

## **PUBLIC ADMONISHMENT OF JUDGE JAMES M. PETRUCELLI**

The Commission on Judicial Performance has ordered Judge James M. Petrucelli publicly admonished pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

### STATEMENT OF FACTS AND REASONS

Judge Petrucelli has been a judge of the Fresno County Superior Court since 1999. His current term began in January 2005.

Judge Petrucelli was the presiding judge of the Fresno Family Law Division from approximately 2000 through January 2006. In January 2006, he was assigned to the Coalinga courthouse, where he hears traffic matters on certain days of the week. While assigned to those courts, Judge Petrucelli engaged in a pattern of conduct that is inconsistent with canon 3B(4) of the California Code of Judicial Ethics, which requires a judge to be patient, dignified, and courteous with persons with whom the judge deals in an official capacity. The judge's conduct included making discourteous and sarcastic comments to attorneys and litigants appearing before him. This conduct is exemplified by the following:

#### **A. Conduct in Family Law**

##### *1. Silva v. Berboa*, case No. 556885-2

On September 26, 2005, attorneys Brian Tatarian and Paul Lerandeau appeared before Judge Petrucelli on a matter in which they wanted to put a stipulation on the record. On a form the clerk uses to locate files, Mr. Tatarian wrote the calendar line item number rather than the case number. The judge called "Tatarian and Lerandeau's cases," reminded them that they needed to write the case number, then called a case that was not theirs. When Mr. Tatarian said that the case called was not theirs, the judge responded, "That's because you didn't bother to write the case number on there. You'll go to the bottom of the line." The judge handled one other stipulation before calling Mr. Tatarian's case a few minutes later.

When Mr. Tatarian's case was called, he said that the "green sheet" should have listed their case as number 2, and that he "was sorry the court had a hard time finding out what the case number was." Judge Petrucelli responded angrily in an elevated tone of voice, as follows:

Well, you know the circumstances. Mr. Tatarian, don't chastise the court, and then esteem that you can talk over the court. I have asked and I have requested many times from you and other attorneys, it says case number. It does not say number 2, Mr. Tatarian, it says case number. So don't think that you can stand there and chastise the court because you write a two on there. Okay? Yes, the court is very busy today. This is a hectic day, and your lack of cooperation is not assisting. And if you think you can

talk over me once you've chastised the court, you're wrong, Mr. Tatarian, fair enough? Now, if you'd like to proceed, fine; if not, you can take a break and cool off. What's your preference, Mr. Tatarian?

The tone and content of the judge's response did not comport with canon 3B(4).

2. *Kaddomi v. Kaddomi*, case No. 01CEFL03817

On June 9, 2005, Judge Petrucelli presided over a hearing regarding visitation. Attorney Linda Richardson represented the mother. The father, who lived out of the country, was seeking an unsupervised visit with the minor children. After Ms. Richardson took a position with which the judge disagreed, he stated words to the effect of, "If your client persists in this behavior, I will do everything in my power to see that custody is taken away from her."

This comment violated canon 3B(4) and reflects embroilment.

3. *Jackson v. Jackson*, case No. 00CEFL10657

On January 24, 2005, attorney Beth Best made an oral motion to disqualify Judge Petrucelli pursuant to Code of Civil Procedure section 170.6, which the judge denied as untimely. Ms. Best asserted that it was not untimely, and Judge Petrucelli told her that she could provide a written motion and then he would make a ruling, "since you believe that you are more correct than I am, Ms. Best." She responded that she would file it under Code of Civil Procedure section 170.1, "actual prejudice," and because of "non-disclosure to the parties of our history," by which she was referring to the fact that the judge was presiding over her divorce proceedings. The judge became embroiled and made a number of comments in violation of canon 3B(4), as follows:

Judge: Ms. Best, you certainly -- you certainly don't want to go there. You are still a litigant in front of me, Ms. Best.

Best: That's true, Your Honor.

Judge: And you have previously waived any conflict. I have made a perfect record of this in the past, Ms. Best, that I have asked you if you wanted me to sit on your cases, because I knew this was going to be a problem. Your conduct is deplorable and I am insulted by it at this juncture. So you bring whatever motion you need to bring appropriately, but I have asked you previously if you wanted me to sit on your cases, because you said, and I quote, "that it would be prejudicial to my clients if I let my case come in the way of their rulings." Now, Ms. Best, that's what the record would reflect. If you want to bring a motion, you bring that, but you make sure you include a transcript of that hearing where I initially said

that the very first time you appeared in front of me, because I was more than willing to disqualify myself on all of your cases until your matter was resolved. Do you remember that, Ms. Best?

Best: You actually were in the process of doing that and then began hearing my cases again.

Judge: That is not correct, Ms. Best.

