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THE STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE GARY G. KREEP No. 198	**ANSWER BY JUDGE GARY G. KREEP TO NOTICE OF FORMAL PROCEEDINGS**

Following multiple Preliminary Investigations pursuant to Rules of the Commission on Judicial Performance, Rules 109 and 111, each of which was answered with ample, reasonable, response, the Commission on Judicial Performance has initiated formal proceedings that simply lack merit. Judge Kreep believes that the Commission on Judicial Performance has unnecessarily singled him out, and it is engaged in a campaign of harassment and intimidation, for the obvious purpose of making his professional life so difficult and miserable, through the constant and ongoing investigations, that he will walk away from the job that the good citizens of San Diego County elected him to perform. This is more than exemplified by several of the Commission's unfounded accusations in this case. There is no evidence of willful misconduct, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, nor improper action within the

meaning of article VI, section 18, of the California Constitution warranting removal, censure, or public or private admonishment of the Honorable Gary G. Kreep.

Some background regarding Judge Kreep's professional experience as a lawyer is important to know. Following admission to the State Bar of California in 1975, Judge Kreep practiced mainly in the area of constitutional law. His representation ran the gamut of assisting underprivileged people in efforts to secure funding of extracurricular academic activity in Escondido to representation of individuals whose constitutional rights had been violated. Some of the causes advanced by Judge Kreep were controversial, including his representation of individuals and groups involved in the "Minutemen" movement. The Minutemen organization patrolled the California/Mexican border, reporting to the United States Border Services entry into the United States by illegal aliens. Ironically, much of the leadership of the Minutemen were nationalized citizens of the United States from Hispanic countries, or the children of immigrants legally in the United States. Judge Kreep's representation of controversial groups and/or matters was at the heart of objections to his judicial election by several political groups. Well after the election, those same objections seem to continue through the Commission on Judicial Performance.

Judge Kreep was never disciplined by the State Bar of California during his 37 years of practice. As he experienced during his early years of practice, Judge Kreep seeks to create a relaxed courtroom environment, one in which the attorneys and the parties feel comfortable. In this environment, Judge Kreep believes that the goals of administering justice are more likely achieved. One of the few pieces of direction that Judge Kreep received from his first Presiding Judge prior to taking the Bench was to make his courtroom "user friendly." Judge Kreep is never mean spirited.

COUNT ONE

A. You ran for judicial office in 2012. Your judicial campaign website included "Gary's Biography." The biography contained misrepresentations about your status in relation to three organizations. The biography stated-in part: "Gary co-founded the FAMILY VALUES COALITION (FVC) in 1998 with two other conservative activists. He has served as the President of FVC since then. FVC is a nonprofit California corporation organized under IRC 501(c)(4)." The federal tax exempt status of the Family Values Coalition had been revoked in 2010, and there was no California corporation with that name at the time of this representation on your judicial campaign website. The statement that you were currently serving as the FVC president was false.

Your biography further misrepresented that you were currently the president of two political action committees, the Justice Political Action Committee (JPAC) and the California Justice Political Action Committee (CALJPAC). The biography stated that you had co-founded JPAC in 1985 with two other conservative activists and had "served as President of JPAC since then."

The biography stated that you had co-founded CALJPAC in 1996 with two other conservative activists and had "served as President of CALJPAC since then." You had resigned your position as president of those political action committees after declaring your candidacy in early 2012.

Your conduct violated the Code of Judicial Ethics, former canon 5B(2).

Canon 5B(2) provides that "A candidate for judicial office shall review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before its dissemination . . . take appropriate corrective action if the candidate learns of any misrepresentations . . ."

With regard to the Family Values Coalition, Judge Kreep was indeed one of the founders and did serve as President. The Family Values coalition was organized as an IRS tax-exempt organization, and its primary purpose was to prepare and distribute "slate cards" in political elections. Due to the cost of circulating the "slate cards," the organization ceased operations, and the entity lost its federal tax-exempt status because it discontinued operations. Judge Kreep acknowledged to the Commission his responsibility relative to the

accuracy of campaign literature, and, while, technically inaccurate, the information was placed on his campaign website by the person who prepared the website, taking information from an old biography of Judge Kreep that was then on the United States Justice Foundation website. This oversight related only to the then tax status of the Family Values Coalition, since the remainder of the representation was accurate. Judge Kreep has apologized to the Commission for failing to catch this innocuous error on his website.

With regard to JPAC and CALJPAC, from a literal viewpoint, the representation that Judge Kreep was the president of JPAC and CALJPAC on the campaign website was inaccurate. Again, the information was used by the website designer and taken from information set forth on the website of the United States Justice Foundation. In reality, Judge Kreep was not the President of the Justice Political Action committee during the period that he ran for judicial office, because he was not allowed to serve as President.

Prior to his campaign, however, Judge Kreep was the President of the Justice Political Action Committee, and resigned the position when he became a candidate for judicial office. The treasurer of the Justice Political Action Committee, has verified this fact. The same is true for the California Justice Political Action Committee. Judge Kreep resigned as President of these organizations on February 24, 2012, and so declared under penalty of perjury when declaring his judicial candidacy.

The representation on the website was an innocuous oversight. Had it been discovered, Judge Kreep would have taken appropriate corrective action, which is allowed pursuant to Canon 5B(2). In evaluating whether the representation on Judge Kreep's campaign website constitutes a material misrepresentation of qualifications, showing a

reckless disregard for the truth, which, in some manner, could have affected the outcome of the election, the following should be considered.

As represented on Judge Kreep's website, he co-founded the Justice Political Action Committee, and he served as president from its inception for over 26 years. Also, a campaign biography, which had been copied by the website designer from another website, listed Judge Kreep as the president of the Justice Political Action Committee after the date of his resignation. Needless to say, during the period of the judicial campaign Judge Kreep was not only a candidate for office, but he continued to operate his law practice to the extent allowed by his candidacy, and he continued to supervise a nonprofit legal foundation. The inadvertence of discovering the erroneous information, or even the failure to update his campaign biography to reflect the fact that he had resigned as President, was not a reckless disregard for the truth, but the consequence of the chaos surrounding his campaign, while at the same time maintaining his law practice. This was a simple mistake, and not a "reckless disregard for the truth." Further, Judge Kreep, until February, 2012, had no intention of seeking election to a judgeship, and did so only at the request of a friend of over 42 years. Thus, his campaign website, and everything else involved in his campaign, were done as a result of a last minute decision, and, so, the campaign was put together hurriedly.

On the issue of whether the oversight was material to the election, or to the deliberations of voters, it should be noted that Judge Kreep resigned from his positions because he was required to do so as a candidate for judge. Therefore, there was no negative connotation to the fact that he had resigned, and he was no longer president of the political action committee. Furthermore, he had served as president of the political action committee

for over 26 years. Any voter who placed a high positive value on Judge Kreep being the president of the JPAC or CALJPAC would not have been deceived in any substantive sense in believing that Judge Kreep was still the president of that group. He was a founder of the group, he served as its only president for 26 years, and he had only just resigned his position because, as a candidate, Judge Kreep was required to do so. We are unaware of any person who voted for Gary Kreep for judge because of any alleged erroneous information on his campaign website. In fact, there were only about two hundred or so "hits" to the website during the campaign.

B. You became a candidate for judicial office on February 13, 2012, when you filed a "Candidate Intention Statement" and "Declaration of Intention to Become a Candidate for Superior Court Judge" with the San Diego County Registrar of Voters, and gave an exclusive statement to SD Rostra (an online blog) that you were running for an open seat on the superior court bench against attorney . On February 14, 2012, the San Diego CityBeat published an article titled, "Birther, Minuteman attorney runs for San Diego judgeship," which stated that you had filed paperwork to run for judge against Mr. Peed.

Until February 24, 2012, you did not resign from your position as president of JPAC or as chairman of the Republican Majority Campaign, a political action committee formed for the purpose of endorsing or opposing candidates for nonjudicial office. You also did not resign from your position as president of CALJPAC prior to becoming a candidate for judicial office on February 13, 2012.

