STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING JUDGE BRUCE CLAYTON MILLS	DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Bruce Clayton Mills, a judge of the Contra Costa County Superior Court since 1995, whose current term began January 2003. Judge Mills and his attorney, James A. Murphy, Esq., appeared before the commission on May 10, 2006, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, to contest the imposition of a public admonishment. Having considered the written and oral objections and argument submitted by Judge Mills and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

I. In 1997 and 1998, Judge Mills engaged in and took action upon a series of improper ex parte communications regarding the matter of *People v. Mendell* (No. 104058-3), in violation of canon 3B(7) of the California Code of Judicial Ethics, as follows:

On November 4, 1997, Judge Mills presided over the *Mendell* misdemeanor theft case, which was scheduled for jury trial that day. Ms. Mendell appeared with her attorney, David Larkin, and entered a no contest plea. Two deputy district attorneys were present during the plea. After the plea was taken, the deputy district attorneys left the building, and Mr. Larkin left the courtroom, while Judge Mills and Ms. Mendell remained in the courtroom. Judge Mills and Ms. Mendell then engaged in a conversation about her plea and the possibility of diversion, meaning the criminal charges against her would be suspended while she fulfilled certain conditions (such as working a certain number of community service hours and participating in a theft awareness seminar), after which the charges would be dismissed. No prosecutor was present during this conversation between the judge and Ms. Mendell.

Ms. Mendell's attorney, Mr. Larkin, then returned to the courtroom and discussed Ms. Mendell's case briefly with Judge Mills. No prosecutor was present during this conversation between the judge and Ms. Mendell's defense attorney.

Judge Mills and Mr. Larkin then went into Judge Mills's chambers and continued discussing the *Mendell* case; Ms. Mendell remained in the courtroom. While Judge Mills and Mr. Larkin were in the judge's chambers, Judge Mills summoned probation officer Susan Cruz to his chambers. Ms. Cruz previously had determined that Ms. Mendell was "not suitable" for diversion because she had been convicted of misdemeanor theft from Nordstrom in 1991. This was indicated on a "Diversion Eligibility" form Ms. Cruz had prepared for the *Mendell* court file, on which Ms. Cruz had noted: "Same victim as '91 Grand Theft which received 1203.4 P.C. in '94." This notation indicated that the pending charges involved the same victim as a case in which Ms. Mendell had been convicted in 1991 (although the 1991 charges were removed from the record in 1994). After Ms. Cruz arrived in Judge Mills's chambers, the case was discussed further. Again, no prosecutor was present for this discussion.

Following Judge Mills's initial ex parte courtroom conversation with Ms. Mendell, he reviewed the *Mendell* court file and told Mr. Larkin that he would set aside Ms. Mendell's no contest plea and grant her diversion. Thereafter, following Judge Mills's discussion in chambers with Mr. Larkin and Ms. Cruz, the judge summoned defendant Mendell, who had been waiting in the courtroom, to his chambers and informed her that he was granting her diversion. Mr. Larkin and Ms. Cruz were present for this in-chambers discussion, but no prosecutor was present. Judge Mills thereupon set aside the no contest plea Ms. Mendell had entered earlier that day in the presence of the two prosecutors, and he granted her diversion. These post-plea proceedings were not reported, and no prosecutor was present for them.

After Judge Mills granted Ms. Mendell diversion, she immediately began fulfilling the conditions of diversion, including attending the theft awareness seminar and performing the required community service.

After the Contra Costa District Attorney's Office received a copy of Judge Mills's order setting aside Ms. Mendell's plea and granting her diversion, a supervising attorney from the district attorney's office telephoned Judge Mills to object to the diversion order and to the judge's having taken action on the *Mendell* matter without notifying or involving any prosecutor. Ms. Mendell's defense attorney, Mr. Larkin, did not know of, or participate in, this telephone communication between Judge Mills and the prosecutor about the *Mendell* case.

