

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE JAMES J. McBRIDE

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge James J. McBride, a judge of the San Francisco County Superior Court. Judge McBride and his attorney, James A. Murphy, appeared before the commission on October 21, 2008, to contest the imposition of a public admonishment, pursuant to Rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Judge McBride and his counsel, 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 on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

Judge James J. McBride was appointed to the San Francisco County Municipal Court in 1994, and elevated to the San Francisco County Superior Court in December 1998 upon unification of the trial courts. His current term began in 2003. Based on the facts set forth below, the commission finds that while presiding over the master criminal calendar in Department 22, Judge McBride improperly advanced a trial date without notice to, or the consent of, the attorney assigned to the case, thereby abusing his judicial authority in violation of canon 1 (a judge shall uphold the integrity of the judiciary), canon 2A (a judge shall respect and comply with the law), and canon 3B(2)

(a judge shall be faithful to the law). The commission also finds that Judge McBride improperly relieved the public defender and appointed new counsel for the defendant in several cases, in violation of canons 1, 2A and 3B(2). The commission further finds that Judge McBride made discourteous and disparaging remarks to attorneys appearing in court before him, contrary to canon 3B(4), which requires judges to be patient, dignified and courteous to lawyers with whom they deal in an official capacity.

I. Advancing the trial date without adequate notice or counsel's consent

At the defendant's arraignment in the misdemeanor case of *People v. Dennis Ogg* on November 27, 2006, the case was set for trial on December 22, 2006. Mr. Ogg had not waived his statutory right to a speedy trial, so the last day his trial could be held was December 27, 2006.

On December 20, 2006, while presiding over the master calendar in San Francisco County Superior Court, Judge McBride ordered the *Ogg* case assigned out to trial (two days before the originally scheduled trial date). Mr. Ogg's trial attorney, Deputy Public Defender (DPD) Michelle Tong, was not present in Judge McBride's court at the time. At his appearance before the commission, Judge McBride stated that there was no objection to the trial assignment. The transcript from the proceeding before Judge McBride on December 20, 2006, reflects that DPD Rebecca Young, the calendar DPD in Judge McBride's court, stated she "could not accept a trial assignment on behalf of Miss Tong." Nevertheless, Judge McBride instructed DPD Young to "get her [DPD Tong] up here" and assigned the matter to a trial department.

The matter appeared back before Judge McBride the following day, December 21, 2006, because the defense filed a peremptory challenge against the judge who was assigned the trial. Judge McBride assigned the case to another courtroom for trial over the objection of DPD Young who stated that DPD Tong would be ready to try the case the next day – the originally scheduled trial date. When Young objected to having the trial date advanced, Judge McBride told her that it was his prerogative to advance the case for trial.

Judge McBride contends that he advanced the trial date based upon his presumption that Mr. Ogg wanted a disposition of his case before Christmas, and the judge wanted to avoid the dismissal of the case for violating the defendant's right to a speedy trial if the case was not tried within the statutory timeframe.

In his response to the commission's investigation, Judge McBride acknowledged that while presiding over the master criminal calendar, he advanced the trial date in a few other criminal cases in which the defendants had not waived their right to a speedy trial and a courtroom became available before the originally set trial date. Judge McBride contends that he advanced the trial dates in those cases to avoid the possibility that the case would have to be dismissed if it had not been tried by the speedy trial deadline. Judge McBride also contends that, in his role as supervising judge of the criminal courts, he had the judicial authority to manage the criminal trial docket for the proper and orderly administration of justice, and that he therefore had the authority to advance a case to trial when a courtroom became available. Judge McBride cites no legal authority for this position.

The commission finds that Judge McBride's advancement of trial dates in disregard of the due process rights of the parties involved in the cases constituted an abuse of his judicial authority and warrants discipline. Advancing a trial date before the scheduled trial date – especially with notice of the new trial date being given that same day – is contrary to fundamental principles of fairness and due process. The attorney assigned to the *Ogg* case received notice that Judge McBride had advanced the trial date on the morning of the advanced trial date. Judge McBride expected the attorney to be available for trial and the defendant to be present to commence trial even though they had not been notified of the new trial date. Moreover, witnesses had not been subpoenaed for that date.

Judge McBride's actions violated canon 1 (a judge shall uphold the integrity of the judiciary), canon 2A (a judge shall respect and comply with the law), and canon 3B(2) (a judge shall be faithful to the law). Judge McBride's conduct was, at a

minimum, improper action within the meaning of article VI, section 18, subdivision (d)(3), of the California Constitution.

II. Improperly relieving the public defender

On Friday, December 1, 2006, Judge McBride presided over the master criminal calendar in Department 22. He learned that Deputy Public Defender (DPD) Maria Lopez was not present in his courtroom that day for her assigned cases. DPD Lopez was in trial on another misdemeanor matter which was in recess that Friday, and DPD Lopez had been preparing for that trial in her office. Judge McBride contended that if DPD Lopez's trial was not actually in session on December 1, 2006, she should have been present in his courtroom. The deputy public defender appearing on DPD Lopez's behalf informed Judge McBride that DPD Lopez was to resume trial the following Monday, December 4, 2006, and she would not be available to start trial in new cases until that trial concluded.