Your conduct violated the Code of Judicial Ethics, canon 5A(1).

Canon 5A(1) provides that "candidates for judicial office shall not act as leaders or hold any office in a political organization." Judge Kreep admits that he served as chairman of the Republican Majority Campaign during the twelve month period prior to his swearing in as a judicial officer on January 7, 2013, but that position is not a leadership position. As with JPAC and CALJPAC, Judge Kreep resigned as President of the Republican Majority Campaign on February 24, 2012, the day he turned in his papers with the Registrar of

Voters. Judge Kreep has already responded to a Fair Political Practices Commission investigation of the same allegation. Within eleven days of disclosing his intent to run for judicial office, Judge Kreep formally resigned as President of these organizations.

The fact that the Commission takes issue with an eleven day gap between declaring an intention to run for judicial office and formally resigning from leadership positions on the day that he actually became a candidate, strongly supports the conclusion that the Commission's proceedings against Judge Kreep are motivated by something other than preserving the integrity of the bench and ensuring the confidence of the public in our judges. Judge Kreep did not officially become a candidate until he turned in his candidacy filings to the San Diego County Registrar of Voters on 2/24/12 at which time he resigned the "offending" position.

C. *In March 2012, you executed a Statement of Economic Interests for the 12 months prior to becoming a candidate (Candidate Form 700). On Schedule C, you disclosed that you had served as "Chairman" of the Beat Obama Political Action Committee. You had never served as chairman of that political action committee. (You later filed an amended Statement of Economic Interests in which you stated that your position with that committee was "Attorney.")*

Your conduct violated the Code of Judicial Ethics, former canon 5B(2).

Canon 5B(2) provides that "A candidate for judicial office shall review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before its dissemination . . . take appropriate corrective action if the candidate learns of any misrepresentations . . ." Judge Kreep was not an officer of the Beat Obama Political Action Committee and never held any position of decision-making authority; he was in fact an attorney who provided legal services to the "Draft Herman Cain" Committee which, when Herman Cain withdrew his candidacy, was renamed as the Beat Obama Political Action Committee.

Upon discovery of the oversight, Judge Kreep promptly filed an amended statement confirming his role as attorney for this organization. Canon 5B(2) allows for prompt correction which is exactly what Judge Kreep did. The FPPC investigated these allegations and chose not to take any action.

D. During your candidacy for judicial office in 2012, you publicly opposed President Barack Obama's reelection to the office of President of the United States. This conduct is exemplified by the following:

1. In a May 14, 2012 fundraising letter you signed, with the heading, "United States Justice Foundation /IMPEACH OBAMA AND PROSECUTE OBAMA! / A Special Project of the United States Justice Foundation," you highlighted an enclosed "CONGRESSIONAL INVESTIGATION PETITION TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES CONGRESS," which urged the House to "launch an election year effort" to investigate the "long-form" birth certificate President Obama released to the public, hold a hearing on President Obama's "eligibility" to hold the office, determine if he and others conspired to cover up evidence that he is not a natural born U.S. citizen, and then impeach and prosecute him for making false claims. You urged the recipients of your letter to sign the petition and "speed it back" to you without delay.

The donation response form/petition is headed "Emergency Reply to Gary Kreep, Esq., Executive Director, United States Justice Foundation," and is addressed to "Dear Gary." In your letter, you stated, "[O]ur effort may be all that stands between four more years of Barack Obama in the White House and catastrophe for our economy, our liberty, and our security."

Your letter referenced a lawsuit in which you contended that the California Secretary of State must confirm a candidate's "eligibility" before being allowed on the presidential ballot, and referred to similar challenges in other states. You asserted in your letter, "[I]n the weeks to come this summer, we plan to lead a massive election year public education campaign, to ensure that millions of Americans know, by this fall, exactly what these potential crimes by Barack Obama may be."

2. In a May 31, 2012 letter you signed, with the heading, "USJF United States Justice Foundation," you sought financial support for your campaign against President Obama's reelection. The letter began with, "I urge you to mail the enclosed PRIORITY REPLY back to me before Friday, June 29," and stated, "We still have a great deal of work to do between now and Election Day."

The letter further stated, "As I speed you this special and heartfelt appeal, we here at USJF are gearing up for the second half of what may soon prove to be the most important election year since 1860"; "our grassroots and legal teams are also working on major projects that go right to the heart of this year's elections"; and "We're in the trenches,

fighting both in court and in the grassroots to ensure that Barack Obama cannot, and does not, steal this year's elections."

3. In a June 18, 2012 letter you signed, with the heading, "From the Desk of GARY KREEP," you highlighted the possible need to pursue "other legal and grassroots options to expose Barack Obama's fraudulent occupation of the White House." In the letter you stated, "That's why we have prepared two aggressive legal and grassroots campaign plans for the weeks and months ahead, between now and November," and "We sit back and hope that he is defeated in November at our own peril." (Emphasis in original.) The letter ended with your personal appeal for funds in support of your campaign against candidate Obama ("I hope you won't be angry with me ... but the amount I'm asking for today is three times more than you normally send to the U.S. Justice Foundation"). (Emphasis in original.)

Your conduct violated the Code of Judicial Ethics, Canon 5A(2).

Canon 5A(2) provides that "candidates for judicial office shall not make speeches for a political organization or candidate for nonjudicial office, or publicly endorse or publicly oppose a candidate for nonjudicial office . ." "Political organizations" means "a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office."

Judge Kreep did not violate Canon 5A(2). From 1979, until January 6, 2013, Judge Kreep was the Executive Director and President of the United States Justice Foundation. In that role, he oversaw a number of lawsuits and related projects. One of the projects related to lawsuits over, and possible grand jury investigations or impeachment efforts pertaining to, the eligibility of Barack Obama to constitutionally run for and serve as President of the United States. The matters set forth above relate to fundraising letters seeking financial donations for the lawsuits and projects being pursued by the United States Justice Foundation. The fundraising was not designed for, nor did it apply to, opposing President Obama's efforts for re-election. Rather, and as noted, the solicitations sought financial assistance to develop and pursue the question of whether the President was

constitutionally permitted to hold the office of President of the United States. In fact, USJF is a California 501(c) (3) non-profit organization. It is prohibited from engaging in political activity, either endorsing or opposing political candidates. Engaging in such conduct would result in the loss of the USJF's tax exempt status. USJF remains a tax exempt organization.

Canon 5 of the Code of Judicial Ethics (during Judge Kreep's candidacy) provided, in part, that, Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates for judicial office.

The Unites States Justice Foundation is not a "political organization," as that term is defined in the Code of Judicial Ethics. The United States Justice Foundation is not a political party, a political action committee "or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office." Rather, it pursues projects and litigation relating to constitutional issues.

The United States Justice Foundation never sought to further the election or appointment of candidates to offices since, by doing so, it would lose its tax exempt status. With respect to Barack Obama, USJF publicly questioned, and, in fact, litigated the issue of whether he was actually a citizen of the United States of America. Not being a citizen of the United States would have constitutionally precluded candidate Obama from running for the office in the first instance, or Mr. Obama from retaining the position, if, in fact, he was not a citizen (United States Constitution, Article s II, Section 1). These lawsuits commenced in 2008.

Judge Kreep's position as Executive Director and President of the United States Justice Foundation was constitutionally permitted activity that was not proscribed by the Canons of Judicial Ethics. Judge Kreep did not publicly oppose President Obama's candidacy for reelection, but, rather, pursued inquiry regarding the constitutional ability of the Barack Obama, Jr., to remain in office.

E. During your campaign, you contracted for slate mailing from organizations that were managed by Landslide Communications. On your Form 460 for the period March 18 through May 19, 2012, . In addition, on your Form 460 for the period May 20 through June 30, 2012, you did not report an accrued expense of $2,700 owed to Landslide Communications of Nevada. Your failure to timely report the accrued expenses violated Government Code section 84211, subdivision (k).