Because the district attorney's office objected to Judge Mills's having set aside Ms. Mendell's plea and granting her diversion without its knowledge or consent, Judge Mills put the *Mendell* case back on calendar and, at a hearing on January 12, 1998, terminated Ms. Mendell's diversion and reinstated criminal proceedings against her. By that time, Ms. Mendell had

completed 130 hours of her 200 hours of community service, completed a 12-hour theft awareness program, and paid $315 in fees.

Canon 3B(7) prohibits a judge from initiating, permitting, or considering ex parte communications. In the *Mendell* case, Judge Mills committed multiple violations of this prohibition. First, Judge Mills engaged in a conversation with Ms. Mendell about her case outside the presence of her counsel or any prosecutor. Second, Judge Mills engaged in a conversation with Ms. Mendell's attorney, Mr. Larkin, about the case without any prosecutor present. Third, Judge Mills conferred with Mr. Larkin and probation officer Cruz about the case in his chambers with no prosecutor present. Fourth, Judge Mills further discussed the case with Mr. Larkin, Ms. Cruz and Ms. Mendell in his chambers, and, following that discussion, took action contrary to the previously-entered plea to which the prosecutor had agreed. Each of the foregoing conversations about the *Mendell* case that occurred without any prosecutor's knowledge or consent constituted an improper ex parte communication in violation of canon 3B(7). Judge Mills's later communications with a prosecutor about the *Mendell* case without the knowledge or participation of defense counsel also was in violation of the prohibition against ex parte communications set forth in canon 3B(7).

In addition to these violations of canon 3B(7), Judge Mills's conduct was inconsistent with canon 2A, which states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

In connection with Judge Mills's objections under rule 116 to the commission's Notice of Intended Public Admonishment, the judge and his counsel asserted in writing and during their appearance before the commission on May 10, 2006 that discipline cannot rest on the underlying *Mendell* matter because of the lapse of time since 1997 when the alleged misconduct occurred. The argument proceeds from an assumption the complaint was filed in 2001; the judge contends the commission has violated its own rules and policy declarations by the assumed five-year delay of its ensuing investigation. The judge also postulates the commission may have removed the matter from its active calendar, in which case he contends there was no proper basis for such action under Commission Policy Declaration 1.8. That policy declaration specifies non-exclusive circumstances under which the commission may remove a case from its active calendar.

The current proceedings before the commission represent the consolidation of seven separate complaints to the commission concerning Judge Mills. The first complaint was not filed in 2001, but rather in June 2003. Thereafter, six additional complaints were filed, beginning in January 2004 and spanning the period to late-March 2005. Consistent with commission policy, each subsequent complaint was consolidated with the first-filed complaint. The commission consolidates multiple open and pending complaints against a judge for reasons that include the need to ascertain whether there are patterns of behavior, and in order to assess the aggregate magnitude and severity of possible wrongdoing. The commission did not remove the

consolidated investigations from the active calendar at any time. Rather, the seven consolidated complaints, involving a wide variety of subject matters and witnesses, were investigated in a timely manner and consistent with standard commission policies and procedures.

Judge Mills also contends in his rule 116 objections he was prejudiced because former Judge Cunningham, "who would have supported [Judge Mills's] explanation of his conduct," died during the pendency of the commission's investigation. According to Judge Mills, the late-Judge Cunningham would have substantiated that at the time of the *Mendell* matter in 1997, the District Attorney of Contra Costa County did not staff misdemeanor arraignment calendars and did not object to a judge granting diversion or accepting a plea in the absence of a prosecutor at such proceedings.

In support of Judge Mills's rule 116 objections to the proposed public admonishment, the judge did present declarations to the commission from another Contra Costa County judge and two attorneys that substantiated the practices in question. However, the prosecutor's general policy of not staffing certain hearings is irrelevant to *Mendell* and the judge's misconduct in handling that matter. Notwithstanding the general practice, two deputy district attorneys were present at the plea hearing in *Mendell*; further, the prosecutor thereafter objected when Judge Mills set aside the plea and granted the defendant diversion. Thus, Judge Mills has not been prejudiced by the lack of further substantiation by Judge Cunningham of the general policies, because, unlike the general situation, the prosecutor was present and active in *Mendell*.

