STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE GARY G. KREEP, **No. 198**	**DECISION AND ORDER IMPOSING PUBLIC CENSURE**

I.

INTRODUCTION

This disciplinary matter concerns San Diego County Superior Court Judge Gary G. Kreep. The commission commenced this inquiry with the filing of its Notice of Formal Proceedings (Notice) on October 12, 2016.

Judge Kreep is represented by James A. Murphy, Esq., and Janet L. Everson, Esq., of Murphy, Pearson, Bradley & Feeney in San Francisco, California. The examiners for the commission are commission trial counsel Mark A. Lizarraga, Esq., and commission assistant trial counsel Sei Shimoguchi, Esq.

The Notice charged Judge Kreep with multiple acts of misconduct between 2012 and 2015, including misconduct during his judicial campaign, failing to take adequate steps to withdraw as counsel of record before taking the bench, issuing checks on his law practice account after taking the bench, making numerous comments in the courtroom reflecting a lack of courtroom decorum and an appearance of bias, engaging in improper ex parte communications, acting out of hostility toward the San Diego City Attorney's Office after they filed a "blanket" challenge against the judge, telling an African-American court employee that she should not say she did not win a Halloween costume contest "due to racism" or words to that effect, failing to give an adequate opportunity to be heard, and soliciting legal opinions from counsel not on the case.

The Supreme Court appointed three special masters who held an evidentiary hearing and reported to the commission. The masters were Hon. Dennis A. Cornell, Retired, Justice of the Court of Appeal, Fifth Appellate District; Hon. Louis R. Mauro, Justice of the Court of Appeal, Third Appellate District; and Hon. Randy Rhodes, Judge of the Los Angeles County Superior Court.

An eight-day evidentiary hearing was held before the special masters commencing February 6, 2017. The masters filed their report containing their findings of fact and conclusions of law on April 20, 2017. The commission heard oral argument on June 28, 2017.

The masters found that all charges were proven by clear and convincing evidence, except for counts three (alleged independent investigation in connection with ex parte temporary restraining order), six (alleged failure to afford opportunity to be heard), and 11 (alleged ex parte communication). The masters concluded that Judge Kreep engaged in 29 acts of misconduct, including one act of willful misconduct.[1] We conclude that the masters' factual findings are supported by clear and convincing evidence based on our independent review of the record, and adopt them in their entirety.[2] We adopt the masters' legal conclusions on all counts except count 1C (misrepresentation on statement of economic interest), where we determine that Judge Kreep engaged in prejudicial misconduct rather than improper action.

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[1] The parties filed written objections to the masters' findings and conclusions. Judge Kreep objected only to the masters' findings and/or conclusions in counts 1D [authoring fundraising letters opposing a nonjudicial candidate], 1E [failure to report accrued election expenses], 1F [use of his personal bank account and credit card for campaign expenses], 4 [improper response to blanket challenge], and 5 [comment to court employee reflecting racial bias]. The examiner objected only to the masters' legal conclusions in counts 1C [misrepresentations on Fair Political Practices Commission financial disclosure form] and 7 [comment about Filipino accent].

[2] The factual findings of the masters we have adopted are either quoted verbatim from the masters' report or summarized and paraphrased, as indicated in this decision. Record citations have been omitted in quoted excerpts from the masters' report.

We agree with the special masters' general assessment of Judge Kreep's judicial style during the time of the charged conduct.

> Judge Kreep expressed sensitivity to how individuals appearing in his courtroom might perceive his prior activities as an attorney, yet he was tone deaf to how attorneys might react to the casual way he ran his courtroom or the comments he made about their appearance and ethnicity. Although he worked diligently on his assigned cases, participated in judicial education opportunities, and volunteered for community outreach, he nevertheless delegated, delayed or ignored some of his most pressing ethical responsibilities. He had a sincere desire to connect with people and to help them in the courtroom, but his approach was improper for a judicial officer. Despite the numerous complaints about his conduct during his first year or so as a judge, the evidence suggests he now has an assignment that works for him and for the public.

We have determined to issue a severe public censure, the highest level of discipline available under the California Constitution short of removal. (Cal. Const., art. VI, § 18.) This decision is based largely on Judge Kreep's pervasive pattern of misconduct evidencing a lack of sensitivity to the adverse impact of his conduct on others and the public's esteem for the judiciary, and his failure to appreciate and accept the impropriety of some of his misconduct. While these factors might otherwise warrant removal from office, we have also taken into consideration that most of the judge's misconduct occurred during his first year on the bench and the record suggests he has since made efforts to modify his judicial style to avoid the type of conduct that led to these proceedings.

II.

LEGAL STANDARDS

The examiner has the burden of proving the charges by clear and convincing evidence. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090 (*Broadman*).) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.]" (*Ibid.*) Factual findings of the masters are entitled to special weight because the masters have "the advantage of

observing the demeanor of the witnesses." (*Ibid*; *Inquiry Concerning Freedman* (2007) 49 Cal.4th CJP Supp. 223, 232.) Legal conclusions of the masters are entitled to less deference because the commission has expertise with respect to the law of judicial misconduct. (See, e.g., *Broadman, supra*, 18 Cal.4th at p. 1090*; Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 880 (*Adams*); *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 878 (*Fletcher*).)

A violation of the California Code of Judicial Ethics constitutes one of three levels of judicial misconduct: willful misconduct, prejudicial misconduct, or improper action. (Cal. Const., art. VI, § 18, subd. (d).) Willful misconduct is (1) unjudicial conduct that is (2) committed in bad faith (3) by a judge acting in his judicial capacity. (*Broadman, supra*, 18 Cal.4th at p. 1091.) The second most serious level of misconduct is prejudicial misconduct, "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) The least serious level of misconduct, improper action, occurs when the judge's conduct violates the canons, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1, 82; *Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89, citing *Adams, supra*, 10 Cal.4th at pp. 897-899.)

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

COUNT ONE

A. Misrepresentations on judicial election campaign Web site.

Judge Kreep was charged with misrepresenting on his campaign Web site that he was the current president of the Family Values Coalition (FVC), the Justice Political Action Committee (JPAC), and the California Justice Political Action Committee (CALJPAC), and that FVC was a current nonprofit California corporation.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

While Judge Kreep was a candidate for judicial office in San Diego in 2012, he paid Darshan Brahmbhatt, his "quasi-adoptive son," to create an election campaign Web site for him.[3] The only instructions Judge Kreep gave Mr. Brahmbhatt was to include a list of his endorsers (which Judge Kreep provided) and a link for people who wanted to make donations.

The Web site created by Mr. Brahmbhatt included, among other things, a link to Judge Kreep's biography. Without informing Judge Kreep, Mr. Brahmbhatt copied the biography from the Web site for the United States Justice Foundation (USJF), an organization Judge Kreep co-founded. Judge Kreep was involved with the USJF until shortly before he was sworn in as a judge.

Judge Kreep did not receive a "final draft" of the Web site before it "went live" in April 2012, but he looked at the Web site once during his campaign. Shortly after the Web site first went up, Judge Kreep told Mr. Brahmbhatt he did not like the content of the Web site, but did not specify what he did not like or what he wanted changed.

The link to Judge Kreep's biography was in plain sight on his Web page. However, Judge Kreep did not review the biography when he looked at his election campaign Web site after the Web site went up.

The biography on Judge Kreep's election campaign Web site stated, in part, "Gary co-founded [JPAC] in 1985" and "served as President of JPAC since then." "Gary co-founded [CALJPAC] in 1996" and "served as President of CALJPAC since then." "Gary co-founded [FVC] in 1998" and he "has served as the President of FVC since then. FVC is a nonprofit California corporation organized under [Internal Revenue Code section] 501(c)(4)."

[3] Although this case includes time periods when Gary Kreep was not yet a judge, we will generally refer to him as Judge Kreep for ease of reference.

With respect to the accuracy of the representations made on the Web site, we adopt the following factual findings of the masters.

"The phrase 'President . . . since then' means Judge Kreep was the current president of FVC, JPAC, and CALJPAC. (Black's Law Dict. (6th ed. 1990) p. 1385 ['in its apparent sense . . . [since] includes the whole period between the event and the present time].) Judge Kreep's Web site represented that FVC was an existing nonprofit corporation in 2012.

"The statements about FVC and Judge Kreep's position with FVC, JPAC and CALJPAC were false at the time of Judge Kreep's 2012 campaign. Judge Kreep was not the president of FVC and FVC was not in operation in 2012. The State administratively terminated CALJPAC prior to 2012. Nevertheless, Judge Kreep resigned his position with JPAC and CALJPAC on February 24, 2012. Therefore, he was not the president of FVC, JPAC or CALJPAC at the time his Web site said he was the current president of those organizations."

2. Conclusions of Law.

A candidate for judicial office must comply with the provisions of canon 5. (Cal. Code Jud. Ethics, canons 6E and 6F.) Canon 5B(2), as in effect in 2012, provided that a candidate for judicial office shall not knowingly or with reckless disregard for the truth misrepresent any fact concerning the candidate. (Cal. Code Jud. Ethics, former canon 5B(2) [now found at canon 5B(1)(b)].) False information provided during a campaign for judicial office may constitute prejudicial misconduct. (See, e.g., *Inquiry Concerning Couwenberg* (2001) 48 Cal.4th CJP Supp. 205, 220-221; *Public Reproval of Judge Bruce Van Voorhis* (1992) p. 2.) In addition, a candidate for judicial office is responsible for ensuring the veracity of the statements published on his or her judicial election campaign Web site, even when the statements are posted by campaign staff. (Cal. Code Jud. Ethics, canon 5B(2) [a candidate shall review and approve the content of all campaign materials produced by the candidate or his or her campaign committee before their dissemination]; *Public Admonishment of Judge Tara M. Flanagan* (2017)

p. 4 (*Flanagan*); *Public Admonishment of Judge Charles R. Brehmer* (2012) p. 4 (*Brehmer*); *Public Admonishment of Judge Paul E. Zellerbach* (2011) p. 6 (*Zellerbach*).)

We concur with and adopt the following findings and conclusions of the masters.

"Judge Kreep acknowledged he was responsible for ensuring that his campaign Web site was accurate. The false statements could have been identified but Judge Kreep did not check all the links on his campaign Web site or review his biography. Although there is no evidence Judge Kreep made knowing misstatements on his campaign Web site, he engaged in a reckless disregard for their truth by failing to confirm the veracity of the statements contained on his campaign Web site, in violation of former canon 5B(2) of the California Code of Judicial Ethics.

"Candidate Kreep's false Web site statements constituted improper action."

Neither party objected to these conclusions.

B. Failure to resign as president or chairman of three political action committees.

Judge Kreep was charged with failing to resign as president of JPAC, president of CALJPAC, and chairman of the Republican Majority Campaign (RMC) before he became a candidate for judicial office, as required by canon 5A(1).

1. Findings of Fact.

We adopt the following factual findings of the masters.

"On February 13, 2012, Judge Kreep filed a Candidate Intention Statement and a Declaration of Intention to become a candidate for superior court judge (Office number 34) with the San Diego County Registrar of Voters. He paid his filing fee and declared his intention to be a candidate in the June 5, 2012 election. His Candidate Intention Statement was filed with the California Secretary of State on February 16, 2012.

"Also on February 13, 2012, Jim Sills posted an item on sdrostra.com announcing that Judge Kreep filed for Office 34. Mr. Sills was Judge Kreep's friend and was the person who suggested that Judge Kreep run for judicial office. Among other things, the posting said candidate Kreep 'heads the United States Justice Foundation in North County, a conservative law agency that specializes in Constitutional Law and protection of family rights.' The posting said Kreep's candidacy assured that voters would have

options. The posting purported to include a statement from then-candidate Kreep about why he sought a judicial position.

"Eleven days later, on February 24, 2012, Judge Kreep resigned his positions as chairman of the RMC and as president of JPAC and CALJPAC. RMC is a political action committee formed in 2008. Judge Kreep was the chairman of RMC. JPAC is a political action committee formed in 1982. Judge Kreep was the chairman of JPAC. CALJPAC is a political action committee that was never operational."

2. Conclusions of Law.

A judicial candidate shall not act as a leader or hold any office in a political organization. (Cal. Code Jud. Ethics, canon 5A(1).) An "office" "commonly suggests a position of . . . trust or authority." (Black's Law Dict. (6th ed. 1990) p. 1082, col. 2.) A political organization within the meaning of canon 5A(1) includes a political action committee. (Cal. Code Jud. Ethics, Terminology.)

A person becomes a judicial candidate as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. (Cal. Code Jud. Ethics, Terminology.) To become a candidate for judicial office, a person must file the declaration of intention required in Elections Code section 8023, and pay a filing fee. (Elec. Code, §§ 8023, subd. (b), 8105, subd. (b).) Prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a judicial candidate must file with the Secretary of State an original statement, signed under penalty of perjury, of intention to be a candidate. (Gov. Code, § 85200; Cal. Code Regs., tit. 2, § 18520, subd. (b).)

Judge Kreep testified he intended to run for judicial office only if no one else ran against the sole candidate for Office 34, and he did not consider himself "an official candidate" until February 23, 2012, when he learned no one else would run for that office. We agree with the masters that "regardless of his private intentions, Judge Kreep became a candidate for judicial office on February 13, 2012, when he filed his Candidate Intention Statement, allowing him to begin soliciting and accepting contributions and

loans for his campaign, and when he made a public announcement of his candidacy on sdrostra.com."

We adopt the following legal conclusions of the masters.

"The prohibition [against acting as a leader or holding office in a political organization] under canon 5A(1) was effective immediately when Judge Kreep became a candidate for judicial office. (Cal. Code Jud. Ethics, canon 6F.) [¶] The RMC, JPAC, and CALJPAC are political action committees and thus they are political organizations. Judge Kreep held offices or positions of leadership in those political organizations when he became a candidate of judicial office on February 13, 2012, and he did not resign until 11 days later. He violated canon 5A(1) of the California Code of Judicial Ethics.

"Judge Kreep's violation constituted improper action. Because he resigned within 11 days, we conclude his violation did not rise to the level of prejudicial misconduct."

Neither party objected to these legal conclusions.