California Government Code §84211(k) requires the disclosure of personally identifying information for every person to whom one hundred dollars ($100) or more has been made during the campaign. Judge Kreep originally authorized one robo-call, that one being narrated by California State Senator Joel Anderson. This robo-call was handled by Landslide Communications of Nevada, and Judge Kreep paid for it, as set forth in his California Form 460. However, at the last moment, a second robo-call was done, resulting in the accrued expense of $2,700 from Landslide Communication, which Judge Kreep also, subsequently, paid for.

The issue of reporting the expense has already been investigated and put to rest by the Fair Political Practices Commission. Specifically, on September 18, 2015, Judge Kreep entered into a stipulation with the FPPC, relating to Judge Kreep's candidacy in the 2012 primary election for judge of the San Diego County Superior Court. The FPPC determined that:

> To their credit, Kreep and the Committee cooperated with FTB's audit and with Commission's staff in reaching this

> resolution. The Committee voluntarily amended its campaign filings upon learning of its violations and there is no evidence the Committee intended to conceal those expenditures made from Kreep's personal accounts since the Committee disclosed them on its campaign statements. Kreep asserts that his violations were inadvertent and due to his lack of familiarity with the Act's requirements having not previously run for public office in California. The Enforcement Division found no evidence indicating that Kreep or the Committee intended to violate the Act.

The above FPPC finding was provided to the Commission, yet the Commission ignores it. This is yet another example of the concerted campaign waged against Judge Kreep. These allegations have been raised and decided by the Fair Political Practices Commission. There was no evidence found by the Enforcement Division indicating that Judge Kreep, or the Committee, intended to violate the Act. Again, the errors were unintentional, and were subsequently corrected. It is disputed that Judge Kreep's failure to timely and correctly disclose the accrued expenses constitutes knowingly, or with reckless disregard for the truth, misrepresenting a fact about himself.

F. During your campaign, from March 13, 2012 through June 17, 2012, you made campaign expenditures totaling $41,796 using your personal credit card or your personal bank account rather than your campaign contribution account as required by Government Code section 85201, subdivision (e). These expenditures constituted approximately 82 percent of your campaign's total expenditures during that time period.

Your conduct constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute and/or improper action within the meaning of California Constitution, article VI, section 18, subdivision (d).

As set forth above, this issue has already been investigated and put to rest by the Fair Political Practices Commission. The Commission should do the same.

G. You were elected to judicial office in June 2012 and you took office in January 2013. For approximately six weeks after you took office in January 2013, you remained as counsel of record in the federal case of Liberi v. Taitz (SACV 11-0485 AG).

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 4G.

In *Liberi v. Taitz*, Judge Kreep, as a lawyer, was local counsel for Phillip J. Berg, Esq., a Pennsylvania-based attorney. The *Liberi* case was originally filed in Pennsylvania federal court, and, then, transferred to the United States District Court for the Central District of California. As soon as Judge Kreep was elected in June, 2012, he asked Mr. Berg to engage another local attorney, and he assumed that Mr. Berg would replace him as local counsel, but Mr. Berg failed to do so. Recognizing that he was still local counsel as his swearing in was approaching, on January 4, 2013, Judge Kreep filed a motion to withdraw, citing his election to the bench as being the basis of the motion. A motion to withdraw in federal court, or even a stipulation for withdrawal, requires an order from the United States District Court judge presiding over the case. Meanwhile, Mr. Berg secured the services of replacement local counsel, and, on January 9, 2013, he filed a Notice of Request to Substitute Counsel. The motion to withdraw was delayed by the court, and there was not a ruling on the motion until after Judge Kreep was actually sworn in. Surprisingly, the motion and the substitution were first denied as deficient. The United States District Court judge, the Hon. Andrew Guilford, did not allow Judge Kreep to withdraw as local counsel until February, 2013. During the pendency of the motion to withdraw, Judge Kreep performed no legal work of any nature on the case. In fact, Judge Kreep made no appearances of any kind in the proceeding, serving only as local counsel for Mr. Berg, who asked the Judge to sponsor him only for purposes of Mr. Berg, a Pennsylvania attorney, being allowed to handle this federal court case in California.

H. In December 2013, the Fee Arbitration Committee of the San Diego County Bar Association ordered you to reimburse Robert Thompson $14,914. Before you took the bench, you had represented Thompson in connection with a fine imposed by the county for

unpermitted storage. Between March and May 2014, you issued four checks intended as payment of the fee arbitration award. The account holder on the checks was identified as "Gary G Kreep Sole Prop, DBA The Law Offices of Gary G Kreep."

Your use of checks that incorrectly represented your status and created the impression that you were continuing to practice law violated the Code of Judicial Ethics, canons 1, 2, and 2A.

Rule 20.0 of the San Diego County Bar Association Local Rules relating to arbitration provides "all communications, negotiations or settlement discussion by and between participants . . .shall remain confidential." Furthermore, there are numerous California statutes relating to the confidential nature of arbitration proceedings, including attorney's fees arbitrations. These include California Code of Civil Procedure section 1281.96, California Code of Civil Procedure section 1284.3(d)(4), California Business and Professions Code section 6200(H), California Evidence Code section 703.5, California Evidence Code section 1118, California Evidence Code section 1119, California Evidence Code section 1120, California Evidence Code section 1121, California Evidence Code section 1125 and California Evidence Code section 1126. These statutory provisions evidence a legislative intent to cloak arbitration proceedings with confidentiality and privilege, making the allegations therein, and the evidence adduced, inadmissible in other proceedings, including this preliminary investigation.

Notwithstanding the above, there was a San Diego County Bar Association fee arbitration award entered in favor of Robert Thompson on December 3, 2013. Judge Kreep's deadline to appeal and reject the arbitration award was in the first week of January, 2014. On December 28, 2013, Judge Kreep injured his back and was bedridden until February 15, 2014. During that approximate seven week period of time, Judge Kreep was under heavy pain medication, including Percocet and other painkillers. Judge Kreep had

totally forgotten about the arbitration award. In February, Judge Kreep was reminded of the award, and, because of the lapse of time, it was final, and not subject to an appeal.

When Judge Kreep became aware that the award was final and not subject to an appeal, it was his intent to satisfy the award in three payments. Judge Kreep requested that his "adopted" son send an initial check to Mr. Thompson in the amount of $5,000, in February, but, apparently, this was not accomplished. Judge Kreep's "adopted" son had an employee of his handle the actual mailing of the initial $5,000 payment, and the man inadvertently used an old, pre-signed, check, from a closed law office account of Judge Kreep, to send that payment. However, as there were no funds in the account, the check was not cashed, and the $5,000 payment was sent electronically upon discovery of the mistake. No funds were paid to Mr. Thompson from Judge Kreep's former Client's Trust Account. Judge Kreep has paid the entire arbitration award, including interest. The account in question was used to pay outstanding obligations incurred by Judge Kreep's law firm while he was a practicing attorney, and in no way suggested that he was still practicing law after joining the bench.

COUNT TWO

From January through approximately the first week of September 2013, you were assigned to Department 3 in the Central Courthouse. Department 3 is an in-custody misdemeanor arraignment department. An assigned deputy city attorney serves as the prosecutor. Most defendants are represented by the Public Defender's office. Certified law students (referred to as interns) are routinely present in Department 3, primarily on behalf of the Public Defender's office.

From approximately mid-September through the first week of November 2013, you were assigned to the Kearny Mesa branch courthouse.

In 2013, you engaged in conduct that reflected a lack of proper courtroom decorum or was otherwise improper, as exemplified by the following:

A. On January 17, 2013, the following exchange occurred while you were on the bench:

THE COURT: I love her accent.

DPD [LETICIA] HERNANDEZ: I'm Mexican.

THE COURT: Are you a citizen of the country of Mexico, Ms. Hernandez?