As respects the *Mendell* post-plea ex parte communications between the district attorney's office and Judge Mills, the judge submitted a declaration in support of his rule 116 objections. The declarant was one of the two deputy district attorneys who were present at the plea hearing, who attested he never engaged in any ex parte communication with Judge Mills. However, the post-plea ex parte communications between the judge and the prosecutor's office did not involve the attorney who filed the declaration. Rather, there is clear and convincing evidence that an attorney in the district attorney's office, who was senior to the two deputies who were present for Ms. Mendell's plea, had substantive ex parte communications with Judge Mills that resulted in the case being rescheduled for the purpose of setting aside the diversion order.

Judge Mills also urges in his rule 116 objections that his post-plea communications with the prosecutor falls within exception (d) to canon 3B(7), which permits a judge to have ex parte communications for scheduling purposes. However, at the outset of the hearing on January 12, 1998 that was scheduled because of the prosecutor's protest over the granting of diversion, Judge Mills made a statement that undermines his claim the conversation involved only scheduling. The judge stated as follows: "After the grant of diversion was made, *the district attorney's office advised me of other factors I was not aware of*. I telegraphed that immediately to Mr. Larkin, your counsel, and indicated that the case would have to be put back on calendar for further discussions." (1/12/98 R.T. 2:17–22, italics added.) The judge's introductory comment confirms

the evidence that the communications with the prosecutor involved substance, beyond scheduling. The scheduling exception of canon 3B(7)(d) therefore was inapplicable.

II. On January 5, 2005, while presiding over an arraignment, disposition and plea conference in *People v. Rieboldt* (No. 122979-9), Judge Mills assumed the role of the prosecutor in the case and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter. In that case, two co-defendants were charged with misdemeanors for having stolen windows from a construction site. Judge Mills was asked to give the defendants an indication of the sentence he would impose if they were to plead guilty to the misdemeanor charges. The transcript indicates that after Judge Mills reviewed the court file in the case, he made the following remarks:

> THE COURT: In addition, the district attorney's office has not charged a violation of 182 of the Penal Code which is felony conspiracy, which is a straight felony. It's not even a wobbler. [¶] *This conduct of these two co-defendants is felony conduct*, for a variety of reasons. [¶] One, because it is a criminal conspiracy to commit grand theft. When grand theft is, say, between $400, which is the bottom, and say, up to somewhere between 2,000 and $4,000, there could be some debate about whether it should be treated as a misdemeanor or as a felony. [¶] When the losses exceed $4,000, then generally in my experience, which runs back in the county some twenty years, *it's generally been the policy of the district attorney's office to pursue the cases on the felony level*. [¶] … [¶]
>
> THE COURT: *I'm appalled by this case*, I've got to tell you. [¶] You know, I sit here day in and day out, and frankly, a lot of the cases are misdemeanor cases, that in the grand scheme of what comes through the courts in California, I can think it's fairly fair to say, are de minimis in nature. [¶] *This is not one of them.* **[¶]** And one thing that Mr. Torres hopefully can appreciate, is that the breadth of my experience is not limited to handling misdemeanor cases here. [¶] In this county, I spent two years of my life as a felony filing deputy. I am one of only two people, to my knowledge, in the history of this county to have held that job twice … [¶] which means that, I have as much if not more experience than any person in the history of this county, in reviewing felony cases to decide what charges should be filed, and if so, at what level, be it felony or misdemeanor. [¶] *This is felony conduct.* [¶] *The fact that this got filed as a misdemeanor, I'm just absolutely appalled. My hair is on fire*.

