STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING FORMER JUDGE ROBERT M. LETTEAU	DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT

This disciplinary matter concerns former Judge Robert M. Letteau, previously a judge of the Los Angeles County Superior Court from his appointment on January 27, 1982 until his retirement effective September 10, 2002. Following the appearance of Judge Letteau and his attorney, Mr. Edward P. George, Jr., on May 11, 2004, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

For the reasons set forth below, the commission found that Judge Letteau engaged in misconduct while presiding over two matters between 1998 and 2000: an attorney's motion for fees in the *Conservatorship of Feist*, and the court trial in *Condon v. Mazza*. The Court of Appeal reversed both matters.

The commission further found that Judge Letteau's misconduct in the *Feist* and *Condon v. Mazza* matters was similar to conduct between 1996 and 2001 in three other matters for which the judge was privately admonished in 2002. Accordingly, the commission concluded that Judge Letteau's misconduct warrants this notice of intended public admonishment.

1. Attorney Fees Award in *Conservatorship of Feist*

Background

Beginning in 1998, Judge Letteau presided over *Conservatorship of Feist* (SP003455). Conservatee Feist was 79 years old and suffering from memory dysfunction and dementia. His family was concerned that he was being verbally and emotionally abused, inadequately cared for and financially exploited by Lee Lane, a woman who had been living in his home for two years. Family members retained attorney Marc Hankin, who specializes in probate work, to file a petition for conservatorship. Professional conservator Frumeh Labow was appointed as conservator of the person and estate of Mr. Feist. A Probate Volunteer Panel (PVP) attorney, Irving Goldring, was also appointed to independently represent Mr. Feist.

Over the next twenty-four months, contentious litigation between Conservator Labow and Ms. Lane ensued. Labow sought orders to compel Lane to account for her use and management of Feist's assets, to obtain discovery from Lane, to set aside durable powers of attorney obtained by Lane, and to annul a September 1997 marriage between Lane and Feist. Ms. Labow also opposed attempts by Lane to retain private counsel to represent Feist and to remove Labow. In March 1999, the parties reached a settlement of their various claims, which was later set aside. After additional negotiations a new settlement was reached and approved by the court in April 2001.

In December 1999, Conservator Labow filed an accounting and a request for conservator's fees in the amount of approximately $25,000, and attorney fees and costs to Mr. Hankin in the amount of approximately $63,820. Labow later supplemented her accounting to request additional conservator's fees of approximately $24,397 for the period September 1, 1998 through December 31, 1999. Mr. Hankin supported the attorney fees request with a declaration that included approximately 50 pages of time records detailing approximately 275 hours of attorney and paralegal services and compensation paid to consult with legal experts in other specialties.

Mr. Hankin's declaration included a section entitled "Public Policy Issues" that contained five paragraphs of comments critical of what Hankin characterized as the Los Angeles Probate Court's "practice" of "cutting" the fees requested by conservators and their attorneys, particularly in protracted litigation. Hankin asserted that because of this practice attorneys "expect" to be denied their normal hourly rate, "do not trust" judges to award adequate fees in protracted litigation, and are discouraged from vigorously representing their clients. This, he asserted, was a potent "weapon in the arsenal of those people who abuse the elderly for profit as a regular business practice."

Attorney Goldring recommended approval of the conservator's accounting and approval of the full amount of fees requested by Labow and Hankin. Judge Letteau approved Ms. Labow's fee request at a hearing on June 2, 2000. As to Mr. Hankin's fee request, however, the judge first deferred decision to the end of the hearing, stating that "it is going to take some considerable time . . . ." (6/2/00 R.T. p. 3:2.) The judge then indicated as to the attorney fees "there are a lot of things that I need to know about. And it may well be that I am never going to approve it. In fact, I have to tell you, I doubt I am going to ever approve the request made for $62,000 in fees." (6/2/00 R.T. p. 3:18-28.)

Judge Letteau also referred to the public policy statements in Mr. Hankin's declaration, which the judge characterized as "really ascrib[ing] elder abuse to the court" (6/2/00 R.T. p. 4:4-5), and which the judge said were "not fair" (6/2/00 R.T. p. 4:5-6). After continuing the hearing to accommodate the schedules of Mr. Goldring and Ms. Labow, the judge sought to engage Mr. Hankin in a discussion of the public policy issues, and stated his intention to "circulate" Mr. Hankin's declaration "so it can be considered by my colleagues on the bench." (6/2/00 R.T. p. 8:8-10.)

When Mr. Hankin appeared before Judge Letteau on another case a week later (June 9, 2000), the judge brought up *Feist*, saying he "hadn't decided" what to do about the fee

request. The judge asked Mr. Hankin if he could speak with retired Judge Irving Shimer (who initially handled the case), and invited Mr. Hankin to submit the name of a proposed referee to speak with Judge Shimer. Mr. Hankin noted that conservator Labow and attorney Goldring were absent and had no notice of Judge Letteau's proposals, stating "this is sort of ex parte without [Mr. Goldring] being present." (6/9/00 R.T. pp. 2:28-3:7.) Judge Letteau agreed to defer the matter to the next *Feist* hearing on June 23: "Okay. Tell you what we'll do. You come in on whatever the date is, and we'll have the same discussion then. That's fine. I don't mind. I was trying to save you some time. [¶] . . . Don't expect that there are going to be substantive decisions made on your 60-some thousand dollar fee request on the scheduled date. [¶] . . . Go back to square one, Mr. Hankin." (6/9/00 R.T. p. 3:8-18.)

