PUBLIC ADMONISHMENT OF JUDGE CHRISTINE K. MORUZA

This disciplinary matter concerns Judge Christine K. Moruza, a judge of the Alameda County Superior Court. On October 15, 2008, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, Judge Moruza waived her right to formal proceedings under rule 118 and to review by the Supreme Court and demanded an appearance. On December 8, 2008, Judge Moruza withdrew her demand for an appearance before the commission and determined not to contest the issuance of this public admonishment. The Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18 (d) of the California Constitution, based on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

Judge Moruza has been a judge of the Alameda County Superior Court since 1997. Her current term began in 2005.

The commission determined that Judge Moruza should be publicly admonished for the following conduct:

1. Comments concerning publicly-funded defense counsel

On or about February 1, 2007, Deputy Public Defender Samuel Greyson requested a continuance in *People v. Finley*, in which Deputy Public Defender Kristen McCannon represented the defendant, so that certain evidence could be retested; the prosecution had no objection. After some discussion, this exchange occurred:

> THE COURT: Okay. So we need to give him enough time to get the retest done. She hasn't submitted it yet.
>
> THE DEFENDANT: She promised me last time it would be submitted. This is the second time I've gone to court.
>
> THE COURT: Well, are you paying her?
>
> THE DEFENDANT: No.
>
> THE COURT: *You get what you pay for. If you want really good service, then you pay an attorney $10,000 to do this.*
>
> MS. THIESEN [DDA]: I'd suggest even six weeks.
>
> MR. GREYSON [DPD]: Thank you.
>
> THE COURT: Okay. March 15. In your case a retest is critical.
>
> THE DEFENDANT: Yes, it is.

> THE COURT: And Ms. McCannon has a zillion cases and she is an excellent attorney and you ain't paying a cent for it. Count yourself really really lucky.
>
> THE DEFENDANT: Okay.
>
> THE BAILIFF: What time, Your Honor?
>
> THE COURT: 8:30.

(R.T. 2:23 – 3:14, italics added.)

Four weeks later, during the morning calendar on February 28, 2007, Deputy Public Defender Elizabeth Campos asked Judge Moruza to call three matters in which she had "quick progress reports," but the judge declined to do so, asking instead if any other private counsel were ready. When Judge Moruza did begin calling public defender cases, this exchange occurred:

> THE COURT: Okay. Ms. Campos. Long last.
>
> MS. CAMPOS: Can we call Kyle Borton? He was here at 8:30.
>
> THE COURT: Right. I understand your clients were on time, but those who have attorneys that they're paying go first and those who you [sic] have a free attorney go second and it's just the way it works here.
>
> MS. CAMPOS: Right. Your Honor, I would respectfully object but I understand.
>
> THE COURT: Sure, you would. That's just the way it's run here. *You get what you pay for. You're paying nothing here.* [¶] Okay. Kyle Borton. [¶] Good. Okay. This is an okay report. So we'll have another diversion progress report on May 30th, this department, at 8:30. So we'll see you then.

(R.T. 1:14 – 2:1, italics added.)

Judge Moruza's remarks in these cases suggested that she believed that indigent defendants were entitled to receive, and consequently did receive, legal services and court access inferior to that provided to defendants who could afford to pay attorneys. The judge's comments conveyed the message that defendants who do not pay can expect to receive legal services inferior to those provided by private counsel, and that public defender clients get nothing because they pay nothing. The remarks could be expected to

have a negative impact on the attorney-client relationship, and to undermine confidence in the criminal justice system. In addition, the comments reflected a lack of patience and courtesy, and conveyed bias. The comments were contrary to canons 2A, 3B(4) and 3B(5).

Judge Moruza has admitted that making the comments was wrong. She has explained that in *Finley*, she was attempting to impress upon a defendant who was somewhat irate and agitated that he should be grateful for the justice system and the representation of the public defender. The judge has denied that she was biased. She self-reported her conduct in *Borton* in May 2007.