Best: That is correct and I do have your transcripts. I also have several other transcripts that have you –

Judge: Ms. Best, your conduct in court today is amazing to me. Your conduct with these two litigants in the settlement conference that I was part of is amazing to me. These two people are trying to get their life on track. These two people could do much better without you today. I will disqualify myself on this case. I certainly hope that these two people can talk in spite of you, and settle their minor differences because you have caused them a lot of grief today, Ms. Best. Yes, I will disqualify myself. I will disqualify myself pursuant to 170.1 and furthermore, I will disqualify myself on all of your cases, Ms. Best, because I think you are not an appropriate counsel for people in this situation. These people could have settled this case today. You were the party that caused this case not to be settled today even with my assistance. So, good luck to you, Ms. Best.

While making the comments set forth above, the judge intermittently used a loud, angry and abrasive tone of voice.

The comments regarding Ms. Best's representation improperly disparaged the attorney in front of her clients, and were demeaning and belittling. Those comments, and the comment that he would "disqualify myself on all of your cases . . . because I think you are not an appropriate counsel for people in this situation," were gratuitous and an improper response to an attempt to disqualify him. (See Pub. Adm. of Judge Howard Broadman, No. 19 (Feb. 26, 1999), p. 11.)

#### 4. *Woods v. Woods*, case No. 497721-8

On September 13, 2004, Judge Petrucelli presided over a hearing regarding custody modification. Both parents were present and represented by counsel. At one point when the attorneys were arguing as to whether one attorney had prevented the father from communicating directly with the mother, the judge said, "I wonder how well these parents would do without their lawyers."

The comment improperly disparaged the attorneys in front of their clients, and was demeaning and belittling to the attorneys. It violated canon 3B(4), which requires a judge to treat those appearing before him with patience, dignity, and courtesy.

#### 5. *Tovsrud v. Tovsrud*, case No. 03CEFL04171

On September 13, 2004, Judge Petrucelli presided over a hearing regarding spousal support. The wife was represented by counsel and the husband appeared in propria persona. The wife was seeking to have an agreement regarding spousal support set aside on grounds of duress. Her former husband, Mr. Tovsrud, was sworn in as a witness and questioned by the judge. The hearing lasted about 45 minutes. As set forth below, Judge Petrucelli made several comments that did not comport with his obligations of patience and courtesy under canon 3B(4).

Near the outset of the hearing, after questioning Mr. Tovsrud, the judge asked him to go ahead and say what he wanted to say. Mr. Tovsrud responded, "Sir?" Judge Petrucelli then said, "Is there a language problem here?" in a loud and angry tone of voice.

According to information presented at the hearing, the litigants had divorced after a long marriage following Mr. Tovsrud's affair with a translator while the Tovsruks were working as missionaries in Mongolia. At the time of the hearing, Mr. Tovsrud apparently was married to the Mongolian woman with whom he had had the affair, and had returned to his former occupation of selling cars. He testified that he was earning about \$36,000 per year.

During the hearing, Mr. Tovsrud testified in a rambling fashion about various matters, including the affair. In expressing confusion as to what Mr. Tovsrud was saying was the cause of the affair, the judge referred to the possibility that "it was cold and so you needed someone to stay warm with." This comment was gratuitous and sarcastic.

Later, the judge asked Mr. Tovsrud whether he had anything to add specifically about the support issue. Before he had a chance to respond, Judge Petrucelli said, "You've got to be the lowest car salesman ... maybe you ought to consider doing something else. I mean, I don't know of anybody that makes \$40,000 selling cars." These comments were belittling.

Shortly thereafter, Mr. Tovsrud commented that he was "not that employable." The judge first reassured him that he was, and that he could be a great salesman. The judge then added, "You've got a new, young wife apparently. That's wonderful. Is it the Mongolian lady I hope .... Did she make it back? ... Okay ... so she made it to America. I hope you're happy. That's wonderful. We should all be happy. So, anything else you want to tell me about the support issue?" The comments about Mr. Tovsrud's new wife appeared to be sarcastic.

#### 6. Chambers argument

On July 25, 2002, Judge Petrucelli and attorney Rodney Rusca were discussing a family law matter in chambers during a break in the hearing. Another attorney was also present. The judge became involved in a heated argument with Mr. Rusca that lasted for approximately five

minutes; the judge's voice was raised to such an extent that he was yelling. This conduct evidences a lack of decorum and a lack of patience and courtesy toward those appearing before the judge, contrary to the requirements of canon 3B(4).

## **B. Conduct in Traffic Court**

### 1. Comments to CHP officers

On February 21, 2006, California Highway Patrol (CHP) Officer Trejo had been subpoenaed to testify in certain traffic matters, but was not present in court when called. The following exchange occurred:

Court: Okay, let's get Officer Trejo up here. Officer Trejo?

Unidentified Officer: Officer Trejo has a DUI trial in Fresno today.

Court: He did? ... So I have a question. Does somebody in your office set priorities on these things? He's got a subpoena here, there's a subpoena there.

