

**FILED**  
**OCT 13 2017**  
COMMISSION ON  
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING  
JUDGE BRUCE CLAYTON MILLS,

No. 201

NOTICE OF FORMAL  
PROCEEDINGS

To Bruce Clayton Mills, a judge of the Contra Costa County Municipal Court from August 14, 1995, to June 7, 1998, and a judge of the Contra Costa County Superior Court from June 8, 1998, to the present:

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, 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 August 12, 2016, you presided over a contempt hearing in a family law case, *Evilsizor v. Sweeney*, D13-01648. You found the citee, Joseph Sweeney, guilty of

contempt of court on five of the eleven counts alleged. During a discussion of a possible sentence, you informed the attorneys and parties that Mr. Sweeney would get “good time” credits during any custody time imposed and would probably “get one day good time for each day that he serves....” You also said, “So the reality is he’ll only serve half of it [the sentence] to begin with.” You set the sentencing hearing to take place on August 16, 2016.

On August 16, 2016, you sentenced Mr. Sweeney to 25 days in custody (which amounted to five days for each count of contempt, to be served consecutively), imposed a fine, and awarded attorney’s fees and costs. Neither the Findings and Order Regarding Contempt that was signed and filed on August 16, 2016, nor the minute order for August 16, 2016, contained any reference to good time credits.

After Mr. Sweeney surrendered, the Sheriff’s Department contacted you ex parte, through your clerk, to find out whether Mr. Sweeney should receive good time credits. Without notifying the parties of the substance of the ex parte communication or providing them with an opportunity to respond, you directed your clerk to modify the Findings and Order Regarding Contempt to read: “No good time credits to be given.” The amended order was provided to the jail where Mr. Sweeney was being held, but not to the parties.

On August 25, 2016, after being informed that the jail was not giving Mr. Sweeney good time credits, Mr. Sweeney’s counsel contacted the jail and learned of the addition to the Findings and Order Regarding Contempt. In a letter dated August 25, 2016, and delivered to you that day, Mr. Sweeney’s counsel wrote that you said at the August 12, 2016 hearing that Mr. Sweeney would receive half-time credits, and that Penal Code section 4019, subdivision (a)(3) provides that half-time credits apply. Later that day, after receiving counsel’s letter, you issued an order stating that Mr. Sweeney was “entitled to receive good time credits[,]” even though you did not necessarily believe that he was entitled to them.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(2), 3B(5), 3B(7), and 3B(8).

## COUNT TWO

In March 2016, you presided over a jury trial in *People v. Jeffers*, No. 01-171912-9. The defendant was charged with driving under the influence of alcohol (DUI) and driving with a blood alcohol level of 0.08% or higher. During trial, Deputy District Attorney (DDA) William Moser presented testimony from the investigating officer and from a criminalist regarding the breath test results. The defense attorney, Ryan Smith, introduced expert testimony challenging the accuracy of the breath test results. Among other things, the defense expert testified that the lack of a breath temperature corrector on the breath machine resulted in the machine reporting inaccurately high results if the subject's breath was over 34 degrees Celsius.

On March 23, 2016, while the jury was deliberating, you engaged in an ex parte conversation with DDA Moser in the courtroom. In relation to Mr. Smith's expert witness, you told DDA Moser that when you last prosecuted a DUI case, about 29 years previously, Grady Goldman, a forensic toxicologist at the Contra Costa County Crime Lab, tracked the accuracy of the breath machines. You told DDA Moser that over a protracted period of time, Mr. Goldman monitored the limited number of cases in which both breath samples and blood samples were taken, in order to determine whether the breath machines were testing properly. You stated that if the data existed, it could potentially counter the defense that was presented in the *Jeffers* case. You also told DDA Moser that if there really was a problem with the breath machines, as the defense expert suggested, someone may have to look at that issue. Later that day, the jury reported that it was unable to reach a verdict and you declared a mistrial. You did not disclose on the record your conversation with DDA Moser or recuse yourself from further proceedings in the case until April 1, 2016, after the district attorney's office disclosed the ex parte conversation to a supervising judge and to defense counsel.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(5), and 3B(7).

### PRIOR DISCIPLINE

In 2006, you were publicly admonished for (1) engaging in a series of improper ex parte communications in a criminal case, (2) assuming the role of a prosecutor in a different criminal case, and (3) engaging in a pattern of making discourteous, demeaning, and belittling comments in criminal cases. (*Public Admonishment of Judge Mills* (2006).) In 2013, you were publicly admonished for engaging in out-of-courtroom communications about your son's infraction case with a court clerk and the pro tem judge handling the case. (*Inquiry Concerning Mills* (2013) 57 Cal.4th CJP Supp. 1, 5.)

The 2013 public admonishment indicated that you also received private discipline on the following occasions. In 2011, you received an advisory letter for allowing your son to accompany a police officer in executing a search warrant you signed, without going through the ordinary application process for going on a ride-along. In 2008, you received an advisory letter for improperly conditioning a defendant's release in a misdemeanor probation revocation proceeding on posting bail for the improper purpose of collecting restitution. In 2001, you were privately admonished for remarks suggesting a lack of impartiality and for attempting to obtain a guilty plea from a defendant despite statements from the defendant indicating he wanted counsel. (*Inquiry Concerning Mills, supra*, 57 Cal.4th CJP Supp. at p. 15.)

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 California Rules of Court, rule 8.204(b). 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: October 6, 2017

  
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Honorable Ignazio J. Ruvolo  
Chairperson

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ACKNOWLEDGMENT OF SERVICE  
OF NOTICE OF FORMAL  
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I, James A. Murphy, on behalf of my client, Judge Bruce Clayton Mills, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 201 and agree to accept service by mail. I acknowledge receipt of a copy of the Notice of Formal Proceedings by mail and, therefore, that Judge Mills has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 10/11/17

  
James A. Murphy  
Attorney for Judge Bruce Clayton Mills  
Respondent