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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE No. 67	)

ANSWER TO NOTICE OF FORMAL PROCEEDINGS

EPHRAIM MARGOLIN
NICHOLAS C. ARGUIMBAU
240 Stockton Street, 3d floor
San Francisco, CA 94108
Telephone: (415) 421-4347

Attorneys for JUDGE
L. EUGENE RASMUSSEN

RECEIVED

Commission on Judicial Performance

Date 1/15/86

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BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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JUDGE L. EUGENE RASMUSSEN (hereinafter "Respondent") by his attorneys, Ephraim Margolin and Nicholas C. Arguimbau, hereby files his answer to the Notice of Formal Proceedings in this case, and states and alleges as follows:

I.

With regard to the preliminary statements in the Notice, Respondent admits the allegations of the first paragraph; lacks sufficient information on the basis of which to formulate a response, and therefore denies the allegation that a preliminary investigation has been made pursuant to the provisions of Rule 904; denies that he was afforded a reasonable opportunity to present such matters as he chose; and admits that the Commission has concluded that formal proceedings shall be instituted. Additionally, Respondent denies that he has been guilty of willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, persistent

failure or inability to perform his duties as a judge or disregard of his oath to well and faithfully discharge the duties of his office. Finally, Respondent denies, generally and specifically, each and every other allegation of the preliminary statement not specifically admitted.

II.

Respondent denies that he has been guilty of a violation of Canon 2 of the California Code of Judical Conduct.

III.

With regard to the allegations of Count I.A., first paragraph, Respondent denies the allegations of the first sentence, lacks information sufficient to form a belief and therefore denies the allegations of the second and third sentences, and admits the remaining allegations. With regard to Count I.A., second paragraph, Respondent denies the allegations of the first sentence; admits that he informed one parent that DeSanders had been convicted of a crime and should not be around children; admits that he was asked by the referee to leave the area of the playing field; and denies each and every other allegation. Respondent lacks sufficient information on which to form a belief, and therefore denies the allegations of the last paragraph of Count I.A.

IV.

With regard to Count I.B., Respondent denies that he initiated any legal proceedings against DeSanders for personal reasons. Respondent admits the allegations of Count I.B.1., but denies having done anything other than performance of his duties as a judge. With regard to Count I.B.2., Respondent admits that he issued a bench warrant for DeSanders after DeSanders and his attorneys had failed to appear, based upon representations of counsel for the plaintiff that DeSanders had been properly served and would not appear without issuance of a warrant. Respondent denies that any wrongdoing whatsoever or actions other than performance of his duties as a judge occurred with respect to the facts set forth.

V.

With regard to the allegations of Count I.C., Respondent denies that he threatened a criminal defendant with a maximum sentence because of his annoyance at an attorney's assertion of rights on the defendant's behalf. The defendant, represented by the Public Defender, had prior to June 27, 1984, agreed to an oral probation report. The attorney who objected to that procedure was not attorney of record, but Respondent acceded to it; the defendant was sentenced to a sentence lesser than recommended by the

probation officer. Respondent denies that he engaged in any improper activity or any activity other than carrying out his duties as a judge.

VI.

With regard to the allegations of Count I.D., Respondent denies that he has improperly invoked his judicial position. With regard to the allegations of Count I.D.1., Respondent lacks sufficient information on which to form a belief and therefore denies said allegations. With regard to the allegations of Count I.D.2., Respondent denies said allegations generally and specifically.

VII.

Respondent denies the allegation of Count I.E., that there have been occasions on which he has challenged and resisted compliance with the law. With regard to Count I.E.1., Respondent denies, generally and specifically, each and every allegation thereof, including those allegations incorporated by reference except for the allegation that issues in the case became matters of local notoriety. With regard to the allegations of Count I.E.2., Respondent admits that he resisted appearing at a show-cause hearing for the reason that the issues were moot and to do so would have required undue interference with his other judicial duties,

but he nonetheless followed all court orders and upon his appearance at the hearing the matter was indeed determined to be moot; Respondent denies each and every other allegation of Count I.E.2. With regard to the allegations of Count I.E.3., Respondent denies that any action he took resulted from his "attitude towards [the defendant's] attorney;" Respondent refused to accept a trust deed on real property as security for bail because on the facts and circumstances of the case the interests of the public fisc were not adequately protected. During the course of Respondent's inquiry into the proposed security, apparent violations of Rules of Professional Conduct were uncovered, which Respondent referred to the State Bar for investigation; Respondent denies each and every other allegation of Count I.E.3., except as specifically revealed by the record in the case, which speaks for itself. Respondent denies the allegations of Count I.E.4.

VIII.

