

Ormsby called the woman forward and immediately remanded her to custody for whispering to her boyfriend in court. Judge Ormsby did not follow proper contempt procedures. Approximately one-half hour later, Judge Ormsby had the woman returned to court. She explained that her boyfriend had said something to her, and that she had told him that they should not talk. Judge Ormsby released her at that time.

3. On approximately February 13, 1990, Judge Ormsby ordered Rhonda Coulon, 90M00035, remanded for whispering in the courtroom. Judge Ormsby did not follow proper contempt procedures. Ms. Coulon was released later that day.

4. On the morning of February 21, 1990, Judge Ormsby ordered the defendant in People v. Gerardo Villaruel, 90M00215, remanded for whispering. Judge Ormsby had told Mr. Villaruel and two other men, in English, that no talking was allowed in court. About an hour later, one of the other men whispered in Mr. Villaruel's ear. Judge Ormsby called both men forward and ordered them remanded to custody without following proper contempt procedures. When counsel objected, Judge Ormsby refused to hear argument before calling the other cases on his calendar. When counsel was allowed to speak, counsel argued that due process required notice and a hearing before incarceration, and pointed out that Mr. Villaruel spoke Spanish. Judge Ormsby told counsel to present points and authorities on the afternoon calendar. In the afternoon, Judge Ormsby recalled the matter and released Mr. Villaruel.

5. On approximately February 20 or 21, 1990, Judge Ormsby ordered Ray Anderson, 90M01263, into custody for appearing to fall asleep in court. Judge Ormsby did not follow proper contempt procedures. Mr. Anderson was released later that day.

6. On occasion, when represented defendants who have failed to appear and have had bench warrants issued for their arrest later appeared in court, Judge Ormsby has refused to let counsel speak for them, stating that because bench warrants have been issued, they no longer have counsel.

7. In People v. Timothy Duffy, 89M03491, on January 10, 1990, the defendant appeared with counsel and was placed on probation upon condition that he serve either 30 days in jail or 90 days home arrest. The matter was continued for proof of acceptance into home arrest program. On February 22, 1990, the defendant appeared without his attorney of record and told Judge Ormsby that he was not in the home arrest program because he had been sentenced by another judge in another case to one year in jail. Judge Ormsby imposed the sentence of 30 days in jail, concurrent to the one year sentence, upon the defendant in the absence of his retained attorney, although Judge Ormsby knew that the defendant had counsel.

8. In People v. Charlie H. Mephram, 90M02273, Judge Ormsby told the defendant that the services of the public defender were for trials and that if he wanted diversion he could not have a public defender. Mr. Mephram appeared before Judge Ormsby on May 16, 1990, and stated that he was in a drug rehabilitation program. He apparently had been referred to the probation department for a diversion eligibility report before entering the program. Judge Ormsby noted that the case was on calendar for diversion eligibility and asked Mr. Mephram if he

wished to be placed on diversion. Mr. Mepham replied, “Actually, I’d like to have a public defender, your honor.” Judge Ormsby responded: “Public defender is for prosecution. I am going to place you on diversion. Once you are placed on diversion, you no longer have the public defender. The public defender is here in case you want to go to trial on this matter. Is that what you want to do is go to trial on the matter?” Mr. Mepham replied that he did not, and that he wished to submit a letter from the program and have the program considered as a diversion program. Judge Ormsby declined to place Mr. Mepham on diversion without a determination by the probation department that the program the defendant had entered was satisfactory, and referred the defendant to the probation department.

9. On February 9, 1993, in People v. Tonia Lynn Taylor, 93M09671, Judge Ormsby was rude and insulting to Deputy Public Defender David Marsh. In denying the defendant’s motion for appointment of a handwriting expert, Judge Ormsby referred to the written materials submitted by the defense as “garbage” and “weak and insipid.” In an opinion reversing Judge Ormsby’s ruling, the Court of Appeal for the Second Appellate District, Division Two, noted that proper judicial discretion must be exercised in conformity with the spirit of the law and stated, “Obviously, such a spirit is lacking when the court itself engages in conduct violative of our Code of Judicial Conduct which requires that ‘...a judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in an official capacity....’”

10. On January 11, 1993, in People v. James Bishara, 92M10291, Judge Ormsby made insulting and disparaging comments to Deputy Public Defender David Marsh. Mr. Marsh requested a continuance to investigate the case further in order to determine whether to request appointment of a fingerprint expert. Judge Ormsby stated several times, in an insulting manner, that Mr. Marsh’s theory of the case was nonsensical and ridiculous, or words to that effect. Approximately ten other defendants represented by Mr. Marsh were present in court and witnessed Judge Ormsby’s disparagement of Mr. Marsh.

11. On December 10, 1992, in People v. Grisham, 92M05977, Judge Ormsby made insulting remarks to Deputy Public Defender David Marsh. In denying a motion to suppress under Penal Code section 1538.5 brought by Mr. Marsh, Judge Ormsby characterized Mr. Marsh’s theory as “marshmallow.” Judge Ormsby employed a mocking tone in his statements.