C. Misrepresentation on Statement of Economic Interests (FPPC Form 700).

Judge Kreep was charged with misrepresenting on his Fair Political Practices Commission (FPPC) Form 700 that he served as chairman of the Beat Obama Political Action Committee (Beat Obama PAC) when he never held that position.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"On March 5, 2012, then-candidate Kreep signed an FPPC Form 700 under penalty of perjury. He verified that he had reviewed the statement and that to the best of his knowledge, the information contained therein and in the attached schedules was true and complete. Candidate Kreep stated in an attached schedule that he received a salary of between $1,00[1] and $10,000 as chairman of the Beat Obama PAC. The statement was filed with the San Diego County Registrar of Voters on March 9, 2012.

"Candidate Kreep's representation that he was chairman of the Beat Obama PAC and received a salary from that organization was false. Judge Kreep was not chairman of the Beat Obama PAC; rather, he performed legal services for the Beat Obama PAC.

"On June 27, 2013, more than a year after filing the original, Judge Kreep signed an amended schedule stating he received income from the Beat Obama PAC in the form of attorney's fees. He included a comment that he erroneously listed himself as chairman of the Beat Obama PAC."

2. Conclusions of Law.

A candidate for judicial office must know and strictly adhere to all applicable election laws and shall not knowingly or with reckless disregard for the truth misrepresent any fact about himself or herself. (Cal. Code Jud. Ethics, canons 5, 5B(1)(b) [formerly 5B(2)]; *Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146, 163.)

Whether he was a chairman or only an attorney for the Beat Obama PAC should have been within Judge Kreep's knowledge. Judge Kreep does not claim that his relationship with the Beat Obama PAC was unclear to him. However, there is not clear and convincing evidence that Judge Kreep intentionally misrepresented his position with the Beat Obama PAC. The fact that he disclosed income from the Beat Obama PAC indicates he did not intend to conceal his relationship with that organization.

We agree with the masters' conclusion that Judge Kreep submitted the FPPC Form 700 with reckless disregard for the truth and violated former canon 5B(2) of the California Code of Judicial Ethics. However, we respectfully decline to adopt the masters' legal conclusion that this conduct constitutes improper action, and instead conclude that the judge committed prejudicial misconduct. We agree with the examiner that an objective person would find a judge's conduct in signing an official document under penalty of perjury with a reckless disregard for the truth to be prejudicial to public esteem for the judicial office.

D. Publicly opposing former President Barack Obama's reelection in 2012.

The Notice charged Judge Kreep with publicly opposing former President Barack Obama's reelection to the office of the President of the United States during Judge Kreep's candidacy for judicial office in 2012, in violation of canon 5A(2).

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Judge Kreep signed fundraising letters for USJF during his 2012 candidacy for judicial office. ([S]ee above discussion about when Judge Kreep became a candidate for judicial office[.]) One letter is dated May 14, 2012, and appears to be on USJF's letterhead. The letterhead stated, 'United States Justice Foundation [¶] IMPEACH AND PROSECUTE OBAMA! [¶] A Special Project of the United States Justice Foundation.' The letter urged the recipient to sign a congressional investigation petition to, among other things, force the House of Representatives to investigate the validity of the long form birth certificate that President Obama released to the public; hold a House hearing on the validity of President Obama's eligibility to hold the office of President of the United States; and launch impeachment proceedings if it was proven that President Obama falsely claimed he was a natural born citizen of the United States. The letter said Congress needed to take action before the November elections. The letter continued, '[w]e also do not believe that Barack Obama can, or will, be beaten this November by any of the Republican challengers . . . [¶] . . . and that our 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.' The letter announced an intention to 'lead a massive election year public education campaign, to ensure that millions of Americans know, by this fall, exactly what' crimes President Obama may have committed. Then-candidate Kreep solicited an 'emergency donation' to the USJF. The letter was signed by 'Gary G. Kreep, Executive Director.'

"Judge Kreep also signed as 'Executive Director' a letter dated May 31, 2012, which also appears to be on USJF letterhead. The letter urged the recipient to send an emergency gift to USJF before June 29; the letter said that could be the day the Supreme Court ruled in favor of USJF's challenge to President Obama's eligibility to be on the 2012 presidential ballot. The letter added that even if the Supreme Court ruled in USJF's favor, USJF could not 'simply sit out the rest of this crucial election year on the sidelines.' The letter explained, 'we will STILL have a great deal of work to do between

now and Election Day.' It said the 2012 election may prove to be the most important election year since 1860, and USJF's grassroots and legal teams were working on projects that 'go right to the heart of this year's elections,' including USJF's efforts to counter, among other things, President Obama's suspicious campaign money machine. The letter stated that the stakes would only get higher as Election Day approached, and '[w]e sit back and hope that he is defeated in November *at our own peril!*' The letter declared that USJF was fighting to ensure President Obama could not and would not 'steal this year's elections.'

"The Examiner also presented evidence of a June 18, 2012 letter with the heading, 'From the Desk of GARY KREEP' and USJF's name at the bottom of the page. The letter was signed by 'Gary G. Kreep, Executive Director.' June 18, 2012 was after Judge Kreep won the June 5, 2012 election but before he was sworn in as a judge. The letter repeated the appeals from the May 31, 2012 letter and urged that 'we' cannot 'simply sit out the rest of this crucial election year on the sidelines.' The June 18 letter said there was a lot of work to do before Election Day. The letter repeated that USJF was working on projects that went to the heart of the 2012 elections, including efforts to expose and counter various misdeeds by President Obama. The letter added that USJF had plans for the weeks and months leading to November and the stakes would only get higher as Election Day approached. The letter then repeated, 'We sit back and hope that he is defeated in November *at our own peril*!' The letter assured that USJF had been fighting to ensure President Obama did not steal the election. Judge Kreep asked in the letter for a gift to USJF to help pay for its election year efforts.

"Judge Kreep did not know Rebecca Dorner, the recipient of the letters presented in evidence. He believed the letters were sent en masse to a list of people USJF obtained from vendors."

2. Conclusions of Law.

Canon 5 prohibits a judge or judicial candidate from engaging in "political activity that may create the appearance of political bias or impropriety." (Former canon 5, in effect at the time of his conduct, contained the same prohibition.) Also, judges and

candidates for judicial office shall not publicly oppose a candidate for nonjudicial office. (Cal. Code Jud. Ethics, canon 5A(2); *Zellerbach, supra*, at pp. 4-5.) The masters concluded Judge Kreep's solicitation letters violated canon 5A(2) and his conduct constituted prejudicial misconduct "in that it would appear to an objective observer to be unjudicial and harmful to the independence of the judicial office."

Judge Kreep objects to the masters' conclusion that his conduct constituted misconduct and argues that his letters did not oppose President Obama's reelection and that canon 5A does not restrict a judicial candidate from making public statements on behalf of a non-political organization. As did the masters, we reject these arguments as being unsupported by the facts and the law.

Judge Kreep asserts that the letters addressed a serious constitutional and public policy issue – the eligibility of a sitting president to serve as president as a matter of constitutional law. He states that the letters did not urge anyone to vote for or against a political candidate, but rather simply urged Congress to investigate whether President Obama was a "natural born citizen," and thus eligible to serve as president.

We agree with the masters that Judge Kreep's argument that his letters did not oppose former President Obama's reelection effort is disingenuous, and is belied by the plain language of the letters. For instance, the May 14 letter stated, "our effort may be all that stands between four more years of Barack Obama in the White House …"; the May 21 letter stated that USJF could not "simply sit out the rest of this crucial election year on the sidelines," "we STILL have a great deal of work to do between now and Election Day," and USJF was fighting to ensure that President Obama could not and would not "steal this year's elections"; and the June 18 letter stated "we cannot simply sit out the rest of this crucial election on the sidelines," and "[w]e sit back and hope that he is defeated in November *at our own peril!*" There can be only one reasonable interpretation of these and other similar statements in the letters – Judge Kreep was urging the recipients to oppose the reelection of President Obama.

Moreover, as the examiner contends, canon 5A(2) is broadly worded (shall not "publicly endorse or oppose") and applies whether the judge's public opposition to President Obama's reelection was made on constitutional, political, or other grounds.

Judge Kreep further argues that canon 5A(2) does not prohibit a judicial candidate from signing a letter that otherwise violates that canon if the candidate signs the letter on behalf of a group that is not a "political organization." The masters rejected this argument, noting the judge did not cite any authority for the proposition, and stating, "We reject that argument as unsupported by the language of canon 5A(2) and contrary to the goal of prohibiting political activity that may create the appearance of political bias or impropriety. (Cal. Code Jud. Ethics, former canon 5 [eff. Apr. 29, 2009].)" We agree.

Canon 5A provides:

> Judges and candidates for judicial office shall not
> **********
> (2) make speeches for a political organization or candidate for nonjudicial office, or publicly endorse or publicly oppose a candidate for nonjudicial office.

The clear intent of the canon is to prohibit political activity that may create an appearance of bias. Judge Kreep's position that a judicial candidate can publicly endorse or oppose a political candidate so long as it is done in the candidate's capacity as a leader of an organization is contrary to this purpose. A reasonable person reading these letters would attribute the views expressed as being those of Gary Kreep as well as those of USJF, particularly when he is identified as the executive director.

For these reasons, we determine that Judge Kreep violated canon 5A(2) and that his conduct constitutes prejudicial misconduct.

E. Failure to report accrued election campaign expenses.

Judge Kreep is charged with creating an appearance of impropriety and failing to adhere to election laws by violating provisions of the Political Reform Act in failing to disclose on his FPPC Recipient Committee Campaign Statement (FPPC Form 460) $6,135 in accrued campaign expenses for the period March 18 through May 19, 2012, and $2,700 in accrued campaign expenses for the period May 20 through June 30, 2012,

and by not filing amended statements to include the omitted accrued campaign expenses before he took the bench.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Judge Kreep signed an FPPC Form 460 for the period March 18, 2012 through May 19, 2012, and the period May 20, 2012 through June 30, 2012. He verified, under penalty of perjury, that he used all reasonable diligence in preparing and reviewing those statements and that to the best of his knowledge the information contained therein and in the attached schedules was true and complete. But the schedules attached to the statement for the period March 18, 2012 through May 19, 2012 do not show $6,135 in accrued campaign expenses owed to four sub-vendors of Landslide Communications for slate mailers. And the schedules attached to the statement for the period May 20, 2012 through June 30, 2012 do not show $2,700 in accrued campaign expenses owed to Landslide Communications of Nevada for phone banking services. Judge Kreep's candidate-controlled campaign committee filed amended statements on June 28, 2013, listing the omitted accrued campaign expenses.

"Judge Kreep entered into a stipulation with the Enforcement Division of the FPPC on September 18, 2015, agreeing that he violated the Political Reform Act, in particular, Government Code section 84211, subdivision (k), by failing to timely disclose accrued campaign expenses totaling $8,835, the expenses owed to the sub-vendors of Landslide Communications and to Landslide Communications of Nevada."

2. Conclusions of Law.

We adopt the following legal conclusions of the masters.

"A candidate for judicial office must know and strictly adhere to all applicable election laws. (Cal. Code Jud. Ethics, canon 5; *Inquiry Concerning Hall, supra,* 49 Cal.4th CJP at p. 163.) A judge violates canons 1, 2A and 5 by failing to read the law governing his or her election and then contravening that law. (*Inquiry Concerning Hall, supra,* 49 Cal.4th CJP Supp. at pp. 162-163 [strict standard of liability applies].)

Ignorance of the law aggravates a violation in this context. (*Inquiry Concerning Hall, supra,* 49 Cal.4th CJP at p. 163.)

"The Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) requires full and truthful disclosure of expenditures in election campaigns so 'the voters may be fully informed and improper practices may be inhibited.' (Gov. Code, § 81002, subd. (a).) 'Public confidence in the integrity of the judicial campaign process and the judiciary is harmed when the public is deprived of important information, such as sources of contributions and amounts of expenditures made by a campaign.' (*In the Matter Concerning Judge Charles R. Brehmer, supra,* at p. 4.)

"Each campaign statement[4] required by Government Code section 84200 et seq. must contain, among other things, the following for each person to whom an expenditure of one hundred dollars ($100) or more has been made during the period covered by the statement: the full name, street address, amount of each expenditure, and description of the consideration for which each expenditure was made. (Gov. Code, § 84211, subd. (k).) 'Expenditure' includes accrued expenses. (*Ibid*.)

"Judge Kreep violated Government Code section 84211, subdivision (k) by failing to disclose accrued expenses for his judicial election campaign. His violation was not an isolated incident, but involved two reporting periods. His conduct contravened the purposes of the Political Reform Act."

We concur with the masters that the forgoing conduct violated the California Code of Judicial Ethics, canons 1 [a judge shall uphold the integrity and independence of the judiciary], 2A [a judge shall respect and comply with the law], 3B(2) [a judge shall be faithful to the law regardless of partisan interests, public clamor or fear of criticism], and 5 [judges and candidates for judicial office shall comply with all applicable election, election campaign, and election fundraising laws] and constituted prejudicial misconduct because it would appear to an objective observer that his failure to comply with the

[4] "Campaign statement" means an itemized report which is prepared on a form prescribed by the FPPC and which provides the information required by Government Code section 84100 et seq. (Gov. Code, § 82006.)

Political Reform Act (hereafter, 'the Act') was unjudicial and harmful to the public esteem for the judicial office.

Judge Kreep objects to the masters' conclusion that his conduct constitutes prejudicial misconduct, and maintains that, although he violated the Act, his conduct constitutes, at most, improper action. He contends that because his violations of the Act were unintentional, they are not prejudicial to public esteem for the judiciary. We disagree.

Prejudicial misconduct does not require proof of intent to violate the law or the canons. The commission has previously found unintentional violations of the Act to constitute prejudicial misconduct. (*Brehmer, supra*, at pp. 2-4; *Flanagan, supra,* at pp. 3-4 [unintentional violations of the Act, including failure to report true source of campaign contribution and commingling personal, business and campaign funds].) Failure to comply with reporting requirements deprives the public of "important information that has the potential to affect how votes are cast," and can undermine public respect for the judiciary. (*Flanagan*, *supra*, at p. 3.)

For these reasons, we concur with and adopt the masters' conclusions.