> I can't tell you how stunned I am that somebody could be caravanning away from construction sites, using two trucks to more efficiently steal thousands of dollars worth of windows, to have not only admitted to having done it on numerous other occasions, but having checks issued by the fence company that's getting rid of and disposing these thousands of dollars of stolen property, and to have everybody think that this is one misdemeanor count of grand theft that is going to be dealt with de minimisly [sic]. [¶] *Frankly, I can't understand how it got to this posture. I am stunned*.
>
> Miss Hamoy [deputy district attorney], I know that apparently you didn't file this case. [¶] I don't know how the deputy DA who received this at the misdemeanor desk didn't run it up the flag pole. Maybe they did. Maybe they took it to the felony filing deputy and got marching orders to pursue it as a misdemeanor case. [¶] *I can't understand that. I don't know how*. [¶] It's not a question of problems of proof. [¶] Not only do we have full confessions, but we have the checks issued by the company that paid Mr. Torres for these windows, on multiple different dates. [¶] So it's not a question of problems of proof. [¶] *I just don't know how we got to this point*.
>
> So my thought is as follows. [¶] *One of two things is going to happen*. [¶] Based on my comments here today, *either Mr. Torres is going to plead and the case is going to get resolved today, or somebody is going to go back to the drawing board, have this reviewed by somebody that can intelligently assess what ought to have been charged, and I would think that it would be more likely than not that an amended pleading would come down the pike, charging, among other things, a violation of Section 182 of the California Penal Code, felony criminal conspiracy*, between the two charged co-defendants.

(1/5/05 R.T. 4:10–7:23, italics added.)

Judge Mills's conduct was contrary to canon 1, which requires judges to maintain "high standards of conduct ... so that the integrity and independence of the judiciary will be preserved," and canon 2A, which requires that a judge "… shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The authority to charge criminal cases is outside the scope of judicial power. (*Ryan* v. *Commission on Judicial Performance* (1988) 45 Cal.3d 518, 535.) It is improper for a judge to use his or her judicial

authority to attempt to influence officers of the court concerning criminal matters. (*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 366-369.) As the California Supreme Court stated in *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 845 (*Kloepfer*), "the court must not undertake the role of prosecutor or defense counsel if public confidence in the integrity of the criminal justice system is to be maintained." Repeating its earlier admonition in *People v. Carlucci* (1979) 23 Cal. 3d 249, 258, the court in *Kloepfer* stated, "It is fundamental that the trial court … must refrain from advocacy and remain circumspect in its comments on the evidence, treating litigants and witnesses with appropriate respect and without demonstration of partiality or bias." (*Kloepfer, supra*, 49 Cal.3d at 845.)

III. In 2004 and 2005, Judge Mills engaged in a pattern of conduct that is inconsistent with canon 3B(4), which requires a judge to be patient, dignified, and courteous with persons with whom the judge deals in an official capacity. The judge's conduct included making sarcastic, demeaning and belittling comments to attorneys and litigants appearing before him, and referring to "malpractice" when admonishing attorneys while their clients were present. This conduct is exemplified by the following:

A. *People v. Milla*

On November 22, 2004, Judge Mills presided over *People v. Milla* (No. 122374-2), a misdemeanor theft case involving the use of a stolen credit card. Deputy Public Defender Jivaka Candappa, who was representing defendant Milla, told Judge Mills that the defendant was unwilling to accept the disposition offered by the court. The transcript reflects the following exchange, which occurred in open court in the presence of the defendant:

> THE COURT: Fine. *Sometimes I can't protect people from themselves, and sometimes I can't protect people from an attorney that is giving them the wrong advice.* [¶] *What I can tell you, Mr. Candappa, is that this is just stupidity and arrogance.* [¶] Your client absolutely has an opportunity to get out from under this for a $250 fine, and you are helping steer her into a path of jeopardy where she can go to jail for up to a year and a fine --
>
> MR. CANDAPPA: Your Honor --
>
> THE COURT: You know what? Fine. I don't need to talk about it any more. If that's what you want to do and that's the way you want to play it, go ahead. *We'll see where this gets you.*
>
> MR. CANDAPPA: Your Honor, your Honor, in fact, I advised Miss Milla to consider diversion but, and [sic] the probation officer spoke with her and then Miss Milla didn't want to