DPD HERNANDEZ: No.

THE COURT: Okay. Okay. There is an attorney in town that I know that is actually a citizen of the — of Mexico who does immigration work here in California.

DPD HERNANDEZ: Oh no, your Honor. I am a U.S. citizen and proud of it.

THE COURT: I wasn't planning on having you deported.

When Judge Kreep called a case in which Ms. Hernandez was the Deputy Public Defender, Judge Kreep commented about her wonderful accent. Ms. Hernandez said that she was "Mexican." Judge Kreep mentioned an attorney in San Diego to whom he had referred a number of immigration cases over the years who was a Mexican citizen, but practiced law in California, and asked Ms. Hernandez if she was a citizen. Jokingly, he quipped words to the effect that she needn't worry, because he wasn't going to have her deported. She laughed at the comment. Unbeknownst to Judge Kreep, there was a reporter from a newspaper called City Beat monitoring his courtroom. The reporter embellished the encounter in a story about Judge Kreep. The presiding judge discussed the story with Judge Kreep, who then discussed the incident with Ms. Hernandez to apologize to her. She also apologized for the furor and stated that she knew that they were just joking.

B. You sometimes addressed the attorneys in Department 3 by nicknames, or otherwise referred to their appearance, as exemplified by the following. You called a public defender (PD) intern who wore her hair in a bun "Bunhead," called a female PD intern "Dimples," and called a tall male PD intern "Shorty." You asked a deputy city attorney if she knew Star Parker, who you described as a beautiful African-American woman. After

this, you would regularly call that deputy city attorney "Star" when she was present in your department.

On several occasions, Judge Kreep told Deputy City Attorney Winbush that she reminded him of someone, but he could not remember who. Judge Kreep finally realized that Ms. Winbush reminded him of a friend, Star Parker, a former welfare mom who pulled herself up by the bootstraps and is now a well-known black conservative Christian activist. Judge Kreep told Ms. Winbush about Ms. Parker, and, after researching Ms. Parker, Ms. Winbush told Judge Kreep that she was flattered by the comparison. Ms. Winbush was not regularly in Judge Kreep's department and he used the nickname about four or five times, and then stopped.

Mr. Crowley was not an attorney, but a certified legal intern. Mr. Crowley is about six feet, four inches, and, jokingly, Judge Kreep referred to him as "Shorty" on two or three occasions. [The "Shorty" nickname was used by court personnel and other Public Defender employees prior to Judge Kreep's use.] Mr. Crowley expressed to Judge Kreep that he did not like the nickname, so Judge Kreep quit using it, and apologized to him.

Ms. McLaughlin was another certified legal intern. Judge Kreep did call her "Miss Bunhead" three or four times, because she occasionally put her hair up in a bun, which reminded Judge Kreep of a television program that was then currently on the air called "Bunheads." When Ms. McLaughlin seemed displeased with the nickname, Judge Kreep apologized to her and discontinued the reference. The statement attributed to Judge Kreep that "someone told me not to call Bunhead, Bunhead" was not made, to the best of his memory.

Ms. Ho had the nickname "Dimples" before Judge Kreep used it. The reason that he did refer to her briefly as "Miss Dimples" was because every time that he mentioned

her name in court, there were snickers from the audience, since many of the defendants appearing in Department 3 were prostitutes, commonly referred to as "hoes" on the street. It was not possible to refer to Ms. Ho as "counsel," since she was a certified legal intern, not an attorney, and, also, because she was there with as many as five to six other public defender staff at the same time, so the word "counsel" did not differentiate one public defender from another.

It should be noted that Ms. Ho requested Judge Kreep to swear her in when she became an attorney later in the year, even though she no longer appeared before him. Judge Kreep felt very honored by the request, and Attorney Leticia Hernandez (referenced above) attended the ceremony.

C. You sometimes made comments about the physical appearance of female deputy public defenders who appeared in your courtroom, as exemplified by the following. During proceedings on July 12, 2013, you stated, "She's a pretty girl, you know you can smile," and "We got all sorts of very attractive, young PD's around here, so." On a date between May and October 2013, when speaking to a defendant, you referred to the defendant's attorney as "this lovely young lady standing next to you."

Judge Kreep may have referred to a public defender in connection with addressing a defendant as "that lovely young lady standing next to you," but it was never stated in a demeaning way, merely descriptive. Any comments made by Judge Kreep were not demeaning and could only be viewed as such if taken out of context.

D. On a date prior to August 2, 2013, during an appearance by a female defendant charged with prostitution, who was represented by a male deputy public defender, you made a comment about how attractive the deputy public defender was, to which the defendant responded in agreement.

There was a case involving a charged prostitute, who was literally smacking her lips and leering at the assigned male Deputy Public Defender. Judge Kreep made a reference of sort to the handsome young attorney representing her and the defendant

replied, "He sure is," which Judge Kreep, and, essentially, everyone else in the courtroom, thought was funny, and laughed.

E. In approximately May and June 2013, you made remarks to a deputy city attorney that referred to her pregnancy. On one occasion, on approximately May 31, 2013, when speaking to a deputy public defender conducting a video arraignment, you made a statement to the effect that the deputy public defender should hurry up because the deputy city attorney "wants to go home and have her baby" so you would "pick on her [the deputy city attorney] today." On other occasions, you remarked to the deputy city attorney that "it's getting closer."

These comments, like many others in this formal proceeding, are taken out of context. The Deputy City Attorney (DCA) was perceptively pregnant, and, ultimately, near term. It was a matter of regular discussion in the courtroom on the few times that she was present. The comments were made as light conversation, and no one expressed any concerns about the comments. Judge Kreep has a vague memory of the DCA saying that she wanted to finish the calendar, so that she could get out of court early to go home and rest. These comments constituted light banter never intended to be derogatory or demeaning and not subject to such interpretation by a reasonable person.

F. On a date between January and June 2013, while discussing a prostitution case with a deputy city attorney, you said, "Speaking of prostitution, here's Ms. Westfall," when Deputy City Attorney Karolyn Westfall entered the courtroom.

If Judge Kreep made the statement, which he does not remember making, he was possibly in mid-sentence when Ms. Westfall entered the courtroom. Judge Kreep has never referred to any Deputy City attorney as a prostitute. Ms. Westfall was part of a special unit at the San Diego City Attorney's Office that dealt with prostitution. Those cases could only be handled when a deputy city attorney from that unit was present in court. As a result, court staff would often have to wait, sometimes 1-2 hours, for a DCA from that unit to appear to handle said cases. It should be noted that this comment allegedly occurred

sometime during a 6 month period. If the comment was made and considered inappropriate, someone certainly would have memorialized the date that it allegedly happened.

G. In approximately mid-2013, you told court staff and attorneys in open court about your experience assisting a personal friend who had a disability and had asked you to be her caregiver. You stated that your tasks as a caregiver required you to shower with your friend and sleep in the same bed, but that you did not have sex with your friend.

Judge Kreep does not remember discussing this with anyone at the courthouse, however, it is a true story, so he must have engaged in the discussion. As no date or tape is noted (all hearings in Dept. 3 are on tape), and given the nature of the comment, this must have been part of a personal discussion with Judge Kreep's Dept. 3 bailiff and/or court staff), one of whom has followed him to Depts. 7 & 22, and is still with him), and all of whom are still friends with Judge Kreep. They and Judge Kreep, as well as the Deputy Public Defenders (DPD's) and the Deputy City Attorneys (DCA's) would regularly talk off the record about a variety of matters. Discussions spanned a whole host of subjects completely unrelated to the court proceedings, and Judge Kreep occasionally joined in. Judge Kreep believed that it was important for him to maintain cordial relations with court staff, bailiffs, and attorneys appearing before him and these discussions, and if occurred, were part of that.

H. On July 12, 2013, in a case in which the defendant, who was represented, was charged with prostitution, you asked the defendant, "Ma'am, anything I can do to get you out of the life?" During the taking of the plea, you asked her, "Is it you like the money? Or you just like the action?" When the defendant started talking about her plans for the future, you asked, "Are you going to try to get a job at the Bunny Ranch in Nevada?"

