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COMMISSION ON
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STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JAMES PETRUCELLI

NO. 193

VERIFIED ANSWER OF JUDGE
JAMES PETRUCELLI TO
NOTICE OF FORMAL
PROCEEDINGS

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The Honorable James Petrucelli responds to the Notice of Formal Proceedings now pending before the Commission on Judicial Performance as follows:

1. Judge Petrucelli admits that on the morning of Saturday, July 13, 2013, he abused his authority by affirming to a correctional officer that he would like someone with whom he was acquainted socially, Jay Ghazal, released on his own recognizance (OR). Though he was not apprised of the charges on which Mr. Ghazal was arrested on July 13, 2013, Judge Petrucelli is informed and believes and on that basis admits that Mr. Ghazal had been arrested the night before on domestic violence related charges, a charge the District Attorney's Office later dismissed. Judge Petrucelli was unaware that the OR of Mr. Ghazal constituted an abuse of his authority because, though he had never

previously “OR’d” anyone from the jail, during the time he was a Sheriff’s deputy from 1974 to 1989, judges would occasionally request that the jail OR individuals that they believed to be responsible citizens and of no flight risk (sometimes referred to as an “honor release”). After he became a lawyer in 1989 and then a judge in 1999, Judge Petrucelli continued to be aware that judges sometimes OR’d arrestees (in matters not pending before them) that they believed were responsible citizens and non-flight risks. Thus, when asked by jail personnel whether he wanted Mr. Ghazal honor released, Judge Petrucelli mistakenly believed that he could authorize the jail to release Mr. Ghazal. His mistake was an isolated incident, not done for a corrupt purpose, done without knowledge that his act was beyond his judicial power, and was not in conscious disregard of the law.

2. Judge Petrucelli admits that around 9:03 a.m. on July 13, attorney Jonathan Netzer sent the following text message to him:

Good morning Jim. One of our HBC members was arrested last night on a domestic violence claim. He's asked that I bail him out this morning. In 22 years of practice, the [sic] is a first for me. Do you have any suggestions for me before I head down to jail?

Thanks!

3. Judge Petrucelli admits that at the time he received the above text, Mr. Netzer had been his friend for a few years. He also admits that his principal point of social contact with Mr. Netzer is through their mutual patronage of Cigars, Ltd., a cigar shop in Fresno, and at events organized by Cigars Ltd., including group trips 2012 and in 2013.

4. Judge Petrucelli admits that he came to learn from subsequent communications that the person referred to in Mr. Netzer's text was local businessman Jay Ghazal, a social acquaintance of Judge Petrucelli’s whom he met approximately five

to ten years ago at a restaurant Mr. Ghazal owned. Judge Petrucelli is not in a position to admit or deny whether Mr. Netzer and Mr. Ghazal are "close friends," but understands that to be the case.

5. Judge Petrucelli admits that he has seen Mr. Ghazal at Cigars, Ltd. and at group events organized through the store. He also admits that he has seen Mr. Ghazal and Mr. Netzer at one or more bbq events organized by Mr. Netzer that began in or around January 2013.

6. Judge Petrucelli does not have sufficient personal knowledge to be able to admit or deny that, when Mr. Netzer texted him, Mr. Ghazal had been in jail since approximately 11:37 p.m. on July 12, but has no reason to doubt that the allegation is accurate. Judge Petrucelli does not have sufficient personal knowledge to enable him to admit or deny that Mr. Ghazal was awaiting booking at the time of Mr. Netzer's text, but was informed by Mr. Netzer that was Mr. Ghazal's status and he believes it to be true.

7. Judge Petrucelli admits that until an individual is booked, he cannot obtain release on a bail bond or be released on his or her own recognizance.

8. Judge Petrucelli admits that he received the above text from Mr. Netzer, that he called Mr. Netzer shortly thereafter, and that Mr. Netzer advised him generally of the situation involving Mr. Ghazal during that phone call.

9. Judge Petrucelli admits that he called the jail after speaking to Mr. Netzer and that the call took place at approximately 9:09 a.m. He admits he spoke to a corrections officer, whom he is informed (but does not have sufficient personal knowledge to admit) is Corrections Officer Merancio, and that he identified himself as a judge. Judge Petrucelli does not recall expressing interest in having Mr. Ghazal's

booking "done as soon as possible" at that juncture, but admits he inquired into where Mr. Ghazal was in the booking process.

10. Judge Petrucelli lacks sufficient information to admit or deny that the officer he spoke with, presumably Officer Merancio, advised him that her supervisor was on a break and took his telephone number, but does not doubt that the allegation is true as he thereafter received calls from the jail from officers other than the first officer with whom he spoke. Judge Petrucelli lacks sufficient information to admit or deny that Officer Merancio told her supervisor, Corrections Officer Galindo, about the call, but admits that he received subsequent calls from the jail. Judge Petrucelli lacks sufficient information to admit or deny that Officer Galindo called him after calling the booking desk to inquire about Mr. Ghazal's status or that Mr. Ghazal was booked by another corrections officer from 9:35 a.m. to 9:45 a.m., but has no basis to doubt the accuracy of those allegations. He admits that he received calls from the jail after he made the initial call at approximately 9:09 a.m., including from a female officer whom he assumes is accurately represented to have been Officer Galindo.