> do it. So I have not been steering her anywhere in that context, as your Honor would suggest --
>
> THE COURT: Well, you ought to be steering her somewhere, Mr. Candappa. *You ought to be steering her to take care of this for a $250 fine and no criminal history, that's what you ought to be doing.* [¶] But far be it for me, who's been in the system for some twenty years now, to tell you how to do your job. God knows, I tell the DA's how to do it often enough, maybe it's time I tell the defense how to do their job once in a while, too. [¶] *Mr. Candappa, to do anything other than taking this offer to resolve this case along the lines I am suggesting, is akin to malpractice, in my view*. But you go how you want to go. [¶] *After twenty years, how this case ought to be disposed of is self-evident to me, and I suspect to everybody else in this room. Except perhaps you.* [¶] I don't know what else to tell you.
>
> MR. CANDAPPA: Well, your Honor, I am not responsible -- just as when clients want to take pleas against my counsel, when clients don't want to take pleas against my counsel, this is one area where I do not steer, I convey the advice, I give analysis, I give the advice. But it is the client's decision to accept or reject the offer. I have been very clear on both sides, with one way or the other. [¶] And that is how I have chosen to do because that is how, I don't apply undue pressure either to take or not take it.
>
> THE COURT: Yes, we wouldn't want you to apply undue pressure to somebody to avoid a year in the county jail, a potential consequence of court probation, and a criminal history, we wouldn't want you to pressure them into getting out from under that, and pressure them into paying a $250 fine and resolving the case for an infraction that doesn't start a criminal history, yeah, that would be wrong, Mr. Candappa. *And if you detect sarcasm in my voice, that's the way it's intended*. [¶] *And I try not to be sarcastic from the bench, but in this case I just can't help myself, because I am just so irritated at the folly of what you are doing here.*

(1/22/04 R.T. 13:1–15:7, italics added.)

At the end of the hearing, Judge Mills said to Mr. Candappa, "*Perhaps it's time you start picking up the books and figuring out what you're doing*." (1/22/04 R.T. 17:13–14, italics added.)

The foregoing remarks by Judge Mills evidence a lack of patience, dignity and courtesy toward Mr. Candappa, contrary to the requirements of canon 3B(4).

B. *People v. Gilmer*

On January 19, 2005, Judge Mills presided over the arraignment in *People v. Gilmer* (No. 123268-5). Deputy Public Defender Jivaka Candappa attempted to file a peremptory challenge against Judge Mills under Code of Civil Procedure section 170.6. That section grants a litigant the right to disqualify a judge from hearing a case based on an affidavit of prejudice; only one section 170.6 challenge may be exercised in any action. The transcript indicates that when Mr. Candappa presented his 170.6 affidavit, Judge Mills made the following remarks:

> THE COURT: Mr. Candappa, I received a document encaptioned Peremptory Challenge Under 170.6 of the Code of Civil Procedure, on this department. And I am somewhat puzzled. [¶] Maybe you could explain. [¶] ... [¶] The court has already reviewed and made an offer on the case. And therefore, has already determined a contested issue of fact relating to the merits of the case. [¶] I can't be challenged pursuant to 170.6 with regard to the conducting of this ADP [arraignment, disposition and plea conference]. [¶] You can't come before the court on ADP, obtain an offer from a judge, and then after you hear the offer, if you don't like the offer, decide to enter a peremptory challenge. [¶] Peremptory challenges don't work that way, it's prohibited. [¶] … [¶] *Exercising the peremptory challenge, in my view, would be malpractice because you are now waiving your ability to exercise a peremptory challenge on a trial department that you may be assigned out to.* [¶] But that's your decision to make. [¶] Do you want to file this now? [¶] . . . [¶]
>
> THE COURT: Mr. Candappa, in this case, this case has previously been on for ADP, before this court. [¶] This court has previously made an offer on this case. And you can't now forum shop by circumventing the offer made by this court on this case by papering this department. [¶] It doesn't work that way. As much as you might like to. [¶] You're not under any obligation to take the offer. So I find it puzzling that you would exercise a peremptory challenge prior to going to the master calendar department. [¶] *In fact, there is some case law that might indicate that that is bordering on malpractice, but, because there is no practical effect of this peremptory challenge* [sic]. [¶] You can't get out from under the offer that's been previously made by this

> department on this case. Because you can't exercise a peremptory challenge after hearing the offer of the court.

(1/19/05 R.T. 2:11–5:7, italics added.)

Judge Mills eventually accepted the filing of the 170.6 challenge.