F. Using a personal bank account and credit card to pay for campaign expenses.

Judge Kreep is charged with the appearance of impropriety in failing to comply with election laws by using his personal credit card or personal bank account rather than his campaign contribution account to make campaign expenditures totaling $41,796.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"During his 2012 judicial election campaign, Judge Kreep made 14 campaign expenditures totaling $41,796 using his personal credit card or personal bank account. He entered into a stipulation with the Enforcement Division of the FPPC on September 18, 2015, agreeing that he violated the Political Reform Act by making campaign expenditures totaling $41,796 from accounts other than his campaign bank account. He agreed his conduct violated Government Code section 85201, subdivision (e). The

expenditures from Judge Kreep's personal accounts were approximately 82 percent of his total campaign expenditures for the audit period."

2. Conclusions of Law.

Upon filing a statement of intention pursuant to Government Code section 85200, a candidate must establish a campaign contribution account at a financial institution located in the State. (Gov. Code, § 85201, subd. (a).) All campaign expenditures must be made from that account. (Gov. Code, § 85201, subd. (e).)

Judge Kreep violated these provisions of the Act by making campaign expenditures using his personal bank account and personal credit card. We concur with the masters that Judge Kreep's conduct violated canons 2A and 3B(2) of the California Code of Judicial Ethics (*Brehmer*, *supra*, at pp. 3-5; *Public Admonishment of Judge Stephen E. Benson* (2006) pp. 2-4), contravened the purposes of the Political Reform Act, and constituted prejudicial misconduct.

Judge Kreep maintains his conduct did not constitute prejudicial misconduct because the violations of the Act were unintentional. We disagree for the reasons discussed in response to the same objection to count one E.

G. Failing to take adequate steps to withdraw as counsel of record.

Judge Kreep is charged with remaining as counsel of record in a federal action captioned *Liberi v. Taitz* for approximately six weeks after he was sworn in as a judge.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

Judge Kreep was designated in June 2011 as local counsel for Pennsylvania attorney Philip Berg in *Liberi v. Taitz*, a case in the United States District Court for the Central District of California. Mr. Berg represented three plaintiffs.

Judge Kreep testified he asked Mr. Berg to find a replacement as local counsel on a number of occasions after he was declared the winner of the judicial election on July 3, 2012. According to Judge Kreep, Mr. Berg promised he would do so.

On December 17, 2012, Presiding Judge Robert Trentacosta urged Judge Kreep to get his substitutions of counsel squared away before he was sworn in. By the end of December, Mr. Berg had still not filed a motion to substitute counsel.

Judge Kreep filed a motion to withdraw as counsel of record on January 4, 2013, three days before he was sworn in as a judge. On January 9, 2013, Mr. Berg filed a request for approval of substitution of attorney, but Judge Kreep did not sign the request indicating his consent to the substitution. The district court set a status hearing for January 14, 2013, because Judge Kreep's motion to withdraw did not set a hearing date and the court found it unclear. On January 22, 2013, the district court concluded Judge Kreep's motion to withdraw as counsel of record and Mr. Berg's request for approval of substitution of attorney were both deficient, noting that Mr. Berg represented he would file a corrected request that would address the deficiencies. Judge Kreep was not allowed to withdraw as counsel at that time.

On January 30, 2013, Judge Trentacosta again urged Judge Kreep to take care of substituting out of the federal case, and told Judge Kreep that to do so was a priority.

On February 7, 2013, Mr. Berg filed another request for approval of substitution of attorney, which was signed by Judge Kreep. Although the district court found there were continuing deficiencies that were "most troubling," the district court recognized that Judge Kreep's judicial duties prevented him from practicing law. The request for substitution was granted on February 14, 2013, over a month after Judge Kreep was sworn in as a judge.

2. Conclusions of Law.

"A judge shall not practice law." (Cal. Code Jud. Ethics, canon 4G.) An attorney elected or appointed to judicial office must ensure he or she is no longer counsel of record in any case and see that clients' cases are transferred to another attorney before taking the oath of judicial office. (Com. on Jud. Performance, Ann. Rep. (2012) Advisory Letter 29, p. 27; Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) §§ 8.10-8.11, pp. 393-394.)

Judge Kreep remained counsel of record in *Liberi v. Taitz* after he was sworn in as a judge. As noted by the masters, "[e]ven if Judge Kreep did not perform any legal work and did not make any appearance in *Liberi v. Taitz*, his status as local counsel allowed Mr. Berg to continue to appear as counsel pro hac vice in the case. (Cal. Rules of Court, rule 9.40(a).)"

We conclude, as did the masters, that Judge Kreep did not exercise reasonable diligence in seeking to withdraw as counsel of record. For almost six months after he was elected, he simply relied on Mr. Berg to take care of the matter and did not file his own motion until three days before he was sworn in as a judge. Any delay in the court's ruling on his motion was because Judge Kreep filed a deficient motion, and the deficiencies still had not been corrected more than a month later. Further, Presiding Judge Trentacosta twice urged Judge Kreep to take care of this matter promptly.

Judge Kreep violated the California Code of Judicial Ethics, canons 1, 2 [a judge shall avoid impropriety and the appearance of impropriety], 2A, and 4G [a judge shall not practice law]. We concur with the masters that his conduct constitutes improper action "[b]ecause he made some effort to seek a substitution but did not use reasonable diligence." Neither party objected to these legal conclusions.

H. Giving the impression of practicing law after taking the bench.

Judge Kreep was charged with giving the appearance of practicing law after taking the bench by issuing four checks between March and May 2014 which identified the account holder as "Gary G Kreep Sole Prop, DBA The Law Offices of Gary G Kreep."

1. Findings of Fact.

We adopt the following factual findings of the masters.

"On December 3, 2013, an arbitrator issued an award of $14,914.65 in favor of Robert E. Thompson, one of Judge Kreep's former clients, and against Judge Kreep in relation to an attorney fee dispute. Judge Kreep paid Mr. Thompson using a check from the Attorney Client Trust Account of the Law Office of Gary G. Kreep.

"Judge Kreep had been on the bench for over a year at the time the check was written. Judge Kreep said he made the payment out of his law office account in order to keep track of expenses or obligations incurred in connection with his law practice."

2. Conclusions of Law.

It is inappropriate for a judge to be connected in any way with his or her former law firm or to give the appearance that the judge is practicing law. (Rothman, *supra*, at § 8.14, p. 396.) "Since it is improper to practice law after taking the oath of judicial office, a judge should not use legal stationery to communicate with former clients or others concerning a former client's legal matters." (*Ibid*.) In addition, a judge must take steps to have his or her name immediately removed from the letterhead of his or her former law firm, as well as any other place where the name of the firm is displayed. (*Ibid.*)

We concur with the masters that "[t]he check sent by Judge Kreep to his former client gave the appearance that Judge Kreep still maintained a law practice." As such, his conduct violated canons 1, 2 and 2A of the California Code of Judicial Ethics and constituted improper action. Neither party objected to these legal conclusions.

COUNT TWO

In count two, Judge Kreep is charged with 15 incidents of engaging in conduct reflecting a lack of proper courtroom decorum, poor demeanor, bias, and/or a lack of impartiality while presiding in Department 3 in 2013. Department 3 was the in-custody misdemeanor arraignment department of the San Diego County Superior Court in 2013. Before turning to a discussion of each incident of charged misconduct, we address Judge Kreep's general responses to his misconduct while presiding in Department 3.

Judge Kreep suggests that much of his misconduct in this count, which occurred during his first year on the bench, was the result of insufficient guidance and training from the court. We agree with the masters' conclusion that "Judge Kreep, who had been an attorney for about 37 years and had appeared in different courts before becoming a judge, received substantial guidance and training when he became a judge, arguably more than most other California judges." As stated by the masters, Judge Kreep "received guidance, advice and instructions from other judges on many occasions, including more

guidance from the Presiding Judge, Assistant Presiding Judge and Supervising Judge than most judges usually receive."

After Judge Kreep was elected, and before he took the bench, the court provided him a copy of David Rothman's California Judicial Conduct Handbook, and arranged for him to observe commissioners and judges in various departments at the San Diego County Superior Court for about a week. Immediately following his assignment to Department 3, Judge Kreep sat with an experienced commissioner in Department 3 observing the proceedings in that department for three days. He attended monthly or bi-monthly judicial education courses offered by the San Diego County Superior Court.

Judge Kreep also completed his new primary assignment orientation presented by the California Center for Judicial Education and Research (CJER) in February or March 2013, attended a separate New Judge Orientation for a week in April 2013, and attended Judicial College, a two-week course, beginning on August 5, 2013. In addition, judicial scripts prepared by CJER and the San Diego County Superior Court, sentencing guidelines, benchbooks, online courses and other types of training were available to Judge Kreep.

Judge Kreep also contended during these proceedings that his misconduct in Department 3 was the result of the difficulty of that assignment. In response, the masters stated, "Department 3 may have been a difficult assignment for a new judge given its high volume, but perhaps no more difficult than new judges around the state are expected to handle." We adopt this finding, and further note that the inappropriate comments charged in count two had nothing to do with the difficulty of the assignment.

Judge Kreep testified that when he started as a judge, then-Presiding Judge Trentacosta told him to create a friendly courtroom environment. Creating an accessible and welcoming atmosphere does not include the type of inappropriate remarks made by Judge Kreep in Department 3. Judge Kreep explained that many of his remarks were misguided attempts at humor. The commission appreciates that each judge has his or her own style and that a certain level of levity or humor is not necessarily improper. "However, the cultivation of a particular judicial personality may not be used as an

excuse for unethical conduct. . . . [R]egardless of the judge's style, she or he must respect the litigants and attorneys who appear in her or his court." (*Inquiry of Judge Susanne S. Shaw* (2000) 48 Cal.4th CJP Supp. 125, pp. 142-143.) Moreover, judicial humor should never be used in a courtroom in "a manner that diminishes the dignity of the judicial process." (*Public Censure of Judge Deann M. Salcido* (2010) p. 21 (*Salcido*); see Rothman, *supra*, at § 3.42, p. 140.) "Judges are expected to administer justice and resolve serious issues, not to provide entertainment." (*Salcido*, *supra*, at p. 22.)

A. Comments to Deputy Public Defender Leticia Hernandez.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Judge Kreep sat in Department 3, the in-custody misdemeanor arraignment department, from January 2013 to September 9, 2013. Deputy Public Defender Leticia Hernandez appeared before Judge Kreep in Department 3 to enter a change of plea in a criminal case on January 17, 2013. The following exchange occurred after Ms. Hernandez stated her appearance:

'THE COURT: I love her accent.

'[DEPUTY PUBLIC DEFENDER LETICIA] HERNANDEZ: I'm Mexican.

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

'[DEPUTY PUBLIC DEFENDER] 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.

'[DEPUTY PUBLIC DEFENDER] HERNANDEZ: Oh no, your Honor. I am a U.S. citizen and proud of it.

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

The exchange between Judge Kreep and Ms. Hernandez was reported in CityBeat magazine.

"Ms. Hernandez testified she was not offended by Judge Kreep's comments. But she reported the incident to Melvin Epley, a supervising attorney with the Public Defender's Office.

"Judge Kreep testified he did not intend to belittle Ms. Hernandez by commenting on her accent. He intended his comment as a compliment. Nevertheless, he acknowledges his reference to deportation was inappropriate. He says he was '[t]rying to get a laugh' and 'put people at ease.' Judge Kreep apologized to Ms. Hernandez for his statements."

2. Conclusions of Law.

Drawing attention to a person's ethnicity and questioning a person's citizenship when these are not issues in the matter before the judge, can reasonably be perceived as offensive and reflecting bias. Additionally, a judge should be sensitive to the possible impact of such comments on the attorney-client relationship when made in the presence of the attorney's client. Judge Kreep maintains that his comments were not meant to be offensive. However, as noted by the masters, regardless of his intent, "the comments were likely to offend members of the public and could be construed as discourteous, demeaning, or as suggesting bias based on ethnic or national origin." (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 376 (*Gonzalez)*; *Public Admonishment of Judge Nancy Pollard* (2011) pp. 1, 3; *Public Admonishment of Judge Harvey Giss* (2011) p. 1.)

We agree with the masters that Judge Kreep's comments to Ms. Hernandez about her accent, Mexican citizenship and deportation violated the following ethical standards set forth in the California Code of Judicial Ethics. "An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary is preserved." (Cal. Code Jud. Ethics, canon 1.) A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. (Cal. Code Jud. Ethics, canon 2.) "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that . . . that are inconsistent with the impartial performance of the adjudicative duties of judicial office." (Cal. Code Jud.

Ethics, canon 2A.) In addition, "[a] judge shall require order and decorum in proceedings before the judge." (Cal. Code Jud. Ethics, canon 3B(3).) "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . . ." (Cal. Code Jud. Ethics, canon 3B(4).) "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment." (Cal. Code Jud. Ethics, canon 3B(5).) We also agree with the masters that the comments to Ms. Hernandez would appear to an objective observer to be prejudicial to public esteem for the judiciary, and thus, constitute prejudicial misconduct. Neither party objected to these legal conclusions.

B. Using nicknames to address attorneys appearing before him.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

Terri Winbush, a Deputy City Attorney with the City Attorney's Office in San Diego in 2013, appeared in Judge Kreep's courtroom multiple times each week from January 2013 until August 2013. Judge Kreep referred to Ms. Winbush as "Star Parker" when she made appearances in his courtroom. There was dispute over how often the judge used the nickname. We adopt the masters' finding that "he used the nickname several times, enough that the repetition annoyed and upset Ms. Winbush."

Judge Kreep told Ms. Winbush she resembled Star Parker, who was a beautiful African American woman. Ms. Winbush was not flattered by the comparison, and it made her uncomfortable.

The judge told Judge Trentacosta that Star Parker was a friend and a beautiful woman and that Ms. Winbush looked like Star Parker.

Brianne McLaughlin, Thanh Ho and Nate Crowley made appearances in Department 3 before Judge Kreep while they were interns in the San Diego Public Defender's Office in 2013. While in Department 3, Judge Kreep referred to Ms. McLaughlin as "Bun Head," to Ms. Ho as "Ms. Dimples," and Mr. Crowley as "Shorty," all nicknames he came up with.

Ms. McLaughlin does not know how the judge came up with the nickname "Bun Head." She did not invite the judge to refer to her by that name, but did not take offense.

Judge Kreep frequently called Ms. Ho, "Ms. Dimples." Although the nickname "Ms. Dimples" did not bother Ms. Ho, she did not invite the judge to use that nickname and no other judge called her that name. She preferred that judges call her by her given name.

