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**Commission on
Judicial Performance**

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING JUDGE
JOSEPH W. O'FLAHERTY,**

No. 188.

**NOTICE OF FORMAL
PROCEEDINGS**

To Judge Joseph W. O'Flaherty, a judge of the Placer County Municipal Court from January 3, 1989 to June 29, 1998, and of the Placer County Superior Court from June 30, 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 in office, 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 December 8, 2008, you presided over the small claims matter of *Scott Herold v. Golden One Credit Union, et al.* (No. RSC13621), in which Mr. Herold claimed, among other things, that the credit union had interfered with his sale of a used car. Two employees of the credit union appeared on its behalf. During the proceeding, the employees made no allegations that Mr. Herold had harassed or threatened them at the credit union or elsewhere. At the end of the proceeding, you dismissed the case and Mr. Herold left the courtroom. The two credit union employees then expressed concerns that Mr. Herold was “going to come after” them. Based upon these statements, you instructed your bailiff to “bring that guy back,” which the bailiff did. No case was pending against Mr. Herold when you had him brought back to the courtroom.

After Mr. Herold was brought back into the courtroom, the following dialogue occurred:

COURT: All right. Now, I'm a little bit concerned about you. I think frankly, I'm going to put it bluntly. I think you've been abusing these people, and I don't like it. And these women are all three of you [sic] afraid of you. Now I'm going to tell you this. I'm not going to issue a formal restraining order which I have the right to do. If there's any contact between you and these three people, in the next few months, then I will issue a formal restraining order on the spot and you will have to pay the fees and if you violate that restraining order, then it's a criminal case. Do you understand that?

HEROLD: Yes, I do.

COURT: There is to be no contact with them.

HEROLD: I understand.

COURT: I really – after you left I did not like their reaction at all. For whatever reason, they – you've

made them afraid of you and I'm not going to have that. You understand?

HEROLD: I understand. I'm not a violent person.

COURT: You are to have no contact with them whatsoever. Whatever you've done and I've listened to this and bluntly, frankly, you're light years away from having a case against anybody. And I really didn't like – because I can gather from these three people, these two people are business people. Their job is to satisfy people. And you've gotten to the point that they're afraid of you. And frankly, that's not going to happen when I'm concerned. Do you understand that?

HEROLD I understand it, Your Honor.

COURT: Well, I hope you're right.

HEROLD: I'm also a customer of Golden One Credit Union too, so what does that mean, I can't do –

COURT: You will have no contact with any of these three people.

What do you want to do about that?

HEROLD: Does that mean I have to pull my accounts out of Golden One –

COURT: You don't want that, right?

FEMALE VOICE: Right. I think if he just stays away from our branch –

COURT: Stay away from their branch. You can have contact with other branches. Do you know which branch it is?

FEMALE VOICE: Roseville on Douglas Boulevard.

COURT: Are there other branches in the area?

FEMALE VOICE: Not in this area –

COURT: How about Sacramento?

FEMALE VOICE: There are branches in Sacramento and on the west side of Roseville.

COURT: Oh, okay. You will not have – what street are you on?

FEMALE VOICE: Santa Clara Drive.

COURT: You will not have any contact in the Santa Clara branch for at least the next 90 days. Do you understand that?

HEROLD: I understand that 100%.

COURT: All right. Good luck, sir.

HEROLD: Thank you very much.

Mr. Herold then left the courtroom.

The minutes of the proceeding and the Notice of Entry of Judgment each state that:

THE COURT MAKES THE FOLLOWING ORDERS: Golden One is dismissed from action. Plaintiff to have no contact with defendants or restraining order will be issued. Plaintiff to stay away from Santa Clara Drive branch for 90 days. (Underline in original.)

You issued this order based upon the post-proceeding remarks of the credit union employees, which were made out of Mr. Herold's presence. You issued the order without following applicable procedural requirements and without affording Mr. Herold notice or an opportunity to be heard.

Your conduct constituted an abuse of authority, embroilment and a denial of the right to notice and the opportunity to be heard, in violation of canon 1 (a judge shall uphold the integrity of the judiciary), canon 2A (a judge shall respect

and comply with the law), canon 3B(2) (a judge shall be faithful to the law), and canon 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding the right to be heard).

You were publicly admonished in 2004 for instructing prospective jurors in two criminal trials that they could lie to get out of jury duty if they thought they might be racially biased, conduct that manifested intentional disregard of the law, disregard of fundamental rights and abuse of judicial authority. (Inquiry Concerning Judge Joseph W. O'Flaherty, No. 171.)

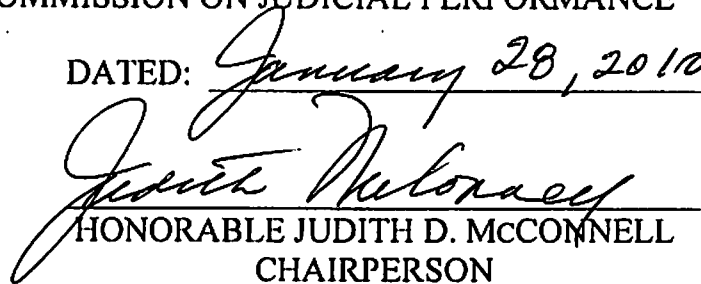
YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

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 the 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: January 28, 2010


HONORABLE JUDITH D. MCCONNELL
CHAIRPERSON

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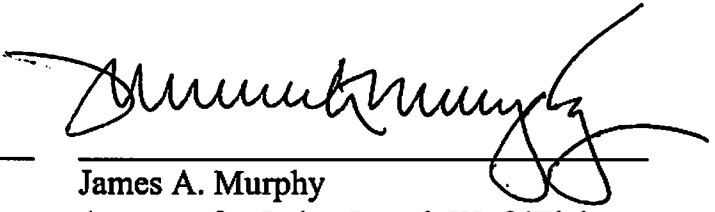
STATE OF CALIFORNIA
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JUDGE JOSEPH W. O'FLAHERTY,
NO. 188.

ACKNOWLEDGMENT OF SERVICE
OF THE NOTICE OF FORMAL
PROCEEDINGS

I, James A. Murphy, on behalf of my client, Judge Joseph W. O'Flaherty, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 188 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 O'Flaherty has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 2/2/10


James A. Murphy
Attorney for Judge Joseph W. O'Flaherty,
Respondent