Judge Mills's remarks to Mr. Candappa about "malpractice" were improper, in violation of canon 3B(4), which requires a judge to treat those appearing before the judge with patience, dignity, and courtesy. In addition, Judge Mills improperly attempted to dissuade Mr. Candappa from exercising a Code of Civil Procedure section 170.6 challenge against him. A judge may only inquire into the timeliness of a section 170.6 challenge or its technical sufficiency, not into the reasons for the challenge. (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 531-532.)

C. *People v. Ibrahim*

On January 26, 2005, Judge Mills presided over the arraignment of the defendant in *People v. Ibrahim* (Nos. 121353-7 and 123639-7). Mr. Candappa again attempted to file a peremptory challenge under Code of Civil Procedure section 170.6. Judge Mills previously had conducted an arraignment, disposition and plea hearing at which the defendant appeared in pro per. At that hearing, Judge Mills had made a settlement offer directly to the defendant, who did not accept the offer and was referred to the public defender's office for representation. Mr. Candappa was appearing for the defendant for the first time on January 26, 2005. In response to Mr. Candappa's submission of the section 170.6 challenge at that appearance, Judge Mills said:

> THE COURT: Fine. Do you want a trial date? [¶] Again, I reiterate, you cannot have an offer from a court, and after hearing the offer, decide you don't like it after the court has already reviewed the case and made the offer, and then forum shop. The system does not permit that, Mr. Candappa. [¶] For purposes of the pretrial offer, it's too late to do what you're attempting to do. That's why it's not done. *In fact, to do it is malpractice.*

(1/26/05 R.T. 5:27–6:8, italics added.)

Judge Mills's characterization of Mr. Candappa's decision as "malpractice" in front of the client was discourteous, in violation of canon 3B(4).

D. *People v. Datta*

On August 29, 2003, Judge Mills presided over the misdemeanor theft case of *People v. Datta* (No. 118628-7), which was set for trial that day. The prosecutor handling the case, Deputy District Attorney Crystal Howard, had learned that morning, before trial was to begin, that the police officer whose availability she had confirmed two days before was now unavailable for trial that day. Ms. Howard made an oral motion to continue the trial, following which Judge Mills and Ms. Howard had the following exchange:

> THE COURT: You are going to have to change the manner in which you prepare for your cases. You are going to have to do preparation. You are going to have to contact your witnesses in advance. If you continue to proceed this way and you continue to choose not to do it, *you're not going to be welcome any longer in this court*.
>
> MS. HOWARD: May I respond, your Honor?
>
> THE COURT: I don't know how else to put it. I have had this discussion with you. And it's not that I don't understand your position. I have been in your position. I have been a deputy district attorney with numerous cases to prepare for trial on a particular day. I have spent hours toiling on the phone contacting witnesses in advance so that I am prepared when I show up on trial day. [¶] In 107 jury trials I never showed up on trial day once without having talked to my witnesses in advance, and without having prepared my witnesses before they took the stand. [¶] This is a chronic problem with you. It is a problem for which you and I have discussed the remedy. And it's a problem for which you choose not to pursue the remedy. [¶] I'm exceedingly disappointed, I don't know how else to put it. I don't understand this, showing up on trial day and not knowing the status of your witnesses, it's a mystery to me.
>
> MS. HOWARD: Could I respond, your Honor, please?
>
> THE COURT: I don't know what you could say. What could you possibly say? You waited until trial day and you got burned again. What could you possibly say?
>
> MS. HOWARD: I could tell the court I did, in fact, call the Sheriff's Department last night, asked to speak with Officer

> Heuerman and Deputy Moore. Was informed they were not working. [¶] Called the Fremont Police Department, asked to speak with Officer Barrett and Officer Wack. Officer Barrett called me back. He told me both he and Officer Wack are working and are available. [¶] I spoke with Deputy Moore who told me he is, in fact, available. [¶] I spoke with our subpoena clerk at our office who told me, when I had explicitly told them, please find out if they're not available because we need declarations ahead of time, I was told everyone had been told it was trailing until today, no declarations had been returned. [¶] So I realize that I may not have spoken to everyone last night, I did what I could. [¶] … [¶]
>
> THE COURT: You can't call witnesses to the stand that you haven't prepped, that you haven't sat down and talked to and gone over the case and their testimony with. *It is quote, "malpractice," end quote, to call witnesses to the stand that have not been prepared. It's malpractice.*

(8/29/03 R.T. 3:25–6:12, italics added.)

