COPY

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE No. 69	NOTICE OF FORMAL PROCEEDINGS

TO: JUDGE BERNARD McCULLOUGH:

IT APPEARING THAT from January 3, 1977, and at all times herein, you have been a Judge of the Justice Court, San Benito Judicial District, San Benito County, and

Preliminary investigation having been made pursuant to the provisions of Rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, 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 pursuant to section 18 of Article VI of the California Constitution and in accordance with Rules 901-922, California Rules of Court;

NOW, THEREFORE, you are hereby charged with wilful

misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, persistent failure or inability to perform your duties as a judge and violation of your oath to well and faithfully perform the duties of your office in the following particulars:

COUNT ONE

You are charged in Count One with wilful misconduct in office:

A. Canon 3.A.(5), California Code of Judicial Conduct, states, "A Judge should dispose promptly of the business of the court." There have been submitted matters in your court which were ready for disposition but which remained undecided for excessive and unacceptable periods of time constituting inordinate delay. These matters include the following cases:

1. Oakley v. Cheadle, #5780, submitted 2/16/82 and not decided as of the date of this Notice;

2. Havens, et al. v. Tulchinsky, # 6641, submitted 11/2/84, decision dated 6/21/85 filed and served 8/2/85;

3. Hayward Lumber Co. v. Maynez, et al., #5600, submitted 6/4/81, Memorandum of Decision dated 12/14/81 filed and served 3/9/82;

4. Polar Services, Inc. v. Gong d.b.a. Central Market, submitted 5/7/80, decided 8/17/81.

B. Your delays in deciding the submitted cases listed in paragraph A., above, have caused distress and hardship to litigants.

C. You have received the salary for your judicial office while there were causes pending and undecided over ninety days after they were submitted for decision, contrary to California Constitution, Article VI, Section 19, which states:

> A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.

D. You have executed salary affidavits when submitted cases in your court remained undecided in excess of ninety days contrary to Government Code, section 68210, which

states:

> No judge of a court of record shall receive his salary unless he shall make and subscribe before an officer entitled to administer oaths, an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision.

E. During the preliminary investigation regarding your delay in deciding Oakley v. Cheadle, #5780, you failed to respond to the merits of the letter from the Commission dated 9/16/85 in violation of Court Rule 903.5, which states, in part, as follows:

> A judge shall, within such reasonable time as the Commission may prescribe, respond to the merits of a letter from the Commission sent either before or during a preliminary investigation.

F. Your conduct as described in paragraphs A., B., C. and D. constitutes a pattern of repeated and continuous failure to conform to Canon 2.A. of the California Code of Judicial Conduct, which states, "A Judge should respect and comply with the law and should conduct himself at all times in

a manner that promotes public confidence in the integrity and impartiality of the judiciary."

G. Your conduct as described in paragraph A., subparagraphs 2. and 3., and paragraphs B. and C. resulted in prior disciplinary action by this Commission as follows:

1. On 9/13/85, you were sent a Notice of Intended Severe Private Admonishment for your conduct in Havens v. Tulchinsky. This constituted a statement of the private admonishment imposed on you;

2. On 8/5/82, you were sent Notice of Intended Private Admonishment for your conduct in Hayward Lumber Co. v. Maynez. This constituted a statement of the private admonishment imposed on you;

3. On 10/21/81, you were sent a Notice of Intended Private Admonishment for your conduct in Polar Services, Inc. v. Gong. This constituted a statement of the private admonishment imposed on you;

These letters contain recitals of the Commission's findings in Private Admonishments #57, #38 and #33 which are attached hereto and made a part of this Notice.

COUNT TWO

For a further and separate cause of action, you are charged in Count Two with conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

In support of Count Two, the allegations contained in Count One are incorporated by reference as if fully set forth.

COUNT THREE

For a further and separate cause of action, you are charged in Count Three with persistent failure or inability to perform your judicial duties.

In support of Count Three, the allegations contained in Count One are hereby incorporated by reference as if fully set forth.

You have the right to file a written answer to these

charges within fifteen (15) days after service of this Notice upon you with the Commission on Judicial Performance, 3052 State Building, 350 McAllister Street, San Francisco, California 94102. Such answer shall be verified, shall conform in style to subdivision (c) of Rule 15 of the rules of Court, and shall consist of the original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: October 29, 1985

Chairperson

State of California
Commission on Judicial Performance
3052 State Building
San Francisco, CA 94102
(415) 557-0686

September 13, 1985

Confidential

Honorable Bernard McCullough
San Benito Justice Court
440 - 5th Street
Hollister, CA 95023

Re: Notice of Intended Severe Private Admonishment

Dear Judge McCullough:

At its September, 1985 meeting, the Commission on Judicial Performance ordered you severely admonished for dereliction of duty, persistent failure or inability to perform the judge's duties and conduct prejudicial to the administration of justice that brings the judicial office into disrepute, all within the meaning of Article VI, section 18(c), of the California Constitution, and determined that this Notice of Intended Severe Private Admonishment be sent to you.