11. Judge Petrucelli admits that during calls with officers at the jail he attempted to determine what needed to occur before Mr. Ghazal was released. He admits that during one of the calls an officer asked whether he wanted Mr. Ghazal out "as soon as possible," to which he responded in the affirmative.

12. Judge Petrucelli lacks sufficient personal knowledge to admit or deny that, after speaking with him, Officer Galindo contacted Sergeant Her, who contacted Lieutenant Porter. Based on records produced by the Commission, however, Judge Petrucelli does not contest the accuracy of the allegations.

13. Judge Petrucelli admits he was contacted by an additional officer or officers about Mr. Ghazal's release and that he gave information to confirm his identity. Not knowing how the release had to be processed by jail personnel, Judge Petrucelli offered to go to the jail to sign any necessary paperwork. He was not asked to do so.

14. Judge Petrucelli admits that, in response to a correctional officer's query as to whether he wanted an "honor release" of Mr. Ghazal, he affirmed. He believed based on his experience as a deputy sheriff, and then, anecdotally, as a lawyer and judge, that such a release was permissible. Judge Petrucelli regrets his error in not ascertaining that though honor releases are permissible, they are not permissible in matters not pending before the judge or in matters where domestic violence is alleged.

15. Judge Petrucelli admits that he and Mr. Netzer exchanged several calls during the period that the sequence of events described above occurred.

16. Judge Petrucelli admits that Mr. Ghazal was released OR on July 13, but lacks sufficient personal information to admit that he was released at 10:48 a.m. He lacks sufficient personal information to admit or deny that the timing of Mr. Ghazal's release was related to his phone calls to the jail, but believes that Mr. Ghazal was released OR as the result of his (Judge Petrucelli's) affirmative response to the above-referenced query as to whether he wanted an "honor release" for Mr. Ghazal. Judge Petrucelli further admits that he supported an honor release of Mr. Ghazal because he believed that Mr. Ghazal was not a danger to the public or a flight risk.

17. Judge Petrucelli admits to having additional conversations with Mr. Netzer on Saturday, July 13, 2013 regarding the events.

18. Judge Petrucelli admits that the matter of Mr. Ghazal's release was not before him or any judge on July 13, 2013. With respect to the matter at issue involving the events of July 12, 2013, given the events of the morning of July 13, 2013, Judge Petrucelli admits that he would have been disqualified from hearing the matter. Judge Petrucelli lacks sufficient information to admit or deny that, as a general proposition, he would have been disqualified from hearing any matter involving Mr. Ghazal after appropriate disclosures concerning their acquaintance.

19. Judge Petrucelli admits that he does not and would not hear matters in which Mr. Netzer is counsel because he would disqualify himself based on their friendship. He denies that Mr. Netzer was representing Mr. Ghazal.

20. Judge Petrucelli admits on information and belief that the scheduled bail amount for the charges on which Mr. Ghazal was booked was approximately \$60,000. Judge Petrucelli admits that Mr. Ghazal's "honor release" temporarily supplanted a bail requirement (which had not been set) on July 13, 2013, but denies that he considered that at the time or that that was the final bail determination for Mr. Ghazal. On information and belief based on court records, the issue of Mr. Ghazal's bail was subsequently considered by the judges assigned to hear his case. On August 6, 2013, Judge Arlan Harrell set bail at \$60,000, but Judge Glenda Allen-Hill revisited the issue of Mr. Ghazal's bail later that month and ordered Mr. Ghazal to post a \$20,000 bond; he did so.

21. Judge Petrucelli admits that given the eventual charges, Mr. Ghazal's release was contrary to Penal Code section 1270.1 which is accurately described in the charging document, but denies that on July 13, 2013 he was aware of that provision or that any charge against Mr. Ghazal would have fallen within the scope of section 1270.1.

Judge Petrucelli admits he did not provide notice to the District Attorney's Office that he honor released Mr. Ghazal and, on information and belief based on court records, that no hearing in the matter was held in open court for approximately three weeks. The District Attorney's Office was advised of Mr. Ghazal's OR and, on information and belief, the case was delivered to the District Attorney's Domestic Violence Unit on July 24, 2013.

