

PUBLIC ADMONISHMENT OF JUDGE RONALD J. MACIEL

The Commission on Judicial Performance has ordered Judge Ronald J. Maciel publicly admonished pursuant to Article VI, section 18(d) of the California Constitution and Commission Rule 115, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Judge Maciel has been a judge of the Kings County Superior Court since 1988; his current term began in January 2001.

Based upon the facts as set forth below, the commission concludes that Judge Maciel abused his authority in sanctioning an attorney without prior notice or an opportunity to be heard.

On Tuesday, January 11, 2005, Judge Maciel presided over the preliminary hearing in the matter of *People v. Pablo Garza* (No. 04CM4925). Attorney Robert Wynne appeared on behalf of the law firm of Sawl & Metzer, which had substituted in as defense counsel for defendant Garza on January 5, 2005. Mr. Wynne also appeared specially for Eric Schweitzer, the attorney with the Sawl & Metzer law firm who had been expected to handle the *Garza* preliminary hearing and who had signed the substitution of counsel form on January 4, 2005, but who was in trial on a juvenile case that was expected to be completed within the next two days. Mr. Wynne requested a continuance of the preliminary hearing for three days so that Mr. Schweitzer could complete the juvenile trial and be available to handle the preliminary hearing.

The deputy district attorney (DDA) handling the *Garza* preliminary hearing objected to a continuance, arguing that Mr. Schweitzer should have known he might not be available for the January 11, 2005 preliminary hearing when he agreed to the substitution of his law firm into the case on January 4, 2005. Judge Maciel said that he had made it quite clear when he accepted the substitution of counsel for defendant Garza on January 5, 2005, that he would not do so if substitute counsel would not be ready to proceed on January 11, 2005, the day of the scheduled preliminary hearing. Judge Maciel asked Mr. Wynne, "Why did somebody accept the representation [of the defendant] when under [Penal Code section] 1050 you have to be available to do the matter in the time allocated by the Court?" Mr. Wynne responded that he had only learned the night before that Mr. Schweitzer had been assigned to a courtroom for a juvenile trial in Fresno and that he, Mr. Wynne, was to handle the preliminary hearing. He also told the judge that the prosecution had not provided discovery and that the firm's investigator had not returned the "working file" that morning as expected, which is when he realized it would be better for defendant Garza to have Mr. Schweitzer handle the preliminary hearing. Judge Maciel then stated:

You know, I appreciate your position, Mr. Wynne. But, you know, for them to say the night before to get prepared for a preliminary hearing, whether there's any kind of complication at all, I think is the direction of malpractice at a minimum, and may be sanctionable conduct as to that.

(1/11/05 R.T. 6:12-17.)

The DDA then asked for the name of the case being tried by Mr. Schweitzer in juvenile court so she could determine when he had been notified of its trial date. Mr. Wynne provided the information to the DDA, and court recessed. When court reconvened, the DDA stated that she had not been able to determine when the juvenile trial date had been set, but it could have been as early as December 17, 2004. After further discussion about Mr. Schweitzer's availability, the following exchange occurred:

THE COURT: Scheduling problems, you know, particularly [Penal Code section] 1050 is clearly addressed for that particular issue. His [Mr. Schweitzer's] scheduling problems are not the problems of the court or witnesses.

You know, when something is scheduled, it's supposed to go. Be that as it may, I'm going to grant the continuance because I feel that there may be problems otherwise. However, since the required notice and motion was not given under [1050(c)], court imposes sanctions of \$1,000 against Mr. Schweitzer. That's payable within two days. Since it's a two-day continuance motion, the motion will be continued -- the preliminary hearing will be continued until Thursday, the 14th at 1:30.

I suggest your firm be ready on that date.

MR. WYNNE: Your honor, as far as, if I could, the sanctions. Could you perhaps wait until Mr. Schweitzer is here who has an accurate record of where he was at and what was said.