Unidentified Officer: I don't know, Your Honor.

Court: You don't know anything? Do you have a sergeant here? I'm having lunch with your commander. He wants to meet me. I've got a mouthful for him already here.

A CHP officer told Judge Petrucelli that Officer Trejo was now assigned to the Fresno office. The judge made the following remarks:

Judge: ... So let me see if I understand this. Somebody gets transferred and just ignores the subpoena, that's it? How does that work, does anybody know? I'm asking, does anybody know?

Officer: I was transferred, but I'm here. Your Honor. I think he thought a DUI was more important.

Judge: Than speeding over 100?

The judge later told a defendant that he was going to dismiss her case because the officer wasn't there, stating: "You got lucky. You won the lottery. Officer Trejo doesn't think this is important, so you go ahead and go."

The judge also dismissed the speeding case of another defendant because Officer Trejo was not present and said to the waiting CHP officers, "This is another over 100, so you can let

your supervisors know.” When the defendant thanked the judge, the judge said, “Don’t thank me, thank Officer Trejo.”

Judge Petrucelli’s remarks to the CHP officers about Officer Trejo’s absence were disparaging to Officer Trejo and discourteous to the CHP officers who were there to testify, contrary to canon 3B(4). The judge’s remarks also created the appearance of a lack of impartiality by publicly indicating that he was attempting to ensure the presence of officers to testify for the prosecution; this contravenes canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the impartiality of the judiciary.

## 2. *Tsang*

On February 14, 2006, defendant Tsang appeared before Judge Petrucelli on a charge of speeding over 100 miles per hour. Ms. Tsang said that she wanted to “plead guilty with an explanation.” At one point during the following discussion, Ms. Tsang said, “Well –” and the judge interrupted with, “What could you possibly explain, that you think the radar was wrong or what? The fine is going up by the minute, so you understand. I mean, just tell me what you think you could possibly say to make me lower the fine?” By threatening that the fine was “going up by the minute” if Ms. Tsang were to speak, the judge created the appearance that he was improperly trying to discourage the litigant from speaking before she was sentenced. The comment is also inconsistent with canon 3B(4).

## 3. *Alvarenga*

Judge Petrucelli presided over this trial for speeding on February 7, 2006. The CHP officer testified that Mr. Alvarenga was driving his tomato truck 74 miles per hour as determined by radar. The judge said to Mr. Alvarenga that he did not see how he was going to talk him out of going by the radar, then said to him, “If you want to try and embarrass yourself by telling me that you weren’t going 74, I guess you are more than welcome to, but go ahead.”

That comment created the appearance that Judge Petrucelli was improperly trying to discourage the litigant from arguing his case and is inconsistent with the judge’s obligations under canon 3B(4).

## 4. *Baracas*

On February 7, 2006, defendant Baracas appeared before Judge Petrucelli for a trial on a charge of speeding over 100 miles per hour. After the CHP officer testified, the judge addressed Mr. Baracas. At one point Judge Petrucelli said to Mr. Baracas, referring to the CHP officer, “I have another question for you. How is it that you didn’t notice him in your back window? They drive those really funny looking cars, you know, they’re different colors. Usually they have lights on top – .” After the defendant responded, the judge asked, “Didn’t you notice that his car was keeping up with you? See, that rear view mirror is for something besides fixing your hair and stuff, you know.”

These comments were demeaning to the litigant and are contrary to canon 3B(4).

The commission found that Judge Petrucelli has engaged in a pattern of making comments that are discourteous, sarcastic or demeaning to those appearing before him. Such remarks toward a litigant or counsel are not consistent with the conduct required by canon 3B(4). (See, e.g., *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 323-327 [demeaning, rude, impatient and abusive behavior toward counsel]; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 703 [deliberate ridiculing of attorneys].)

In determining that a public admonishment was appropriate, the commission noted that Judge Petrucelli received an advisory letter in 2001 and in 2002. The 2001 advisory concerned the judge's response to the filing of a peremptory challenge; the judge assigned the case to a series of family law commissioners rather than sending it back to the master calendar, and disparaged the attorney and his client for exercising the right to refuse to stipulate to a commissioner and peremptorily challenge a judge. The 2002 advisory concerned his practice regarding disqualification and disclosure as to an attorney employed by his former law firm, and an incident in which he raised his voice at county employees who had inadvertently deleted certain Internet folders while installing new software on his chambers computer, and accused them of calling him a "liar."

Commission members Mr. Marshall B. Grossman, Hon. Frederick P. Horn., Hon. Katherine Feinstein, Mr. Michael A. Kahn, Hon. Judith D. McConnell, Ms. Patricia Miller, Mr. Jose C. Miramontes, Ms. Barbara Schraeger and Mr. Lawrence Simi voted to impose a public admonishment. There are two vacancies on the commission.

Dated: May 22, 2007.