One of DPD Lopez's matters that had been scheduled for Friday, December 1, 2006, was a motion to suppress in the matter of *People v. Magno*. The prosecutor in that case was present in court on Friday morning with a law enforcement officer witness and represented to the court that DPD Lopez had told him she would be available that morning for the hearing on the motion. Judge McBride was understandably displeased that DPD Lopez was not present in court for the hearing on the motion to suppress and that the motion had to be continued.

The following Monday, December 4, 2006, Judge McBride called the matter of *People v. Maxwell*, to which DPD Lopez was assigned. Mr. Maxwell had waived his speedy trial rights. DPD Nicole Solis appeared on behalf of the public defender's office and told the judge that the case was trailing for trial that day. Judge McBride responded as follows:

THE COURT: The Court's custom is to relieve the Public Defender if the Public Defender's incapable of handling the Public Defender's obligations. On *Maxwell*, the Public Defender is relieved. As your last act, you will have your client in here so we can appoint new counsel and turn the file over. Thank you.

While he continued to preside over the master criminal calendar on December 4, 2006, Judge McBride called other cases to which DPD Lopez was assigned that were also trailing for trial until there was an available courtroom. DPD Solis told him that DPD Lopez was in trial in a different department that day but that she would stand by and the case could trail or, if no courtroom was available, other options were available, including continuing the trial date. Judge McBride responded by relieving the public defender over DPD Solis's objection and appointing new counsel for Mr. Maxwell. Judge McBride then relieved the public defender and appointed conflicts counsel or private counsel on four additional cases that had been assigned to DPD Lopez on which she had not appeared the preceding Friday, but on which another deputy public defender had appeared on her behalf (*People v. Gaines*, *People v. Ramirez*, *People v. Ginn*, and *People v. Evans*).

In another matter, *People v. Black*, Judge McBride relieved the public defender because the deputy public defender assigned to the case, DPD Stephanie Wargo, also had not been present in court the preceding Friday. When DPD Wargo appeared in court on the Monday, December 4, 2006 calendar, she informed the court that her absence the preceding Friday was due to what she described as a calendaring error by her office. DPD Wargo objected to Judge McBride's relieving the public defender in the *Black* case, and told the judge that she was present and ready to serve her client. Judge McBride responded:

THE COURT: The Public Defender serves at the pleasure of the Court. If the Public Defender cannot serve the Court and the client on the day appointed, the Public Defender is relieved. Thank you.

Although a judge has the discretion to relieve counsel on the court's own motion over the objection of defense counsel, "this discretion has been severely limited by California decisions." *People v. McKenzie* (1983) 34 Cal.3d 616, 629, overruled in part on other grounds by *People v. Crayton* (2002) 28 Cal.4th 346, 365.

Courts should “exercise their power to remove defense counsel with great circumspection.” (*Id* at p. 630.) See also *People v. Daniels* (1991) 52 Cal.3d 815, 846-847 [stating that strict rules limit a court’s power to remove counsel]. A trial court may relieve counsel over the objection of defense counsel “to eliminate potential conflicts, ensure adequate representation, or prevent substantial impairment of court proceedings.” *People v. Cole* (2004) 33 Cal.4th 1158, 1187. “The involuntary removal of any attorney is a severe limitation on a defendant’s right to counsel and may be justified, if at all, only in the most flagrant circumstances of attorney misconduct or incompetence when all other judicial controls have failed.” *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 697-698 [conduct of the deputy public defenders was not so flagrant as to justify the court’s abrupt substitution of counsel without the prior concurrence of the attorneys and defendants involved; the judge’s conduct amounted to unlawful interference with the attorney-client relationship].

In these matters, the commission finds that there was no indication of any conflict or that the attorneys’ representation was inadequate, or that the impairment of court proceedings caused by DPD Lopez’s unavailability and DPD Wargo’s absence the preceding Friday was substantial enough to warrant the removal of the public defender’s office from their cases. The commission further finds that Judge McBride’s action in relieving the public defender in all of these cases created the appearance that he was acting out of pique and for the purpose of punishing the deputy public defenders for not appearing in his court the preceding Friday, December 1, 2006. Judge McBride’s relieving of the public defender in these cases violated canons 1, 2A and 3B(2) and constituted improper action at a minimum.

III. Improper demeanor

A. People v. Darryl Vaughn

Defendant Vaughn was in custody when he appeared in court on December 20, 2006, having been arrested for impersonating a police officer while in a drug treatment

program. When the prosecutor said he was planning to file a motion to revoke probation, Judge McBride remarked in open court:

THE COURT: *So we have a misdemeanor running around as a cop holding people hostage, right? That's good. [¶] And somebody just woke up and decided to file a motion to revoke, huh?*

Later in the proceeding, when a probation officer asked that a supplemental report be ordered for January 23, 2007, Judge McBride made the following remarks:

THE COURT: That's a little difficult since he's got a right to have a jury [trial] on the new case before that. [¶] *I'm going to suggest that the district attorney get their act together by two o'clock this afternoon. How about that? Is that too much to ask? You either decide what the basis of the motion is, or not file a motion, or don't or I'll send this back for trial to Department 16.*

[PUBLIC DEFENDER]: Mr. Vaughn indicates he wants it to go to trial with [DPD] Razzaq.