At the June 23 hearing in *Feist*, Judge Letteau referred to the conversation on June 9, stating that Mr. Hankin was "less than enthusiastic" about his request to speak with Judge Shimer. (6/23/00 R.T. p. 16:10-11.) Mr. Hankin said, "[Y]ou were asking me to do that on an ex parte communication that was not proper. I felt I should communicate with [Mr. Goldring and Ms. Labow] beforehand." (6/23/00 R.T. pp. 16:28-17:2.) Judge Letteau responded, "I don't see how [Goldring's] client, who is the conservatee, would be adversely affected." (6/23/00 R.T. p. 17:5-6.) Ms. Labow and Mr. Goldring then reiterated their support for Mr. Hankin's fee request. Judge Letteau stated that he would not speak with Judge Shimer in light of "this personal animus by Mr. Hankin towards the court, which I'm willing to ignore":

> COURT: . . . It would have been my preference, and with almost anybody else that hadn't personalized this, I would have simply called Judge Shimer and listened to what he had to say. After hearing further remarks by Mr. Hankin today, I absolutely would not talk to Judge Shimer about this case because I think whatever I then did would be subject to very possible mischaracterization, unless I simply awarded Mr. Hankin all of his fees. So I've made the decision since we've had this long discussion, that I will not ever talk to Judge Shimer about this case, even though I think it might have been helpful, productive and constructive. And we'll probably do it in virtually every other situation where there didn't seem to be this personal animus by Mr. Hankin towards the court, which I'm willing to ignore. (6/23/00 R.T. p. 22:1-17.)

Mr. Hankin responded that he had no objection to Judge Letteau questioning Judge Shimer, for whom he had "the highest respect," so long as they did not meet ex parte. (6/23/00 R.T. p. 23:5-9.)

Also at this hearing, Judge Letteau requested a list of proposed referees to review Mr. Hankin's fee request. Mr. Hankin stated that he would object should the judge appoint retired Judge Edward M. Ross, whom he had previously sought to disqualify. Judge Letteau responded, "I hadn't thought about Judge Ross, but since you mention it, that would be one possibility. Feel free to submit his name . . . ." (6/23/00 R.T. pp. 18:28-19:6.)

Judge Letteau also directed Mr. Hankin to further support his fee request by filing, by August 1, a "brief synopsis of what was accomplished" at each of his appearances in *Feist*. (6/23/00 R.T. p. 12:6-7.) When Mr. Hankin objected that he would need to obtain costly transcripts, the judge responded "That's your decision." (6/23/00 R.T. p. 15:13.) The matter was continued to August 18.

Following the hearing, Mr. Hankin and Mr. Goldring jointly submitted a list of proposed referees that did not include Judge Ross. On July 10, Judge Letteau appointed one person on the list of proposed referees, and also appointed Judge Ross as "second referee/special master." Mr. Hankin filed a peremptory challenge against Judge Ross, which Judge Letteau rejected on July 20. Mr. Goldring then objected to Judge Ross. On July 25, Judge Letteau vacated his order appointing the referees, stating that he would rule on the fee request "in due course."

On July 26, 2000, Mr. Hankin filed an objection to Judge Letteau deciding the fee matter without a hearing, as well as a motion to disqualify Judge Letteau on grounds of bias. (The disqualification motion was later re-filed after the judge advised it had not been properly served.) On August 1, Mr. Hankin filed the synopsis of appearances that Judge Letteau had requested on June 23. On August 18, Judge Letteau struck as untimely and insufficient Mr. Hankin's re-filed motion to disqualify him from hearing the fee motion. The matter was continued for four months to December 15.

As of December 14, 2000, Judge Letteau had not ruled on the fee request for almost a year. The judge also had not ruled on Mr. Hankin's request for a hearing for more than four months. Mr. Hankin amended his fee request to include interest occasioned by the delay, with a new total of about $67,420.

Prior to the December 15 hearing date, Mr. Hankin learned the hearing was to be continued because the file was missing. He contacted the court's probate attorney, who agreed to Mr. Hankin's request that the new hearing date be January 19, 2001, because Mr. Hankin was going to be out of town on vacation. On December 15, attorney Goldring was present but Mr. Hankin was not, because he believed the matter had been continued. Judge Letteau noted that circumstance but said he would continue the matter only to December 22, whether Mr. Hankin could attend or not: "[I]t's a fee order. Everything else has already been resolved. There needn't be any discussion. I can even make the order now, but I'm willing to put it over a week. If [Mr. Hankin] can be here, fine. If he can't, it won't make any difference." (See Opinion in Appeal B149324 at pp. 13-14.)

On December 20, Mr. Hankin submitted an *ex parte* motion seeking to continue the hearing until a date in January. Judge Letteau denied it, advising Mr. Hankin to the effect that, "No, we're really not going to have a lot of discussion [at the December 22 hearing]. This is going to be a time for decision and not debate, so there's no reason to continue it." (See 12/22/00 R.T. p. 1:19-22.)