Judge Kreep does not dispute the language attributed to him, but believes that it is taken out of context. It is his recollection that the defendant charged with prostitution had

several prior Penal Code section 647(b) convictions. When prostitutes appeared before Judge Kreep, especially those charged with prostitution on a first time basis, he attempted to talk with them into finding another, legal, way to earn a living. Judge Kreep was trying to find out what it was that caused the defendant to engage in illegal acts of prostitution. The reference to the Bunny Ranch was in response to the defendant's statement that she was going to go somewhere where prostitution was legal. The Bunny Ranch was a state-approved house of prostitution in Nevada. When she indicated that she was going to continue being a prostitute, Judge Kreep so inquired as a way to try to find out what was motivating her to violate the law.

I. You sometimes provided cookies or other snacks to the attorneys and staff in department 3, and kept a jar of cookies in the courtroom. In approximately late July 2013, you told a city attorney intern who was appearing on a matter, "If you're good during your hearing, I'll give you cookies, little boy."

While presiding over Department 3, it was Judge Kreep's practice to give candy, pastries, and cookies to the deputy public defenders, the deputy city attorneys, the public, and the court staff on a regular basis. It was common to have to wait for special unit specific DCA's to appear in Dept. 3, and, given the afternoon heat of the summer and the location of the courtroom, it often became hot and humid in the courtroom. The attorneys, court staff and public there often started "dragging," (complained about no energy), so Judge Kreep kept snacks around for energy, and frequently distributed them as discussed above. So his statement was probably in reference to this practice.

J. During a sidebar conference in a prostitution case that came before you on September 4, 2013, you referred to a different prostitution case as the "Chinese prostitutes" case. You then stated to the deputy city attorney, who is Taiwanese-American, "no offense to Chinese people."

If these allegations are derived from statements made by Deputy City Attorney, the following must be considered. Ms. Song would regularly comment that the defendants were all "scumbags." She made it very clear that she did not like it that Judge Kreep made efforts to help defendants move on positively with their lives. After the City Attorney filed a blanket challenge under Code of Civil Procedure section 170.6 against Judge Kreep, Ms. Song got into disputes with judges who replaced Judge Kreep in Department 3. It has been reported that, in open court, in front of a Judge Lorna Alksne, and in reference to the Public Defenders, Ms. Song stated, "Fuck them." Her courtroom conduct and demeanor was such that she was removed from courtroom responsibility. Ms. Song is now an issuing Deputy City Attorney, with only rare courtroom duties.

The case referenced involved a situation where two agents from the United States Department of Homeland Security came into Judge Kreep's courtroom, and advised him that they wanted to "turn" one or both of two Chinese immigrant prostitute defendants into witnesses for a federal human trafficking investigation. Instead of referencing the two women as simply prostitutes, Judge Kreep referred to them, at one point, as "Chinese prostitutes." Fearing that Ms. Song would consider his language to be racially insensitive, Judge Kreep apologized to Ms. Song for making the reference, believing that by so apologizing, he was being sensitive to her ethnic background.

K. On multiple occasions when imposing sentence in Department 3, you referred to the sentence as a "gift," "gift of the day," or "gift for the day."

There needs to be an understanding of the context of Judge Kreep's comments regarding late filed cases by the City Attorney's Office, and what appears to be gamesmanship by that office. Due to ongoing budgetary problems in the Court, Judge Kreep was under instructions to do his best to eliminate clerk overtime. The City Attorney

would often delay filing dozens of cases until as late as 2:00 p.m., on the last day to charge. In order to avoid clerk's overtime expense, these late filed cases needed to be processed before 5:00 p.m. That meant the court hearings had to be finished by 4:00 p.m. These purposefully late filed matters were extremely disruptive and inconvenient to the court, to the clerk staff, and to other parties and counsel. Criticism was directed at the City Attorney's office for the practice because it was completely in control in creating the situation.

Judge Kreep does not dispute the statements that he is accused of making. However, the comments were directed to the defense attorneys, not to the defendants. The "gifts" were Judge Kreep's way of describing his utilization of his discretion to provide certain defendants some concessions in sentencing, usually reducing fines for people who were unable to pay the fines. Could "better" language have been utilized? Probably, but by using the term "gift," in comments made to defense counsel, it would have been more understandable to the defendant that there was going to be a reduction in the sentencing made by Judge Kreep.

L. On multiple occasions in Department 3, you advised defendants whose cases were being dismissed after completion of certain terms and conditions, that if asked about their cases, including by employers or prospective employers, they could say it was "all a big mistake."

A common question asked by the defendants in Department 3 related to their "criminal record" if they pled guilty, and how it would effect future employment. Judge Kreep suggested to them that, since the case was being dismissed, if asked by a potential employer, the individual tell the employer that the matter arose out of a mistake, and, eventually, the charges had been dismissed. There was no reference whatsoever by Judge Kreep to the effect that the prosecution made a mistake, nor was there intent on his part to

imply that. The reference was the defendant doing something he or she should not have done: in other words "a mistake." In other words, a mistake by the defendant, not by the City Attorney.

Judge Kreep was not giving the defendants legal advice. He simply suggested a way for the defendants to deal with an issue that could bar them from gainful employment. Judge Kreep believes that many first-time offenders had simply "made a mistake" by what they had done, allowing for the matter to be dismissed.

M. You sometimes used crude language during proceedings in Department 3. For example, on July 22, 2013, you stated in reference to a deputy city attorney that if she was not present at 8:30, you would "kick her in the butt." Also on July 22, you referred to "get[ting] the crap beat out of [you] on a regular basis." On July 23, 2013, you told defense counsel that his client was "no virgin" as far as the type of case involved. On July 29, 2013, you advised the mother of a defendant whose case was being dismissed to "slap him up the head a few times —make sure he stays off drugs." On July 30, 2013, you stated to a defendant, "If you violate your OR, I'll throw your butt in jail."

As a general proposition Judge Kreep denies that during his service as a Superior Court judge he has been crude. The statements attributed to him must be taken in the appropriate context – the context in which the statements were made. While, in general, the statements attributed to Judge Kreep sound like statements that he would make, Judge Kreep does not have an independent recollection of making all of them.

With regard to the July 22, 2013, statement, Department 3 had an 8:30 a.m. calendar. Carolyn Song would not show up in the courtroom until about 9:00 a.m. She would then immediately leave to get coffee and to talk on her cellphone. Ms. Song would not be ready to handle any cases until about 9:30 a.m. The Deputy Public Defenders and the private defense counsel would have to wait around until she decided that she was prepared to start work on the calendar. Judge Kreep complained to his Supervising Criminal Judge, Tim Walsh, about Ms. Song's conduct, and he was told that there was

nothing that could be done. The Supervising Judge would not even raise the issue with the City Attorney's Office. Defense counsel regularly appearing in Department 3 knew Ms. Song's work habits and Judge Kreep's statement merely was for the purpose of advising that he would try to ensure a timely appearance by her.

With regard to the July 23, 2013, comment, the statement was strictly in reference to the defendant having similar priors, and that is what everyone understood.

With regard to the July 29, 2013, statement, Judge Kreep does not have an independent recollection of making the statement, but concedes it sounds like something that he would say. Judge Kreep made a concerted effort to treat everyone in his courtroom with dignity and respect, and the statement suggests that he was trying to be supportive of a mother working to keep her child out of trouble. The same is true for the statement referenced on July 30, 2013. If it was made, it was an effort to make this offense the last offense for that particular defendant. It was common for the parents and family of Defendants in Dept. 3 to ask the court how they could keep their child out of jail.

While the language used to advise the Defendant that he or she would go back into custody if he/she violated his/her OR was a little earthy on 7/30/13, it was intended to make sure that the Defendant knew that he/she would bear the consequences of a violation. It was Judge Kreep's experience in Department 3 that numerous defendants had violated their OR's without any consequences, and he wanted them to know that said practice was over.