22. Judge Petrucelli lacks sufficient information to admit or deny what communications transpired between correctional officers and Mr. Ghazal regarding paperwork indicating that he accepted OR release, that he agreed to OR release terms and conditions, that he agreed to appear on a date certain, that is, July 26, 2013, or that he might later be required to post bail. Judge Petrucelli is informed and believes and on that basis admits that Mr. Ghazal was told to appear in court on July 26, 2013. He lacks sufficient information and belief to admit that the reason the jail did not require Mr. Ghazal to complete paperwork or follow its paperwork procedures was because of his communications with the jail. Judge Petrucelli denies that in approving the honor release of Mr. Ghazal he in anyway suggested or requested that Mr. Ghazal not be required to sign or complete necessary paperwork of any kind, including paperwork indicating that he accepted OR release, agreed to OR release terms and conditions, or that he must appear on July 26, 2013.

23. Judge Petrucelli is informed and believes and on that basis admits that Officer Galindo emailed court judicial assistants to advise them of what had occurred and that there was no paperwork from which to enter information into the court's case management system. Judge Petrucelli lacks sufficient personal knowledge to admit or deny what the court's "ordinary procedures" are with regard to the entry of such

information, but believes it is accurate that court staff is provided with paperwork in order to enter the matter into the court's case management system and place matters on calendar.

24. Judge Petrucelli admits that he attended a fundraising event at which more than 1800 people were present on the evening of July 13, 2013, and that Mr. Ghazal and Mr. Netzer were present. He admits Mr. Ghazal spoke to him briefly and told him that bail was or would be set at \$60,000 and that he was scheduled for a court date later in the month. Judge Petrucelli admits that he told Mr. Ghazal to stay away from his wife and that he did not otherwise want to speak about the matter. He further admits that Mr. Ghazal asked him for a referral to an attorney.

25. Judge Petrucelli admits that on Monday, July 15, 2013 he called local defense attorney Roger Nuttall and asked if he would accept a call from Mr. Ghazal, and then called Mr. Ghazal to give him Mr. Nuttall's name and phone number.

26. Thereafter, on information and belief, Mr. Ghazal pled no contest to misdemeanor false imprisonment and disobeying a domestic relations court order. All other charges were dismissed including those that fell within Penal Code section 1270.1.

27. With respect to the allegation that Judge Petrucelli's conduct violated Canon 1, 2, 2A, 2B(1), 2B(2), 3B(2) and 3B(7), Judge Petrucelli admits. As to the allegation that Judge Petrucelli violated Canon 3E, Judge Petrucelli lacks sufficient information about the charge such that he can admit or deny it. Though Judge Petrucelli admits to violating the Canons, he did not act in bad faith, for a corrupt purpose, with knowledge that his act was beyond his judicial power, or in conscious disregard of the limits of his authority. He is not alleged to have committed, nor is he guilty of, a pattern

of preferential treatment. Rather, this was an isolated incident that Judge Petrucelli admits was a mistake for which he should suffer discipline short of removal.

CONCLUDING REMARKS

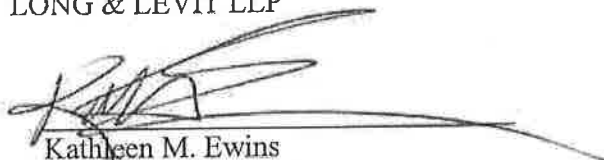
Judge Petrucelli is a hardworking judge, a dedicated public servant, and a respected member of his judicial and local community. He is also human and errs. Judge Petrucelli has at all times been forthright in his dealings with his Court and the Commission about this matter and immediately accepted responsibility.

Judge Petrucelli has a great deal of respect for the Commission's mission and diligence, but strongly disagrees that removal is the appropriate punishment for his admitted wrongdoing. The Commission is not tasked with removing judges for momentary lapses in judgment, but instead with ensuring the public is protected and that judges learn from their mistakes and do not repeat them.

Respectfully submitted,

Dated: October 27, 2014

LONG & LEVIT LLP



Kathleen M. Ewins
Counsel for Respondent
Judge James Petrucelli

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF FRESNO

I, JAMES PETRUCELLI, declare that:

I am the respondent judge in the above-entitled proceeding. I have read the foregoing Verified Answer of Judge James Petrucelli to Notice of Formal Proceedings, and all facts alleged in the above document, not otherwise supported by citations to the record, exhibits, or other documents, are true of my own personal knowledge.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 27 day of October, at Fresno, California.


JAMES PETRUCELLI
Judge No.193

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 465 California Street, 5th Floor, San Francisco, California 94104.

On October 27, 2014, I served the document(s) named below on the following attorney(s) of record and/or interested parties in the Commission on Judicial Performance's matter involving the Honorable James Petrucelli.

- **VERIFIED ANSWER OF JUDGE JAMES PETRUCELLI TO NOTICE OF FORMAL PROCEEDINGS**

Commission on Judicial Performance
Janice Brickley
Valerie Marchant
Gary Schons

- (BY E-MAIL) I served the below party(ies) by transmitting the document via electronic mail to the electronic mail address as listed herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 27, 2014, at San Francisco, California.



Sasha Chittum