THE COURT: Well, the sanctions are quite specific. It's that the motion was made for continuance less than two days prior to the preliminary hearing. That sets the sanctions in motion. If he wants to discuss that –

MR. WYNNE: Can they be 999?

THE COURT: No. I want it \$1,000 because I think the firm needs to address the issue of scheduling and this type of conduct. I don't approve of that. Further I'll order that the defendant have no

contact with the victim whatsoever. And with that in mind, the matter is continued as indicated.

(1/11/05 R.T. 12:6-13:8.)

Two days later, on January 13, 2005,¹ Mr. Schweitzer appeared before Judge Maciel for the preliminary hearing with Douglas Feinberg, an attorney he had retained personally to address the sanctions matter. Mr. Schweitzer apologized to Judge Maciel for his absence on January 11, 2005, and deferred to Mr. Feinberg on the sanctions issue. Mr. Feinberg submitted a declaration prepared by Mr. Schweitzer offering an explanation for his absence, which the judge initially refused to accept. Although Judge Maciel eventually accepted Mr. Schweitzer's declaration for filing, he did not appear to read it before cutting Mr. Feinberg off and telling him, "Take it up on appeal."

Mr. Feinberg filed a Petition for Writ of Mandate in the appellate department of the Kings County Superior Court, alleging that Judge Maciel had improperly sanctioned Mr. Schweitzer without notice or a hearing. On April 18, 2005, the appellate department issued an order vacating the sanctions.

Before sanctions are imposed, adequate notice and an opportunity to be heard are mandated, based upon the due process clauses of both the federal and state constitutions. (*Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 976 [holding that regardless of the statute under which sanctions are imposed, "the imposition of sanctions always requires procedural due process"].) While a court may raise the issue of sanctions on its own motion, it must give notice of its intent to impose sanctions "*before* findings are made and at a time preceding the trial judge's decision whether, in fact, to impose sanctions." (*Bergman v. Rifkind & Sterling, Inc.* (1991) 227 Cal.App.3d 1380, 1387, emphasis in original [sanctions reversed where judge's findings regarding sanctions preceded his review of the attorney's explanation and evidence of good cause].)

By imposing sanctions without prior notice and an opportunity to be heard, Judge Maciel violated canon 2A ("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"), canon 3B(2) ("A judge shall be faithful to the law ... and shall maintain professional competence in the law"), and canon 3B(7) ("A judge shall accord to every person who has a legal interest in a proceeding ... full right to be heard according to law").

The commission also disapproves Judge Maciel's statement to Mr. Wynne in open court that his firm's telling Mr. Wynne to prepare for a preliminary hearing the evening before "is the direction of malpractice at a minimum." Gratuitous remarks about malpractice made to an attorney in open court in the presence of the attorney's client are

¹ The judge's reference to the 14th appears to have been a mistake, as the following Thursday was January 13th, the date the continued preliminary hearing took place.

contrary to canon 3B(4), which requires judges to be patient, dignified and courteous toward those with whom they deal in an official capacity.

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

In determining that a public admonishment is appropriate, the commission notes that Judge Maciel has been the subject of the following prior discipline:

In 2001, Judge Maciel received an advisory letter for commenting to the press about a litigant's peremptory challenge of him while the case was still pending;

In 1999, Judge Maciel received an advisory letter for not following procedural requirements when he terminated a father's visitation rights without notice or a hearing;

In 1997, Judge Maciel received a public admonishment for ex parte communications with an attorney he had appointed to represent a defendant in a criminal case and to whom he was giving advice on how to handle the case;

In 1995, Judge Maciel, who was then the presiding judge, received an advisory letter for ordering a colleague to request in writing his permission to recuse in a case.

Commission members Mr. Marshall Grossman, Judge Frederick P. Horn, Mr. Michael Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, Ms. Barbara Schraeger, and Mr. Lawrence Simi voted to impose a public admonishment. Commission member Mr. Jose Miramontes did not participate.

May 9, 2006