N. You often used Spanish phrases to address defendants, attorneys, and others who you thought were Spanish. speaking, when greeting these persons or at the conclusion of a case (e.g., senor, senora, Buenos dias, Como estas?, Vaya con Dios, Buenas tardes). You occasionally used other Spanish phrases (e.g., muy importante, momento por favor, no mas, "no cerveza, no tequila, no alcohol, nada, until your case is over").

Judge Kreep would address Spanish-speaking parties in Spanish as a sign of respect. Judge Kreep readily acknowledges that he inquired of parties whether they spoke English, and, when a party appeared with an interpreter, he would frequently greet that party in Spanish. Many judges in other areas with large Hispanic populations employ the same practice as well, including numerous judges in San Diego County. Judge Kreep always greeted the defendants in Department 3 by name, and he wished them well after the hearing. For those who did not speak English, and did speak Spanish, or Spanish was their main language, Judge Kreep would greet them in Spanish and wish them well after the hearing in Spanish. To do otherwise, Judge Kreep felt, would be racist, as he did the same with English speaking defendants. Every defendant deserves respect, and, if they did not speak English, and did speak Spanish, he saw nothing wrong with making such comments in Spanish, since he was not discussing the merits of the matter, but, merely, greeting them, or wishing them well at the conclusion of the matter. If the claim here is that greeting the Spanish speaking defendants in Spanish is showing partiality to them, then, if a judge were to only greet defendants in English, could that not be the basis of a claim that the judge was partial to English speaking defendants, and biased against non-English speaking defendants?

At some point Judge Kreep was instructed by the presiding judge, never to use Spanish in his courtroom again. Judge Kreep discontinued the use of any Spanish whatsoever after receiving the instruction. Numerous other Judges in San Diego County, to this day, still speak Spanish in their courtrooms.

O. During the hearing of a small claims matter at the Kearny Mesa courthouse on October 3, 2013; you repeatedly addressed an insurance company representative as "Mr. Insurance Man."

Judge Kreep has no specific recollection about it, but does not dispute making such a reference. Frequently, individuals will appear on behalf of a company or organization, and Judge Kreep is unaware of the person's name. So he may refer to someone as "project manager," "office manager," or even a lawyer as "counsel." Calling someone "Mr. Insurance Man" is certainly not pejorative, and it happens every day in courtrooms throughout the state of California, especially during settlement conferences where an insurance representative with full settlement authority is required to be present. Further, Judge Kreep's family was heavily involved in the insurance industry—his step-father, his mother, his 2 half-sisters, and 2 of his 3 brother-in-law's all worked for State Farm Insurance, so, if he made the comment, he was not being disrespectful.

Your conduct violated the Code of Judicial Ethics, Canons 1, 2, 2A, 3B(3), and 3B(4). Your conduct set forth in parts B through H, above, also constituted sexual harassment in violation of the Code of Judicial Ethics, canon 3B(5).

For all the allegations set forth in Count 2, these claims are stale and resolved. All of the charges in Count 2 occurred within months of Judge Kreep being sworn in, and all of the conduct complained of has been long ago changed.

COUNT THREE

In Department 3, you occasionally handled ex parte applications for civil harassment restraining orders. The city attorney is not a party in ex parte civil temporary restraining order (TRO) proceedings. In April 2013, your supervising judge counseled you not to undertake independent investigations in connection with ex parte civil TRO applications. On approximately May 17, 2013, you asked a deputy city attorney, who was present in court during an ex parte civil TRO proceeding, to contact the San Diego Police Department to inquire about the existence of a surveillance video referred to by the TRO applicant.

Your conduct violated the Code of Judicial Ethics, Canons 1, 2, 2A, 3C(2), and 3B(7).

Judge Kreep did not have a "practice of undertaking independent investigations of facts outside the record while adjudicating civil restraining order applications." Furthermore, Judge Kreep did not "occasionally" handle ex parte applications for restraining orders, rather, during 2013, Judge Kreep presided over hundreds of ex parte applications for temporary restraining orders. In any event, the claims asserted are stale dating back to over three years ago. Judge Kreep believes that he may have asked about a police surveillance video in one case, since it was represented that such was evidence in the case at issue, but does not remember any of the details.

COUNT FOUR

The city attorney's office filed a "blanket" challenge against you on September 9, 2013. On the morning of September 9, you went to Department 1 during a break in proceedings and talked about the challenge with the deputy public defenders (DPD's) and PD interns who were present. You advised the DPD's present to tell another DPD that she should "watch out, because if they're coming for me they're likely coming" for her also, or words to that effect. You also engaged the DPD's in improper ex parte communications about pending public defender cases.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3B(7).

After the blanket challenge by the City Attorney's Office, Judge Kreep did go to Department 1 of the San Diego Superior Court, to tell the Deputy Public Defenders about the blanket challenge. He did this because there were no deputy public defenders, or deputy city attorneys, in Department 3, when he became aware of the blanket challenge. He wanted the deputy public defenders to know that another judge would be handling the Dept. 3 calendar that day.

Judge Kreep told the deputy public defenders that his understanding was that the blanket challenge resulted from a ruling that he had made in a case the previous Friday, when he granted a deputy public defender's request to set a motion. Judge Kreep

vehemently denies that he spoke to the public defenders about other cases, since he did not know what was on his calendar in Department 3 for that day. Since Judge Kreep did not discuss any pending cases with those public defenders, he does not believe there could have been an ex parte communication, as he discussed the blanket challenge, which did not need to be discussed with the City Attorney's Office, since having filed it they obviously knew about it.

Judge Kreep recalls that he did tell the public defender staff to warn Ms. Tesch that she might be subject to actions against her by the City Attorney's Office. Deputy City Attorney Caroline Song had a habit of attacking the ethics and integrity of deputy public defenders on the record when they were not present. Judge Kreep specifically remembers Ms. Song attacking the ethics and integrity of two male DPD's, when there were no deputy public defenders in the courtroom to hear the attacks. Judge Kreep admonished Ms. Song on three occasions where he observed her attacking the ethics and integrity of the deputy public defenders, but his admonishment did not stop her from continuing to do so. Ms. Song was the attorney who challenged Judge Kreep when he ruled in the case giving rise to the blanket challenge, telling Judge Kreep, in a belligerent manner, words to the effect, "You can't do that." This came about when Ms. Song started to refuse to honor plea agreements, and Judge Kreep informed courtroom attorneys that he would honor the plea agreements in his sentencing of a defendant, even if the City Attorney's Office would not. It was clear to Judge Kreep that Ms. Song would attack Ms. Tesch because Ms. Tesch had filed a motion to enforce another plea bargain, giving rise to the blanket challenge. It should be noted that Ms. Tesch's motion to enforce a plea bargain was opposed by Ms. Song, who told Judge Kreep that the Public

Defender's Office could not file such a motion and that Judge Kreep could not allow such a motion to be filed. Judge Kreep told Ms. Song that the motion, and other motions, could be filed, and that by allowing the motions to be filed, he was not thereby ruling on the merits of the motion. DCA Song repeatedly, in open court, would literally jump up out of her chair, and, in a loud voice, tell Judge Kreep, "You can't do that."

COUNT FIVE

At the end of October 2013, a Halloween party was held at the Kearny Mesa courthouse. You were one of the three judges for the costume contest. After the contest, an African-American court employee who was a third place winner in one of the costume contest categories asked you why there were no prizes for third place, as had been the case in prior years. You said it was not up to you and that you did not want the employee to say that she "didn't win due to racism," or words to that effect.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 4A.

Judge Kreep was asked to be a judge of the costume contest conducted by the traffic court as part of a Halloween party. The costume name "White Queen" was specified by the contestant, as opposed to the "Red Queen" in *Alice in Wonderland.* Judge Kreep does not remember the race of the contestant, or even if the person's race or gender could be determined under the costume. Judge Kreep recalls that the "White Queen" was a winner of one of the prizes. There were several categories in which there were winners. It is recalled that only first and second place finishers were given prizes.