On December 22, Mr. Goldring was present but Mr. Hankin was not. Judge Letteau stated that Mr. Hankin, in his amended fee request, asserted that he had "saved Mr. Feist's life." Judge Letteau then commented on the fee request as follows:

> COURT: I appreciate that Mr. Hankin has possibly spent a lot of time on this. A lot of money has already been paid to the conservator . . . . [¶] . . . In terms of the life saving, I do have a hard time understanding the lawyer's role in that. I've read and I did at one time ask Mr. Hankin if I could talk to the Judge who was first involved, Judge Shimer. [Mr. Hankin] had some problems with that. [¶] I suggested because I know he feels that there's a personal problem between this court and Mr. Hankin that we . . . put into place a mechanism so this could be determined by a lawyer and a retired judge, and he recommended – I recommended [Judge] Ed Ross, and I would have been very happy to adopt whatever recommendation that he made. [¶] You [Mr. Goldring] objected to that, as you had every right to. So here we are . . . . (12/22/00 R.T. pp. 1:28-2:21.)

Judge Letteau then made his order allowing Mr. Hankin "all of his costs, $1,280.30, [and] fees of $11,134.71 . . . ." (12/22/00 R.T. p. 2:22-23.) Judge Letteau did not state any reason for reducing Mr. Hankin's fee request from $67,400 to $11,135 – a reduction of more than 80% – and did not issue a written explanation of his ruling.

In February 2001, Mr. Goldring filed a petition for fees of $28,025 (95 hours at $295 per hour) for the period from January 1999 through December 2000. Judge Letteau approved that request in full at the first hearing on the matter. Mr. Goldring had previously been awarded fees of $15,151. Thus, Mr. Goldring's compensation in *Feist* totaled $44,176, as compared to $11,135 to Mr. Hankin, and was awarded at an hourly rate of $295, in contrast to the hourly rate of $275 requested by Mr. Hankin.

Mr. Hankin appealed from the reduction of his fees, and attorney Goldring filed a letter stating he did not oppose the appeal and supported the request for fees. In December 2001, the Court of Appeal reversed and remanded the matter for further consideration in a different department of the superior court. The Court of Appeal concluded that Judge Letteau's "unexplained drastic reduction" of Mr. Hankin's fee request was "tainted by an evident bias against counsel and constitutes a clear abuse of discretion." (Opinion in Appeal B149324, at pp. 16-17.)

Findings

After a full review of the record, the commission found that Judge Letteau committed misconduct with respect to Mr. Hankin's fee request in *Feist* as follows.

A. Bias and Embroilment

A judge must "perform the duties of judicial office impartially and diligently" (Canon 3, Code of Judicial Ethics) and "perform judicial duties without bias or prejudice" (Canon 3B(5)). Further, a judge must "avoid impropriety and the appearance of impropriety in all the judge's activities" (Canon 2) and "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Canon 2A).

A judge who displays evident bias against one side of a case, or one who is so personally embroiled as to lose the ability to consider the matter in a neutral and objective manner, violates these canons. (See generally Rothman, *California Judicial Conduct Handbook* (2d ed. 1999) §§ 2.01, 2.03, 2.04, pp. 31-34; § 2.19, pp. 49-50; see also *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 858-861 [misconduct included failure to remain objective, improper personal involvement, and distaste for a party that overrode judge's objectivity]; see also *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1311 [judge's in-court statement to defendants that judge would always believe testimony of a police officer found to be prejudicial misconduct]; *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 748 [misconduct for judge to express legitimate concern in unacceptable, non-objective and non-neutral manner and to demonstrate unwarranted impatience, disbelief and hostility toward counsel, litigants and witnesses]; *McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 538 [vehement expressions of personal hostility improper even in face of clearly contemptuous conduct]; *Inquiry concerning Judge James Randal Ross*, No. 141 (1998) Decision and Order Imposing Public Censure, at pp. 9-10 [judge censured for improper threats of contempt and orders to appear based on judge's anger with one party].)

In its December 2001 decision reversing the reduced fee award, the Court of Appeal noted that:

> The one clear impression that emerges from this record is that there was palpable animosity between the trial court and Hankin. In his declaration in support of his request for fees, Hankin had raised the court's ire by stating that the court's practice of cutting fees is used as a weapon by those who abuse elders because they are encouraged to drag out the litigation while the conservators and their attorneys are discouraged from doing all that is necessary to protect the elderly victims. The trial court took this outspoken commentary as a personal affront and stated that Hankin was ascribing elder abuse to the court, even saying that the court would circulate Hankin's remarks to other judges.
>
> Although Hankin's commentary was accusatory and immoderate, he was nonetheless entitled to have his fee request decided by an unbiased court. The court's thinly veiled hostility toward Hankin was manifest: the court said from the outset that it doubted it would ever approve the fee request for $62,000; the

> court appointed as one of two referees the very person to whom Hankin specifically objected; . . . the court inordinately delayed decision of the fee request for a full year; and ultimately the court refused to continue the hearing on the matter for even a few weeks to give Hankin an opportunity to appear and be heard. (Opinion in Appeal B149324, at pp. 16-17.)