Judge Kreep called Mr. Crowley, who is six feet seven inches tall, "Shorty." Mr. Crowley recalled that Judge Kreep called him Shorty in open court about 10 to 15 times.

On August 1, 2013, Supervising Deputy City Attorney Mark Skeels complained to then-Supervising Judge Timothy Walsh about Judge Kreep's conduct toward Ms. Winbush and some other deputy city attorneys. That same day, Judge Kreep admitted to then-Assistant Presiding Judge David Danielsen that he referred to Ms. Winbush as Star Parker. The next day, Judge Kreep admitted to Judge Walsh that he used the nicknames Star Parker, Shorty, Bun Head, and Ms. Dimples.

Judge Trentacosta, Judge Danielsen and Judge Walsh met with Judge Kreep on August 2, 2013. Judge Trentacosta instructed Judge Kreep not to use nicknames. Judge Kreep stopped using nicknames after that meeting.

Judge Kreep admitted his use of nicknames was inappropriate.

2. Conclusions of Law.

We agree with the conclusion of the masters that Judge Kreep's "unilateral creation and use of nicknames for attorneys and interns appearing in his courtroom was discourteous and did not convey proper respect for them." Furthermore, his use of nicknames created an atmosphere in the courtroom that was too informal and lacked appropriate decorum. The nicknames used by the judge could suggest a lack of

impartiality or a sense of inappropriate familiarity, which could undermine public confidence in and respect for the judiciary. As noted by the masters, "[i]n particular, Judge Kreep's comments to Ms. Winbush could have reasonably been perceived as improper attention based on her gender, race and physical appearance."[5]

We adopt the masters' conclusion that Judge Kreep's conduct violated the California Code of Judicial Ethics, canons 1, 2, 2A, 3B(3) and 3B(4) and constituted prejudicial misconduct. (See *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 324-325, disapproved on other grounds in *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 319-320 [45 Cal.Rptr.2d 254, 902 P.2d 272]; *Inquiry Concerning Willoughby* (2000) 48 Cal.4th CJP Supp. 145, 151, 155-156; *Public Admonishment of Judge John B. Gibson* (2010) p. 2 [judge's conduct in, among other things, referring to a tall, thin female attorney with short hair who appeared before him as a "Q-tip" violated canons 1, 2A and 3B(4)]; *Salcido, supra*, at pp. 11, 13, 15 [judge engaged in prejudicial misconduct and violated canons 1, 2A, 3B(3) and 3B(4) by, among other things, referring to an attorney as "Mr. Federal Case" and referring to court staff as "cucumbers"].) Neither party objected to these legal conclusions.

C and D. Commenting on the physical appearance of attorneys.

1. Findings of Fact.

We adopt the following findings of fact of the masters as summarized and paraphrased.

On July 12, 2013, Judge Kreep said to someone in the courtroom, "She's a pretty girl, you know you could smile." That same day, Judge Kreep said (apparently to Deputy

[5] In the proceedings before the masters, the examiner argued that the judge's comments about the physical appearance of Ms. Winbush and other attorneys (counts Two E and G) could be perceived as sexual harassment. The masters concluded that although Judge Kreep engaged in a pattern of inappropriate behavior, his conduct did not meet the legal standard for sexual harassment. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 609.) Neither party objected to this conclusion to which we defer.

City Attorney Caroline Song's friend who was observing the proceedings), "We've got all sorts of very attractive, young PD's around here, so."

Deputy Public Defender Hernandez testified that Judge Kreep commented on the physical appearance of female attorneys who appeared before him. As an example, she said Judge Kreep said to a defendant, "the lovely attorney next to you went over the form, correct?" Deputy City Attorney Winbush and Deputy City Attorney Song also testified that Judge Kreep commented on the attractiveness of female attorneys who appeared before him.

Deputy City Attorney Paige Hazard, who appeared in Department 3 before Judge Kreep in 2013, testified Judge Kreep referred to a deputy public defender as "the pretty brown one."

Judge Kreep conceded he may have said to a defendant, "The lovely woman next to you is your public defender." He believed the comment was descriptive, not demeaning. He also admitted that 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, he made a comment about how attractive the male deputy public defender was to a defendant. Judge Kreep said "he was going for a laugh" but now agrees his comment was wrong and he has not made such a comment since then.

At a meeting on August 2, 2013, Judge Trentacosta instructed Judge Kreep not to make such comments about the physical appearance of persons in the courtroom.

2. Conclusions of Law.

The masters concluded, "Judge Kreep's comments about the physical appearance of persons appearing in his courtroom were not relevant to the court proceedings, made others in the courtroom uncomfortable, did not afford proper respect to the individuals, diminished the dignity of the judicial process, and may have created the appearance of bias or impartiality." (See Judicial Council of Cal., Advisory Com. Access and Fairness, et al., Guidelines for Judicial Officers: Avoiding the Appearance of Bias (Aug. 1996) p. 15 [judicial officers should think before commenting on the physical appearance of others].) We concur.

We also concur in the masters' conclusion that the pattern of behavior in counts Two C and D violated canons 1, 2A, 3B(3), 3B(4) and 3B(5) of the California Code of Judicial Ethics and constituted prejudicial misconduct. (*Inquiry Concerning Harris*, (2005) 49 Cal.4th CJP Supp. 61, 71-72; see also *Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552, 556-558.) Neither party objected to these conclusions.

E. Comments referencing the pregnancy of Deputy City Attorney Danielle Stroud.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Deputy City Attorney Danielle Stroud appeared before Judge Kreep in 2013 when she was pregnant. During one appearance, Judge Kreep said to defense counsel, 'Let's get on with this case' and then added something like 'We don't want Ms. Stroud to have her baby in the courtroom.' On other occasions Judge Kreep made comments to Ms. Stroud about her pregnancy such as 'It's getting closer, Ms. Stroud' and 'She wants to go home and have her baby. I'll pick on her today.' Judge Kreep made these comments in open court, sometimes on the record.

"Judge Kreep testified he asked Ms. Stroud how she was doing and when she was due, but that was the extent of his comments about her pregnancy. However, Ms. Stroud's testimony, which we find more credible, contradicts Judge Kreep's version, and it is corroborated by the testimony of Department 3's bailiff, Deputy Sheriff Piper Paulk. Deputy Paulk said Judge Kreep told Ms. Stroud, 'Ooh, I hope you don't have this baby in here.'

"Judge Kreep explains his conduct by stating that he regularly overheard conversations between Ms. Stroud and other attorneys regarding her pregnancy. But Ms. Stroud denied that her pregnancy was a matter of regular discussion in the courtroom. Deputy Paulk likewise did not recall Ms. Stroud talking to anyone about her pregnancy when she was in Department 3. We find that while Ms. Stroud may have talked with people in Department 3 about her pregnancy, she did not do so regularly nor invite

comments about her pregnancy from Judge Kreep. Judge Kreep's comments made Ms. Stroud uncomfortable."

2. Conclusions of Law.

"Unprofessional remarks made in the courtroom concerning an attorney's personal appearance, pregnancy, or sexuality, can have an impact on the credibility of women in court; and when addressed to a woman lawyer, such remarks make it difficult for her to effectively represent her clients." (Rothman, *supra*, at § 2.11, p. 52.)

We agree with the masters that "Judge Kreep's references to Ms. Stroud's pregnancy go beyond a show of concern or polite inquiry. His comments were indecorous, discourteous, and undignified and could reasonably be perceived as gender bias." As such, we adopt the masters' legal conclusion that the judge's comments to Ms. Stroud about her pregnancy violated canons 1, 2, 2A, 3B(3) and 3B(4) of the California Code of Judicial Ethics and constituted prejudicial misconduct. Neither party objected to these legal conclusions.

F. Comment regarding prostitution and Deputy City Attorney Karolyn Westfall.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Deputy City Attorney Karolyn Westfall appeared in Judge Kreep's courtroom during the period January through June 2013. On one occasion, when Ms. Westfall entered the courtroom Judge Kreep said, 'Speaking of prostitution, here's Miss Westfall.' Judge Kreep was on the bench and court staff and other attorneys were present when Judge Kreep made the comment. Ms. Westfall understood the remark as Judge Kreep trying to be funny, but she found the remark to be 'ridiculous.'

"Judge Kreep does not remember making the remark but concedes he may have used that language in referring to Ms. Westfall. He explains that he may have been referring to the prostitution cases handled by the City Attorney's office.

"We find Ms. Westfall's testimony credible and reject the suggestion in the closing argument by Judge Kreep's attorney that Judge Kreep may have actually said

'prosecution' rather than 'prostitution' but Ms. Westfall misheard what Judge Kreep said. No evidence supports that version of the incident."

2. Conclusions of Law.

Although Judge Kreep's comment was made in jest, it was disrespectful and undignified for a judge to suggest or imply that an attorney appearing before the court was a prostitute. As previously noted, humor should never be used in the courtroom in a manner that demeans the dignity of the court. Thus, we agree with the masters that the comment violated the California Code of Judicial Ethics, canons 1, 2, 2A, 3B(3) and 3B(4) and constituted prejudicial misconduct. Neither party objected to these conclusions.

G. Comments disclosing intimate personal facts.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Judge Kreep told someone in his courtroom he took care of a friend with whom he traveled because the friend had seizures. Judge Kreep shared that he showered and slept with the friend but '[t]here was no sex involved. We were just -- we were just friends. It was purely platonic.' "

2. Conclusions of Law.

As stated by the masters, "While it is not necessarily improper for a judge to share personal anecdotes in the courtroom, Judge Kreep's disclosure was an example of sharing too much information." The judge should have realized that sharing a gratuitous personal anecdote about sleeping and showering with a friend, with a reference to sex, was likely to make people in the courtroom uncomfortable and diminish the dignity of the judicial office.

As such, we adopt the masters' conclusion that Judge Kreep's comments violated canons 3B(3) and 3B(4) of the California Code of Judicial Ethics and constituted prejudicial misconduct. Neither party objected to these legal conclusions.

H. Comments to a female defendant in a prostitution case.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

During the taking of a plea on July 12, 2013, Judge Kreep asked a defendant charged with prostitution, "Ma'am, anything I can do to get you out of the life?" Later in the proceeding, Judge Kreep asked, "Is it you like the money? Or you just like the action?" When the defendant attempted to respond and discuss her plans for the future, Judge Kreep cut her off and asked, "Are you going to try to get a job at the Bunny Ranch in Nevada?" Judge Kreep subsequently told the defendant "I don't think it's a good lifestyle choice, but it's your lifestyle choice and it's your decision."

Judge Kreep testified he was trying to show support for the defendant but may also have been trying to shame her into changing her lifestyle. He was not trying to embarrass or demean the defendant.

2. Conclusions of Law.

We agree with and adopt the following conclusions of the masters.

"Judge Kreep's asserted goal may be laudable, but his questions -- 'you just like the action?' -- were insensitive, indecorous and discourteous to the defendant. Judge Kreep admitted he may have been attempting to shame her.

"Judge Kreep suggested his reference to the Bunny Ranch was in response to the defendant's statement that she was planning to go somewhere where prostitution was legal. But Judge Kreep's question about the Bunny Ranch followed the defendant's statement that she was 'certified for MT' and 'wanted to go to PT' and it was well after she discussed getting a passport and going somewhere where prostitution was allowed. We agree with the Examiner that Judge Kreep's questions created the appearance of embroilment. (Rothman, *supra*, at § 2.01, p. 37 [embroilment refers to the loss of "the necessary professional distance between" the judge and the attorneys, parties, or causes before the judge].)

"Judge Kreep's conduct violated canons 1, 2, 2A, 3B(3) and 3B(4) of the California Code of Judicial Ethics and constituted prejudicial misconduct."

Neither party objected to these legal conclusions.

I. Comment to Abraham William Tanoury.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"Abraham William Tanoury was a law student intern with the City Attorney's Office in 2013. He appeared in Judge Kreep's courtroom for an arraignment on one occasion, along with his Supervising Deputy City Attorney Caroline Song. Before he went on the record, Judge Kreep picked up a plastic container of animal crackers, gestured at Mr. Tanoury, and said in the presence of Ms. Song and court staff, 'If you're good during your argument, I'll give you some cookies, little boy.' Mr. Tanoury was in his early 20's at the time and was taken aback by Judge Kreep's comment. Mr. Tanoury felt that Judge Kreep's statement was unprofessional and demeaning.

"Judge Kreep testified he did not intend to demean or embarrass Mr. Tanoury."

2. Conclusions of Law.

We agree with the masters that "[r]egardless of his intent, Judge Kreep's statement to Mr. Tanoury was demeaning, indecorous, discourteous, undignified, and prejudicial to the public esteem for the judicial office." Judge Kreep's conduct violated the California Code of Judicial Ethics, canons 3B(3) and 3B(4) and constituted prejudicial misconduct. (*Public Admonishment of Judge Christine K. Moruza* (2008) p. 10 [judge's comment to deputy district attorney, "How old are you? Eighteen?" was demeaning, undignified and contrary to canon 3B(4)].) Neither party objected to these legal conclusions.

J. Comment to Deputy City Attorney Caroline Song.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"During a sidebar conference for a prostitution case in July or September 2013, Judge Kreep used the words 'Chinese prostitutes,' then turned to Deputy City Attorney Caroline Song and said, 'No offense to Chinese people.' Judge Kreep made the comment

to Ms. Song in the presence of one of Ms. Song's supervisors along with a City Attorney's Office intern and Deputy Public Defender Chelsea Kopp. Judge Kreep explains he said '[n]o offense to Chinese people' because Ms. Song gave him an angry look when he used the term 'Chinese prostitutes.' We believe that in this context, Judge Kreep was actively trying not to offend Ms. Song, and yet still managed to upset her.

"Caroline Song testified she was bothered by the '[n]o offense to Chinese people' comment because Judge Kreep constantly mentioned her ethnicity. By way of example she mentioned a time when Judge Kreep introduced visitors from Korea. Judge Kreep told the visitors Ms. Song was from China and spoke Mandarin. Ms. Song is not from China.

"Judge Kreep testified he would not have indicated Ms. Song was from China or that she spoke Mandarin because he had no personal knowledge of those things. But in an audio recording of Judge Kreep's courtroom, Judge Kreep told individuals apparently visiting from Korea that Ms. Song was 'of Chinese heritage' and spoke Mandarin."

