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COMMISSION ON
JUDICIAL PERFORMANCE

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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE PATRICK B. MURPHY
NO.157

ANSWER TO FIRST AMENDED
NOTICE OF FORMAL PROCEEDINGS

Comes now the Respondent Judge Patrick B. Murphy and answers as follows:

COUNT ONE

- A. The Complaint fails to state the days in question, so the Respondent can not verify the days in question. However, the Respondent can state that all days in which the Respondent was absent from court in the year 1996 were pursuant to vacation, personal leave or documented medical illness.
- B. Again the complaint fails to state the specific days in question, but the Respondent can again aver that all days the Respondent was absent from court were pursuant to vacation, personal leave, or documented medical illness.
- C. Again the complaint fails to state the specific days in question, but the Respondent can once again aver that all days the Respondent was absent from court were pursuant to vacation, personal leave, or documented medical illness.
- D. Again the complaint fails to state the specific days in question, but the Respondent can again aver that all days the Respondent was absent from court were pursuant to vacation, personal leave, or documented medical illness.
- E. All time absent from court in these relevant time periods were pursuant to documented medical illness.

Respondent respectfully states that the conduct alleged in no way constitutes misconduct or violation of any canon of the Code of Judicial Ethics. The Respondent suffers from a medical condition which rendered the Respondent unable to perform his Judicial functions at the relevant times. Respondent did the ethical thing and abstained from functioning as a Judge in this impaired condition. When the Respondent believed he could ethically function in his capacity as a Judge, he immediately returned to work and did so. When it became apparent to Respondent his cognitive functioning was impaired by his medical condition to the degree he

could not competently perform his judicial functions, he immediately withdrew from performing or attempting to perform said functions, thereby comporting his conduct in accord with Canon One.

When Respondent accepted the medical fact he would never be able to competently perform his judicial functions, he filed for medical disability. This application is presently pending before the Commission on Judicial Performance.

COUNT TWO

A The Complaint fails to state the sixteen days in question for the years 1996,1997,1998 when it is alleged the Respondent taught or co-taught evening classes at Glendale University College of Law. Respondent can state that there were undoubtedly evenings when the Respondent was able to teach, but was unable to perform his judicial functions. The medical documentation furnished the Commissions delineates the fact that functioning as a Judge exacerbated the Respondent's medical condition. Furthermore, If Respondent's cognitive functioning impaired his ability to function as a Judge, it would not necessarily preclude functioning at a less stressful, less demanding activity, for example teaching. Furthermore, from documents furnishes Respondent by the Commission, Respondent's medical condition necessitated the rescheduling or in excess of sixteen classes at Glendale University College of Law. Respondent was able to teach the non stressful class at the Baldwin Park Citizens Academy.. This was done free of charge in an attempt to increase Community awareness of and respect for the Judiciary.. This was in response to the admonitions of our presiding judge and our Chief Justice to be involved in Community affairs.. Although the respondent was incapacitated from functioning in his judicial functions, he continued to perform any quasi judicial functions and did so when able including signing Probable Cause Determinations and Search Warrants. These functions were only performed when the Respondent felt confident of his ability to do so.

B.On each of the dates in question, there is medical documentation showing the incapacity of Respondent to competently perform his judicial functions. Although Respondent's medical condition precluded his performance of his judicial functions which would directly impact litigants' pecuniary or penal interests, it did not preclude his sitting for depositions on the dates in question. When queried, Respondent disclosed in the deposition his disability status from court and disclosed the fact that he was taking medication for his medical condition.

C.The Commission is in possession of documentation dated April 23, 1999 wherein the Respondent's treating physician, Dr. James Eshom requested permanent disability for the Respondent due to the debilitating medical condition of the Respondent. Respondent desperately desired to return to functioning as a Judge, but each attempt was met with failure as the symptoms were exacerbated and eventually Respondent was forced to file for permanent disability. The Respondent was urged to stay as physically and intellectually active as his condition permitted. He was also advised to seek another profession, as he was precluded from continuing in his functioning as a judge due to his medical impairment. Respondent therefore commenced a study of basic sciences to ascertain if the medical affliction would preclude these studies. Fortunately, the Respondent, with the aid of significant amounts of medication, was able to complete certain classes in basic sciences as delineated. I believe the Commission is in error as to the grades. It is Respondent's understanding that the only B received was in Physics II lab, not lecture. While Respondent's medical condition impaired his ability to function as a Judge, due to the necessity of taking pain medication and the exacerbation of symptoms while functioning as a Judge, they did not preclude sitting in class and taking notes, and taking tests.