The commission concluded that from June 2, 2000 forward, Judge Letteau repeatedly made oral and written statements displaying hostility and animosity toward Mr. Hankin that apparently arose, at least in part, from the judge's reaction to the material in Mr. Hankin's fee request that criticized the probate court's overall handling of attorney fees requests in cases involving possible elder abuse.

The reduction in Mr. Hankin's fees cannot be justified on the theory that Mr. Hankin's $275 hourly rate exceeded the court's maximum allowable rate for PVP attorneys, as Judge Letteau has urged. The local rules of the court do not specify a maximum compensation rate for private counsel or for PVP attorneys appointed at the expense of the conservatee's estate. Further, in the same litigation, Judge Letteau approved Mr. Goldring's fees in full based on an hourly billing rate that was $20 per hour higher than Mr. Hankin's rate. Judge Letteau also approved without question or reduction Ms. Labow's request for fees for her own services. Only Mr. Hankin's fee request – at an hourly rate lower than Mr. Goldring's – was criticized and reduced by over 80% with no statement by Judge Letteau of factual grounds for that different treatment.

Judge Letteau defended his reduction of Mr. Hankin's fees before the commission on the ground that the fee request was "overreaching." However, both Ms. Labow, the conservator, and Mr. Goldring, the PVP attorney appointed by the court to independently monitor the actions of the conservator and protect Mr. Feist's interests, agreed that Mr. Hankin's request for fees was reasonable. (See Probate Code § 2642(b).) Moreover, Judge Letteau did not tell Mr. Hankin that overreaching was suspected, did not conduct a hearing on the issue, and made no determination that overreaching had occurred or that any specific amount was attributable to overreaching or services for which compensation was not justified. To the contrary, Judge Letteau never stated any reason or basis for the reduction of more than 80% in the amount of fees awarded to Mr. Hankin.

Further, Judge Letteau's suggestion that his conclusion was justified because he had reduced Mr. Hankin's fees in previous probate matters only strengthens the commission's conclusion that the judge acted with bias and was personally embroiled with Mr. Hankin. Judge Letteau has never articulated any reason for concluding that the fees requested in *Feist* – which were approved by conservator Labow and attorney Goldring – were excessive or unwarranted.

B. Decisional Delay

The commission also concluded that Judge Letteau inordinately delayed decision of Mr. Hankin's fee request. A judge has an obligation to dispose of all matters "fairly,

promptly, and efficiently." (Canon 3B(8).) Judge Letteau violated this obligation when he failed to complete the hearing and issue a ruling on Mr. Hankin's fee request for a full year after the request was filed.

The record of the *Feist* matter contains numerous indications that Judge Letteau's failure to act promptly on Mr. Hankin's request for fees was due to the judge's annoyance with Mr. Hankin rather than the need to ensure the fairness of the judicial process. At the initial hearing on the fee request on June 2, 2000, Judge Letteau made it clear that discussion of the fee request would "take some considerable time" and that even though Mr. Goldring had found the fees "satisfactory," the judge would "need to spend a lot of time talking about this." After referring to Mr. Hankin's "public policy statements" as "not fair," the judge then indicated some of his concerns about "what was done" and the value of the services compared to the million dollar value of the estate.

When Judge Letteau later raised *Feist* with Mr. Hankin in the absence of the other parties, the judge stated he hadn't decided what he would do, and indicated he would probably put it over "for a couple of months." After Mr. Hankin objected to the *ex parte* nature of the conversation, Judge Letteau responded with pique, telling Mr. Hankin: "Don't expect that there are going to be substantive decisions made on your 60-some thousand dollar fee request on the scheduled date. [¶] . . . *Go back to square one, Mr. Hankin*." (6/9/00 R.T. p. 3:13-18; emphasis added.)

Thereafter Judge Letteau appointed referees, including one to whom Mr. Hankin had specifically objected, then vacated the appointment only after Mr. Goldring objected. In the July 25, 2000 minute order, Judge Letteau stated he would rule on the fee request "in due course." When the matter was before Judge Letteau again on August 18, he continued it until December 15, 2000 – a date nearly four months later, and nearly a full year after the request for fees was filed – despite the pendency of Mr. Hankin's demand for a hearing pursuant to Probate Code sections 2640-2642.

Judge Letteau has given no persuasive reason why it required more than six months after the initial hearing on June 2 to obtain the information the judge deemed necessary to a fair and fully-informed decision on Mr. Hankin's fee request, why the materials filed by Mr. Hankin on August 1, 2000 were not sufficient, or why the judge's expressed concerns with the quality and necessity of the services rendered, as well as his desire to obtain Judge Shimer's recollection of earlier proceedings, were not addressed promptly. With respect to the appointment of referees, the commission notes that Judge Letteau's decision to appoint a referee to whom Mr. Hankin had specifically objected undermined any chance that the appointment of referees would expedite the handling of the fee request.

The judge's obligation under Canon 3B(8) to promptly dispose of all judicial matters does not depend on whether parties or attorneys complain to the judge about a delay. The obligation to ensure timely resolution of matters before the court rests not with parties or counsel, but with the judge. Judge Letteau violated this obligation when he failed to promptly dispose of Mr. Hankin's fee request.