2. Conclusions of Law.

Gratuitously singling a person out based on ethnicity or national origin can be offensive to that person and can also be perceived as indicating bias. Under the circumstances, Judge Kreep's comments violated canons 1, 2, 2A, 3B(4) and 3B(5) of the California Code of Judicial Ethics and constituted improper action. We adopt the masters' conclusion that the charged conduct did not rise to the level of prejudicial misconduct because an objective observer would have understood that Judge Kreep was attempting not to offend Ms. Song. Neither party objected to these legal conclusions.

K. The Gift of the Day.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

When sentencing criminal defendants in Department 3, Judge Kreep on multiple occasions mentioned giving a defendant or defense counsel a "gift of the day," "gift for

the day," or "gift for today" during sentencing. The statement was made in the presence of other criminal defendants.

On July 26, 2013, Judge Kreep said, "Here's your gift for your new child" before he vacated a fine. On July 30, 2013, he said, "I already gave the gift of the day," (although he appeared to stay the requirement to pay the balance of a $286 fine pending the successful completion of probation). In another case, after indicating he would stay the payment of a fine pending the defendant's successful completion of probation, he said to the defendant, "That's a gift, ma'am. [Unintelligible] don't take it for granted, alright. If you come back before me on another case, you'll have to pay that fine plus whatever you got to do on the other one." On July 31, 2013, Judge Kreep said he was giving a "[s]econd gift of the day since we're going so long."

Judge Kreep testified that he used the term "gift of the day" to convey that he was giving the defendant "a break" and the defendant needed to "live the straight and narrow," but conceded it was a mistake.

2. Conclusions of Law.

We agree with the masters that Judge Kreep's characterization of discretionary rulings as a gift suggested unequal treatment and bias and "may have improperly suggested to court participants that Judge Kreep was ordering something that was not deserved under the law, that he was dispensing favored treatment to certain defendants or defense counsel and withholding that special treatment from others, and that such special treatment was only available once a day to a lucky recipient." Such conduct undermines public confidence in the dignity and impartiality of the court.

As such, we conclude, as did the masters, that Judge Kreep's conduct violated the California Code of Judicial Ethics, canons 1, 2, 2A, 3B(3) and 3B(4) and constituted prejudicial misconduct. (*Gonzalez, supra,* 33 Cal.3d at p. 375; see also, *Inquiry Concerning Velasquez* (2007) 49 Cal.4th CJP Supp. 175, 213-215.) Neither party objected to these legal conclusions.

L. Advising defendants to say it was all a big mistake.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

In Judge Kreep's courtroom, the prosecution and defense attorneys often entered into agreements allowing for the withdrawal of the defendant's plea to a misdemeanor and dismissal of the case upon completion of the terms and conditions of diversion. On multiple occasions, Judge Kreep advised defendants whose cases were being dismissed under these terms, that if asked about their cases, including by employers or prospective employers, they should say "it was all a big mistake." In each instance, the advice was unsolicited.

On July 18, 2013, after the prosecution dismissed a defendant's case, Judge Kreep advised the defendant, "This conviction, this case, may pop up on a database. And if it does and they ask you about it, you say here, it was all a big mistake, the case was dismissed. Uh. If they want to know the details, it's really none of their business -- so."

On July 22, 2013, Judge Kreep advised a defendant, "If somebody asks you about it, you say hey, it was all a big mistake. Case was dismissed, here's the proof. It's really none of their business. So. Ok?" Judge Kreep provided the same advice to another defendant on that same day, stating "So if, if it comes up that you were charged and pled guilty or whatever. Uh, or they say, what's this theft conviction? You just say, it's all a big mistake, and it was [chuckle] on your part, and that the case has been dismissed and it's really none of their business all the details. Okay, sir."

On July 29, 2013, Judge Kreep said to a defendant, "If this pops up on a database, they say hey, what about this? Say it's all a big mistake. Case is dismissed and if they want to know the details, it's really none of their business. Okay?"

On August 1, 2013, the judge said to a defendant, "And if they, you're asked about it, you just say, hey, it was all a big mistake, case got dismissed. And if they wanna know the details, it's really none of their business. Okay?"

Judge Kreep testified he meant to advise defendants to explain that the defendant had made a mistake in committing the offense, not that the prosecution had made a mistake in charging the defendant. We agree with the masters' finding that "[o]n only one occasion did he suggest he was referring to a mistake made by the defendant; all other times his comments could have been interpreted to mean that the legal proceedings were flawed or that it had been a mistake to file charges against the defendant." In fact, the cases were not dismissed due to a defect or mistake.

2. Conclusions of Law.

It was improper for Judge Kreep to render an opinion on the legal effect of a theft conviction and counsel defendants on what they should say to potential employers. (Cal. Code Jud. Ethics, canon 4G [a judge shall not practice law].) Moreover, the judge's comments could suggest that he was counseling defendants to mislead potential employers by implying that they were mistakenly prosecuted.

We adopt the masters' conclusions that Judge Kreep's conduct violated canons 1, 2, 2A and 4G of the California Code of Judicial Ethics and constituted improper action. Neither party objected to these legal conclusions.

M. Using crude language.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

On July 22, 2013, Judge Kreep was discussing the date for a continued criminal case with defense counsel. When defense counsel indicated he would like to have the hearing completed by 9:30 a.m. on the continued date, Judge Kreep responded, "if Ms. Song isn't here, I'll kick her in the butt." Deputy City Attorney Song was present when Judge Kreep made the statement.

Judge Kreep explained he simply wanted Ms. Song, who was routinely late for the morning calendar, to be on time. The testimony of other witnesses corroborates Judge Kreep's testimony that Ms. Song was habitually tardy. Judge Kreep acknowledged he used inappropriate language in this instance.

In another case the same day, the defense attorney informed Judge Kreep that the defendant was in an abusive relationship. Judge Kreep said to the defendant: "Just so you know, ma'am, I grew up in a relationship where I used to get the crap beat out of me on a regular basis by a stepfather [unintelligible] my mother. So I have some understanding of what you're going through, okay? From a child's perspective." Judge Kreep testified he wanted to convey that a person does not turn to a life of crime just because they are being abused.

On July 23, 2013, when a defense attorney requested reinstatement of probation for a client, Judge Kreep said: "Yeah, your client's no virgin . . . as far as these cases are going."

On July 29, 2013, Judge Kreep was counseling a defendant whose case was dismissed upon successful completion of diversion to stay off drugs. When the defendant's mother identified herself, Judge Kreep said, "His mother, okay. Slap him upside the head a few times, make sure he stays off the drugs." The mother did not ask Judge Kreep for advice on how to keep her son out of jail. Judge Kreep explained he did not really intend for the mother to beat her son, but wanted her to take an active role in making sure the defendant stayed off drugs. He testified he did not intend to demean or embarrass anyone, and he no longer uses such language in court.

2. Conclusions of Law.

As to each of the above matters, Judge Kreep used language that was crude and undignified. Swearing is "unbecoming, injudicious and unsuited to the proper decorum of a courtroom." (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 535 (*McCartney*).) Crude comments from a judge "have no place in a courtroom." (*Salcido, supra*, at p. 20.)

We concur with the following conclusions of the masters. "The words 'butt' and 'crap' may be relatively tame examples of crude language, particularly when compared to the vulgar language rampant in culture, social media, and entertainment. But a higher standard of conduct is required in our courtrooms, and for good reason. The Code of Judicial Ethics requires that judges conduct themselves in a manner that maintains the

dignity of our courts and respect for our judicial institutions. (Cal. Code Jud. Ethics, canon 3B(4).) Casual conduct and crude language are inconsistent with those requirements. (*Salcido*, *supra*, at pp. 4, 6, 15 [judge violated canons 1, 2A, 3B(3) and 3B(4) by, among other things, using crude language during proceedings (the word 'screwed')].) Judge Kreep's statements were indecorous and undignified, and in some cases did not convey proper respect for the individuals appearing in his courtroom."

Accordingly, we conclude, as did the masters, that the judge's use of crude language in the courtroom violated canons 1, 2, 2A, 3B(3), 3B(4) and 3B(5) of the California Code of Judicial Ethics and constituted improper action. Neither party objected to these legal conclusions.

The Notice alleged that on July 30, 2013, Judge Kreep told a defendant, "If you violate your OR, I'll throw his butt in jail." The Examiner did not present evidence on that allegation. Thus, we conclude that allegation is not proven.

N. Speaking Spanish during courtroom proceedings.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"In January 2013, Presiding Judge Trentacosta received concerns about Judge Kreep using Spanish to address individuals with Hispanic surnames. In his January 30, 2013 meeting with Judge Kreep, Judge Trentacosta instructed Judge Kreep not to use Spanish when calling a case or communicating with a defendant.

"Nevertheless, Judge Kreep spoke Spanish during courtroom proceedings on July 22, 23, 24, 25, 26, 29, 30, and 31 and September 5, 2013. He addressed Ms. Hernandez and other defense attorneys as señor or señora and sometimes spoke in Spanish to ask how they were doing.

"Judge Kreep also addressed some defendants as señor, señora, or señorita. He also greeted some defendants and court interpreters with 'buenos dias,' 'buenos [*sic*] tardes,' or 'vaya con Dios.'

"Judge Kreep claims he merely used Spanish in greetings or to wish defendants well. But his characterization is incorrect. He asked one defendant with the last name

Ontiveros, 'Habla Ingles?' When Mr. Ontiveros indicated he did not speak English, Judge Kreep said, 'Señor, we'll explain it to you all in Español. Un momento por favor.' Judge Kreep then asked Mr. Ontiveros' counsel, 'Would you explain to his mama, por favor?'

"Moreover, in telling a defendant with the last name Sanchez that she should retain certain paperwork, Judge Kreep said, 'Keep your paperwork, okay? Muy importante.' There is no indication in the recorded proceeding that Ms. Sanchez spoke Spanish. Ms. Sanchez did not appear with an interpreter and she responded in English when Judge Kreep greeted her.

"In a different case, Judge Kreep spoke to a defendant in Spanish even though a court interpreter was present. He asked the defendant, 'Culpable o no culpable?' Judge Kreep also referred to 'papeles.'

"Judge Kreep again addressed another defendant in Spanish even though a court interpreter was present. Judge Kreep told the defendant, 'No cerveza. No tequila. No alcohol. Nada.'

"Deputy City Attorney Terri Winbush testified that Judge Kreep used Spanish when the defendant was 'Hispanic-appearing' and the judge was not always correct that the defendant spoke Spanish. She recalled that in some cases the defendant responded, 'I actually speak English" and Judge Kreep stopped using Spanish.

"Consistent with Ms. Winbush's testimony, in a July 26, 2013 proceeding, Judge Kreep greeted a defendant with the last name Torres in Spanish even after the defendant said she understood the terms and conditions of her probation in English. And in a case heard on July 31, 2013, involving a defendant whose last name was Silva, Judge Kreep spoke in Spanish to the defendant's mother and girlfriend, who were in the courtroom. Judge Kreep asked the two women, in Spanish, whether they spoke English. They responded that they spoke English, and Judge Kreep addressed them in English.

"During an August 2, 2013 meeting, Presiding Judge Trentacosta again urged Judge Kreep not to speak Spanish in court. During an August 19, 2013 meeting, Presiding Judge Trentacosta counseled Judge Kreep for a third time not to speak Spanish

in the courtroom. Judge Kreep testified that he stopped using Spanish in the courtroom after that instruction from Judge Trentacosta. But that is also incorrect. Judge Kreep referred to defendant Trujillo as señor on September 5, 2013. On the same date, Judge Kreep referred to defendant Arguenta as 'señor,' although he quickly apologized and called the defendant Mr. Arguenta.

"Deputy public defenders Katherine Tesch and Jose Orozco testified that Judge Kreep's use of Spanish did not upset their clients or make the clients feel uncomfortable. But according to Supervising Deputy Public Defender Melvin Epley, Deputy Public Defender Leticia Hernandez reported to him that although Judge Kreep's use of Spanish was not malicious, it 'could be naive and insensitive towards Hispanics.' "

2. Conclusions of Law.

Judicial proceedings must be conducted in English only. (Code Civ. Proc., § 185, subd. (a).) There is no express exception to that statutory mandate. While Judge Kreep may have thought he was simply being welcoming to litigants, he failed to recognize that speaking Spanish to people based on his perception that they were Hispanic could be perceived as offensive or suggest differential treatment. As stated by the masters, "[a]n assumption that a person with a Latino/Hispanic surname speaks Spanish can suggest stereotyping based on race, national origin, or ethnicity."

For these reasons, we concur with the masters' conclusion that "Judge Kreep's use of Spanish in the courtroom violated canons 1, 2, 2A and 3B(5) of the California Code of Judicial Ethics and, under the totality of the circumstances, including the January 2013 instruction from Presiding Judge Trentacosta not to use Spanish, constituted prejudicial misconduct. (Com. on Jud. Performance, Ann. Rep. (2011) Advisory Letter 24, p. 26; Com. on Jud. Performance, Ann. Rep. (2006) Advisory Letter 16, p. 33.)" Neither party objected to these legal conclusions.

O. Addressing insurance company representative as "Mr. Insurance Man."

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

On October 3, 2013, while assigned to hear traffic and small claims matters at the Kearny Mesa Branch Courthouse, Judge Kreep heard a small claims matter entitled *Liu v. Wood,* involving an automobile accident. Dominic Figuera, a representative of the defendant's insurance company, was not a party but announced his presence on behalf of the insurance company. Judge Kreep repeatedly referred to Mr. Figuera as "Mr. Insurance Man" during the proceedings.

Judge Kreep testified he referred to Mr. Figuera as "Mr. Insurance Man" because he did not remember Mr. Figuera stating his name on the record. The judge asserted he did not mean to disrespect Mr. Figuera, but was simply trying to get through the case quickly.

2. Conclusions of Law.

We agree with the masters that "repeatedly referring to the insurance company representative as 'Mr. Insurance Man' rather than by his name was discourteous and did not convey proper respect for the individual appearing in Judge Kreep's courtroom" and could also suggest a lack of impartiality. Judge Kreep suggested that use of the nickname was proper because small claims proceedings are informal. (Code Civ. Proc., § 116.510.) However, the degree of informality permitted in small claims proceedings does not include the gratuitous creation of undignified and discourteous nicknames. Nor does the judge's desire to get through the proceeding promptly justify his unjudicial conduct. As the masters observed, "if he did not hear Mr. Figuera state his name, Judge Kreep could have asked for the name."