2. Comments in *People v. Rupple*

On or about February 21, 2007, *People v. Kenneth Rupple*, a domestic violence case, was before Judge Moruza for a readiness conference. When the case was called, defense counsel said that the matter was being maintained for jury trial. Judge Moruza asked what the offer was, and DDA Eric Swalwell stated that it was to let the defendant plead guilty to simple battery, go on court (informal) probation for three years, receive credit for time served, attend 52 domestic violence classes and pay a fine of $335. Judge Moruza confirmed the case for trial, and the prosecutor requested that she order the victim, Ms. West, to return on the trial date. This exchange followed:

> THE COURT: All right. Ms. West, be sure to be back here on Monday. [¶] Is there a stay away?
>
> MS. WEST: I didn't get the decision in that. There shouldn't be any.
>
> THE DEFENDANT: That was done by [Judge] Walker.
>
> THE COURT: Do you want to proceed with this case?
>
> MS. WEST: No.
>
> MR. SWALWELL [DDA]: Your Honor, we have a statement from the defendant where he admits to hitting.
>
> THE COURT: So.
>
> MS. CAMPOS [DPD]: It's ambiguous.
>
> THE DEFENDANT: It's pointless.
>
> MS. WEST: He's defending me.
>
> THE BAILIFF: Ma'am.

MR. SWALWELL: Defendant admitting to hitting her is pretty good evidence.

THE COURT: So we're going to have a criminal prosecution. [¶] Does he have a record?

THE DEFENDANT: No.

MR. SWALWELL: Not in [sic] county.

THE COURT: No. Okay.

MR. SWALWELL: But we know we expect a victim of domestic violence to say it didn't happen. That happens a lot.

THE COURT: Well, I know. I was a D.A. too. [¶] How long have you been married?

MR. SWALWELL: How long --

THE DEFENDANT: We're actually engaged.

MS. CAMPOS: Mr. Rupple is her caretaker. She is disabled.

THE COURT: How many times has he hit you before?

MS. WEST: Never.

THE COURT: What led up to this?

MS. WEST: We were intoxicated. I was extremely intoxicated. There was a man on top of me and in the process of getting this man off of me, he inadvertently hit me. I was belligerently drunk. Once the guy was off of me, I was like 'Okay. Let's keep partying.' If you call Gallagher's bartender, he would testify --

THE COURT: Is this what we're going to call 60 people to hear?

MR. SWALWELL: Your Honor, I --

THE COURT: This is what we're going to waste court time with.

MR. SWALWELL: I don't believe it's a waste of court time.

THE COURT: I do.

MR. SWALWELL: For a person that has been hit --

THE COURT: I do.

MR. SWALWELL: With all due respect, our office --

THE COURT: With all due respect, I have lived about 30 years longer than you have. I know a lot more about relationships and life and the court system. [¶] To tell you the truth, this is a crazy waste of time.

MR. SWALWELL: I understand, Your Honor.

THE COURT: Okay. This will go on the back burner for Monday. But now you know my feelings about -- what can I say; painting on the numbers as far as prosecutorial discretion.

MR. SWALWELL: I would have to answer to my boss on Monday if I dismissed it and she was hit again.

THE COURT: Well, I have to answer to the People of this County and they're going to be asking me why 60 people have to come and sit here and listen to this kind of stupidity. Okay.

MR. SWALWELL: I understand, Your Honor.

THE COURT: I'm going to say the D.A., has the policy about domestic violence. We don't look at each case on its individual merits. We don't try to do what's best for the victim. What can we do best to prevent this kind of thing in the future? No, we have a policy that we're guided by. [¶] I know, I was a young D.A. once too. If you were caught with a concealable weapon in San Francisco, you did 90 days, period, period. That led to a lot of stupid prosecutions.

THE DEFENDANT: Judge, can I speak freely?

THE COURT: No, don't.

THE DEFENDANT: No.

