

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE
NO. 77

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE BERNARD McCULLOUGH

IT APPEARING THAT from January 3, 1977, to the present, you have been a Judge of the Justice Court, San Benito County Judicial District, 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

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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 and persistent failure or inability to perform your duties as a judge, all in disregard of your oath to well and faithfully discharge the duties of your office. The particulars of the charges are as follows:

COUNT ONE

You have abused your judicial authority and abdicated your judicial duty to respect and comply with the law by denying guaranteed rights to a defendant appearing before you, as follows:

In People v. Sumaya, #91935, on January 8, 1987, you deprived the defendant of a trial by jury when you ordered the jury to return a verdict of guilty. The defendant was found guilty. On May 8, 1987, the Appellate Department of the San Benito County Superior Court reversed the judgment.

It is charged that you took this action in knowing disregard of or gross unconcern about fundamental legal principles of which you were or should have been aware.

COUNT TWO

By your actions in People v. Cerrato, No. 888470, you engaged in a gross abuse of your judicial power and thereby effectively obstructed the administration of justice, as follows:

You failed and refused to arraign a criminal defendant, Frank John Cerrato, Jr. The defendant and his brother who was then a County Supervisor were long-time friends of yours. You kept the case file on your desk in Chambers during 1983, 1984 and 1985, during which period you repeatedly noted it as "continued" on the case docket on your own motion twenty-one times; you then dismissed the case, also on your own motion, without any statement of reasons or notice to the District Attorney.

It is charged that you did this in knowing disregard of or gross unconcern about fundamental legal principles of which you were or should have been aware.

COUNT THREE

In a driving-under-the-influence case (Vehicle Code Section 23152), People v. Amalia O'Brien, No. 86-83-12492, you deprived a defendant of fundamental

rights of which you were or should have been aware, as follows:

On January 22, 1987, you recited to the jury the docket entries showing numerous continuances and then required the People to proceed to trial by jury in the absence of both the defendant and her attorney of record. The defendant was found guilty. It is charged that you did this in knowing disregard of or gross unconcern about fundamental legal principles of which you were or should have been aware.

On January 25, 1987, you granted a defense motion for a new trial.

COUNT FOUR

By your actions in a driving-under-the-influence case (Vehicle Code Section 23152), People v. Rose Roberts, No. 93005, you deprived a defendant of fundamental rights of which you were or should have been aware, as follows:

On March 26, 1987, after you recited to the jury the docket entries listing numerous continuances, you required the People to proceed to trial by jury, although defendant's attorney was not present and had earlier advised the court of his unavailability. The defendant was found guilty. It is charged that you did this in knowing disregard of or gross unconcern about fundamental

legal principles of which you were or should have been aware.

COUNT FIVE

You regularly fail to advise convicted misdemeanants of their right to appeal, the time for filing a notice of appeal and the right of an indigent defendant to have counsel appointed on appeal, in disregard of California law and the specific provisions of California Rule of Court 535. It is charged that you have done so in knowing disregard of or gross unconcern about fundamental legal principles of which you were or should have been aware. Three recent examples are included as illustrative of your practice:

1. People v. Abelardo Alfaro
1987, #87-0745
2. People v. David Gomez Agredano
1987, #95290
3. People v. Ramon Perez
1987, #87-89-14130

COUNT SIX

You have repeatedly and persistently failed and refused to dispose promptly of the judicial business of

your court, as follows:

Since you verbally announced your judgment in favor of defendant Kathy Brashear in the case of Oakley v. Cheadle, No. 5780, on February 2, 1982, you have failed to and refused to issue your written judgment despite repeated written and verbal requests from Brashear's attorney.

Your failure to decide a submitted cause for over 90 days coupled with your signing salary affidavits that no cause submitted before you remains pending and undecided for a period of 90 days was in violation of California Government Code, Section 71610 and California Code of Civil Procedure, Section 170.

You have so failed and refused to issue your judgment in Oakley v. Cheadle notwithstanding the fact that your excessive delay in rendering the principal judgment in this case was a basis for your Public Censure by the Supreme Court on April 17, 1987 (Inquiry Concerning a Judge, No. 69, Opinion attached as Exhibit A) which followed the Commission on Judicial Performance's imposition of three Private Admonishments for similar delay in deciding submitted causes with attendant execution of salary affidavits. (Private Admonishments No. 33, 38 and 57 attached as Exhibit B.)

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COUNT SEVEN

It is charged that your conduct as described in Count Six constituted persistent failure or inability to perform your judicial duties; the Record of your Censure will be introduced under Rule 909(b) to prove that your conduct in this regard is persistent or habitual, and to determine what action should be taken or recommendation made following the finding of any facts constituting grounds for private admonishment, censure, removal or retirement.

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, Suite 304 Fox Plaza, 1390 Market Street, San Francisco, California 94102. Such answer shall be verified, shall conform in style to subdivision (c) of Rule 15 of the Rules on Appeal, and shall consist of the original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE.

Dated: Sept. 24, 1987


Chairperson