Judge Kreep's conduct violated the California Code of Judicial Ethics, canons 1, 2, 2A, 3B(3) and 3B(4) and constituted improper action. (See *Inquiry Concerning Willoughby, supra,* 48 Cal.4th CJP Supp. at pp. 151, 155; *Public Admonishment of Judge*

John B. Gibson, supra, at p. 2; *Salcido, supra*, at pp. 11, 13, 15.) Neither party objected to these legal conclusions.

COUNT THREE

Judge Kreep was charged with engaging in misconduct by asking a deputy city attorney who was in the courtroom during a civil ex parte temporary restraining order (TRO) proceeding to contact the San Diego Police Department to inquire about the existence of a surveillance video referenced by the TRO applicant. It was alleged that the judge attempted to conduct an independent investigation of information outside the four corners of the TRO application in violation of canons 1, 2, 2A, 3B(7) [judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed], and 3C(2) [judge shall cooperate with other judges and court officials in the administration of justice]. The masters concluded that the charges were not proven by clear and convincing evidence based on the following findings of fact, as summarized and paraphrased.

On May 17, 2013, Judge Kreep issued a requested TRO because the applicant made a prima facie case in her application. The TRO applicant reported in court that a police officer told her there was a video of the subject occurrence. With the applicant present, and after he had granted the TRO, Judge Kreep asked a deputy city attorney how the applicant could get a copy of the police video.

The masters found that Judge Kreep did not make his request outside the presence of the parties and he did not make the request to help him decide the case. The applicant desired to obtain the video and Judge Kreep inquired how she might do that.

Based on these factual findings, which we adopt, we agree with the masters that that there is not clear and convincing evidence that the judge attempted to obtain information outside the record to help him decide a TRO application, and that the charge has not been proven.

COUNT FOUR

Judge Kreep was charged with improperly responding to a "blanket" challenge from the City Attorney's Office by telling deputy public defenders and public defender interns to "watch out" because if the City Attorney's Office was "coming for" Judge Kreep, they were also likely coming for Deputy Public Defender Katherine Tesch. He was also charged with engaging in improper ex parte communications in that same incident by discussing pending cases with the deputy public defenders and interns.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"On September 4 or 5, 2013, Supervising Deputy City Attorneys Marlea Dell'Anno and Mark Skeels informed Supervising Judge Walsh that, among other things, Judge Kreep had 'called out' deputy city attorneys who complained about him, and Judge Kreep's recent diversion case decisions appeared to be retaliatory. On September 5, 2013, the City Attorney informed Presiding Judge Trentacosta that his office would file 'blanket' challenges against Judge Kreep, i.e., Code of Civil Procedure section 170.6 challenges against Judge Kreep in each new Department 3 case.

"Upon learning that the City Attorney's Office planned to file blanket challenges against Judge Kreep, Judge Walsh informed Judge Kreep on September 9, 2013, that he was being reassigned to traffic court at the Kearny Mesa branch courthouse. Judge Walsh instructed Judge Kreep to report immediately to Commissioner Blair at the Kearney [*sic*] Mesa courthouse.

"Instead of proceeding immediately to the Kearny Mesa courthouse, Judge Kreep went to Department 1, a courtroom where he was not assigned, when he saw no attorneys in his courtroom. Although Department 1 was not in session at the time, it was fairly busy. Deputy city attorneys Eric Pooch and Taylor Garrot were in Department 1 discussing the morning calendar; deputy public defenders and public defender interns were also present in the courtroom. Judge Kreep approached the deputy public defenders and public defender interns and spoke with them; he did not speak with the deputy city attorneys.

"Judge Kreep told the deputy public defenders and public defender interns the City Attorney's Office had filed a blanket challenge against him. He said the challenge was because of a case in which he granted a request made by Deputy Public Defender Tesch to set a motion to enforce a plea agreement which the City Attorney's Office refused to honor. The motion referenced by Judge Kreep was pending in another courtroom when Judge Kreep made the statement. Judge Kreep also talked about how he would handle cases on his calendar for that afternoon. He mentioned specific cases during his conversation with the deputy public defenders and public defender interns.

"Judge Kreep asked the deputy public defenders and interns to tell Ms. Tesch something like the following: 'If they're coming for me, they are likely coming for you.' Judge Kreep then added something like, 'You know why I'm not talking to them,' gesturing toward Deputy City Attorneys Pooch and Garrot as he left Department 1. Mr. Pooch and Mr. Garrot found Judge Kreep's statements inappropriate. Mr. Garrot reported what he witnessed to his supervisors.

"According to Judge Kreep, he said 'they are likely coming for you' because it had become increasingly tense between Deputy City Attorney Caroline Song and Deputy Public Defender Katherine Tesch and he was concerned Ms. Song would attack Ms. Tesch's reputation. Judge Kreep said he simply went to Department 1 as a courtesy to tell the deputy public defenders another judge would hear their cases because he did not see any attorneys in Department 3 and he could not remember if any of his staff were present in Department 3 at the time. He said he could not have discussed any of the cases on the Department 3 calendar for that day because at that point he did not know what would be on the calendar.

"Judge Kreep's explanation is not credible. We find that he was angry and upset when he learned of the blanket challenge against him and he specifically went to Department 1 to discuss the challenge with the deputy public defenders in order to vent his anger and in contravention of his supervising judge's instruction. We further find that Judge Kreep talked about at least one case pending in another courtroom during his discussion with the deputy public defenders and public defender interns in Department 1:

the case in which he had granted the request made by Ms. Tesch to set a motion to enforce a plea agreement."

2. Conclusions of Law.

It is misconduct for a judge to display hostility toward an attorney who files a motion to disqualify the judge. (*In re Rasmussen* (1987) 43 Cal.3d 536; *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 786-787, 797; *McCartney*, *supra*, 12 Cal.3d at p. 529; *Inquiry Concerning Velasquez*, *supra*, 49 Cal.4th CJP Supp. at pp. 208-210; *Inquiry Concerning Hall*, *supra*, 49 Cal.4th CJP Supp. at pp. 165-167.) Further, it is improper for a judge to initiate, permit, or consider an ex parte communication, that is, any communication to or from the judge outside the presence of the parties concerning a pending proceeding (with limited exceptions not applicable here). (Cal. Code Jud. Ethics, canon 3B(7).)

The masters concluded that the judge's conduct violated canons 1, 2, 2A and 3B(7) of the California Code of Judicial Ethics and constituted willful misconduct. They concluded that the judge acted in bad faith, a requisite element of willful misconduct, because he acted for a purpose other than the faithful discharge of his judicial duties. The masters found that Judge Kreep had no legitimate reason to speak about the challenge, but went looking for deputy public defenders to vent his hostility about the challenge by the City Attorney's Office and discussed the motion to set aside a plea agreement, a matter that was still pending in another courtroom in the superior court.

Judge Kreep objects to the masters' conclusions that he acted in bad faith and engaged in willful misconduct. He agrees that it is misconduct for a judge to display hostility toward an attorney who files a challenge, but asserts that there is no evidence that he displayed hostility toward any city attorney. He maintains that he went to Department 1 as a courtesy to inform the deputy public defenders that he would not be hearing their cases and that he did not discuss pending cases. To the contrary, the masters found that Judge Kreep initiated the conversation to vent his anger at the City Attorney's Office for challenging him, mentioned specific cases, and discussed at least one case pending in another courtroom.

We give special weight to the masters' factual findings and credibility determinations and determine they are supported by clear and convincing evidence, including the testimony of two deputy city attorneys who overheard the conversation in Department 1. Moreover, the words the judge used ("If they are coming after me, they are likely coming after you") reflect hostility toward the City Attorney's Office. Significantly, there was no legitimate reason for the judge to go into Department 1 to inform the deputy public defenders of his disqualification since they would be notified by the court.

We concur with the masters' legal conclusion that Judge Kreep acted in bad faith and engaged in willful misconduct. A judge engages in bad faith when the judge performs a judicial act for a corrupt purpose, which is any purpose other than the faithful discharge of judicial duty. (*Broadman, supra,* 18 Cal.4th at p. 1092; *Geiler v. Commission on Judicial Qualifications* (1973)10 Cal.3d 270, 286 [judge acted in bad faith when he indulged in personal hostility]; *Inquiry Concerning Clarke* (2016) 1 Cal.5th CJP Supp. 1, 14 [judge acted in bad faith when he ordered prospective juror to wait in hallway out of pique and in retaliation for complaints against his clerk); *Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257 at p. 275 [judge acted in bad faith by acting out of anger in suggesting that a prosecutor was misleading the jury].) Judge Kreep was not acting in the faithful discharge of judicial duty, but became embroiled and went to Department 1 to vent his hostility toward the City Attorney's Office. Although he did not lash out directly at the deputy city attorneys in the courtroom, he expressed his anger within clear earshot of them.

Additionally, Judge Kreep engaged in improper ex parte communications about at least one pending case with the deputy public defenders who were in Department 1.

For these reasons, we agree with the masters that Judge Kreep's conduct on September 9, 2013, violated canons 1, 2, 2A and 3B(7) of the California Code of Judicial Ethics and constituted willful misconduct.

COUNT FIVE

Judge Kreep was charged with telling an African-American superior court employee who had participated in a Halloween costume contest that she should not say she "didn't win due to racism" or words to that effect.

1. Findings of Fact.

The masters made the following factual findings.

"Maurisa Young worked in the small claims division of the San Diego County Superior Court in 2013. She participated in a Halloween costume contest for court employees in October 2013. Judge Kreep was one of the contest judges. Ms. Young won third place in one of the contest categories.

"Ms. Young was talking with coworker Maria Fujita about the contest when Judge Kreep joined their conversation and gave his opinion about some of the costumes. Ms. Young asked Judge Kreep why third place winners did not get prizes. Judge Kreep responded that he did not have control over the prizes. He said the contest was conducted fairly and he did not want anyone to say 'I didn't win due to race.' Ms. Young is African American. According to Ms. Fujita's recollection, Judge Kreep used the word 'black' or 'colored' and said something about racism. Judge Kreep's statement shocked and offended Ms. Young. She later complained to her supervisor about Judge Kreep's comment.

"Judge Kreep denies making any comment about race.

"We find Ms. Young's testimony to be credible and find no evidence or indication of a motive or incentive for her to present a false account. We credit her version of the incident."

Judge Kreep objects to the masters' finding that he made the statement about race, and contends that the examiner did not prove this charge by clear and convincing evidence because he denied making the statement and Ms. Young and Ms. Fujita differed in their recollection of what he said.

A charge can be proven by clear and convincing evidence based on the testimony of one witness if believed, even when there is conflicting or divergent testimony. (*People*

v. Rincon-Pineda (1975) 14 Cal.3d 864; California Jury Instructions Civil [CACI] 107 [the testimony of one witness if believed is sufficient to prove any fact].) With respect to discrepancies between witness testimony, California jurors are instructed: "Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony." (CACI 107.)

We conclude there is clear and convincing evidence to support the masters' finding that Judge Kreep told Ms. Young she should not say she "didn't win due to racism" or words to that effect. The fact that Ms. Fujita's recollection differed as to the exact words used does not discredit Ms. Young's testimony. Both witnesses remembered the judge referring to racism in relation to a conversation about why Ms. Young did not receive a prize, whether it be "black," "colored," "something about racism" or "due to racism." Ms. Fujita recalled Ms. Young appearing upset by the comment. Ms. Young's testimony is further corroborated by the fact that she emailed her supervisor with a complaint about the judge's comment when her supervisor returned from vacation. Finally, as noted by the masters, Ms. Young had no reason to present a false account.

Giving special weight to the credibility determinations of the masters who were in a position to observe the demeanor of the witnesses, we adopt the factual findings of the masters in their entirety.

2. Conclusions of Law.

The masters concluded the judge violated California Code of Judicial Ethics canons 1, 2, 2A and 4A [judge shall conduct extrajudicial activities so that they do not cast reasonable doubt on his capacity to act impartially or demean the judicial office] and engaged in prejudicial misconduct. We concur.

Judge Kreep injected race into the conversation about prizes for Halloween costume contest winners, without any prompting or suggestion by Ms. Young or Ms.

Fujita. The comment suggested unfairly that Ms. Young might question the results of the contest based on her race. Ms. Young was shocked and offended. We concur with the masters that the comment "was insensitive and demeaning and could reasonably have been perceived as racial or ethnic bias." "Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include inappropriate use of humor or the use of demeaning remarks." (Cal. Code Jud. Ethics, canon 4A, Advisory Com. Commentary.)

We conclude that the remark would be found by an objective observer to be prejudicial to public esteem for the judiciary.

COUNT SIX

Judge Kreep was charged with giving the appearance of prejudging an unlawful detainer case by failing to offer the parties the opportunity to present evidence, cross-examine witnesses, or present argument, and with making comments reflecting prejudgment during the proceeding. The masters concluded that the examiner did not prove the charge by clear and convincing evidence.

The following is a summary of the masters' factual findings.

Vismara v. Coplin was before Judge Kreep for trial on September 26, 2014. Richard Hein, a representative of the plaintiff, was present at the trial with plaintiff's counsel Richard C. Alter. Defendants Ken Coplin, Alex Iatridis and Ed Kinney were also present.

After witnesses were sworn in, someone explained that defendants were no longer in possession of the premises. Judge Kreep asked the parties questions to determine who had personal property on the premises and what it was, so he could "figure . . . what's going on before we get too far into this case." Judge Kreep received and reviewed documents with the permission of the parties and questioned the parties about the lease and lease payments. When plaintiff's counsel clarified that the only issue for trial was possession of the premises because defendants' bankruptcy actions precluded a claim for damages against them, Judge Kreep responded, "I was trying to figure out what's going

on, so. You understand that gentlemen? They're not seeking any money from you [¶] . . . [¶] They just want the property back." During the proceeding, Mr. Coplin and Mr. Iatridis did not challenge plaintiff's right to possession of the premises, and Mr. Kinney was dismissed as a defendant.