THE COURT: I've said enough.

THE DEFENDANT: All right.

THE COURT: We'll have 60 people come in. That will be great. Then afterwards we'll have them tell you what they think of it.

(R.T. 1:20 – 4:16.)

Judge Moruza's statements that the *Rupple* case was a "crazy waste of time" and that pursuing it amounted to "stupidity" suggested abandonment of the judicial role and embroilment, and appeared impatient and discourteous, contrary to canons 1, 2A and 3B(4), and 3B(5). The judge's reference to having lived about 30 years longer than the prosecutor and knowing "a lot more about relationships and life and the court system" appeared inappropriately personal, undignified and demeaning, and contrary to canon 3B(4). In addition, the judge's comments, particularly when considered in conjunction with the comments described immediately below in sections 3 and 4, suggested a bias in domestic violence prosecutions.

Judge Moruza has admitted that the remarks she made were inappropriate, demonstrated a lack of patience, and could have led an observer to think she had prejudged the case, although she has denied that she has a bias against domestic violence cases in general.

3. Comments in *People v. Dantes*

On or about February 21, 2007, immediately after discussion of the *Rupple* case, the case of *People v. Dantes*, another domestic violence case scheduled for readiness conference, came before Judge Moruza. The transcript of the matter reads in its entirety:

MS. CAMPOS [DPD]: Mr. Jester Dantes.

THE COURT: Is this another case where we're going to ruin the relationship between the victim --

MS. CAMPOS: There is no relationship with the victim and Mr. Dantes. [¶] The victim, we haven't been able to locate her. She hasn't been subpoenaed for today. She's been subpoenaed for Monday. So we're going to maintain. If she doesn't come in, it's going to be a dismissal.

THE COURT: Okay.

MS. THEISEN [DDA]: That is true and correct.

THE COURT: All right.

(R.T. 1:4-15.)

Judge Moruza's comment suggested bias in domestic violence cases, and was contrary to canons 2A, 3B(4) and 3B(5). The judge has admitted that her comment should not have been made, although she has denied that she is generally biased in domestic violence cases.

4. Comment about personal experience of domestic violence

On or about February 22, 2007, Judge Moruza made a remark to counsel in chambers to the effect that she had tried to slap her husband once, that he had been quicker and slapped her back, and that she had never tried to slap him again. The context of her remark was her expression of the view that the prosecution should not be pursuing the *Rupple* case, described in section 2, above. On another occasion, the judge told counsel that she had once called the police on her husband for domestic violence. The judge's remarks appeared inappropriate and undignified, and suggested a lack of impartiality in domestic violence cases. The remarks were contrary to canons 2A, 3B(4) and 3B(5). Judge Moruza has stated her recognition that statements about her own life experience are not appropriate, and has assured the commission that she will not in the future share personal information in her role as a judge.

5. Comment in *People v. Turner*

In or about August 2007, in *People v. Turner*, a felony assault case in which the defendant stabbed a 17-year-old in the arm in response to crude comments the victim and others shouted at him from a car, Judge Moruza told the prosecutor that her son might have reacted in a similar way in that situation. The judge's comment was inappropriately personal and suggested bias and prejudgment, contrary to canons 2A, 3B(4) and 3B(5). Judge Moruza has denied bias, but has stated that she will not mention matters related to personal relationships when handling cases in the future.

6. Comments in *People v. P.B.*

In 1999, Judge Moruza heard the case of *People v. P.B.*, in which the defendant was charged with felony assault with a deadly weapon, with an enhancement for great bodily injury. The victim in the case was a deputy sheriff who had been having an affair with a neighbor who was also employed by the sheriff's department. The deputy also had sex with this woman's 16-year-old daughter, and was prosecuted for statutory rape. The defendant was the husband of the woman and the father of the 16-year-old. The defendant beat the victim over the head with a baseball bat.