THE COURT: That would be a great thing to do, but –

[PUBLIC DEFENDER]: Is that right, sir?

THE DEFENDANT: Yes.

THE COURT: *Now that the district attorney's had the benefit of everybody explaining everything to them, maybe they'll figure out what they want to do. Two o'clock?*

[Italics added for emphasis.]

Judge McBride's sarcastic and denigrating comments violated canon 3B(4), which requires judges to be patient, dignified and courteous to those with whom they deal in an official capacity. Sarcastic, demeaning or belittling comments toward 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.)

B. *People v. Germaine Glenn and Winford Battle*

Co-defendants Germaine Glenn and Winford Battle, husband and wife, were on probation for felony theft. Judge McBride called their cases together during the December 20, 2006 criminal calendar. Ms. Glenn's attorney asked that the two cases be severed and that Ms. Glenn be permitted to go to drug court. Although one of the prosecutors handling the case initially agreed to allow Ms. Glenn to go to drug court, a supervising prosecutor opposed severing the cases, which would have prohibited Ms. Glenn from going to drug court because of a guideline for drug court that the cases of both defendants must be resolved before either defendant can attend drug court. When Judge McBride granted the defense motion to sever, the following exchange occurred:

THE COURT: Motion to sever is granted.

[THE PEOPLE]: Your Honor, it's part and parcel of the same transaction, one's handing the other the money from the transaction.

THE COURT: Then why are you agreeing that she should go to drug court?

[THE PEOPLE]: Well, your Honor, I am not punitive in nature, but if that's the case, and the Court is intending to sever, maybe we won't send her to drug court because the purposes of the [Memorandum of Understanding regarding drug court] are frustrated.

THE COURT: *A little light on this subject always reveals the truth. Motion to continue is granted. I'm so glad the public has a district attorney who's not punitive and really sees the light here.*

[Italics added for emphasis.]

Judge McBride's remark in open court was sarcastic and denigrating to the prosecutor in violation of canon 3B(4).

C. *People v. Mark Speilman*

On January 5, 2007, while Judge McBride was presiding over the master criminal calendar, *People v. Speilman* was called, and DPD Young advised the

court that the defendant's assigned public defender was in trial. A discussion of whether the defendant wanted to keep his attorney and go to trial later ensued; the defendant told Judge McBride that he did not want a new lawyer. DPD Young told the court that three weeks remained before the deadline for the defendant to receive a speedy trial, and requested that the matter be continued for one week. The following exchange occurred in front of the defendant:

THE COURT: I'm going to ask him now.

[DPD] YOUNG: Well, he may not need to waive time. [The assigned public defender] Mr. Luce is in trial.

THE COURT: He's not waiving time, Ms. Young, *if you understand the doctrine.*

[DPD] YOUNG: I do you (sic) understand the doctrine.

THE COURT: He is balancing his right to a statutory limit to a speedy trial against his right –

[DPD] YOUNG: I understand.

THE COURT: -- to the lawyer who has been appointed and works with him. [¶] I'm asking him now if he wants to find another lawyer or not?

[DPD] YOUNG: I am merely saying I would like him not to waive his last day yet.

THE COURT: *I don't know if you have any business in it, but thank you for your* – now I'm going to ask your clients. Do you want to come back and have me try and find you a lawyer, or Mr. Luce if possible –

THE DEFENDANT: No, I don't want to waive no time.

THE COURT: You don't want to waive time. [¶] Then we're back here on the 8th. We're going to look for a lawyer.

[DPD] YOUNG: He said he doesn't want to look for a lawyer. If the court reporter can read it back.

THE COURT: If he's going to assert his time waiver he's going to be back here on the 8th.

[DPD] YOUNG: He's not asserting his time waiver. He's asserting and he also wants Mr. Luce as his lawyer.

THE COURT: January 8. [¶] Thank you.

[Italics added for emphasis.]

Judge McBride's remarks were rude and condescending, in violation of canon 3B(4).

The commission finds that Judge McBride's conduct constituted improper action at a minimum.

Commission members Hon. Frederick P. Horn, Hon. Judith D. McConnell, Mr. Peter E. Flores, Mr. Marshall B. Grossman, Ms. Barbara Schraeger, Ms. Maya Dillard Smith, Ms. Sandra Talcott and Mr. Nathaniel Trives voted for a public admonishment. Commission members Hon. Katherine Feinstein and Mr. Lawrence Simi were recused. Commission member Mr. Samuel A. Hardage did not participate.

Dated: November 18, 2008

/s/
Honorable Frederick P. Horn
Chairperson