

FILED
OCT 08 2014
COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JAMES PETRUCELLI

No. 193

NOTICE OF FORMAL
PROCEEDINGS

To James Petrucelli, a judge of the Fresno County Superior Court from January 1999 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. Commission member Mr. Anthony Capozzi was recused in this matter.

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 the morning of Saturday, July 13, 2013, as set forth below, you abused your authority by ordering the own recognizance (OR) release of someone with whom you were acquainted socially, Jay Ghazal. Mr. Ghazal had been arrested the night before on felony charges that included a violation of Penal Code section 273.5 (spousal abuse).

Around 9:03 a.m. on July 13, attorney Jonathan Netzer sent the following text message to you:

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!

Mr. Netzer has been a friend of yours for the last few years. You have social contact with Mr. Netzer at Cigars, Ltd., a cigar shop in Fresno, and at events organized by Cigars Ltd., which have included group trips to other countries in 2012 and in 2013.

The person referred to in Mr. Netzer's text was local businessman Jay Ghazal, a close friend of Mr. Netzer and a social acquaintance of yours. You met Mr. Ghazal approximately 5 to 10 years ago at a restaurant he owned. Over the last few years, you have seen him at Cigars, Ltd., or at group events organized through Cigars, Ltd. On a number of occasions, you have seen Mr. Ghazal, and Mr. Netzer, at a monthly weekend cigars-and-barbecue event organized by Mr. Netzer, which started in January 2013 (referred to as "HBC" in the text message above).

At the time of Mr. Netzer's text to you, Mr. Ghazal had been in jail since approximately 11:37 p.m. on July 12, and was awaiting booking; until he was

booked, he could not obtain release on bail bond. You called Mr. Netzer in response to his text, and were advised of the situation involving Mr. Ghazal.

You then called the jail, at approximately 9:09 a.m. You spoke to Corrections Officer Merancio about Mr. Ghazal. You identified yourself as a judge, and expressed interest in having Mr. Ghazal's booking done as soon as possible. After further discussion, Officer Merancio advised you that her supervisor was on a break and took your telephone number. Officer Merancio told her supervisor, Corrections Officer Galindo, about your call. Officer Galindo returned your call shortly before 10:00 a.m., after calling the booking desk to inquire about Mr. Ghazal's status. (Mr. Ghazal was booked by another corrections officer, from 9:35 a.m. to 9:45 a.m.) You indicated to Officer Galindo that you wanted to have Mr. Ghazal released. After speaking with you, Officer Galindo contacted Sergeant Her, who contacted Lieutenant Porter. You were contacted by the sheriff's dispatch staff shortly after 10:00 a.m., and Sgt. Her was added to the call; your identity as a judge was verified, and you provided identifying information about Mr. Ghazal. You ordered that Mr. Ghazal be released on OR.

You called Mr. Netzer several times during the sequence of calls described above.

Mr. Ghazal was released on OR at approximately 10:48 a.m. on July 13, pursuant to your order. You ordered the OR release on the basis of your personal knowledge of Mr. Ghazal and ex parte communications with Mr. Netzer, a friend of both you and Mr. Ghazal. The matter of Mr. Ghazal's release was not properly before you, and you would have been disqualified had the matter come before you in the ordinary course of judicial business because of your relationship with both Mr. Ghazal and Mr. Netzer.

The scheduled bail amount for the charges on which Mr. Ghazal was booked was approximately \$65,000. As a result of your intervention, Mr. Ghazal was released without being required to post bail.

Mr. Ghazal's OR release was contrary to Penal Code section 1270.1. Section 1270.1 provides that before a person arrested for certain crimes (including spousal abuse) may be released on his or her own recognizance, a hearing shall be held in open court upon two days' notice to the prosecution. You did not notify the prosecution that you were releasing Mr. Ghazal on his own recognizance, and no hearing in open court was held before you ordered him released.

Because your order for Mr. Ghazal's immediate release was not in accordance with usual procedures, Mr. Ghazal was not required to sign or complete any paperwork indicating that he accepted OR release, agreed to OR release terms and conditions, or agreed to appear on a certain date. (He was advised informally by jail personnel to report to the courthouse on July 26. Officer Galindo emailed the court judicial assistants who process paperwork from the jail, to advise them of what had occurred, and of the fact that there was no paperwork to send; ordinarily, court staff would be provided with paperwork in order to enter the matter into the court's case management system and place it on calendar.)

On the evening of July 13, you attended a large fundraising event at which Mr. Ghazal and Mr. Netzer were also present. Mr. Ghazal spoke to you briefly. He mentioned the July 26 date and the expected bail amount; you told him to stay away from his wife. Mr. Ghazal also asked you for a referral to an attorney. On Monday, July 15, you called a local defense attorney and asked if he would accept a call from Mr. Ghazal, and then called Mr. Ghazal to give him the attorney's name and phone number.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 2B(1), 2B(2), 3B(2), 3B(7), and 3E.

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: September 26, 2014



Honorable Erica R. Yew
Chairperson

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No. 193

ACKNOWLEDGMENT OF SERVICE OF
NOTICE OF FORMAL
PROCEEDINGS

I, Kathleen Ewins, on behalf of my client, Judge James Petrucelli, hereby waive personal service of the Notice of Formal Proceedings in Inquiry No. 193 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 Petrucelli has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: October 6, 2014



Kathleen Ewins
Attorney for Judge James Petrucelli
Respondent