At the preliminary hearing, Judge Moruza exercised her discretion, under Penal Code section 17, to reduce the assault with a deadly weapon charge to a misdemeanor. The defendant pled guilty, and the judge sentenced him.

At sentencing, after counsel submitted the matter, Judge Moruza made the following remarks:

> THE COURT: All right. I would like to say one thing about the probation report which I, the Court, found daunting. On page five, the last sentence of the first incomplete paragraph, there it says, 'Be that as it may, there is no excuse for the defendant's behavior in the instant offense.' I think that sentence is 180 degrees wrong. That's why this Court reduced this case from a felony to a misdemeanor. [¶] The Court feels there was almost every excuse for the defendant's behavior in this offense. There was a day in this country not that long ago when if a man's young daughter was raped and his wife was seduced by a neighbor who he considered a good friend, that man would have been privileged to go ahead and take care of the matter and in a way similar to what Mr. [B] did, and it wouldn't have gone any further. There wouldn't have been felony convictions on either side. There wouldn't have been all kinds of expenditures of tax payers' money, but now the politically correct thing is to say when someone does what Mr. [B] did, that they've taken the law into their own hands. That's a cliché. It represents a lot have [sic] emoting and feeling about the issue rather than thinking. [¶] Mr. [B] did not take the law into his own hands. He knew what he was doing was illegal and he took responsibility immediately. He's done nothing to evade responsibility, as far as I can see, during the entire pendency of these proceedings. So Mr. [B] isn't taking the law into his own hands. And frankly, this Court understands perfectly well why he did what he did. Unfortunately we have the system of criminal justice that you're not allowed to do that anymore. Some people would say our system of criminal justice is immoral because of that. However, it is what it is and I must apply it.

(R.T. 11:14 – 12:20.)

Judge Moruza has said that she intended only to convey her understanding of the defendant's situation and her view that it was unfortunate *for him* that his conduct was now illegal. What she said, however, was that in the past, if someone did what the defendant did, the matter "wouldn't have gone any further," and there wouldn't have been felony convictions or "all kinds of expenditures of taxpayers' money." These remarks suggested

the view that prosecution of such cases is an unwise expenditure of public funds. The judge went on to say, "Unfortunately, we have the system of criminal justice that you're not allowed to do that anymore. Some people would say our system of criminal justice is immoral because of that. However, it is what it is and I must apply it." Regardless of the judge's intent, this statement suggested that the judge holds the view that the criminal justice system is "immoral" insofar as it requires punishments for conduct such as the defendant's. Her statements appeared to reflect disdain for the legal system, as well as bias and prejudgment, and were contrary to canons 2A and 3B(5). The judge has admitted that her statements could be construed as disdainful of the fact that the law had to be applied in that particular situation.

7. Comments in *People v. Spotorno*

On or about February 27, 2007, the case of *People v. Spotorno*, in which the defendant was charged with killing a mountain lion, came before Judge Moruza. During a bench conference, the judge made a reference to killing unborn babies, which, according to the judge, was intended to put into perspective the crime with which the defendant was charged. The comment, in addition to being inappropriately personal, suggested the view that the offense with which the defendant was charged was minor by comparison with killing unborn babies, and thus conveyed bias. The comment was contrary to canons 2A, 3B(4) and 3B(5).

During discussion of the case, Judge Moruza made a statement to the effect that she knew someone who sounded a bit like the defendant, who was an elderly rancher, as her father was also an ornery old guy. The judge's comparison of the defendant to her own father carried the suggestion of bias in favor of the defendant, and was contrary to canons 2A, 3B(4) and 3B(5).

In further discussion of the case, after the prosecutor mentioned the suffering of the mountain lion, which had died of thirst after being caught in a trap that the defendant checked infrequently, Judge Moruza made comments to the effect that she was not sure that animals were conscious of, or had the ability to contemplate, their own pain the way that human beings do, but that putting animals out of their misery was appropriate; the judge then described an incident in which her husband shot a deer that had been hit by the car in which she and her family were traveling. The judge's statements about her own views of how animals might experience pain and her references to her personal experience were inappropriate and contrary to canons 2A, 3B(4) and 3B(5).