C. Denial of Hearing on Fee Request

Pursuant to Probate Code sections 2640, et seq., Attorney Hankin was entitled to a hearing on his application for fees, in order to address any objections raised by the parties or the court. (See, e.g., Prob. Code §§ 2640(c), 2641(b), & 2642(b).) A hearing on the substance of the fee request was never held. Judge Letteau refused to address the substance of Mr. Hankin's fee request at either the June 2 or June 23, 2000 hearing. Upon denying Mr. Hankin's attempt to disqualify Judge Ross from serving as a referee, Judge Letteau stated his intention "to rule upon the Hankin fee request without further argument and following receipt of those supporting materials already requested along with any further documents necessary for the Court's information in rendering a fair and fully-informed decision." (7/20/00 Minute Order.)

Subsequently, when the fee request came before Judge Letteau on December 15, 2000, the judge refused to continue it to a date agreed to between Mr. Hankin and the court's research attorney after the loss of the court file necessitated a continuance. Instead, Judge Letteau set a hearing for December 22, 2000 – a date when he knew Mr. Hankin could not be present. A few days later, Judge Letteau denied Mr. Hankin's *ex parte* application for a brief continuance so that he would have an opportunity to be present and be heard. In refusing the date requested by Mr. Hankin on December 15, Judge Letteau revealed that he had already made up his mind and saw the hearing as a mere formality and not as an opportunity for Mr. Hankin to address the merits of the fee request: "There needn't be any discussion. I can even make the order now . . . . If [Mr. Hankin] can be here [on December 22], fine. If he can't, it won't make any difference." Judge Letteau made similar remarks when he again denied a continuance on December 20, stating that the purpose of the hearing on the fee request was "decision and not debate."

Thereafter, on December 22, 2000, at a hearing attended only by Mr. Goldring, Judge Letteau reduced Mr. Hankin's fees by more than 80% on the basis of factors that the judge did not articulate, and to which Mr. Hankin had no opportunity to respond. The commission agrees with the Court of Appeal, which found that Judge Letteau's decision to make an "unexplained drastic reduction of Hankin's fee request" after refusing to continue the hearing for even a few weeks to give Hankin an opportunity to appear and be heard was "tainted by an evident bias." (See Opinion in Appeal B149324, at pp. 16-17.)

D. Ex Parte Communication

Canon 3B(7) of the Code of Judicial Ethics requires a judge to "accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law" and prohibits a judge from initiating, permitting or considering ex parte communications "concerning a pending or impending proceeding . . . ." When Judge Letteau attempted to engage Mr. Hankin in a discussion of the handling of the pending fee request in the *Feist* matter on June 9, 2000, in the absence of Ms. Labow and Mr. Goldring, he violated Canon 3B(7). Both the conservator (Ms. Labow through her counsel Mr. Hankin) and conservatee (Mr. Feist through his counsel Mr. Goldring) were entitled to be heard in proceedings relating to Mr. Hankin's fee request. (See Probate Code §§ 2640(b), 2642(a), 1460.)

It was improper for Judge Letteau to initiate a communication concerning the fee request without notice to Mr. Goldring, and outside of Mr. Goldring's presence, regardless of the fact the discussion occurred on the record in open court. (Canon 3B(7).) Nor does Judge Letteau's attempt to characterize the purpose of the communication as "procedural" ("I'm here to save you time and tell you what the procedure is going to be," R.T. p. 2:19-20), make the communication proper under Canon 3B(7)(3). The proposed appointment of a panel of referees was not a scheduling or administrative matter, but a new procedure that would have substantive impact on the conservatee and his estate because – as Judge Letteau later recognized – the cost of the referee or referees would be paid from the assets of the conservatee's estate. Moreover, there were no exigent circumstances that required the matter be addressed on an *ex parte* basis on June 9.

2. Trial of *Condon v. Mazza*

Background

In August 2000, Judge Letteau presided over a two-day court trial in a malicious prosecution action titled *Condon v. Mazza* (No. SC053182). The defendant, attorney Steven Mazza, had previously sued Michael Condon on behalf of an individual (Klein) who was injured in a nightclub ("The Pink"). Mazza's complaint alleged that Condon owned the club. Attorney Mazza initially secured a default judgment, but Condon, who in fact did not own the club, had that judgment set aside. Condon later prevailed on a summary judgment motion, and immediately sued attorney Mazza for malicious prosecution. Condon claimed damages to compensate him for his attorney fees in the first lawsuit, and for emotional distress. Condon also claimed punitive damages.

At the conclusion of the two-day trial, Judge Letteau found for Condon, awarding him $12,460 in attorney fees, $4,500 for emotional distress, and $17,500 in punitive damages. Mazza appealed. In November 2002, the Court of Appeal reversed on the ground that Mazza was not liable for malicious prosecution because he had probable cause to name Condon as the defendant when he filed the *Klein* lawsuit. (Opinion in Appeal B145458 at pp. 2, 9.) The appellate court remanded with directions that judgment be entered in favor of defendant Mazza.

In its decision, the appellate court noted Judge Letteau's treatment of defendant Mazza, which the court characterized as "unorthodox:"

> From the outset of trial the court was openly critical of Mazza's handling of the underlying action. The judge conducted extensive cross-examination of Mazza himself, challenged his testimony and argued with him throughout the brief proceedings. (Opinion, Appeal B145458 at pp. 3-4.)