Judge Mills failed to treat Ms. Howard with patience, dignity and courtesy, as required by canon 3B(4), particularly when he told her she would not be welcome in his court and when he accused her of "malpractice" in open court.

E. *People v. Contreras*

In mid-December 2004, Judge Mills presided over the jury trial of *People v. Contreras* (No. 121632-4). At trial, the deputy public defender representing defendant Contreras, Joni Spears, requested a court interpreter on the basis that her client did not understand, or proficiently speak, English. Judge Mills initially allowed a court interpreter for the defendant. Partway through the trial, however, Judge Mills conducted a hearing outside the presence of the jury to determine the defendant's need for an interpreter and concluded that the defendant was sufficiently fluent in English and that an interpreter was not warranted. Judge Mills then dismissed the interpreter. After the defendant was convicted by the jury, Ms. Spears argued that the dismissal of the interpreter had been the basis for the jury's conviction of her client. During this argument, Judge Mills made the following comments to Deputy Public Defender Spears while the defendant was present:

> But *I am not going to continue to spend $180 per interpreter, per half day, to conduct a charade with the defendant that*, if I believe he can clearly understand English, *is having the interpreters here to establish the fictional defense*.

(12/10/04 R.T. 72:23–27, italics added.)

> Unfortunately, you know, while *this is entertaining that you have this opinion*, it is not founded in the law.

(12/10/04 R.T. 227:16–18, italics added.)

> THE COURT: Because Mr. Contreras was feigning he didn't understand the questions, and *it was just a game. It was a dog and pony show*, Miss Spears.

(12/13/04 R.T. 255:11–13, italics added.)

A judge has discretion to make a credibility determination with regard to whether a defendant is entitled to a court-ordered interpreter. (*In re Raymundo B.* (1988) 203 Cal.App.3d 1447, 1452-1458.) Nevertheless, the foregoing comments Judge Mills made in connection with exercising his discretion were sarcastic and discourteous to the defendant and to his attorney in violation of canon 3B(4).

Judge Mills has engaged in a pattern of making comments that are discourteous, sarcastic, demeaning and belittling to those appearing before him. Such remarks toward a litigant or counsel are not consistent with the conduct required by canon 3B(4). (See, e.g., *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 323-327 [disapproving the use of demeaning, rude, impatient and abusive behavior toward counsel]; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 703 [disapproving the ridiculing of attorneys].)

In Judge Mills's written rule 116 objections and at his appearance before the commission on May 10, 2006, the judge acknowledged his "malpractice" language was inappropriate and he apologized to the commission for using it. He also submitted the declarations of a judge and two attorneys in support of his contention that the conduct of the attorneys in some of these cases fell below the standard of care expected of a competent attorney. However, the issue before the commission is not whether there was attorney malpractice, but rather, whether there was judicial misconduct. Irrespective of whether the attorneys in question were acting in a competent manner, Judge Mills's demeaning and insulting comments to the attorneys in open court were inappropriate and in violation of canon 3B(4).

In determining to issue this public admonishment, the commission noted that Judge Mills received a private admonishment in 2001 for ignoring a defendant's request for counsel and attempting to coerce him into a guilty plea.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Justice Judith D. McConnell, Ms. Patricia Miller, Mr. Jose Miramontes, Mrs. Penny Perez and Ms. Barbara Schraeger voted for a public admonishment. Commission members Judge Risë Jones Pichon and Mr. Lawrence Simi voted for a private admonishment that would not base any discipline on the *Mendell* matter because of the passage of time since Judge Mills presided over that case. Commission members Mr. Michael Kahn and Mrs. Crystal Lui did not participate.

Dated: June _12_, 2006

_______________/s/___________________
Marshall B. Grossman
Chairperson