12. On December 17, 1992, in the case of People v. Morin, Judge Ormsby reacted angrily to Deputy Public Defender David Marsh when he requested that Judge Ormsby address the issue of whether or not the defendant could travel to Mexico while released from custody pending trial.

13. On June 10, 1993, in the case of People v. Fuller, case no. 92M09152, Judge Ormsby suggested that Deputy District Attorney William Thomas might have committed misconduct by asking to interview the wife of a defendant before she testified at trial. When Mr. Thomas stated that if Judge Ormsby believed he had committed misconduct it would be appropriate to refer the matter to the State Bar, Judge Ormsby replied that, “I don’t think because of your inexperience or because of your ignorance that I will do that.”

14. On July 28, 1994, defendant Robert Lowery appeared before Judge Ormsby unrepresented for arraignment on theft charges. Mr. Lowery told Judge Ormsby that he was unemployed and attending school. Judge Ormsby forced him into an unnecessary colloquy regarding what he was learning in school. Judge Ormsby questioned him in a manner which was demeaning, visibly embarrassing Mr. Lowery in open court.

15. On occasion, Judge Ormsby put inordinate pressure on prosecutors to offer dispositions and on defendants to enter guilty pleas. On other occasions, Judge Ormsby engaged in conduct which appeared aimed at avoiding conducting preliminary hearings in cases which involve multiple counts or multiple defendants. In such cases, Judge Ormsby pressured defendants to waive preliminary hearings and prosecutors to offer dispositions.

16. On occasion, when defendants scheduled to appear in court for pretrial conferences were late, Judge Ormsby ordered them remanded to custody upon their arrival in court; Judge Ormsby then advised that if the defendant was willing to plead guilty he would be released that day, but if the defendant wished a trial, the trial would be set within thirty days and the defendant kept in custody until trial.

17. In the summer of 1994, an in-custody defendant was offered an opportunity to plead guilty for credit for time served; when the defendant refused the offer and opted for a jury trial, Judge Ormsby stated that he would proceed with jury selection that day (a Tuesday) and then recess the trial until the following Monday, with the defendant to remain in custody.

18. On December 17, 1992, Judge Ormsby criticized Deputy Public Defender David Marsh for filing motions to suppress under Penal Code section 1538.5. Judge Ormsby stated that the question of standing was going to come up, whether or not it was raised by the People. On February 4, 1993, in the case of People v. Cervantes, case no. 92M08973, Judge Ormsby sua sponte refused to allow David Marsh to call witnesses on the issue of standing in a motion to suppress under Penal Code section 1538.5. The appellate department of the superior court found this to be reversible error.

19. In People v. Yvonne R. Cleveland, 89M09659, at a jury trial held in 1990, Judge Ormsby refused to allow a defendant charged with battery to call a police officer to testify about an inconsistent statement he heard the alleged victim make at the time of the incident.

20. Judge Ormsby refused to accept written or oral Tahl waivers in the driving under the influence case of People v. Tai, 92M04129, in which the defendant entered a guilty plea on January 4, 1994. When the prosecutor pointed out that it was necessary that waivers be in the record in order for the conviction to be used as a prior conviction in any subsequent proceedings, Judge Ormsby indicated that he did not care.

21. Judge Ormsby frequently and arbitrarily dismissed misdemeanor cases on the day set for trial if the prosecution was unable to proceed that day, without giving consideration to the

prosecution's requests to trail the cases within the 10-day grace period set forth in Penal Code section 1382. Judge Ormsby stopped dismissing cases under these circumstances in 1994.

22. On or about February 27, 1990, Judge Ormsby remanded Edgar Poz, 89M09497, for being late to court without giving him or Michael Russo, the deputy public defender representing him, an opportunity to explain his tardiness. Believing that Mr. Russo had made inconsistent statements about when he had seen Mr. Poz in court that morning, and confusing Mr. Poz with another defendant, Judge Ormsby refused to hear from Mr. Russo or Mr. Poz as to why Mr. Poz was late. Judge Ormsby rudely cut off Mr. Russo when he attempted to speak, stated that he was not concerned with what his understanding was because he had been wrong on things before, and directed him to sit down. Mr. Russo filed an affidavit pursuant to Code of Civil Procedure section 170.6. Judge Ormsby continued the case to the following day before another judge, rather than transferring it immediately to another judge. Mr. Russo was able to have the case called by another judge on February 27; and Mr. Poz was released on the original bail amount.