The action taken by the Commission is as follows:

RESOLVED that Judge McCullough be severely admonished for conduct as set forth below in the statement of facts found by the Commission.

The Commission found that:

Judge Bernard McCullough heard the case of Havens v. Tulchinsky, No. 6641, on October 5, 1984, at which time the case was submitted for decision pending the filing of post-trial briefs on November 1, 1984. The last brief was filed on

November 2, 1984 at which time the case was ready for decision. On June 3, the Commission advised Judge McCullough by letter that it had ordered a preliminary investigation, and Judge McCullough replied on June 19 that "The decision would be sent out by the time you receive this reply." On August 2, 1985, a decision dated June 21, 1985 was mailed to the parties. There was a delay between submission and decision by Judge McCullough in excess of ninety (90) days.

Judge McCullough's delay was contrary to Canon 3 of the Code of Judicial Conduct, which states that a judge should perform the duties of his office diligently and should dispose promptly of the business of the court.

During the approximate ten-month period between the filing of briefs and the mailing of the decision, Judge McCullough had each month signed an affidavit under Government Code Section 68210 stating that he had no matter pending longer than ninety days, and he had received the judicial salary each month notwithstanding the provisions of Article VI, Section 19 of the California Constitution.

During the period between the filing of briefs and the mailing of the decision, the Defendant and his attorney had directed numerous inquiries regarding the disposition of the case to the Court Clerk, the Defendant had personally inquired with Judge McCullough about the case and the Plaintiff's attorney had twice written Judge McCullough about the case.

The foregoing acts and conduct amounted to a dereliction of duty which evidenced Judge McCullough's persistent failure or inability to perform the Judge's duties, and which constituted conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

The Commission found further that:

Judge McCullough had been privately admonished on two previous separate occasions for similar conduct, to wit, failure to decide a case in a timely manner, signing salary affidavits contrary to Government Code Section 68210 and acceptance of the judicial salary in violation of California Constitution Article VI, Section 19; Admonishment No. 33, dated October 21, 1981, and Admonishment No. 38, dated August 5, 1982, are incorporated herein by reference and made a part of this record.

This Statement of Facts and the certification of its mailing will be permanently retained as part of the Admonishment record; should there occur further conduct within the Commission's disciplinary purview, the Commission may institute proceedings and offer this record in evidence in accordance with Rule 909(b).

The foregoing action was taken pursuant to Article VI, section 18(c), of the California Constitution and constitutes the statement of facts found by the Commission, resulting in the issuance of a Severe Admonishment. Enclosed are Rules of Court 904(d) and 904.5 which cover your right to a hearing and the requirement of a hearing prior to seeking a review of this action in the Supreme court, and a related Commission Policy Declaration.

Please note the following provision in particular: if you have not filed a written demand for appearance or hearing within 15 days after the mailing of this notice, the foregoing statement of facts and reasons shall become self-executing and shall thereafter constitute the statement of the private admonishment imposed upon you.

Very truly yours,

JACK E. FRANKEL

JEF/ldw
Enclosure

CERTIFIED MAIL

cc: 1680 Sunny Slope Road
Hollister, California 95023

State of California
Commission on Judicial Performance
3052 State Building
San Francisco, California 94102-3680
(415) 557-0686

August 5, 1982

Confidential

Honorable Bernard McCullough
Judge of the Justice Court
San Benito Justice Court District
440 - 5th Street
Hollister, California 95023

Re: Notice of Intended Private Admonishment

Dear Judge McCullough:

In its letter to you of Februry 23, 1982, the Commission informed you of its preliminary investigation regarding your conduct. The Commission again considered this matter at its meeting of July 23, 1982, including review of your testimony under oath June 22, 1982. The Commission decided to withdraw its Notice of Formal Proceedings dated May 11, 1982, and determined that this Notice of Intended Private Admonishment be sent to you. On July 23, 1982, the Commission on Judicial Performance ordered you privately admonished for persistent inability to perform judicial duties and dereliction of duty within the meaning of Article VI, section 18(c), of the California Constitution.

The Commission found that the case of Hayward Lumber Co. v. Maynez, et al., San Benito Justice Court No. 5600, was submitted to you for judgment after trial June 4, 1981.

Your signed Memorandum of Decision, bearing a handwritten date of December 14, 1981, was not filed and served upon the parties until March 9, 1982, more than nine months after submission.

Counsel for plaintiff in the case contacted the Clerk of the San Benito Justice Court approximately twelve times between July 17, 1981, and March 8, 1982. Each time, counsel was told the case remained under submission and not decided. Counsel wrote you December 15, 1981, concerning the decision. You did not reply.

