed you that she did not believe you. On April 19, 1995, after becoming aware that Ms. Graves had independent evidence corroborating your contacts with Ms. Munoz, you admitted to Ms. Graves and Mr. Stanford that you had talked with defendant Munoz outside the presence of her attorney, had telephoned Ms. Munoz, and that you had met with her in your chambers.

Your actions as alleged and the events described above relating to Ms. Munoz received widespread media coverage.

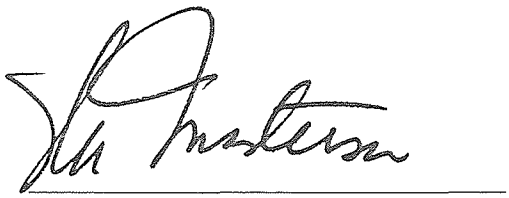
YOU ARE HEREBY GIVEN NOTICE, pursuant to California Rules of Court, rule 905, that formal proceedings have been instituted and shall proceed in accordance with California Rules of Court, rules 901-922.

Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to the charges against you within fifteen (15) days after service of this notice upon you. An original and eleven (11) legible copies of the answer may 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 California Rules of Court, rule 911.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 2/6/96



CHAIRPERSON

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FEB 21 1996

State of California
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105
(415) 904-3650
FAX (415) 904-3666

February 16, 1996

CONFIDENTIAL

Ephraim Margolin, Esq.
240 Stockton St., Third Floor
San Francisco, CA 94108-5300

Re: **Inquiry Concerning a Judge No. 137**

Dear Mr. Margolin:

On February 9, 1996, we sent to you a copy of the executed Notice of Formal Proceedings (Inquiry No. 137) and asked that you sign and return the copy of the cover letter if you were willing to accept service by mail on behalf of your client.

We note that we did not provide you with a copy of transitional commission rule 2, enclosed, which concerns public formal proceedings instituted after March 1, 1995.

In the event you are willing to accept service by mail, please sign and return a copy of this letter. For purposes of transitional rule 2, the five day period pertaining to the issuance of a press statement will begin to run from the date you execute this letter.

Very truly yours,

Sei Shimoguchi

Sei Shimoguchi
Staff Counsel

SS:mg/L216marg.doc
Enclosure
VIA FACSIMILE (415) 397-9801 & CERTIFIED MAIL

I, Ephraim Margolin, Esq., hereby acknowledge receipt of the copy of the Notice of Formal Proceedings in Inquiry Concerning a Judge No. 137 and agree to accept service of the Notice by mail.

_____ _____
Date Ephraim Margolin, Esq.