When Judge Kreep was asked about third place contestants, and whether they were given prizes, his reply was that he did not know, nor was he the one who made the decision to limit prizes to first and second place. Judge Kreep did not make the comments attributed to him and doesn't even recall who came in third place in the particular contest involving the "White Queen."

COUNT SIX

On September 26, 2014, you presided over the unlawful detainer case of Dr. Louis Vismara, Trustee of the Thelma &Mario Vismara Trust Dated 1976 v. Ken Coplin, et al., No. 37-2014-12072-CL-UD-CTL. Although the case was set for trial that day, you did not conduct a trial and did not offer the defendants an opportunity to conduct cross-examination or present testimony or evidence. On multiple occasions, you stated that you were trying to figure out what was going on. After you questioned defendant Kenneth Coplin and property manager Richard Hein, you announced, "We haven't gotten into testimony yet. I'm just trying to get a feel for this."

After plaintiff's counsel informed you that the plaintiff was only seeking possession of the property and was not seeking damages, one of the defendants told you, "They've got the property back." You replied, "Well, but your stuff's still in there, so. All right —all right. So, let's talk —let's get down to brass tacks...." You repeatedly asked the defendants when they could get their "stuff out of there." When one of the defendants responded that he could have his property off the premises within 60 days, you replied that "that's not gonna cut it."

In the ensuing discussion, you negotiated or mediated between the parties about how much time would be allowed for the defendants to remove their personal property, and pressured the defendants to reach a settlement concerning the amount of time in which they would remove their property from the premises.

You informed the parties that the plaintiff owned the real property and had a right to get it back. You then instructed the parties that they should discuss the timeframe among themselves; and informed the defendants that if the plaintiff did not agree to more than the "standard time," you would "go through the formalities" and issue an order and the defendants would get only the "standard time" of about 2 ½ weeks before they would be locked out. By telling the defendants that the plaintiff had a right to get the real property back and that the defendants would "get the standard time" if the plaintiff did not agree to allow more time, without hearing all of the evidence, you gave the appearance that you had prejudged the case.

Your conduct violated the Code of Judicial Ethics, Canons 1, 2, 2A, 3B(5), 3B(7), and 3B(8).

Vismara Trust v. Coplin was assigned to Judge Kreep for trial on September 26, 2014. This unlawful detainer action was one of several lawsuits involving mostly the same parties, including two bankruptcy proceedings filed by Defendants, in connection with the leasing of commercial space. The bankruptcy filings precluded the court from awarding monetary damages.

After advising the parties and counsel that the case was presented to him for trial, following witnesses being sworn, Judge Kreep began to ask questions of counsel and the pro per parties to determine the scope of the trial, the issues to be resolved, and the evidence to be presented, so that he could have an understanding of the evidentiary issues at play, including what may or may not have been relevant evidence. His inquiry in this regard was no different than hearing and deciding in limine motions, or having counsel describe to the court the matters at issue requiring his adjudication in a pre-trial context.

It quickly became evident to Judge Kreep that there really wasn't any factual issue for him to decide. Damages could not be awarded for unpaid rent because of the bankruptcies of the two remaining defendants, and possession of the realty was already with the landlord. The only real issue left to decide was the tenants' right to possession of their personality still located at the leased premises. It is true that Judge Kreep attempted to broker a settlement on this one issue, that the parties went into the halls of the courthouse for further discussions, and that an agreement was reached. The only question for the court was how much time, if any, would the former tenants have to retrieve their personal property. It was either going to be that they had no time, since, admittedly, they previously had access to the real property for a substantial amount of time, or that there would be some retrieval time that Judge Kreep would allow.

COUNT SEVEN

On October 27, 2014, you presided over an unlawful detainer trial in Pinewood Park, LP v. Paula Anderson, No. 37-2014-32680-CL-UD-CTL. During a discussion about pronunciation, you made the following remark: "And I had a Filipino teacher who always used to ask for a shit of paper."

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(3), 3B(4), and 3B(5).

During the course of the hearing, the defendant Paula Anderson, commented that she may be hard to understand because of her Texas accent. Plaintiff's counsel then made a comment about her husband's pronunciation of a certain word. Judge Kreep then made the statement attributed to him, which he recognizes should not have been made and apologizes for it. However, he was not ridiculing a group, nor was it perceived in that fashion by the parties in the case. All three statements were made in an attempt to bring some levity and relaxation into the proceeding.

COUNT EIGHT

While presiding over unlawful detainer matters in Department 7, you sometimes asked attorneys waiting for their matters to be called for their opinions on issues of law in cases before you in which those attorneys did not represent a party. For example, on one occasion, you asked whether, after sustaining a demurrer, it would be appropriate to rule that the defendant had to "answer" within five days, or "respond" within five days. Mr. Feinberg, who did not represent any party in the case before you, stated his view that the defendant should "answer" within five days. You then ruled that the defendant should "answer" within five days.

On October 2, 2014, while presiding over the unlawful detainer case of Gelb Revocable 2010 Trust v. Pearl Chapman, et al., No. 37-2014-00025304-CLUD- CTL, you asked, who did not appear in the case, "Does the 30-day notice require the 'abandonment of property' wording?" When Ms. Coyne responded affirmatively, you told the plaintiff's attorney that she "might want to try to settle this matter.., " You then added that you had called upon Ms. Coyne because her firm only represents plaintiffs.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 2B(1).

While not an excuse, Judge Kreep had seen judges in the past inquire of lawyers knowledgeable in an area of law to comment upon the proper interpretation of a statute. Judge Kreep was counselled in late January, or early February, 2015, as to the use of this practice, and he discontinued doing so. This was not a frequent practice, and only happened

twice. On both occasions, Judge Kreep believes that he asked for comments on the issue at hand from both plaintiff and defense counsel.

COUNT NINE

On January 8, 2015, you presided over the small claims trial in Juhar Sleea v. Win Brown, No. 37-2014-00310494-SC-SC-CTL. The defendant did not appear at the trial. At the end of the trial, you gave the plaintiff the choice of dismissing the case and filing it as a limited or unlimited civil case, or having you decide the case based on the evidence presented. The plaintiff moved to dismiss the case.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(5), and 3B(8).

Judge Kreep's handling of Small Claims Court cases was the subject of a supplemental preliminary investigation by the Commission. The common thread was that the manner by which Judge Kreep conducted the proceedings failed to comply with the law.

The Commission seems to believe that there is some textbook procedure to follow in presiding over Small Claims Court cases. There is not. Judge Kreep's handling of the small claims calendar comports with Code of Civil Procedure §§ 116.110-116.950. The mandate of the Small Claims Act is to conduct the proceedings informally (CCP § 116.510), giving judges broad power to examine witnesses, and to "investigate" the controversy, with or without notice to the parties. (CCP § 116.520 (c)). There is no bar to a judge using his or her own life experiences in formulating a decision in these cases.

The Small Claims Court Act is a statutory scheme calling for an informal evidentiary hearing for purposes of resolving a relatively minor dispute. The Statute gives Small Claims Court judges wide latitude in conducting the evidentiary hearing, with a

recognition that the parties to Small Claims Court cases are not represented, and cannot be represented, by counsel at trial, so, by implication, the judicial officer must become more involved in the evidentiary inquiry. This is exactly the reason why a Small Claims Court judicial officer is entitled to conduct an independent investigation in connection with the proceeding, including the investigation of claims outside of court (CCP § 116.520 (c)). The Commission tries to find fault with Judge Kreep's efforts to develop and understand the factual claims and defenses, so that a fair and just result can be attained. Judge Kreep's actions in these proceedings are consistent with the way that Commissioners and Judges have handled such cases for decades. Why Judge Kreep has been picked out for discipline in these cases can only suggest of harassment.