In setting the case for trial (further discussed in section 11, below), Judge Moruza said to the prosecutor on the record, "I want to deal -- you can win your case maybe, maybe not, but let's not take an old man and just rack [sic] him over the coals for something -- I don't know, maybe he didn't know it was not okay, you know." The statement, particularly the reference to the prosecution as raking the defendant "over the coals," appeared to reflect bias and was contrary to canons 2A, 3B(4) and 3B(5).

8. Comments to prosecutor in *People v. Eubanks and Barfield*

On August 13, 2007, the case of *People v. Eubanks and Barfield* was before Judge Moruza for a hearing on a motion to suppress. During the hearing, which was contentious, the judge questioned a police officer about his age, allergies, and smoking habits in order to gauge whether he had been able to smell from outside a vehicle a small amount of marijuana that had been found in a plastic bag in a closed area inside the vehicle. At sidebar, when DDA Eric Swalwell said that he could smell the marijuana from approximately 15 feet away, Judge Moruza responded, "How old are you? Eighteen?" In further discussions at sidebar, after DDA Swalwell expressed the view that the judge had taken an "amateurish" approach to making a factual determination in the case, the judge responded, "You're the amateur." The judge's remarks were demeaning, undignified and contrary to canon 3B(4).

9. Conduct toward spectator in *People v. Rainwater*

In September 2005, Judge Moruza presided over proceedings in *People v. Rainwater*, a homicide case in which the defendant was charged with the murder of a woman discovered bound and bludgeoned in her apartment. The defense requested and received a continuance to enter a plea, on the ground that more time was needed to review recently received discovery. At the hearing, a number of the victim's friends and family sat in the courtroom, wearing red T-shirts with a picture of the victim on the front. As they filed out of the courtroom at the end of the proceedings, one of them turned in the judge's direction and interjected, "Another wasted day." Judge Moruza ordered the woman to stand before the bench and asked, "Did you graduate from high school?" When the woman said that she had, the judge asked whether she had taken any civics classes. When she said that she had not, Judge Moruza responded, "That's why you're ignorant." The judge also said, "The public's safety has been ensured. This defendant is not getting out … if you want to go back to the days when we strung people up before a trial, you can go back there on your own." Judge Moruza ordered the woman to apologize to the court, which she did.

The judge's comments were unnecessarily harsh and demeaning, and were contrary to canon 3B(4). Judge Moruza has admitted making these statements, which were not recorded by the court reporter, and has expressed regret.

10. Setting distant trial date in *People v. Burchers*

On March 1, 2007, the domestic violence case of *People v. Burchers*, which was approximately ten months old and had been set for trial twice, came before Judge Moruza for pretrial conference. DPD Samuel Greyson asked that the pretrial conference be continued for two weeks so that he could consult an immigration specialist. Judge Morzua called counsel to the bench; during an unreported conference, the judge noted a concern that the victim could be using the criminal courts for advantage in a pending family law case involving the victim and the defendant. On the record, after a short discussion of the defendant's need for an order allowing her to retrieve her belongings from the family

residence (a "civil standby"), the judge said, "This Court has November 19 [for trial]." DDA Ronda Theisen stated her desire to have the matter set for trial sooner:

> MS. THEISEN: Judge, I want a trial date. I'm not asking for anything this month or next month or even in May, but I think by June this case needs to be resolved.
>
> THE COURT: It will be November 19, readiness will be on November 14.
>
> MR. GREYSON: May we get a further pretrial or should -- well --
>
> THE COURT: Why?

(R.T. 2:16-23.)

After brief further discussion of the "civil standby" order, the proceedings concluded.

At least one other case on the judge's calendar on March 1, 2007 was set for trial May 7, 2007.