All classes were scheduled on the week ends or evenings so as not to conflict in any manner with Respondent performing his judicial functions if medically competent to do so.

D. As previously stated, Respondent was informed he would not be able to return to functioning as a Judge. Although he vigorously resisted this, under medical advice, he explored alternative career paths. Respondent erroneously believed that while his medical condition would preclude his functioning as a Judge, that it would not impair his study of or practice of medicine. Respondent was proved categorically wrong. When he attempted the study of Medicine, the symptoms were so exacerbated that this futile endeavor had to be terminated after only two weeks.

Respondent took an examination offered by the College Level Examination Program one Saturday in November, 1999. This tested basic knowledge of Biology.

On November 29, 1999, Respondent was queried as to his health and as previously stated, Respondent believed he had no disability which would interfere with his study of or practice of Medicine. Again, as previously stated, Respondent was proven wrong.

In early December, Respondent retained Edward Moses, Esq. To process an application for permanent disability with the Commission on Judicial Performance. It was Respondent's understanding and belief that this was being processed. Accordingly, Respondent took all necessary steps to attempt to embark on a new occupation, specifically the study of Medicine at Ross University Medical School. Unfortunately this met with catastrophic results. The Respondent's symptoms were so exacerbated that this attempt had to be curtailed after two weeks. Respondent's disability was more severe than Respondent either realized or acknowledged. The dates contained in the Complaint seem to be correct in this well intentioned, but misguided effort by Respondent to remain productive and of service.

As evidenced by the foregoing, Respondent's conduct violated no Canon. Respondent was following Medical advice to remain as physically and intellectually active as possible. Respondent, while disabled from functioning as a Judge, attempted to maximize his cognitive functioning, productivity and service to the community. There is nothing in Respondent's conduct which violated any Canon. On the contrary, everything Respondent did was done with integrity and a determination to try to overcome his disabling condition.

COUNT THREE

A. In the conversation of January 22, 1999, Respondent did not exhibit a lack of candor nor did he fail to cooperate in the administration of court business. In this conversation, Respondent was explaining his medical condition to Judge Rolf Treu. Respondent is trained as a Registered Nurse and is quite facile with employing medical terminology. Judge Treu, lacking this training misconstrued what the Respondent was relaying to him. When Respondent ascertained Judge Treu's confusion, he offered to have his physician send a letter which would clarify Judge Treu's misunderstanding. Judge Treu declined this offer. This is nothing more than a misunderstanding on the part of Judge Treu which Respondent attempted to resolve, but whose offer was declined.

B. Again, this is nothing more than another misunderstanding. On March 26, 1999 Judge Treu was in possession of a medical certificate of disability dated March 9, 1999 and signed by Dr. James Eshom. This placed the Respondent off work for two months commencing March 9, 1999 and continuing through the week in question, to wit that of March 29, 1999. In the conversation alluded to Respondent informed Judge Treu that pursuant to the aforementioned disability slip, Respondent would be off work. Judge Treu asked what would be transpiring the next week and Respondent replied that he anticipated having more diagnostic tests performed. Since Respondent has an HMO, these tests were performed at a later date.

Respondent was not thinking about the previously scheduled deposition, so there was no mention of this. Respondent, while medically unable to function as a judge, as previously stated, was able to sit and answer questions in a deposition the following week.

