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**Commission on
Judicial Performance**

**STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**

**INQUIRY CONCERNING
JUDGE VINCENT J. McGRAW,
NO. 169.**

**NOTICE OF
FORMAL PROCEEDINGS**

To Vincent J. McGraw, a judge of the Fresno Municipal Court from October 5, 1989 to June 30, 1998, and of the Fresno County Unified Superior Court from July 1, 1998 to September 20, 2002:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

On January 12, 1999, the Commission on Judicial Performance issued to you a Notice of Intended Private Admonishment. The Private Admonishment went into effect on January 26, 1999, when you informed the commission in writing that you would not contest the Private Admonishment. (Rules of the Commission on Judicial Performance, rules 113, 114.) The "statement of facts and reasons" in the Private Admonishment included the following:

In January 1998, the judges in the Fresno courts were given access to the Internet through the county's computer system. The policies of Fresno County and the Fresno courts specifically prohibited the use of county computers or the Internet in connection with sexually oriented, sexually explicit, or pornographic material. Judge McGraw was furnished with these policies when he was given Internet access. Beginning in January 1998, and continuing through August 1998, Judge McGraw frequently used the county computer in his chambers to access Internet sites containing sexually explicit materials. The judge's use of the computer for this purpose occurred on weekdays – before, during and after regular court business hours – and on weekends. Records of the judge's Internet use maintained by Fresno County for the months of April 1998 through August 1998, indicate that the computer was logged on to these Internet sites, on average, approximately fifteen hours per month. Approximately eleven hours per month of this log on time occurred on weekdays between 8:00 a.m. and 5:00 p.m. The county did not maintain records of the judge's Internet use prior to April 1998. The judge's use of the computer violated the policies of Fresno County and the Fresno courts.

On Friday, September 4, 1998, Judge McGraw was confronted about his inappropriate use of the computer by the presiding and assistant presiding judges of the Fresno courts. Judge McGraw was told that an investigation was underway concerning this

matter and was given a copy of the county's records reflecting his Internet use in August. Judge McGraw admitted that he was the person accessing the sites reflected in the records. Judge McGraw also admitted that he was aware that his conduct violated the court and county policies prohibiting the use of the computer in connection with sexually explicit materials. During a second meeting that day with the presiding and assistant presiding judges, Judge McGraw admitted that he had been using the computer to access the Internet in the same manner and with the same frequency since January 1998, when the court obtained access to the Internet.

[¶]

When asked about these matters by the commission, Judge McGraw admitted that his conduct breached county computer protocol and was without excuse.

On February 25 and 26, 2002, while you were a candidate for reelection to judicial office, you participated in interviews with a Fresno television station KMPH newscaster concerning information that KMPH apparently had regarding the 1998 misuse of your courthouse computer. The election was to be held on March 5, 2002. The interviews were tape-recorded for possible future broadcast. During the interviews, you made the following false and/or misleading statements:

A. On February 25, 2002, in response to the question whether allegations you had accessed pornographic sites on your courthouse computer were true, you stated, "I don't have any information of what you're talking about," "I don't have any information whatsoever." When asked whether your statement was a denial, you stated, "[t]hat's a denial."

B. On February 26, 2002 (all statements through "K" below were on February 26), you denied reports that you had in 1998 used your court computer to

“surf the Internet for pornographic material,” stating, “[n]o, that is not true. I categorically deny that.”

C. You denied that you surfed the Internet for pornographic material on your work computer at the county courthouse in 1998 or at any other time, stating, “[t]hat did not take place.”

D. You denied that you ever admitted to former Presiding Judge James L. Quashnick that you had surfed the Internet for any kind of pornographic material, stating, “Not true. That did not happen.... In any way, shape or form.”

E. You denied ever talking to former Presiding Judge James L. Quashnick about “any of this,” stating, “[n]o. I really don’t know what you’re talking about.”

F. You denied that you ever admitted to former Presiding Judge James L. Quashnick that you had misused your computer “in any way, shape or form, either in 1998 or since then,” stating, “[n]o sir.... No. And, the questions you’re asking me are very troubling because this is something that would have been the subject of judicial discipline and I have not been disciplined for these things that you are talking about.”

G. You denied that you were disciplined by the Commission on Judicial Performance for improper use of your court computer, stating, “I have not been disciplined for these things that you are talking about.”