COUNT TEN

On February 11, 2015, you presided over the small claims hearing in William Clenendin v. Pacific West Home Mortgage, LLC, No. 37-2014-00310893-SC-SC-CTL. The plaintiff was suing over alleged defects in the flooring that he discovered when he was removing a carpet the defendant had previously installed.

Stephen Niednagel appeared for the defendant. Throughout the hearing, you repeatedly interjected your views based on your personal experiences, as follows:

(a) When Mr. Niednagel was presenting the defense case to you, you stated that you had "bought and sold houses...." You also stated, "I'm a landlord, I have commercial and residential realty. And I have replaced carpets and I have done a whole lots [sic] of construction and reconstruction on a variety of pieces of property for my own benefit or to fix them and sell them, all right? So, although I don't claim to be a builder, I'm not a virgin when it comes to these types of matters."

(b) After Mr. Niednagel admitted that he was basing his statements on what other people had told him, you stated, "I've seen some pretty strange — I was an attorney for over 37 years, sir, and I was involved in some lawsuits over houses that I don't ever even know how they got approved by code —brand new houses that were sold that people walked in them and fell right through the floor. And they've been approved by code, okay. Just before selling, so, I mean strange things happen is the only point I'm making."

(c) After reviewing photographs submitted by Mr. Niednagel, you prefaced your subsequent questions by stating, "I'm not an expert, I'm not a developer, I'm not a contractor, but I've been involved in real estate a little bit."

(d) After questioning the reliability of a letter written by a company's vice president of operations, you stated, "[L]et's put it this way, I've been in enough lawsuits as an attorney,- fortunately not as a party, to know that sometimes the truth gets left out when people are trying to cover their butts."

Your conduct violated the Code of Judicial Ethics, Canons 1, 2, 2A, 3B(3), 3B(4), and 3B(5).

Judge Kreep's response to Count Nine is incorporated herein by reference as though fully set forth in response to County Ten.

COUNT ELEVEN

On May 28, 2015, the unlawful detainer matter of REO Group v. George Newman, No. 37-2015-00017889, was assigned to your department. On July 17, 2015, REO Group filed a motion for summary judgment with a hearing date of July 29, 2015. On July 24, 2415, Newman filed a document wherein he notified the court that he would be unable to attend the motion for summary judgment hearing on July 29 because of a deposition he was scheduled to give that day in another case. Also on July 24, REO's attorney received a phone call from a court clerk advising that Newman was unavailable on July 29 and asking if she objected to a continuance. REO's attorney said she did not object. On the morning of July 27, 2015, REO's attorney received a phone call from your clerk advising that the hearing on the motion for summary judgment was continued to August 5, 2015, and that the court would provide notice. At 11:30 a.m., a minute order was entered, which stated that the hearing was continued to August 5 at 1:30 p.m. In addition, a Notice of Rescheduled Hearing, reflecting the new hearing date, was sent to the parties by your clerk by regular mail. (The Clerk's Certificate of Service by Mail states that the certification occurred in San Diego on July 27, but that the mailing occurred in Sacramento on July 28.)

On July 27, several hours after the initial phone call from your clerk, REO's attorney received a second call from the clerk advising that Newman was unavailable on August 5 and asking if she was agreeable to another continuance to August 12. REO's attorney subsequently had a letter hand-delivered to your department that afternoon wherein she recounted the calls she had received from the clerk that day, set forth her belief that on July 22, Newman's counsel in the other case had submitted a request to continue the deposition from July 29 to August 5, and requested that the summary judgment hearing be moved back to July 29. (REO's attorney sent the letter to Newman that day by regular mail; Newman did not receive it until after July 29.) You discussed the letter with your clerk that afternoon and ordered the hearing date moved back to July 29, 2015.

Thereafter, the clerk contacted REO's attorney by phone and advised that the summary judgment hearing had been moved back to July 29. The clerk was unable to reach Newman by phone to advise him of this change. No written notice of this rescheduling was sent to Newman by either the court or REO's attorney. On July 29, 2015, you presided over the hearing on REO's motion for summary judgment. REO's attorney appeared but no appearance was made by or on behalf of Newman. You granted the motion.

It is alleged that Judge Kreep received a hand-delivered letter from Plaintiff's Counsel requesting that Judge Kreep advance the date for hearing on Plaintiff's motion for summary judgment from August 5, 2015, to July 29, 2015. It is further alleged that although the letter listed Defendant's name as a "cc", there was no indication that the letter was delivered to the Defendant, and the letter was not accompanied by a proof of service on the Defendant. It is claimed that Plaintiff's letter was an ex parte communication.

The allegations are inaccurate and misstate the events relating to the hearing on the motion for summary judgment, and the letter.

The hearing for the motion for summary judgment was originally scheduled for July 29, 2015, at 1:30 p.m., in Department 7. On July 24, 2015, a clerk of the Court was contacted by Defendant, the clerk was informed by Defendant that he had a deposition scheduled in another legal matter set for July 29, 2015, and Defendant requested a continuance of the hearing. That information was conveyed to Judge Kreep's courtroom clerk (Tina), who conveyed the information to Judge Kreep. On the basis of this information Judge Kreep directed Tina to contact both parties to continue the hearing to the following Wednesday, August 6, 2015.

Subsequently, Tina told Judge Kreep that Defendant's deposition had been continued from July 29, 2015, to August 6, 2015. Therefore, Judge Kreep directed Tina to

contact both parties to reschedule the hearing back to the original hearing date of July 29, 2015. According to Tina, she did so by telephone.

Plaintiff's Counsel then wrote to Department 7, on July 27, 2015, requesting that the Court move the summary judgment hearing back to the original hearing date of July 29, 2015. Tina mentioned the letter to Judge Kreep, but, as there was no proof of service attached to the letter, it was returned to Plaintiff's counsel with the messenger who had delivered it. Judge Kreep was not presented a copy of the letter, nor did he read it.

Plaintiff's Counsel re-submitted the letter, via messenger, with an accompanying proof of service for the letter, to Department 7, later that day. The proof of service verified that the letter was mailed via US First Class Mail to defendant on July 27, 2015. While Judge Kreep was aware of the letter because of discussions with his clerk, Judge Kreep never saw the letter in question until this inquiry.

The accusations against Judge Kreep on the *Reo Group* matter are either based upon an inadequate factual investigation, or are a bare contrivance, to accuse him of ethical and judicial administration standards violations that did not occur. Judge Kreep denies that any of his actions violated any Canon of Judicial Ethics or that he failed to act in a manner that promotes public confidence in the integrity and impartiality of the judicial system.

Even before Judge Kreep took office there were special interest groups who actively solicited his removal. One of those "groups" was spearheaded by attorney Leonard Simon who recently accused Judge Kreep of being a "politician" and therefore not qualified to be a judge. Simon has a political platform himself and is unqualified to comment on Judge Kreep's judicial abilities having never appeared in his courtroom. Over the years, as a lawyer, Gary Kreep advocated constitutional positions that were contrary to

positions of people whose political views were and are different than his own. Judge Kreep has never advanced a political agenda in his courtroom and never will. But his right of free speech, exercised before his election to the bench, has fueled this campaign seeking to embarrass, humiliate, and remove him from office. Judge Kreep recognizes being a judge has been a learning experience for him and he has endeavored to discharge his judicial responsibilities as constitutionally required. Living in a fishbowl for the past 3 years and 10 months, with the attendant complaints against him, and the continual investigations by the Commission has been demoralizing, but, he now welcomes the opportunity to have a full, complete, open, and fair evaluation without any political overtones whatsoever

DATED: October 27, 2016 MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Janet L. Everson
Attorneys for Judge Gary G. Kreep

JAM: 3056740

VERIFICATION

I, GARY G. KREEP, declare that I am the Responding Judge in the instant inquiry, that I have read the foregoing ANSWER, and know the contents thereof, that I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: October 27, 2016

GARY G. KREEP