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7 THE STATE OF CALIFORNIA
8 BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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13 **INQUIRY CONCERNING A JUDGE**
14 **NO. 135**

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**VERIFIED ANSWER TO
NOTICE OF FORMAL PROCEEDINGS**

16 **COMES NOW, the Honorable James C. McGuire, and states, answers and alleges as**
17 follows:

18 1. This answering party has not sufficient facts upon which to base a denial or admission to
19 the allegations of page 1 line 28 through page 2 line 7 and based on said lack of
20 information and belief denies same.

21 **Notwithstanding, this answering party does admit Judge Bert L. Swift brought to**
22 **him a search warrant and affidavit on or about December 16, 1993.**

23 2. This answering party denies each and all allegations contained in the paragraph on page 2,
24 lines 11 through 14 except and however states and alleges that Judge Swift and the two
25 Park Rangers entered my chambers together and without my prior response; Judge Swift
26 did remain in my chambers but most of my conversation was with the Rangers (and later
27 Mrs. Root); Judge Swift was not involved in my "decision-making" but he did respond to
28 questions about his willingness to give consent to search.

1 This answering party denies the allegation that as part of my "decision making process,
2 (I) engaged Judge Swift and the law enforcement officers in discussions regarding the
3 search warrant". The discussions related to the "service" of the search warrant.

4 It is true the Rangers informed me they intended to serve the warrant on the
5 following day and that they and I talked about alternatives to executing the search
6 warrant the next day. Mrs. Root was also involved in that discussion. It is true that I
7 "raised the possibility" of a consent search but only by a question to the officers to the
8 effect that could they serve it this evening if a consent search was obtained. It is true I
9 asked Judge Swift if he would consent and if his stepson would consent and he
10 advised in the affirmative. I deny not obtaining from Judge Swift facts or confirmation
11 of facts that would justify his authority to consent. I deny the allegation that I " . . .
12 participated in questioning the law enforcement officers regarding the basis of their
13 knowledge as to the genuineness of the artifacts to be seized and the possible criminal
14 consequences to Judge Swift's stepson". The allegation that the "discussions" were
15 intimidating to others is conclusionary and not one that can be denied or admitted by
16 me. I deny that Mrs. Root was called simply to advise as to " . . . the propriety of a
17 consent search". Rather she was called to represent the Rangers and to participate in
18 the evaluation of all issues and possible solutions. I did inform Mrs. Root that the
19 subject premises belonged to Judge Swift and his wife and I told her it was a house he
20 didn't live in but visited, supervised and had meals with the family.

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22 I deny the allegations of page 3 lines 7 & 8 except that Mrs. Root and I and the
23 Rangers talked about my expressed concern over the Rangers inability to serve the
24 warrant before the following day. My expressed concern was that if the search warrant
25 service was delayed until the next day and it was not productive of the subject property
26 it could be said that Judge Swift had forewarned the arrival of the warrant to his
27 stepson. Such a circumstance would not fair well for the public trust of our judiciary
28 and would place Judge Swift in an indefensible position. That was my concern.

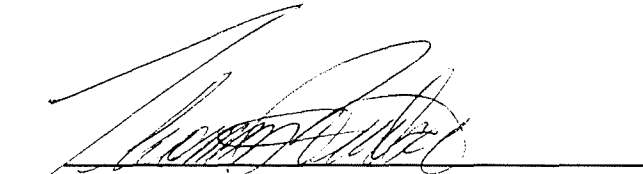
1 I deny the allegation that "despite finding probable cause to issue the search
2 warrant (I) decided not to do so" as well as all allegations of the paragraph on page 3,
3 line 10 through 20 except that I agreed to issue the warrant (i.e. sign it) even if we had to
4 amend it or the affidavit and/or conduct it by phone but I asked everyone in the room if
5 we could execute it with consent and specifically if Mrs. Root and the Rangers had any
6 legal problem or any other problem with proceeding with a consent search. All of this
7 was prefaced with my inquiry and commitment of the Rangers that they would execute
8 the warrant forthwith if it could be done with consent. I authorized the Rangers and/or
9 Mrs. Root to contact me by phone if they had any problems or felt they needed a
10 telephonic search warrant approval.

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12 This answering party further alleges:

- 13 1. Judge Swift was not allowed to participate in how, when or under what circumstances this
14 search warrant would be served.
- 15 2. Judge Swift's continued presence in my chambers was limited to his stating whether he or
16 his stepson would consent and providing facts supporting his authority to consent to those
17 who questioned.
- 18 3. I was not motivated in any way by the fact Judge Swift was up for re-election and made no
19 effort to complicate or simplify that matter. My concern was to avoid a delayed service of
20 this warrant so as to avoid the possibility of public distrust of the judiciary in general.

21
22 March 5, 1996

LAW OFFICE OF THOMAS R. HUDSON

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THOMAS R. HUDSON
Attorney for Judge No. 135

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing NOTICE OF FORMAL PROCEEDINGS, RE: JUDGE 135

and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on 3-5, 1996, at Ontario California.

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

James C. McGuire

Type or Print Name

James C. McGuire Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT

(other than summons and complaint)

Received copy of document described as

on 19

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the county of San Bernardino, State of California.

I am over the age of 18 and not a party to the within action; my business address is: 3602 Inland Empire Boulevard, Suite B-140, Ontario, California 91764

On 3-5, 1996, I served the foregoing document described as VERIFIED ANSWER TO NOTICE OF FORMAL PROCEEDINGS

on Interested Parties

in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105

Attn: Sei Shimoguchi

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Ontario, California.

Executed on 3-5, 1996, at Ontario, California.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

Executed on, 19, at, California.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Lisa Moore

Type or Print Name

Lisa Moore Signature