Judge Kreep urged the parties to reach a compromise about how much time defendants would have to remove their personal property from the premises. Plaintiff's counsel welcomed Judge Kreep's help. Judge Kreep asked Mr. Coplin to talk with the plaintiff to "work out" a timeframe to remove his property from the premises. Judge Kreep said, "If you're not willing to do that then I will -- then we'll go through the trial and I'll make a formal finding and, depending on the evidence, I'm not saying I'm going to rule against you -- uh -- but I, you know, just what I know of this case, there's -- there's somewhat of a prima facie case made unless you start paying rent and they agree to accept the rent now." Judge Kreep indicated he would make an enforceable order if they agreed on a timeframe, but otherwise they would go "through the formalities," and the defendants would get the "standard time" to vacate the premises. Plaintiff agreed to give defendants 30 days to remove their belongings after the parties conferred. Judge Kreep entered an order awarding possession of the premises to plaintiff, with the lockout stayed until October 31, 2014.

The masters concluded that the only issue for trial was possession of the premises and that issue had already been resolved. (*Union Oil Co. v. Chandler* (1970) 4 Cal.App.3d 716, 721 [in general, the sole issue before the court in an unlawful detainer proceeding is the right to possession of real property], disapproved on another point in *Green v. Superior Court* (1974) 10 Cal.3d 616, 633, fn. 19.) They further concluded that it was not improper under these circumstances for Judge Kreep to try to help the parties negotiate the removal of defendants' personal property. Moreover, the judge elicited information from both the defendants and the plaintiff and did not appear to be partial to either side.

The masters concluded Judge Kreep should not have said, "[W]e'll go through the formalities and I'll issue an order" if the parties could not agree, because "[s]uch

comments can suggest prejudgment of the case." Nonetheless, the masters found that the evidence demonstrates that Judge Kreep's approach at the hearing was welcomed and appreciated by the parties and resolved their remaining issues. Thus, the masters concluded, "Although Judge Kreep should have been more cautious with some of his statements, his conduct was not coercive and did not constitute prejudgment of the case."

Based on the foregoing findings and conclusions of the masters, which we adopt, we conclude that this charge was not proven by clear and convincing evidence.

COUNT SEVEN

Judge Kreep is charged with stating during an unlawful detainer proceeding, "I had a Filipino teacher who always used to ask for a shit of paper." It was alleged that the comment was undignified and created an appearance of impropriety and bias.

1. Findings of Fact.

We adopt the following findings of fact of the masters as summarized and paraphrased.

On October 27, 2014, Judge Kreep presided over an unlawful detainer trial in a matter entitled *Pinewood Park, LP v. Anderson.* During the trial, defendant Paula Anderson was describing the circumstances ever since the owner had "filed" on her when the following colloquy ensued:

"THE COURT: Ever since she what on you?

"ANDERSON: Ever since she, um, gave me --

"THE COURT: Filed on you?

"ANDERSON: Yes, filed.

"THE COURT: I thought you said fouled on me. I'm sorry, filed on me.

"ANDERSON: Oh, sorry. We talk with, I got Texas, my parents are from Texas.

"THE COURT: Don't worry about it.

"ANDERSON: We might say y'all or something like that.

"THE COURT: Doesn't bother me a bit. I just misunderstood what you said.

"LANDLORD'S ATTY: My husband asks for a pin all the time, but it's a pen.

"THE COURT: That's okay I, I talk about doing the warsh [*sic*], so. Anyway, people look at me like, are you crazy? Anyway. And I had a Filipino teacher who always used to ask for a shit of paper."

Judge Kreep testified he made the "shit of paper" remark in response to Ms. Anderson's joke about her accent and the plaintiff's attorney's joke about her husband's accent. He said his remark was "made in an attempt to bring some levity and relaxation into the proceeding," but he admits it was inappropriate and he apologized for his comment.

2. Conclusions of Law.

Judge Kreep had been previously counseled by his presiding and supervising judges about commenting on accents and he was advised to filter what he said, share less with others and be more judicial. Thus, we agree with the masters that "he should have known not to make a comment about a Filipino teacher's accent and not to use the word 'shit' in the courtroom, even if it referred to a sheet of paper." (See *McCartney, supra*, 12 Cal.3d at p. 535; *Salcido, supra,* at p. 20.)

Judge Kreep's conduct violated canons 1, 2, 2A, 3B(3), 3B(4) and 3B(5) of the California Code of Judicial Ethics, and constituted improper action. The examiner contends that the comment was prejudicial to public esteem for the judiciary, and thus constituted prejudicial misconduct. We concur with the masters that given the context of the comment, in which other individuals initiated a discussion about how people with accents can be misunderstood, sometimes in a humorous way, the comment constituted improper action rather than prejudicial misconduct.

COUNT EIGHT

Judge Kreep was charged with improperly soliciting the legal opinion of attorneys who did not represent a party in the case before him.

1. Findings of Fact.

We adopt the following factual findings of the masters.

"In *Gelb Revocable 2010 Trust v. Chapman*, Judge Kreep held a hearing on October 2, 2014, regarding defendant Carlton Noble's ex parte application for an order

staying a lockout and for an order shortening the time to hear a motion to set aside a default judgment. The plaintiff and Mr. Noble were represented by counsel at the hearing. During argument about whether Mr. Noble received proper service of the summons and complaint, Judge Kreep turned to attorney Patricia Coyne, who was sitting in the courtroom but did not represent the plaintiff or Mr. Noble, and asked her, 'Does the 30-day notice require the abandonment of property wording?' Ms. Coyne responded in the affirmative and Judge Kreep told plaintiff's counsel, 'You might want to try to settle this matter.' Ms. Coyne had appeared before Judge Kreep numerous times and testified it was not odd for Judge Kreep to ask her a question about a case she was not handling; similar occurrences had happened in the more than 26 years she had been representing landlords.

"In another case, during a hearing on a demurrer, Judge Kreep asked attorney Mark Feinberg, who was in Judge Kreep's courtroom to oppose a demurrer in a different case, whether an order overruling a demurrer should state that the defendant had five days to 'respond' or five days to 'answer.' Mr. Feinberg opined that the order should give the defendant five days to answer. Judge Kreep adopted Mr. Feinberg's suggestion. Later, in Mr. Feinberg's case, Judge Kreep overruled a demurrer and gave the defendant five days to answer. Like Ms. Coyne, Mr. Feinberg had been practicing for decades and appeared before Judge Kreep many times. There had been another instance in which Judge Kreep asked Mr. Feinberg for his legal opinion in a case Mr. Feinberg was not handling. And on one or two other occasions, Mr. Feinberg saw Judge Kreep ask attorneys for their legal opinion in cases they were not handling. Mr. Feinberg testified he had occasionally seen other judges make similar inquiries of lawyers in their courtrooms even when the lawyer did not represent a party in the case. Mr. Feinberg said such inquiries were usually made by a judge who was new to the unlawful detainer department or was a visiting judge.

"Judge Kreep likewise testified he had seen other judges ask attorneys for their legal opinions regarding cases they were not handling. Judge Kreep said he only did that in unlawful detainer cases and only in his first year in the unlawful detainer department.

According to Judge Kreep, he discontinued the practice after he was counseled about it in January or February 2015."

2. Conclusions of Law.

Soliciting the advice of attorneys in the courtroom who are not involved in the case could convey an impression that those attorneys hold a special position of influence over the judge and create an appearance of impropriety and partiality. Counsel in the case might rightly be troubled by the judge's soliciting advice on how he should handle the matter from attorneys unfamiliar with the case. Further, as noted by the masters, parties on the opposing side of Ms. Coyne and Mr. Feinberg in matters waiting to be called might also be concerned. They could see that Judge Kreep thought so highly of Ms. Coyne's and Mr. Feinberg's advice that he called on them in cases they were not handling.

Witnesses testified that other judges called on attorneys in the courtroom audience for their opinions on legal issues in unlawful detainer cases. Nevertheless, we agree with the masters that "the fact that it may be a common practice does not necessarily excuse inappropriate conduct."

For the forgoing reasons, we conclude, as did the masters, that the judge's conduct violated canons 1, 2, 2A and 2B(1) of the California Code of Judicial Ethics [a judge shall not convey or permit others to convey the impression that any individual is in a special position to influence the judge] and constituted prejudicial misconduct. (See *McCartney*, *supra*, 12 Cal.3d at pp. 529, 532-533 [holding benchside sentencing conferences with bailiff].) Neither party objected to these legal conclusions.

COUNT NINE

Judge Kreep was charged with creating an appearance of lack of impartiality and failing to afford a full opportunity to be heard by giving the plaintiff in *Sleea v. Brown* the choice of either (1) dismissing his small claims case and filing it as a limited or unlimited civil case, or (2) having Judge Kreep decide the case based on evidence which Judge Kreep told the plaintiff was insufficient to support his claim for $10,000 in damages.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

On January 8, 2015, Judge Kreep presided over *Sleea v. Brown*, a small claims action. Plaintiff Juhar Sleea sought $10,000 in damages for "stolen property, occasional hotel fees, food charges, clothing expenses, [and] hospital expenses." Mr. Sleea was present but the defendant did not appear.

Mr. Sleea was not sworn in. Upon questioning by Judge Kreep, Mr. Sleea said he rented a room from defendant but eventually defendant filed a restraining order against him and kept Mr. Sleea's belongings. He sought damages for the items kept by the defendant, including jewelry, cash, and a passport. Mr. Sleea said he also incurred hotel, food, and medical expenses as a result of the defendant's conduct.

Mr. Sleea presented Judge Kreep with receipts to support a portion of his damages claim. When Judge Kreep said Mr. Sleea had to present evidence of the cash left in the room and the value of the stolen jewelry, Mr. Sleea responded that he wrote down the amount of the cash and the value of the jewelry. Judge Kreep replied, "Just writing it down is meaningless. I could say you stole $10,000 from me. You have to give me some evidence, sir."

Judge Kreep pressed Mr. Sleea for some evidence that he had $10,000 in cash he claimed he had hidden in his room and for receipts for the allegedly stolen jewelry. Mr. Sleea said he got the jewelry "from the Holy Land" and the receipt "was in Arabic and it was [a] long time [ago.]" Judge Kreep responded, "I can only give you damages for what you can prove to me. And without some appraisal or estimate or receipt for the jewelry, you have no idea what it's worth, sir. I have no idea what it's worth, sir. I can't give you damages based on speculative values. That's the law."

Mr. Sleea said he knew the jewelry was worth $5,000 because he showed a photograph of the jewelry to a "jewelry owner" who told him so. Judge Kreep said Mr. Sleea's representation about the value of the jewelry was not admissible evidence.

Judge Kreep told Mr. Sleea that if the defendant had "taken all this stuff" from Mr. Sleea, Mr. Sleea should have brought a limited or unlimited civil action and not sued in small claims court. Mr. Sleea explained that even though his damages exceeded $10,000 he filed a small claims action because he did not have the money to file an unlimited civil action.[6]

Judge Kreep told Mr. Sleea: "Here's your options, sir, you can dismiss this case, uh, and file it in limited civil or unlimited civil. Or I can rule on the evidence you've given me. That's your choices. Which right now is looking -- from what you've -- all I've seen here in damages is two or three thousand dollars. It's what I've got [unintelligible], sir. If you have, if you have more receipts or something there, show them to me." Judge Kreep later repeated Mr. Sleea's options and added, "There are attorneys who may take it on a contingency basis. I don't know. If you have no income, you may be able to get a fee waiver. In fact, you got a fee waiver for this case. If you can get a fee waiver for this case, you can get a fee waiver for limited civil or unlimited civil."

When Mr. Sleea said he had no money to pay an attorney, Judge Kreep responded, "Sir, third time, here are your options, you dismiss this case and take it into limited civil or unlimited, or I rule on the evidence that you have given me so far, plus whatever other damage evidence. But doctors' bills, just because you could not pay them, unless this man physically attacked you and the doctors' bills are as a result, the doctors' bills are not relevant to this proceeding. So, what's your choice? You want me to rule on what you've given me? Or do you want to dismiss this and try to get more money in another court?" Mr. Sleea elected to dismiss his action but protested, "I don't think this is fair, Your Honor." Judge Kreep dismissed the action without prejudice.

[6] Except in circumstances not shown to be applicable here, the jurisdictional limit for a small claims action brought by a natural person is ten thousand dollars ($10,000). (Code Civ. Proc., § 116.221.)

Judge Kreep testified he believed he had authority to give Mr. Sleea the option of having his case dismissed without prejudice because Mr. Sleea did not have "concrete" evidence to prove his alleged damages.

2. Conclusions of Law.

The masters concluded that Judge Kreep failed to afford Mr. Sleea a full opportunity to be heard by refusing to consider Mr. Sleea's offer to prove his damages through his own sworn testimony or through hearsay evidence in a small claims case in which the defendant had not appeared. The judge did not swear Mr. Sleea in as a witness and informed Mr. Sleea that his testimony about the amount of cash in the room and what a jeweler told him about the current value of the missing jewelry was not evidence.

"The hearing and disposition of . . . [a] small claims action shall be informal, the object being to dispense justice promptly, fairly, and inexpensively." (Code Civ. Proc., § 116.510.) "While there are obviously some limits beyond which the court should not go, the statutes are clearly designed to afford both the parties and the court considerable flexibility in presenting their cases and ascertaining the truth." (*Houghtaling v. Superior Court* (1993) 17 Cal.App.4th 1128, 1135 (*Houghtaling*).)

The rules of evidence, including the hearsay rule, do not apply to small claims court proceedings. (*Sanderson v. Niemann* (1941) 17 Cal.2d 563, 573.) In small claims matters, the trial court should "listen patiently, even if it is mentally classifying the evidence as improbable, incredible, or preposterous." (*Houghtaling*, *supra*, at pp. 1137; Cal. Judges Benchguides: Small Claims Court (rev. 2016) § 34.32, p. 34-27 ["In most instances, the judge should admit all of a party's evidence, including hearsay evidence and evidence offered through witnesses, and thereafter determine its weight and trustworthiness."].)

"The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law

and the canons, to enable the litigant to be heard." (Cal. Code Jud. Ethics, canon 3B(8), Advisory Com. Commentary.)

Judge Kreep repeatedly commented on the insufficiency of the plaintiff's evidence and then pushed Mr. Sleea to either dismiss the matter and refile it as a civil action or continue with the small claims action and have the judge rule based on the evidence presented. Mr. Sleea had already told the judge that he had not filed an unlimited civil action because it was something he could not afford. As stated by the masters, "[u]nder the circumstances, the 'choice' Judge Kreep offered the indigent plaintiff was not much of a choice at all."

