

COMMISSION ON JUDICIAL PERFORMANCE
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102

Contact: Victoria B. Henley
Director-Chief Counsel
(415) 557-1200

FOR RELEASE
August 17, 2017

JUDICIAL PERFORMANCE COMMISSION ISSUES
DECISION AND ORDER IMPOSING PUBLIC CENSURE OF
JUDGE GARY G. KREEP

The Commission on Judicial Performance has issued a severe public censure of Judge Gary G. Krep of the San Diego County Superior Court. Public censure is the highest level of discipline that the commission can impose short of removal from office.

The commission determined that Judge Krep engaged in 29 acts of judicial misconduct: one act of willful misconduct, 17 acts of conduct prejudicial and 11 acts of improper action between 2012 and 2015. The commission determined that the acts of conduct prejudicial and willful misconduct afforded a sufficient basis for a severe public censure. Those acts included misconduct during his judicial campaign, making numerous comments in the courtroom reflecting a lack of courtroom decorum and an appearance of bias, engaging in an improper ex parte communication, acting out of hostility toward the San Diego City Attorney's Office after they filed a "blanket" challenge against the judge, soliciting legal opinions from counsel not on the case and 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. The commission concluded that Judge Krep had engaged in a pattern of misconduct that demonstrated 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." The commission concluded that Judge Krep's misconduct undermined public confidence in the dignity, integrity and impartiality of the judiciary. In addition, the commission noted that Judge Krep's conduct 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 Krep and preparing memoranda documenting repeated complaints about Judge Krep's conduct, all at a time when the court was dealing with a budgetary crisis.

The commission noted that in general, Judge Krep 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. The commission stated, however, that Judge Krep 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. The commission cited as particularly troubling “the disingenuous and specious explanations Judge Kreep offered in response to some of the charged conduct.” For instance, he denied opposing President Obama in political fundraising letters he signed during his judicial campaign despite unambiguous language in the letters to the contrary, and he claimed to have gone to another courtroom simply to inform the public defenders of the blanket challenge filed by the City Attorney’s Office 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 commission noted that the masters credited the court employee’s testimony that Judge Kreep made a statement about race in relation to the Halloween costume contest, despite the judge’s denial.

While observing that 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, the commission stated that other considerations persuaded it that a severe public censure was the appropriate discipline. Those considerations included 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 the commission suggested that Judge Kreep had made efforts to reform his judicial style and behavior. The commission noted that 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 for attorneys, commenting on the physical appearance of attorneys and asking attorneys in the courtroom for advice, the conduct ceased. The commission also cited in mitigation that the masters who presided over the evidentiary hearing 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 was hard working and had 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.

Judge Kreep is represented by James A. Murphy, Esq., and Janet L. Everson, Esq., of Murphy, Pearson, Bradley & Feeney in San Francisco.

The commission’s Decision and Order of Public Censure is available on the commission’s website at <http://cjp.ca.gov> (under “Pending Cases - Press Releases & Documents” and “Public Discipline & Decisions”) and at the commission’s office.

* * *

The commission is composed of six public members, three judges, and two lawyers. The chairperson is Hon. Ignazio J. Ruvolo of the Court of Appeal, First Appellate District.

For further information about the Commission on Judicial Performance, see the commission’s website at <http://cjp.ca.gov>.