This in no way impaired the administration of court business, Respondent was previously scheduled for disability as documented on March 9, 1999. The fact that tests were delayed in no way demonstrates a lack of cooperation on the part of Respondent

C. This is the most picayune issue the Respondent can imagine. In the first place, the commission is cognizant of the fact that no document whatsoever at Citrus Court mandates that a judge furnish a doctor's note. There is no requirement for this contained in any Citrus Court manual, rule, memoranda, internal guidance or any other document. The commission requested this of Judge Treu in a letter dated October 22, 1999 and were informed no such requirement is embodied in any Citrus Court document whatsoever. Even though no note is necessary, Respondent furnished numerous doctor notes and letters to Judge Treu documenting the Respondent's debilitated medical condition as well as continuous telephonic contact. For the time in question, Judge Treu was in fact furnished a doctor's note reading "No work x 2 wk 10/7-10/24. On 10/21/99 Respondent placed a call to Judge Treu informing him Respondent was placed off work by his doctor for another couple of weeks. Judge Treu has acknowledged receipt of this notification. On 11/1/99 Respondent again called Judge Treu advising him that his doctor has extended his disability through 11/14/99. This notification was acknowledged by Judge Treu as well. On November 12, Respondent again called Judge Treu notifying him that the Respondent was placed on disability until November 30, 1999. Again receipt of this notification was acknowledged by Judge Treu. Next, Judge Treu received a written doctors note reading "No work x 2 weeks 12/2/99.

In light of the foregoing, it is abundantly clear that Respondent consistently informed Judge Treu of his medical disability and fully complied with all mandates. In no way did Respondent's conduct of consistently informing Judge Treu of his medical disability exhibit a lack of candor or failure to cooperate in the administration of court business.

D. This is a specious allegation. There is no mandate that Respondent keep Judge Treu informed of his sojourns out of the city, state, or country. Respondent's responsibility was to keep him informed of his disability status which he scrupulously did.

E. This is another specious allegation. In the first place, it is evident that the Commission is cognizant that Respondent never received the ballot in question, or the phone calls, as Respondent was out of the country for two weeks. The Commission is well aware that Respondent was not at home at the time in question, it is therefore specious to allege a failure to cooperate when it is aware Respondent never received said correspondence.

What is even more distressing is that the Commission is insinuating an OBLIGATION to vote even when a judge wishes to abstain. Even if Respondent had received the ballot that was faxed, Respondent had no position on the matter in question and would have abstained. Nothing in Respondent's conduct manifests a lack of candor or a failure to cooperate in the administration of court business. On the contrary, everything in Respondent's behavior shows a consistent effort to fully cooperate with Judge Treu and the administration of court business.

COUNT FOUR

There is no merit whatsoever to the allegation that Respondent was malingering. On the contrary, Respondent's medical disability is adequately documented by Dr. Eshom, Dr. Tennant and Dr. Mc Cord, all doctors who evaluated and treated Respondent during the time in question. All of Respondent's medical absences have been irrefutably established

It should be noted that Respondent, in a spirit of cooperation willingly submitted to an Independent Medical Examination by a doctor chosen by the Commission. The Commission appointed Dr. Daniel Wallace who performed an extensive evaluation of Respondent including EKG and blood tests. His conclusion was that the Respondent is disabled. Of all doctors who have examined Respondent it is UNANIMOUS that the Respondent is disabled. There is no evidence whatsoever that Respondent was malingering. On the contrary, Respondent did everything possible to maintain his physical and mental functioning in a sincere effort to return to functioning as a Judge. Respondent contrary to medical advice made gallant efforts to return to functioning as a Judge, but the medical condition was so disabling that these attempts proved futile.

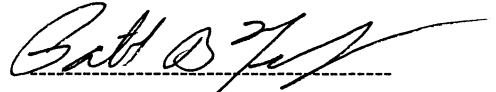
It should also be noted that Respondent worked diligently as a Judge. He would seek extra cases and extra assignments. He would be available at all hours of the day or night to sign Probable Cause Determinations or Search Warrants. He would lecture at citizen academies and lecture police agencies and organizations free of charge on his own time to further the respect for the Judiciary

All of Respondent's actions and conduct are totally incongruous and inimical to malingering. At no time did Respondent ever malingering. Every doctor concurs that Respondent was and is disabled from functioning as a Judge for all relevant times in question.

I declare under penalty of perjury that the foregoing is true and correct to the best of my understanding and belief.

Executed this 12 day of October, 2000 at Alhambra, California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my understanding and belief. Executed this 12 day of October, 2000 at Alhambra, California.



Patrick Bernard Murphy