The appellate court also noted that Judge Letteau awarded plaintiff attorney fees as compensatory damages despite plaintiff's testimony that a third party had paid his legal bills in the underlying lawsuit, awarded the plaintiff damages for emotional distress despite his

testimony he had suffered no financial or other loss, and "perhaps most unorthodox," ordered defendant to testify about his net worth on the basis of an informal financial statement (prepared by hand in the courtroom), and awarded punitive damages on a finding that the defendant had "no net worth" and "lots of debt" but "the ability to borrow." (Opinion in Appeal B145458, at pp. 3-5.)

Findings

Canon 3 of the Code of Judicial Ethics imposes upon judges the obligation to perform the duties of judicial office impartially and diligently. Among the specific prescriptions of Canon 3 are the requirement that a judge "perform judicial duties without bias or prejudice" (Canon 3B(5)) and that a judge "be patient, dignified, and courteous to litigants . . . , witnesses, lawyers and others with whom the judge deals in an official capacity." (Canon 3B(4).)

Failure to comply with these obligations is misconduct. (E.g., *Kloepfer v. Commission on Judicial Performance, supra,* 49 Cal.3d at 844-845; *Roberts v. Commission on Judicial Performance, supra,* 33 Cal.3d at 748; *McCartney* v. *Commission, supra,* 12 Cal.3d at 533; *Inquiry Concerning Judge Bruce Van Voorhis*, No. 165 (2003).) After considering the full record of the matter, the commission concluded that Judge Letteau violated Canon 3 and committed misconduct in the trial of *Condon v. Mazza* as follows.

A. Prejudgment and Advocacy

Judges may examine witnesses appearing before them, but that power "must be exercised impartially . . . . [T]he judge should not appear to be an advocate." (California Judges Benchbook: Civil Proceedings -- Trial [Cal CJER 1997] § 5.55, pp. 234-235 [citations omitted]; see also, Rothman, California Judicial Conduct Handbook, *supra*, § 2.20 ["Although a judge has the inherent power to examine witnesses . . . , the judge cannot use these powers in a manner that compromises his or her impartiality"].) In *McCartney v. Commission on Judicial Qualifications*, *supra,* 12 Cal.3d 512, the Supreme Court emphasized that, while judges may examine witnesses when it appears that counsel will fail to elicit "relevant and material testimony," they "may not . . . in the course of examining witnesses become an advocate for either party or cast aspersions or ridicule upon a witness." (*McCartney* v. *Commission, supra,* 12 Cal.3d at p. 533 [emphasis in original].) The court found that Judge McCartney's "extended examinations of witnesses [were] particularly destructive of the image of the court as an impartial forum for the determination of truth." (*Ibid.*) In *Kloepfer v. Commission on Judicial Performance, supra,* 49 Cal.3d 826, the Supreme Court found misconduct where a judge "did not limit himself to questions directed to eliciting clarifying testimony [but] told the witness his testimony did not make sense, and engaged in argumentative dialogue . . . ." (*Id.* at p. 845.)

The record of *Condon v. Mazza* shows that Judge Letteau failed to maintain impartiality in several instances.

(1) During re-direct examination of defendant Mazza

During trial, Judge Letteau focused on two aspects of Mazza's conduct in the *Klein* case that the judge concluded showed malice and lack of probable cause to maintain the *Klein* action against Condon: (1) a collection letter Mazza sent to Condon after obtaining the default judgment, in which Mazza essentially threatened to ruin Condon by executing on all of his property to satisfy the default judgment; and (2) Mazza's failure to dismiss the action against Condon promptly when he learned through discovery after the default judgment was set aside that Condon had no ownership interest in The Pink. (See Opinion in Appeal B145458 at p. 8.) Judge Letteau also expressed considerable concern as to whether Mazza was justified in relying on conversations with an insurance adjuster for The Pink's insurer and a letter from the carrier addressed to Mr. Condon d.b.a. The Pink. (The appellate court held this was "information from which a reasonable attorney could conclude that Condon would be subject to liability under a premises liability theory as well as general negligence principles." Opinion in Appeal B145458 at p. 7.)

On the second day of trial, during re-direct examination of Mazza by plaintiff's attorney, Judge Letteau asked whether Mazza could "show me a single piece of paper that says that a Mr. Condon is the owner of this business?" (8/3/00 R.T. p. 8:7-8.) When Mazza responded there was no such document, Judge Letteau stated: "See, that's the problem you have, Mr. Mazza. Nobody told you he owned the business . . . . You didn't take reasonable efforts to make that determination. When you found out that he didn't own the business, you wouldn't let him go. That's the problem . . . ." (8/3/00 R.T. p. 8:12-18.) Later, when Mazza testified he had multiple conversations with people, Judge Letteau asked "Where are these people? Why haven't you brought them into the courtroom? . . . They're presumably the people that you need. Have you taken their deposition in this case? . . . Presumably you would have thought that these people might assist you in your defense of the claim. But as you didn't think to depose Mr. Condon . . . you haven't thought to bring into this courtroom the ammunition you might need to successfully defend yourself. So what you are telling me is hearsay. It's just words, and it's empty at that." (8/3/00 R.T. pp. 8:27-9:11.)

