STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

| INQUIRY CONCERNING A JUDGE<br>No. 133, | SECOND AMENDED NOTICE OF FORMAL PROCEEDINGS |
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To JUDGE WILLIAM M. ORMSBY, a judge of the Los Angeles Municipal Court, Inglewood Judicial District, from July 17, 1981, to the present, and at all relevant times therein:

Preliminary investigation pursuant to California Rules of Court, rules 904 and 904.2, 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, improper action, and dereliction of duty within the meaning of Article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge, to wit:

## COUNT ONE

You have improperly remanded to custody individuals present in your courtroom, for conduct such as talking and sleeping, without following proper contempt procedures. This conduct is exemplified by, but not limited to, the following:

a. In approximately February of 1994, you remanded to custody the girlfriend of a defendant charged with gun possession who had accompanied the defendant to court. You called the woman forward and immediately remanded her to custody for whispering to her boyfriend in court. You did not follow proper contempt procedures. Later that day, you 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. You released her at that time.

b. On approximately February 13, 1990, you ordered Rhonda Coulon, 90MOO035, remanded for whispering in the courtroom. You did not follow proper contempt procedures.

c. On the morning of February 21, 1990, you ordered the defendant in *People v. Gerardo Villaruel,* 90MOO215, remanded for whispering. You 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. You called both men forward and ordered them remanded to custody without following proper contempt procedures. When counsel objected, you shouted counsel down and refused to hear argument before calling the other cases on your 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. You told counsel to present points and authorities on the afternoon calendar. In the afternoon, you recalled the matter and released Mr. Villaruel.

d. On approximately February 20 or 21, 1990, you ordered Ray Anderson, 90MO1263, into custody for appearing to fall asleep in court. You did not follow proper contempt procedures.

## COUNT TWO

You have denied represented defendants their right to counsel. This conduct is exemplified by, but not limited to, the following:

a. When represented defendants who have failed to appear and have had bench warrants issued for their arrest later appear in court, you have refused to let counsel speak for them, stating that because bench warrants have been issued, they no longer have counsel.

b. In *People v. Timothy Duffy*, 89MO3491, on February 22, 1990, you sentenced the defendant to a jail term in the absence of his retained attorney, although you knew that the defendant had counsel.

## COUNT THREE

You have denied counsel to defendants entitled to counsel. This conduct is exemplified by, but not limited to, the case of *People v. Charlie H. Mepham*, 90 M02273, in which you 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. Mepham appeared before you 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. You noted that the case was on calendar for diversion eligibility and asked Mr. Mepham if he wished to be placed on diversion. Mr. Mepham replied, "Actually, I'd like to have a public defender, your honor." You 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. You 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.

## COUNT FOUR

You have been rude and abusive toward individuals appearing before you. This conduct is exemplified by, but not limited to, the following:

a. On February 9, 1993, in *People v. Tonia Lynn Taylor*, 93MO9671, you were rude and insulting to Deputy Public Defender David Marsh. In denying the defendant's motion for appointment of a handwriting expert, you referred to the written materials submitted by the defense as "garbage" and "weak and insipid." In an opinion reversing your 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....'"

b. On January 11, 1993, in *People v. James Bishara*, 92MlO291, you 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. You 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 your disparagement of Mr. Marsh.

c. On December 10, 1992, in *People v. Grisham*, 92MO5977, you 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, you characterized Mr. Marsh's theory as "marshmallow." You employed a mocking tone in your statements.

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

e. For a brief period in 1993, you were rude and abusive to Deputy District Attorney Bill Thomas when he was assigned to your courtroom. This conduct is exemplified by, but not limited to, an incident, on June 10, 1993, in the case of *People v. Fuller*, case no. 92M09152, in which you suggested that Mr. 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 you believed he had committed misconduct it would be appropriate to refer the matter to the State Bar, you replied that, I don't think because of your inexperience or because of your ignorance that I will do that."

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

## COUNT FIVE

You have regularly engaged in conduct which appears designed to avoid conducting jury trials. For example, you put inordinate pressure on prosecutors to offer dispositions and on defendants to enter guilty pleas, and you delayed having jurors called into the courtroom. You also have engaged in conduct which appears aimed at avoiding conducting preliminary hearings in cases which involve multiple counts or multiple defendants. In such cases, you have pressured defendants to waive preliminary hearings and have pressured prosecutors to offer dispositions.