23. On May 9, 1989, Deputy Public Defender Fred Brennan appeared before Judge Ormsby in the case of People v. Seller, 89M01068. Mr. Brennan and the prosecution had agreed upon a proposed disposition of the matter, which was presented to Judge Ormsby. Judge Ormsby rejected the proposed settlement and, without request from the defendant, gave an indicated sentence should the defendant plead guilty. Mr. Brennan asked that the case be set for trial and orally moved to disqualify Judge Ormsby under Code of Civil Procedure section 170.6. The case was continued to July 11, 1989. On the same day, May 9, 1989, Mr. Brennan executed a written affidavit pursuant to Code of Civil Procedure section 170.6. The affidavit was accidentally dated May 5, 1989. When the case came before Judge Ormsby on July 11, 1989, Mr. Brennan reminded Judge Ormsby that he had challenged him pursuant to Code of Civil Procedure section 170.6, and stated that an affidavit had been filed on May 9, 1989. Judge Ormsby stated that the challenge was untimely because it was made after he gave an indicated sentence. Mr. Brennan requested a continuance to seek appellate review of Judge Ormsby's order. Judge Ormsby denied this request without prejudice, and continued the case to July 12, 1989. Thereafter, Judge Ormsby's clerk told Mr. Brennan that the affidavit was not in the court file. Mr. Brennan checked his files and found that the affidavit he had executed was still there; he immediately filed it with the clerk. On July 12, 1989, Judge Ormsby accused Mr. Brennan on the record of unethical conduct, stating that Mr. Brennan had engaged in "forum shopping" by attempting to disqualify him after he gave an indicated sentence. Judge Ormsby also accused Mr. Brennan of committing a fraud on the court by representing that the affidavit had been filed on May 9 when it had not been, and stated that the written affidavit had been back dated. Judge Ormsby then denied the disqualification motion, but recused himself from further proceedings in the case. Thereafter, without giving Mr. Brennan an opportunity to respond, Judge Ormsby stated his intention to refer Mr. Brennan to the State Bar and ordered Mr. Brennan "not to appear in my courtroom again, either as public or private counsel." On July 13, 1989, Mr. Brennan's supervisor, Deputy Public Defender Alvin Nierenberg, went to Judge Ormsby to attempt to clarify the situation. Mr. Nierenberg made comments in defense of Mr. Brennan. Judge Ormsby said that if Mr. Brennan was in court when he took the bench, he would warn him to leave and then have him arrested if he did not. Judge Ormsby said, ". . . if I come out and he is in my court, I will give him warning that he is not to be here; and if he does not leave, I will have my

bailiff arrest him, take him into custody and I will begin contempt proceedings against him because it will be a direct contempt.” When Mr. Nierenberg asked the basis of the contempt, Judge Ormsby declined to state one. When Mr. Nierenberg attempted to discuss the matter further, Judge Ormsby stated that the record was closed, ordered everything further to be off the record, and ordered Mr. Nierenberg physically removed from the courtroom. The appellate department of the superior court granted a writ preventing enforcement of Judge Ormsby’s order barring Mr. Brennan from his courtroom. The State Bar found insufficient evidence that Mr. Brennan had engaged in impropriety.

24. On February 23, 1994, Judge Ormsby unnecessarily threatened Deputy Public Defender Lois Bruton with contempt. Ms. Bruton had conferred with her in-custody clients in the court’s holding cell instead of conferring with three out-of-custody clients, whose cases Judge Ormsby wished to resolve that morning. Judge Ormsby chastised Ms. Bruton for this, and then attempted to appoint alternate counsel for a defendant appearing for arraignment, although the public defender had not declared a conflict. When Ms. Bruton attempted to make a record that there was no conflict and that the public defender was prepared to represent the defendant, Judge Ormsby threatened her with contempt.

25. On December 13, 1993, the defendant in People v. Alonzo Harris, 93M09733, appeared before Judge Ormsby on time and advised that he had not been able to get to the public defender’s office to be interviewed as Judge Ormsby had directed. Judge Ormsby remanded Mr. Harris to custody. The prosecutor agreed to dispose of the matter for a \$300 fine and penalty assessment. Judge Ormsby refused to accept the disposition at that time and continued the matter to the following day, with the defendant to remain in custody, “to see how he’s going to pay the fine.” On December 14, 1993, Judge Ormsby questioned Mr. Harris about when he had last worked and why he could not find work. Judge Ormsby then refused to give Mr. Harris credit against the fine for time spent in custody on the ground that his failure to go to the public defender’s office was “worth the two days in county jail.” Judge Ormsby also stated that because bail was set and the defendant could not make bail, the time he served in custody would be in addition to the fine.

26. None of the acts by Judge Ormsby, described above, involved personal corruption or gain. Judge Ormsby has acknowledged his mistakes and appears to have significantly improved his judicial conduct. A medical condition may have contributed to some of the conduct described above.

Conclusions of Law

The commission has independently reviewed the facts set forth above, and reached the following conclusion of law: Judge Ormsby’s conduct constituted wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Discipline

The stipulated facts warrant discipline, and could warrant removal from office. In the present case, however, the commission is persuaded that Judge Ormsby--having admitted his misconduct--is genuinely repentant and is unlikely to resume the conduct.

In reaching an agreement to terminate these proceedings and withdraw it from the Special Masters, the commission advised Judge Ormsby that it would not recommend or impose any discipline more severe than that of a severe public censure. Judge Ormsby further agreed that this order would be effective when entered; he has waived any right to further review.

The commission concludes that the appropriate discipline is a severe public censure. The commission vote was six to zero.

ORDER

For the reasons set forth herein, the commission orders that Judge William M. Ormsby be, and he hereby is, issued a severe public censure.

Dated: March 20, 1996

William A. Masterson
Chairperson