With these comments Judge Letteau essentially told Mazza the judge had determined it was not reasonable for Mazza to have relied on the insurer's letter, and that, in the judge's view, the defense Mazza had presented was inadequate because Mazza had not produced additional witnesses at trial. In doing so, Judge Letteau abandoned the impartial role of eliciting relevant and material testimony, and used the examination of Mazza to criticize the defense. The judge also indicated he had made up his mind on the disputed issue of whether Condon's reliance on the insurer's letter in the underlying *Klein* case was reasonable.

(2) Comments on damages prior to closing argument

Prior to closing arguments, Mazza's attorney, Silberman, objected to the lack of authentication of checks and billing records offered to prove Condon's claim for damages for attorney fees paid in the underlying *Klein* matter. Judge Letteau asked attorney Silberman what amount of fees he thought would have been reasonable, and then expressed the opinion that the attorney fees paid on behalf of Mr. Condon were "very reasonable" in amount "for what Mr. Lindblom had to deal with to extricate Mr. Condon from a situation that he never

should have been in the first place." (8/3/00 R.T. p. 48:14-17.) Later that day, at the conclusion of the trial, Judge Letteau awarded Mr. Condon damages that included the full amount of attorney fees paid in the *Klein* matter, $12,460.

Judge Letteau's comment concerning the reasonableness of the fees paid on behalf of Condon indicated that the judge had made up his mind as to two disputed issues: liability and the attorney fees portion of plaintiff's damages. The comment was consistent with the damages awarded by the judge later that day. However, at the time Judge Letteau made the comment, he had not yet heard all of the evidence; after overruling Mazza's evidentiary objection, the judge permitted Mazza to reopen and examine Mr. Condon on his attorney fees in the *Klein* matter. Nor had the judge heard the arguments of either party's counsel on the issues of liability and damages. The matter was not yet submitted for decision. By making these comments before the completion of evidence and argument, Judge Letteau gave the appearance of advocacy on behalf of Condon and indicated he had prejudged the matter.

(3) Comments at beginning of defendant's closing argument

Mazza's attorney, Silberman, began his closing argument by asserting there was no proof of the malice element of malicious prosecution and no evidence supporting plaintiff's claim for damages. The court immediately interrupted with a question about the definition of malice, and then commented that Mazza's conduct has been "just carelessness, sloppiness." The judge then stated, "I disagree with Mr. Lindblom. I think the damages for his [client's] emotional distress are greater than $3,000. And I certainly intend to award damages greater than $3,000." (8/3/00 R.T. p. 66:7-13.) At the conclusion of the trial, the judge awarded Condon $4,500 for emotional distress.

Judge Letteau's statement of intent to award a specific amount in emotional distress damages – made at the beginning of defense counsel's closing argument – gave the appearance of prejudgment. As with the comments about the attorney fees portion of damages, these comments indicated that Judge Letteau reached a decision on the issues of liability and damages for emotional distress prior to completion of the trial.

B. Lack of patience, dignity and courtesy

Canon 3B(4) requires that a judge "be patient, dignified, and courteous to litigants . . . , witnesses, lawyers and others with whom the judge deals in an official capacity" (Canon 3B(4)). Sarcastic, demeaning or belittling comments toward a litigant or counsel are not consistent with the conduct required by Canon 3B(4). (See, e.g., *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 323-327 [demeaning, rude, impatient and abusive behavior toward counsel, litigants and witnesses]; *Roberts v. Commission on Judicial Performance, supra,* 33 Cal.3d at 748 [judge's expression of legitimate concern in unacceptable, non-objective and non-neutral manner, demonstrating unwarranted impatience, disbelief and hostility toward attorneys, litigants and witnesses]; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 703 [deliberate ridiculing of attorneys]; *Inquiry Concerning Judge Bruce Van Voorhis*, *supra*, No. 165 Decision and Order at pp. 10-13, 18, 20, 23 [ridicule, disparagement, belittling of counsel, giving an appearance of lack of impartiality].)

The commission found that on numerous occasions during the trial of *Condon v. Mazza*, Judge Letteau made remarks that were sarcastic, disparaging, belittling and discourteous to defendant Mazza and his counsel:

> (1) Judge Letteau interrupted the direct examination of defendant Mazza to question him concerning a collection letter he sent to Mr. Condon after the default judgment was entered: "No, no no. If you listen to the question, the question was, after you took your default judgment, did you send him a letter that preceded this totally classless, stupid letter that you sent them saying, 'We have a default judgment.' Two paragraphs. 'We're going to go after all your property'?" After Mazza answered "no," the judge continued: "This is one of the more offensive things I've seen a lawyer, presumably a college graduate, a law school graduate do. It's an embarrassment to the entire profession . . . ." (8/3/00 R.T. pp. 17:25-18:7.)
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> (2) During Mazza's testimony on redirect examination, Judge Letteau took over the questioning and examined Mazza extensively about discovery he had failed to undertake in the *Klein* matter: "These are the depositions you never bothered to take, right?" After Mazza admitted he never took depositions, the judge commented "So does that mean that you didn't do anything towards trying to identify the assailant, ever?" and "You testified you were going to determine who did it when you took depositions, but you never took depositions?" Attorney Silberman attempted to interject a comment (". . . he didn't take depositions because he had a judgment") but the judge cut him off: "I'm doing the examination, but thank you anyway, Mr. Silberman." (8/3/00 R.T. pp. 32:16-33:4.)
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> (3) When discussing the legal issue of malice with plaintiff's counsel, Judge Letteau commented on Mazza's defense in the *Condon v. Mazza* matter: "I might say, by the way, this defense of Mr. Mazza has been just about as careless and sloppy as his prosecution of the underlying case of Mr. Condon . . . . One of the problems is he was sloppy, he was careless, he was professionally negligent . . . ." (8/3/00 R.T. pp. 60:17-20, 61:25-26.)
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> (4) When defense counsel Silberman commenced his closing argument on the issue of malice and general damages, Judge Letteau interrupted with a lengthy comment about defendant Mazza. The comments included lecturing attorney Silberman on the definition of the term, then stating: ". . . And I think I've been kind when I've said that he's [Mazza] – he was just careless in his practice, careless in the filing of this case . . . . And the real problem with this is, it's Mr. Mazza. It's his testimony . . . . But he was really, in a true sense, holding Mr. Condon hostage to this claim. That's offensive. It's improper. It rises to the level of malice . . . . That's wrongful. It's wrong for anybody. It's especially wrong for a lawyer, an officer of the court, a professional. This is awesome what he did . . . . This is just carelessness, sloppiness . . . ." (8/3/99 R.T. pp. 64:25-66:8.)
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> (5) During direct examination of Mazza by plaintiff's counsel, Mazza's attorney objected to the use of the term "owner of a corporation" as vague and ambiguous, and

stated, "There is really no such legal term as 'owner of a corporation.' There are –" Judge Letteau overruled the objection, stating that the question was "How do you determine who owns, meaning who owns shares in the corporation." Silberman noted that the question had not been phrased that way, and Judge Letteau retorted: "It's understood by the court, and, I'm sure, everybody in this courtroom . . . ." (8/3/00 R.T. p. 7:23-24.) The comment belittled attorney Silberman by suggesting that he did not understand a matter of common knowledge, and further suggested the judge viewed attorney Silberman as either incompetent or disingenuous.

(6) During the direct examination of defendant Mazza by plaintiff's counsel, Judge Letteau interrupted and questioned Mazza about his decision not to serve the complaint on the Briggs Trust, the owner of the building where The Pink was located. Mazza testified that his decision was reached after conversations with insurance company representatives, and Judge Letteau commented: ". . . you are taking your orders from the other side, so to speak?" When Mazza disagreed, Judge Letteau continued: "The insurance company gave you some information? . . . You don't represent the insurance company? . . . You don't take your orders from the insurance company? . . . And without having anything in writing, based on these alleged verbal conversations, you decided not to proceed with a named party. Is that right?" (8/3/00 R.T. pp. 15:23-16:20.)

In addition to reflecting a lack of impartiality, these comments violated the duty imposed by Canon 3B(4), which requires a judge to be patient, dignified and courteous to litigants and parties appearing before the judge.

3. Prior similar misconduct

The misconduct on which this public admonishment is based bears a striking similarity to conduct for which the commission has previously privately disciplined Judge Letteau. On February 14, 2002, Judge Letteau was privately admonished for conduct in three separate cases that included:

- In one matter, the appearance of prejudgment in favor of one party in remarks during trial at the conclusion of one witness's testimony: "I think you've acted with complete honor at your personal financial cost in bringing this ever so long ago to the court's attention" and "I think you're an entirely credible person for having taken the steps that you did at enormous personal financial cost . . . and I thank you for doing so."

- In that same case, abuse of authority by ordering a person who was not a party to the case to provide information to the court.

- In the second mater, denial of due process to a conservatee by failing to afford statutory protections – including the right to trial – at the hearing to impose a permanent conservatorship, improper ex parte communications with the conservatee's retained attorney and

bias against that attorney. The conservatorship order was reversed on appeal.

- In the third matter, prejudgment and abuse of the sanctions power in the imposition of substantial sanctions (totaling in excess of $50,000) after a hearing at which the judge peremptorily announced his ruling at the outset of the hearing, then refused to permit the attorney to present contrary evidence or argument. The sanctions order was reversed on appeal.

Judge Letteau's handling of the matters included in the prior private discipline, and the two matters included here occurred over a span of six years and resulted in four appellate decisions reversing his orders. Three of the appellate decisions reversed Judge Letteau on grounds that he had displayed bias, prejudgment, abuse of the sanctions power, and/or disregard of the rights of parties or their attorneys.[1]

Taken together, the incidents described in the body of this admonishment, and those that were the subject of the prior private discipline, present a troubling pattern of repeated violation of ethical duties that are fundamental to the fairness, and the perceived fairness, of the judicial process. In the commission's view, the existence of a pervasive pattern of bias, prejudgment, *ex parte* communication, and abuse of judicial authority toward parties and attorneys warrants a public admonishment.

The conduct set forth above was at a minimum improper action.

Commission members Justice Vance W. Raye, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. Mr. Marshall Grossman did not participate in this matter. There is currently one public member vacancy on the commission.

Dated: May 20, 2004

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Honorable Vance W. Raye
Chairperson

[1] The decision in *Condon v. Mazza* found that the judge had applied the wrong legal standard to determine the defendant's liability and did not reach additional issues raised on appeal.