The issue before the commission is not whether Judge Kreep's legal rulings were correct or whether there was or was not sufficient evidence to prove damages. Rather, the ethical issue is whether he provided the plaintiff with an opportunity to fairly adjudicate his small claims matter. We agree with the masters that he did not.

The masters stated, "A disinterested observer in the courtroom might think Judge Kreep was working hard to avoid making a decision. Judge Kreep may have been trying to help Mr. Sleea by giving him a way out of an adverse ruling, but Mr. Sleea thought it was unfair, and we agree." We also agree.

The masters concluded that Judge Kreep's conduct violated canons 2A and 3B(8) of the California Code of Judicial Ethics [a judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law] and constituted improper action. However, the masters also concluded that there was not clear and convincing evidence to prove the charge that Judge Kreep created an appearance of favoritism and bias toward Mr. Sleea in violation of canon 3B(5) by offering him the option of dismissing without prejudice and refiling in limited or unlimited jurisdiction civil court. We reach the same legal conclusions. Neither party objected to these legal conclusions.

COUNT TEN

Judge Kreep was charged with creating an appearance of impropriety and lack of impartiality by repeatedly interjecting views based on his personal experience during a small claims hearing in *Clendenin v. Pacific West Home Mortgage, LLC*.

1. Findings of Fact.

We adopt the following factual findings of the masters as summarized and paraphrased.

Judge Kreep heard *Clendenin v. Pacific West Home Mortgage, LLC*, a small claims action, on February 11, 2015. Plaintiff William Clendenin was present at the hearing and Stephen Niednagel appeared as the representative for defendant.

Mr. Clendenin claimed damages for Pacific West's failure to disclose there was damage to the subfloors when they sold him the property. There was a dispute over whether the damage existed when the property was sold to Mr. Clendenin. Mr. Niednagel said Pacific West replaced the carpet before the property was sold and Mr. Niednagel would have known about damage to the subfloor when the carpet was replaced. As Mr. Niednagel was explaining that the carpet could not have been installed if the subfloor had been in the condition shown in Mr. Clendenin's photographs, Judge Kreep interjected that he had "bought and sold houses," was a landlord, and had "commercial and residential realty." Judge Kreep also stated that he had "replaced carpets" and had done a lot of construction and reconstruction to fix and sell property. He said, "So, although I don't claim to be a builder, I'm not a virgin when it comes to these types of matters."

Mr. Niednagel testified he had not seen the carpet being installed and that his testimony about the condition of the subfloor was based on what other people told him. Judge Kreep replied, "Alright. So, 'cause 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."

Judge Kreep prefaced his questions to Mr. Clendenin 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."

Mr. Niednagel presented a statement from the Vice President of Operations for Pacific West's carpet installation contractor, stating that Mr. Clendenin's photographs did not depict the condition of the subfloor when the carpet was installed in 2011. Judge Kreep commented that the statement was double hearsay. He continued, "[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." Judge Kreep ultimately awarded Mr. Clendenin $2,500, plus costs.

2. Conclusions of Law.

We agree with the masters' conclusion that Judge Kreep's repeated comments about his prior experiences in real estate and as an attorney created an appearance that he was not impartial and that he based his rulings on his personal experiences rather than the evidence presented. Judge Kreep suggested he discredited Mr. Niednagel's testimony about the improbability of the subfloor being damaged when the carpet was installed because the judge had "seen some pretty strange" things happen with houses. He also suggested a letter from the Vice President of Operations for the carpet installation contractor stating that the floors were not damaged was not trustworthy because in Judge Kreep's experience as an attorney, "the truth gets left out when people are trying to cover their butts."

Judge Kreep testified he disclosed he was a landlord so the parties could file a Code of Civil Procedure section 170.6 challenge against him if they wished. However, the timing and nature of his comments suggest otherwise. He did not make the comments at the beginning of the proceeding, he made them after the proceeding had commenced and sprinkled them throughout the proceeding. Additionally, his comments went well beyond disclosing he was a commercial landlord so that the parties could disqualify him if they wished. Rather, his remarks about his personal experiences were in response to testimony on particular subjects.

We conclude, as did the masters, that Judge Kreep's conduct violated canons 2, 2A and 3B(5) of the California Code of Judicial Ethics and constituted improper action. (*Public Admonishment of Moruza, supra*, at pp. 7, 9; see also *Inquiry Concerning Velasquez, supra*, 49 Cal.4th CJP Supp. at pp. 201, 204.) Neither party objected to these legal conclusions.

COUNT ELEVEN

Judge Kreep was charged with violating canons 1, 2, 2A, 3B(7) and 3B(8) of the California Code of Judicial Ethics by engaging in an ex parte communication in *REO Group v. Newman*. The judge allegedly considered an ex parte letter from REO's counsel, Jennifer Freedman, requesting that a court date that had been continued from July 29, 2015 to August 5, 2015, be moved back to July 29. The judge granted the request and reset the date to July 29. Allegedly, the defendant George W. Newman was not given written notice of REO's request, and did not appear on July 29.

The masters found that Judge Kreep's courtroom clerk "did not accept Ms. Freedman's letter because it was hand-delivered to Department 7 without a proof of service showing service of the letter on Mr. Newman. A process server redelivered Ms. Freedman's letter later that day with a proof of service showing that a copy of Ms. Freedman's letter to the court was sent to Mr. Newman by mail on July 27, two days before the date Ms. Freedman sought for the hearing."

Based on this finding, the masters concluded that the charge was not proven by clear and convincing evidence. (*Nguyen v. Superior Court* (2007) 150 Cal.App.4th 1006, 1013, fn. 2 [letter from real party in interest to the court was not ex parte communication where it was served on petitioner's counsel].) The masters reasoned, "Ms. Freedman's letter is not an ex parte communication. Mr. Newman may have been prejudiced by the timing of the communications to him, but that was a procedural issue for which he had legal remedies and it did not amount to misconduct."

We adopt the masters' conclusion that the charge was not proven by clear and convincing evidence.

IV.

DISCIPLINE

The purpose of a commission disciplinary proceeding " 'is not punishment, but rather the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system.' " (*Broadman, supra*, 18 Cal.4th at pp. 1111–1112, quoting *Adams, supra,* 10 Cal.4th at p. 912.)

In determining the appropriate level of discipline, we first consider the number of acts and the nature of the proven misconduct. Judge Kreep has engaged in one act of willful misconduct, 17 acts of prejudicial misconduct, and 11 acts of improper action. Under the California Constitution, improper action is not a basis for censure or removal. (Cal. Const., art. VI, § 18, subd. (d).) The proven acts of willful and prejudicial misconduct in this matter support our determination to severely censure Judge Kreep.

The number of acts of misconduct is relevant to discipline to the extent it shows isolated incidents, or a pattern which demonstrates that the judge lacks judicial temperament and the " ' "ability to perform judicial functions in an even-handed manner." ' " (*Fletcher, supra,* 19 Cal.4th at p. 918.) In addition to the number of acts of misconduct, the nature and seriousness of the misconduct is an important factor in the commission's consideration. (*Broadman, supra,* 18 Cal.4th at pp. 1112–1113; Policy Declarations of the Com. on Jud. Performance, policy 7.1(1)(b).)

Judge Kreep has engaged in a pattern of misconduct that demonstrates a lack of judicial temperament. During his campaign for judicial office he conducted himself in a manner that created an appearance of lack of impartiality and demonstrated a disregard for adhering to election laws and assuring the accuracy of his public representations. After taking office, he often ran his courtroom in a manner that was undignified and suggested bias or prejudgment. Further, he engaged in willful misconduct by acting out of hostility in discussing with deputy public defenders the City Attorney's blanket challenge to him.

Judge Kreep maintains that he never intended to demean or belittle anyone in his courtroom. While that may be the case, his failure to recognize that his comments could offend people or make them feel uncomfortable is troubling. Drawing attention to a person's ethnicity when not an issue in the case, questioning an attorney's citizenship, suggesting that a court employee might blame the results of a costume contest on racism, asking a defendant charged with prostitution if she did it for the money or the action, referring to attorneys by nickname, and commenting on the physical appearance and pregnancy of attorneys demonstrates an astonishing lack of sensitivity to how such comments could be perceived by others and a judicial style unbefitting the judicial office.

Judge Kreep's misconduct undermines public confidence in the dignity, integrity and impartiality of the judiciary. In addition, Judge Kreep's conduct has had a negative impact on the administration of the San Diego County Superior Court. His presiding and supervising judges were required to spend substantial time meeting and corresponding with Judge Kreep and preparing memoranda documenting repeated complaints about Judge Kreep's conduct, all at a time when the court was dealing with a budgetary crisis.

Other significant factors we take into consideration in determining the appropriate level of discipline are whether the judge acknowledges and appreciates the impropriety of his or her misconduct, and whether the judge has cooperated fully and honestly in the commission proceeding. (Policy Declarations of the Commission on Judicial Performance, policy 7.1(2)(a)(b).) "A judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform." (*Inquiry Concerning Platt* (2002) 48 Cal.4th CJP Supp. 227, 248.)

In general, Judge Kreep admitted that he ran his courtroom too casually and that many of his comments could be perceived as improper and demonstrating a lack of decorum and bias. Specifically, he acknowledged wrongdoing in failing to report campaign expenses and use of his personal credit card and bank account for campaign expenses, commenting on an attorney's accent and citizenship, referring to attorneys by nickname, commenting on the attractiveness of a male public defender, referring to a

"gift for the day" during sentencing, making certain crude comments, and the Filipino accent comment.

However, Judge Kreep also failed to see the impropriety as to many instances of misconduct, such as commenting on an attorney's pregnancy and the physical attractiveness of female public defenders, sharing intimate personal facts about his caretaking of a friend, asking a prostitute whether she did it for the money or the action, calling an adult man "little boy," unnecessarily referencing a person's ethnicity and speaking Spanish to litigants based on their surname. Particularly troubling are the disingenuous and specious explanations Judge Kreep offered in response to some of the charged conduct. For instance, he denied opposing President Obama in the USJF fundraising letters he signed during his judicial campaign despite unambiguous language in the letters to the contrary, and he claimed to have gone to Department 1 simply to inform the public defenders of the blanket challenge when there was no reason for him to do so and when his words conveyed anger. While admitting that he commented on an attorney's pregnancy, he minimized the extent of the comments. Further, the masters credited Ms. Young's testimony that Judge Kreep made a statement about race in relation to the Halloween costume contest, despite the judge's denial.[7]

While the number of incidents of misconduct and Judge Kreep's failure to fully and honestly acknowledge the extent of his misconduct might warrant removal from office, other considerations have persuaded us that a severe public censure is the appropriate discipline. Those considerations include that all but five of the 29 incidents of proven misconduct occurred either during Judge Kreep's judicial campaign or during his first year on the bench and the evidence before us suggests that Judge Kreep has made efforts to reform his judicial style and behavior. (Policy Declaration of the Commission on

[7] Judge Kreep argued through his attorney that two witnesses may remember events differently, and that discrepancies between the testimony of witnesses does not necessarily mean that one witness is intentionally lying. While we think making a comment about race in this context is something a person is likely to remember, we cannot say based on this record that there is clear and convincing evidence that Judge Kreep intentionally lied in his testimony on this issue.

Judicial Performance, policy 7.1(c).)[8] There was a significant drop in incidents of misconduct after the judge's first year on the bench and after he was counseled by his supervising judges. For the most part, when specific improper conduct was brought to his attention, such as the use of nicknames, commenting on the physical appearance of attorneys and asking attorneys in the courtroom for advice, the conduct ceased.

However, Judge Kreep did not always heed the advice of his superiors. During a January 30, 2013 meeting with Judge Kreep, Presiding Judge Trentacosta counseled Judge Kreep about his statements to Ms. Hernandez and an article in CityBeat reporting those statements. Judge Trentacosta told Judge Kreep that statements singling out a person based on something that is not relevant to an issue before the judge, such as the person's accent or national origin could make the person uncomfortable. Judge Kreep apologized for his conduct and promised not to do it again. Yet, after that meeting, Judge Kreep made the "no offense to Chinese people" and Filipino accent comments. Also, the judge stopped speaking Spanish during court proceedings only after repeated admonishments from his presiding judge.

In mitigation, the masters noted the testimony of attorneys who appeared before Judge Kreep in the unlawful detainer department, and described him as fair and respectful of litigants. The masters also found in mitigation that Judge Kreep is hard working and has helped reduce the backlog on default matters at the superior court. Further, the judge has participated in continuing education, and extracurricular court and community activities and committees.

After careful consideration and balancing of the foregoing aggravating and mitigating factors, we have determined that imposition of a severe public censure, the highest level of discipline short of removal, best fulfills our mandate to protect the public and maintain public confidence in the integrity and impartiality of the judiciary.

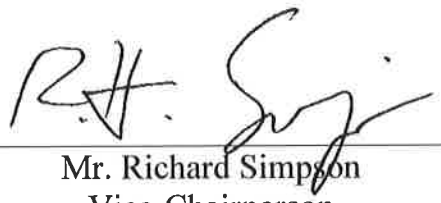
[8] Although Judge Kreep has no prior discipline, we do not consider that to be a mitigating factor in his case because most of the misconduct occurred while he was a judicial candidate and during his first year on the bench.

ORDER

Pursuant to the provisions of article VI, section 18 of the California Constitution, we hereby impose a severe public censure on Judge Gary G. Kreep.

Commission members Mr. Richard Simpson; Anthony P. Capozzi, Esq.; Ms. Sarah Kruer Jager; Ms. Pattyl A. Kasparian; Nanci E. Nishimura, Esq.; and Mr. Adam N. Torres voted in favor of all the findings and conclusions expressed herein and in this order imposing a severe public censure. Commission members Hon. Ignazio J. Ruvolo, Hon. Michael B. Harper, Dr. Michael A. Moodian, and Hon. Erica R. Yew concur as to the factual findings and legal conclusions expressed herein, but dissent as to the order of severe public censure and would have ordered the removal of Judge Kreep from office. Commission member Ms. Mary Lou Aranguren did not participate.

Date: August 17, 2017



Mr. Richard Simpson
Vice-Chairperson