Your letters to the Commission confused the situation further by failing to explain the delay. Your terse letters offered no reason for the filing in March 1982 of a Memorandum of Decision dated in December 1981, for a case completed in June 1981. Not until you appeared in the Commission offices and responded to direct questioning under subpoena did some probable account of the events emerge.

During the five-month period, September 1981 to February 1982, you, each month, signed an affidavit stating that you had no matters pending in your court longer than ninety days and each month you received your salary.

The Commission found further that the above facts and conduct constitute persistent inability to perform judicial duties and dereliction of duty.

In taking the foregoing action, the Commission expressed its interest in and willingness to be informed of appropriate changes by you in your case management for solving the recurrent difficulties disclosed in Inquiry No. 50 and Inquiry No. 55. After you so notify the Commission in the next five to six months, such letter of notification will be placed in and become part of the official record in Inquiry No. 55.

The foregoing constitutes the statement of facts found by the Commission, resulting in the issuance of a Private Admonishment. Enclosed are the rules which cover your right to a hearing, and the requirement of a hearing prior to seeking a review of this action in the Supreme Court. Please note in particular Rule 904(d) and Rule 904.5.

Please note the following provision in particular. If you have not filed a written demand for appearance or hearing within fifteen days after the mailing of this notice, the foregoing statement of facts and reasons shall become self-executing and shall thereafter constitute the statement of the private admonishment imposed upon you.

Very truly yours,

JACK E. FRANKEL

JEF:dl
Enclosure

CERTIFIED MAIL

State of California
Commission on Judicial Performance
State Building
San Francisco, California 94102
557-0686

October 21, 1981

Confidential

Honorable Bernard McCullough
Judge of the Justice Court
San Benito Justice Court District
440 - 5th Street
Hollister, California 95023

Re: Inquiry Concerning a Judge No. 50
Notice of Intended Private Admonishment

Dear Judge McCullough:

The Commission on Judicial Performance gave the above referenced matter further consideration at its meeting of October 16, 1981. The Commission decided to withdraw its Notice of Formal Proceedings dated July 27, 1981, and determined that this notice of intended private admonishment be sent to you. On October 16, 1981, the Commission on Judicial Performance ordered you privately admonished for dereliction of duty and conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article VI, section 18(c), of the California Constitution. By this letter, the Commission herewith gives you formal notice of intended private admonishment.

The Commission found that the case of Polar Services, Inc. v. Gong d.b.a. Central Market was submitted to you for disposition May 7, 1980, but was not decided until August 17, 1981, an interval longer than ninety (90) days notwithstanding Government Code sections 71610 and 68210. This is contrary to Canon 3 of the Code of Judicial Conduct which states that a judge should perform the duties of his office diligently.

The Commission found that you failed to respond to letters of inquiry dated March 19 and April 14, 1981, and letters of preliminary investigation dated June 3 and June 23, 1981, from the Commission on Judicial Performance. By

its letters of April 14, June 3, and June 23, 1981, the Commission informed and reminded you that response is mandatory under California Rules of Court section 903.5. Your failure to respond was in violation of Rule 903.5, California Rules of Court, and hindered the Commission in pursuing an investigation undertaken pursuant to Rules for Censure, Removal, Retirement or Private Admonishment of Judges, and in making a satisfactory disposition of the matter. This is a persistent failure to perform judicial duties.

The Commission found that, from May 1980 until August 1981, you continued to receive your salary as a judge under conditions which fail to meet the requirements of Government Code sections 71610 and 68210. This is conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

The foregoing constitutes the statement of facts found by the Commission, resulting in the issuance of a Private Admonishment which is set out in this notice to you of intended private admonishment. Before this notice becomes final, you have the right to request a hearing. Enclosed are the rules which cover your right to seek such a hearing, and the requirement of a hearing prior to seeking a review of this action in the Supreme Court. Please note in particular Rule 904(d) and Rule 904.5.

Please note the following provision in particular. If you have not filed a written demand for appearance or hearing within 15 days after the mailing of this notice, the foregoing statement of facts and reasons shall become self-executing and shall thereafter constitute the statement of the private admonishment imposed upon you.

Very truly yours,

JACK E. FRANKEL

JEF:dl

Enclosure

CERTIFIED MAIL

INQUIRY CONCERNING A JUDGE

No. 69

DECLARATION OF PERSONAL SERVICE

I, Robert Katten, declare as follows:

I am and was at the time of service of the

NOTICE OF FORMAL PROCEEDINGS

herein, over the age of 18 years, and was not a party to the above proceeding; that I served the said document(s) by delivering a true copy thereof to each of the following named person(s), personally:

NAME	ADDRESS	DATE
Honorable Bernard McCullough		

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 4 day of Nov, 1985, at Hollister, California. 1155 AM

Robert Katten
Declarant

RECEIVED

n Judicial Performance