H. You denied that you were ever privately disciplined by the Commission on Judicial Performance for improper use of your court computer or for any other reason “in any way, shape or form,” stating, “[n]o ... [not] in any way.”

I. You denied that you ever misused your court computer at any time throughout your career, stating, “[n]ot at any time ... throughout my career.”

J. You stated that you initiated a February 26, 2002 discussion with Court Executive Officer Tamara Beard to find out whether the court’s computer system is serviced by in-house court technical personnel or by outside personnel provided by the county, and that you were informed by Ms. Beard that the computers are serviced by in-house technical personnel. (In fact, you asked Ms. Beard who had

discovered that you had accessed pornographic Web sites on your court computer.) You stated to the newscaster that “the reason why that was important for me to know is because if our court personnel had discovered this, most likely I would have been told about it, and that has not happened. That simply is not true.”

K. You stated that your own campaign had “spent almost all day today trying to uncover some substantiation for this story and we have not been able to substantiate the story. The story is not true.” You further stated, “[t]he story is not true. It is false.”

On March 1, 2002, the portions of the interviews described in paragraphs A, B, C, D, E, F and G were broadcast by KMPH, as part of a news story concerning the allegation that you previously made improper use of your court computer.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 4A(2) and 5B(2).

COUNT TWO

Count one is incorporated.

During the February 26, 2002 interview with the KMPH newscaster, you threatened legal action against the television station if it published the allegations you had denied. You stated, “I’m concerned if these allegations are on your newscast that my reputation, my career, twelve years on the bench, a sitting judge, is going to be damaged.” You further stated, “I’ve heard of no evidence so far to substantiate the allegations. And it sounds to me like this is reckless,” and that “it troubles me that if this is the subject of media coverage, that my reputation will be injured. And I’m seriously considering whether or not I shouldn’t be seeking counsel and considering a lawsuit.” You also stated that you had considered “filing a lawsuit in order to protect my reputation against a reckless story. I have

been provided with no basis for the story and I know the story is not true.” You then re-asserted your denial of the allegations, stating, “I don’t know what you’re talking about. I know that the allegations are not true.” You again denied that you ever got on a county computer and misused it, stating, “[a]t no time.” You again denied surfing the Internet for pornographic sites, stating, “[t]hat’s not true.”

Your threat to bring legal action and your reiteration that the allegations were not true and that the news story lacked factual basis were made for the purpose of attempting to dissuade the publication of facts concerning your conduct that were true and known by you to be true prior to the March 5, 2002 election. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 4A(2) and 5B(2).

COUNT THREE

Count one is incorporated.

Prior to the March 5, 2002 election, you engaged in, or involved court employees in, improper campaign activities in and around the courthouse, as follows:

A. In October 2001, you distributed to several hundred court and county employees copies of a Petition in Lieu of Filing Fees and a request that the recipients support your candidacy for judicial office by collecting signatures on a petition. You provided a stamped envelope addressed to yourself at your home address for the return of signed petitions to you. Your requests did not include a caution against the solicitation of signatures by court or county employees during working hours in court facilities. Although the requests for support were created using your own private resources, you utilized court resources in the form of the court’s interoffice mail system to distribute some or all of your requests for support.

Some court and/or county employees responded to your request by soliciting signatures during working hours and/or in public facilities, activities

which were prohibited by county ordinance. (Fresno County Ordinance Code, § 3.08.110(A)(1) and (2).) Some of the persons from whom you requested support were court employees subordinate to you.

B. You distributed a campaign brochure containing a photograph of you and members of your judicial staff, who are employees of the Fresno county courts. You did not obtain the permission or consent of the staff members prior to including their photograph in your campaign brochure; some members of the staff complained about the unauthorized use of their photograph.

C. You engaged court employees and staff in conversations about your election campaign during working hours, including asking employees to obtain signatures on a petition in lieu of filing fees and asking employees for other assistance with your campaign.

D. On February 20, 2002, you failed to give precedence to your judicial duties when you left the courthouse to attend to campaign-related activities prior to the call of the 10:00 a.m. small claims calendar, and did not return to the courthouse until approximately 11:00 a.m.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(2), 3A and 5.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall

conform in style to subdivision (c) of rule 15 of the Rules on Appeal, contained in the California Rules of Court. The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 9/3/02



RISE JONES PICHON
CHAIRPERSON