

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE KELLY MacEACHERN,

No. 184.

NOTICE OF FORMAL
PROCEEDINGS

To Kelly MacEachern, a judge of the Orange County Superior Court from January 6, 2003 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, persistent failure or inability to perform your duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

The California Judicial Education and Research (CJER) branch of the Administrative Office of the Court (AOC) sponsored a judicial education seminar called the Continuing Judicial Studies Program (CJSP) in San Diego, which was held Monday through Friday, July 31 through August 4, 2006. On June 16, 2006, you applied online, through your clerk, to attend two of the CJSP courses: an Excellence in Judging course that would be held Monday through Wednesday and a Statements of Decision course that would be held on Wednesday. AOC's Education Division sent you an e-mail reply the same day, June 16, that read in pertinent part:

2006 Summer Continuing Judicial Studies Program

July 31 – August 4, 2006

San Diego

Please print the confirmation below for your records.

Registration Confirmation

Dear Kelly MacEachern:

Please Note: This is only a confirmation that your CJSP application has been received by CJER.

Notification of acceptance into your course choices(s) will be sent via e-mail the week following the June 16 application deadline. You will receive further information regarding travel arrangements with your acceptance confirmation. **We ask that you do not make hotel or airline reservations until you have received your Acceptance Email.** [Bold in original e-mail.]

On June 21, 2006, AOC Senior Attorney Bonnie Pollard sent you an e-mail that included the following:

Here is the status of your application for the summer 2006 Continuing Judicial Studies (CJS) Program scheduled the week of July 31-August 4 at the Hyatt Regency Islandia Hotel.

First Choice:

Denied entry into **Excellence in Judging** (see below for explanation)

Accepted into **Statements of Decisions** course (see below for additional program information)

We are unable to enroll you in the Excellence in Judging course because it is designed for experienced judicial officers with approximately eight years or more on the bench. You indicated on your application that you did not meet this requirement.

Your Course

You are enrolled in the **Statements of Decision** course, which has the following schedule:

Wednesday, August 2; 1:30 - 4:45 p. m.

Overnights allowed: 1**

**Under conditions outlined at §C of the enclosed manual, and pending the availability of funds, the State will directly pay for your hotel lodging charges at the Hyatt Regency Islandia Hotel (up to \$110.00 per night

plus tax) [¶] ... [¶] [Bold, underlining,
parentheticals and asterisks in original e-mail.]

On June 22, 2006, you submitted to the Orange County Superior Court an Education Leave Request for the full week of the CJSP, July 31 through August 4, 2006.

On July 11, 2006, you attempted to enroll in a CJSP evidence course that would be held Monday through Friday of the seminar. You contacted Susan Gordon, AOC's Education Coordinator responsible for the CJSP, who told you that the evidence course was full, but that you would be put on a waiting list.

On July 28, 2006, the Friday before the Monday on which the CJSP was to begin, you contacted Susan Gordon and asked whether there was an opening in the evidence course. She told you there was not. Nevertheless, you went to San Diego and stayed at the Hyatt Regency Islandia Hotel overnight Sunday, July 30. When you appeared at the CJSP registration table the next morning, July 31, Gordon again told you the evidence course was full.

You stayed at the Hyatt Regency Islandia Hotel in San Diego through Thursday night, August 3, 2006. Based on your enrollment in the Statements of Decision course on Wednesday, CJER was billed directly by the Hyatt for your hotel stay Tuesday night. You paid the Hyatt for Sunday, Monday, Wednesday, and Thursday nights with your personal credit card.

Shortly after the CJSP ended, you submitted a travel reimbursement claim to Rick Valadez, the Orange County Superior Court's travel coordinator, requesting that the court reimburse your hotel expenses for three nights (Sunday, Monday, and Wednesday). On August 15, 2006, Valadez sent you the following e-mail:

Good afternoon your Honor,
I wanted to update you with regards to your claim. I
spoke with Susan Gordon (CJER Coord) and she

informed me that your class schedule was for a computer class in the AM and a Statements of Decision in the PM Wed. 8/2. Since that was the only class you attended CJER only covered one night (8/1 Tues.). Hence, the charges on your credit card for 7/30-31 and 8/2-4.

The court will reimb. you for mileage r/t 180 miles and dinner for 8/1+2.

Please let me know if this looks ok or if I'm missing any other info. to add to your reimb. claim from the court.

You replied to Valadez the next day, August 16, 2006, with the following e-mail:

Dear Rick,

When I got to the CJSP it turned out there was a mix up with my registration. SO I just sat in on the judicial excellence class on Monday, They allowed me to attend a Tuesday a.m. computer class, and the Wednesday afternoon S.O.D. class, and I sat in on the Thursday a.m. D.V. class. I attended no classes on Friday. I know they won't cover any other nights, however I was hoping the county would. Thank you for your help. JKM

You had registered for a half-day Introduction to Microsoft Word and Windows course held on Tuesday morning (the "Tuesday a.m. computer class" referred to in your August 16 e-mail), only after you had arrived at the CJSP, and therefore CJER was not billed directly by the Hyatt for your hotel stay on Monday

night. However, because the CJSP records indicated that you had attended the Tuesday computer course, CJER agreed to reimburse you for the hotel on Monday night.

On August 17, 2006, based on your assertions in your e-mail of August 16, 2006, Valadez submitted an amended Superior Court Judicial Officer Travel/Training Request on your behalf to Orange County Superior Court Presiding Judge Nancy Stock, requesting (in addition to travel and meal allowances) reimbursement to you of \$220 for two nights at the Hyatt: Sunday, July 31, 2006, and Wednesday, August 3, 2006.

Your assertion to Valadez in your e-mail of August 16, 2006, that “when I got to the CJSP it turned out there was a mix up with my registration” was false and misleading. When you arrived at the CJSP registration on Monday morning, after staying in the hotel in San Diego on Sunday night, the status of your registration was just as you had been told it was before you left for San Diego: that is, that you were not enrolled in the Monday through Wednesday Excellence in Judging course because you were not eligible for it; you were not enrolled in the Monday through Friday Evidence course because it was full; you were only enrolled in the half-day Wednesday Statements of Decision course.

Your assertion to Valadez in your e-mail of August 16, 2006, that you had “sat in on the judicial excellence class on Monday” was false and misleading. Your assertion to Valadez in your e-mail of August 16, 2006, that you had “sat in on the Thursday a.m. D.V. [Domestic Violence] class” was false and misleading.

Judge Stock had her executive assistant conduct an investigation into your expense reimbursement claim. On September 8, 2006, Judge Stock called you into her chambers in the presence of Judge Thierry Colaw, a member of the court’s executive committee, and confronted you with the results of the investigation. You admitted that you had not sat in on either the Excellence in Judging or the Domestic Violence courses and that your e-mail to Valadez of

August 16, 2006, was misleading, and you withdrew your claim for reimbursement.

Your false and misleading assertions in your August 16, 2006 e-mail in support of your request to be reimbursed money for hotel expenses were in violation of the Code of Judicial Ethics, canons 1, 2, 2A and 2B.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 14(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: July 24, 2007

/s/
HONORABLE JUDITH D. McCONNELL
VICE-CHAIRPERSON