## COUNT SIX

You have engaged in conduct which appeared designed to discourage defendants from exercising their right to trial and designed to coerce guilty pleas in criminal cases. This conduct is exemplified by, but not limited to, the following:

a. During the period of 1990 through 1994, when defendants scheduled to appear in court for pretrial conferences were late, you frequently ordered them remanded to custody upon their arrival in court; you then advised that if the defendant is willing to plead guilty he could 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.

b. 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, you stated that you 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.

## COUNT SEVEN

You have improperly prohibited the presentation of witness testimony in matters before you and displayed a lack of impartiality. This conduct is exemplified by, but not limited to, the following:

a. On December 17, 1992, you criticized Deputy Public Defender David Marsh for filing motions to suppress under Penal Code section 1538.5. You 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. 92MO8973, you 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.

b. In *People v. Yvonne R. Cleveland*, 89MO9659, at a jury trial held in 1990, you 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.

## COUNT EIGHT

You refused to accept written or oral *Tahl* waivers in the driving under the influence case of *People v. Tai*, 92 M04129, 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, you said that you did not care.

## COUNT NINE

You have failed to follow the law and abused your authority with respect to the dismissal of criminal cases. This conduct is exemplified by, but not limited to, the following:

You have frequently and arbitrarily dismissed misdemeanor cases on the day set for trial if the prosecution is 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.

## COUNT TEN

On or about February 27, 1990, you remanded Edgar Poz, 89MO9497, for being late to court without giving him or Michael Russo, the deputy public defender representing him, an opportunity to explain the 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, you refused to hear from Mr. Russo or Mr. Poz as to why Mr. Poz was late. You rudely cut off Mr. Russo when he attempted to speak, stated that you were 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. You 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; Mr. Poz was released on his own recognizance.

## COUNT ELEVEN

You abused your judicial authority by attempting to banish an attorney from your courtroom and making an improper threat of contempt in connection with the following incident:

On May 9, 1989, Deputy Public Defender Fred Brennan appeared before you in the case of *People v. Seller*, 89MO1068. Mr. Brennan and the prosecution had agreed upon a proposed disposition of the matter, which was presented to you. You 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 you 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 you on July 11, 1989, Mr. Brennan reminded you that he had challenged you pursuant to Code of Civil Procedure Section 170.6, and stated that an affidavit had been filed on May 9, 1989. You stated that the challenge was untimely because it was made after you gave an indicated sentence. Mr. Brennan requested a continuance to seek appellate review of your order. You denied this request without prejudice, and continued the case to July 12, 1989. Thereafter, your 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, you accused Mr. Brennan on the record of unethical conduct, stating that Mr. Brennan had engaged in "forum shopping" by attempting to disqualify you after you gave an indicated sentence. You 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.

You then denied the disqualification motion, but recused yourself from further proceedings in the case. Thereafter, without giving Mr. Brennan an opportunity to respond, you stated your 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 you to attempt to clarify the situation. Mr. Nierenberg made comments in defense of Mr. Brennan. You said that if Mr. Brennan was in court when you took the bench, you would warn him to leave and then have him arrested if he did not. You 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, you declined to state one. When Mr. Nierenberg attempted to discuss the matter further, you 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 your order barring Mr. Brennan from your courtroom. The State Bar found that Mr. Brennan had engaged in no impropriety.

## COUNT TWELVE

On February 23, 1994, you abused your judicial authority by improperly threatening 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 you wished to resolve that morning. You 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, you threatened her with contempt.

## COUNT THIRTEEN

On December 13, 1993, the defendant in *People v. Alonzo Harris*, 93MO9733, appeared before you on time and advised that he had not been able to get to the public defender's office to be interviewed as you had directed. You remanded Mr. Harris to custody. The prosecutor agreed to dispose of the matter for a $300 fine and penalty assessment. You 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, you questioned Mr. Harris about when he had last worked and why he could not find work. You 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." You 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. You asked defense counsel, Deputy

Public Defender Cynthia Kairys, whether Mr. Harris was certain that he wanted the proposed disposition, mentioning that Ms. Kairys had wanted to file an appeal as to a sentence after a defendant had been sentenced following a guilty plea in a different case.

YOU ARE HEREBY GIVEN NOTICE, pursuant to California Rules of Court, rule 905, that formal proceedings have been instituted and shall proceed in accordance with California Rules of Court, rules 901-922.

Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to the charges against you within fifteen (15) days after service of this notice upon you. An original and eleven (11) legible copies of the answer may be filed with the Commission on Judicial Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. 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 California Rules of Court, rule 911.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: 11/16/95

CHAIRPERSON

Justice, Ct of Appeal