Under the circumstances, Judge Moruza's setting of the trial date in *Burchers* over eight months away, when the prosecutor asked that the trial date be set no later than June 2007, gave the appearance that the judge set the distant trial date because of her view that the case should not be tried. Such conduct constitutes an abuse of authority, is in disregard of the People's right to a speedy trial, and is contrary to canons 2A and 3B(5).

11. Setting trial date in *People v. Spotorno*

On February 27, 2007, after a pretrial conference in the case of *People v. Spotorno*, in which Judge Moruza made comments (set forth in section 7, above) suggesting a lack of impartiality, the judge set a trial date of November 5, 2007, over eight months away. The *Spotorno* case was at that time eleven months old and had been set for trial twice. In seeking a continuance of a prior trial date (February 13, 2007), defense attorney Timothy Rien had asserted, among other things, that it was lambing season, that the 80-year-old defendant and his 65-year-old wife were responsible for all the work on the ranch without help, that the defendant had recently had episodes of loss of consciousness that were being medically evaluated, and that time was needed to investigate and prepare. The prosecution did not oppose the motion, and the matter was continued to February 27, 2007, the date of the proceedings in question.

After discussion off the record on February 27, 2007, the following took place on the record:

THE COURT: Okay. Jury trial November 5.

MR. RIEN: And October 31.

THE COURT: And October 31 for readiness. [¶] The evidence isn't going to go away. It is not like you got [sic] witnesses. The worse [sic] thing that will happen, the defendant may become whatever.

MR. RIEN: I'm still going to meet with Mr. Spotorno next week. I'm still going to send a settlement over. He's a nervous wreck over the thing himself, but I haven't had any access to him.

MS. SANDBACH [DDA]: When you haven't even had access to a client, it just tells me that he's pushing this thing away and he's not going to deal with it.

THE COURT: I want to deal -- you can win your case maybe, maybe not, but let's not take an old man and just rack [sic] him over the coals for something -- I don't know, maybe he didn't know it was not okay, you know.

(Whereupon, the proceedings concluded.)

(R.T. 1:5-22.)

Although DDA Sandbach expressed her desire for an earlier resolution of the case, Judge Moruza set a trial date over eight months away, while making a comment concerning the prosecution's taking an "old man" and raking him "over the coals" for something he possibly "didn't know … was not okay." Under the circumstances, the judge's setting of the distant trial date appeared to reflect her view that the case should not be tried. Such conduct constitutes an abuse of authority, is in disregard of the People's right to a speedy trial, and is contrary to canons 2A and 3B(5).

Judge Moruza's conduct in the matters set forth above was, at a minimum, improper action.

Judge Moruza reported the *Borton* incident to the commission in May 2007. When the commission instituted a preliminary investigation concerning this incident and others and sent a preliminary investigation letter to Judge Moruza, the judge took immediate steps to address the problems brought to her attention. She enrolled in sixteen hours of group anger management counseling and found the sessions valuable.

Judge Moruza has not been the subject of prior discipline in her 11 years on the bench. She has supplied declarations from prosecutors and defense attorneys praising her judicial abilities and demeanor.

In view of the judge's forthrightness in reporting herself to the commission, her immediate efforts to address problems in her conduct that were brought to her attention, her willingness to concede the impropriety of certain of her actions, and her lack of prior discipline, the commission determined that institution of formal proceedings was not necessary for protection of the public, and that public admonishment was an appropriate resolution of this matter.

Commission members Hon. Frederick P. Horn, Hon. Judith D. McConnell, Mr. Peter E. Flores, Mr. Marshall B. Grossman, Ms. Barbara Schraeger, Mr. Lawrence J. Simi, Ms. Maya Dillard Smith, Ms. Sandra Talcott and Mr. Nathaniel Trives voted to impose a public admonishment. Hon. Katherine Feinstein and Mr. Samuel A. Hardage did not participate.

Dated: December 16, 2008