

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning a Judge,)

No. 25)
_____)

NOTICE OF FORMAL
PROCEEDINGS.

TO: JUSTICE MARSHALL E. McCOMB

It appearing that from January 3, 1956 to the present, you have been a Justice of the Supreme Court of California; and

Preliminary investigation having been made, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission as a result of said preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted,

NOW, THEREFORE, you are hereby charged with wilful and persistent failure to perform your duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, that you have a disability that seriously interferes with the performance of your duties and is, or is likely to become permanent, and wilful misconduct in office,

The specifications of the charges and the alleged facts upon which such charges are based are as follows:

COUNT ONE

You are hereby charged in Count One with wilful and persistent failure to perform your duties.

A. You do not participate in the oral discussions at the weekly conferences of the Court.

B. In voting at the weekly conferences of the Court you do not vote in accordance with your own judgment, but, rather, according to written instructions from your staff.

C. You engage in personal telephone conversations during the weekly conferences of the Court, and do not give your attention to such conferences.

D. You do not prepare yourself to participate in the weekly conferences of the Court.

E. You have not, for a substantial period of time, performed any of the duties of a Justice of the Supreme Court.

F. You have not, for a substantial period of time, written, or supervised the writing of, opinions which you have signed as the author thereof.

COUNT TWO

You are hereby charged in Count Two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A. Since January 2, 1967 you have, on many occasions, during open sessions of the Supreme Court:

1. Fallen asleep on the Bench;
2. Left the Bench for ten minutes;
3. Performed a series of physical exercises.

B. In December of 1975, while Court was in session, you left the Bench, picked up a magazine in the bailiff's office, returned to the Bench, and read the magazine while an attorney was arguing his case.

C. During the year 1974 at the San Francisco International Airport you wore a police riot stick on your belt, publicly brandished it, and were thereupon admonished by the airport security police.

D. In November of 1975, in Los Angeles, while the Court of Appeal was in session, you entered the Court and stood behind the justices and looked out over the audience.

COUNT THREE

You have a disability that seriously interferes with the performance of your duties and is, or is likely to become, permanent.

Because of such disability, you are unable to:

A. Participate in the oral discussions at the weekly conferences of the Court;

B. To arrive at a judgment of your own with respect to matters discussed at the weekly conferences of the Court;

C. To devote your attention either to matters discussed at the weekly conferences of the Court, or to oral arguments before the Court;

D. To prepare yourself to participate in the weekly conferences of the Court;

E. To perform any of the duties of a Justice of the Supreme Court.

F. To write or supervise the writing of opinions of the Court.

G. To remain awake during sessions of the Court.

H. To remember or be aware of the facts and issues of cases on which you vote during the weekly conferences of the Court.

I. To remember the day upon which the weekly conferences of the Court are scheduled to be held.

J. To remember the names of people who work for you on your staff.

COUNT FOUR

You are hereby charged in Count Four with wilful misconduct in office.

A. You have directed bailiffs of the Court to perform personal services for you which are not connected with your judicial responsibilities, to-wit:

1. Regularly and frequently driving you between home and your chambers;

2. Driving you to and from the annual gathering of the Bohemian Club at Bohemian Grove;

3. Driving you to and from lunch almost every day;

B. On October 10, 1975 you required the State Police to transport you in connection with business not related to your judicial responsibilities.

C. In 1971, 1972, and 1973 you used a State vehicle for transportation to and from three annual meetings of the Bohemian Club at Bohemian Grove.

D. On or about December 19, 1975 you directed the State Police to furnish transportation from San Francisco to Berkeley for one of your staff to visit an optometrist.

E. You have improperly and unlawfully claimed and received allowances to which you were not entitled by virtue of travel expense claims dated June 18, 1974, June 23, 1975 and November 12, 1975.

You have the right to file written answer to the charges against you within 15 days after service of this notice upon you with the Commission on Judicial Qualifications, Room 3041 State Building, 350 McAllister Street, San Francisco, California, 94102. Such answer must be verified, must conform in style to subdivision (3) of Rule 15 of the Rules on Appeal, and must consist of an original and 11 legible copies.

By Order of the Commission on Judicial Qualifications.

Dated: April 29, 1976.



CHAIRMAN