With regard to Count I.F., Respondent denies that he has demonstrated a lack of impartiality towards certain attorneys by his improper and demeaning comments to and actions towards those attorneys and their clients, or otherwise, and denies that paragraphs one through six, or any of them, constitute examples of such conduct. Respondent

denies, generally and specifically, each and every allegation of Counts I.F.1., 2., and 3. With regard to Count I.F.4., Respondent admits that he told Cole that if indeed the affidavit were true and made on good faith that he was prejudiced towards Cole personally, then he would no longer be able to hear any of Cole's cases; in fact, Respondent has never subsequently refused to hear any of Cole's cases, and has heard some of Cole's cases and ruled in Cole's favor subsequent to the incident referred to. With regard to the allegations of Count I.F.5., Respondent admits said allegations, but alleges that he could not accommodate the attorney's vacation schedule without putting the county to great expense to bring in an out-of-county judge for an additional day or more when such a judge was already scheduled to be present at the time indicated and further alleges that attorney Specchio's vacation schedule was not in fact disrupted, because one of the two cases was settled and the other was handled by an associate. With regard to Count I.F.6., Respondent admits that on or about August, 1981, he became angered at attorney Kim Dodge, as a result of Mr. Dodge's having made inaccurate and unauthorized representations with regard to Respondent's position on the disposition of a juvenile case; Respondent denies each and every other allegation of Count 1.F.6.

IX.

Respondent denies that he has committed any violation of Canon 3 of the California Code of Judicial Conduct.

X.

Respondent denies the allegation of Count II.A that he failed to disqualify himself in proceedings involving parties towards whom his impartiality was reasonably in question, incorporates by reference his answers to Counts I.A., I.B.1., I.C., and I.D.2., and further alleges that no request for his disqualification was made or denied. With regard to Count II.A.4., Respondent admits that he made a comment in open court about the defendant's alleged inability to obtain an attorney and alleged need for a continuance for that purpose, denies that the statement was other than accurate and factual or that he was prejudiced against the defendant, denies that any appeal was filed, and alleges that on defendant's motion he granted a new trial before a different judge, which resulted in confirmation of the decision made by Respondent against defendant in the first trial.

XI.

Respondent admits that the disputes in the Olsen case were matters of local notoriety, but denies, generally

and specifically, each and every other allegation of Count II.B.

XII.

Respondent incorporates by reference, in response to Count II.C., his response to that charge set forth in his letter to the Commission with regard to that charge written while a preliminary investigation was being conducted.

XIII.

With regard to the allegations of Count II.D., Respondent denies that he has attempted to discourage the exercise of rights conferred by Code of Civil Procedures §§ 170.1 et seq. With regard to Count II.D.1., he admits that on one single occasion he suggested to one deputy district attorney that peremptory disqualification matters (C.C.P. 170.6) be heard last on calendar, but that he promptly discontinued that practice. He denies each and every other allegation of Count II.D.1. With respect to Count II.D.2, Respondent's answer to Count I.F.4. is incorporated herein by reference. Respondent admits that he telephoned attorney Richard Specchio; he denies, generally and specifically, each and every other allegation of Count II.D.3.

XIV.

Respondent denies, generally and specifically, each and every allegation of Count III., except for the

allegation that his conduct has been described in California Magazine.

XV.

As and for a first affirmative defense, Respondent alleges that the Commission lacks jurisdiction of the subject matter.

XVI.

As and for a second affirmative defense, Respondent alleges that the Commission has failed to comply with Rule 904, California Rules of Court.

XVII.

As and for a third affirmative defense, Respondent alleges that the matters set forth in Count I.A. were totally unrelated to the performance of Respondent's duties as a judge.

XVIII.

As and for a fourth affirmative defense, Respondent alleges that with regard to the matters set forth in Count I.B.1., he was acting within the scope of his authority and did not abuse said authority.

XIX.

As and for a fifth affirmative defense, Respondent alleges that the issuance of the bench warrant under the facts and circumstances of the case was a ministerial act.

XX.

As and for a sixth affirmative defense, with regard to the matters set forth in Count I.E., Respondent alleges that he acted in good faith reliance upon the law as he understood it, and that at no time did he disobey any court order.

XXI.

As and for a seventh affirmative defense, with regard to the allegations of Count II., Respondent alleges that the disqualification of judges in South Lake Tahoe requires the Court to bring in out-of-county replacements at substantial public expense, that he has a duty to avoid unnecessary expenditures of public monies by his Court, and that he has not abused the discretion vested in him as a result of that duty.

XXII.

As and for an eighth affirmative defense, Respondent alleges that he has an ethical obligation as a lawyer to report potential ethics violations of other attorneys to the State Bar and that the alleged complaint against Michael Laub referred to in Count I.E.3. was absolutely privileged.

XXIII.

As and for a ninth affirmative defense as to all Counts, Respondent alleges that these proceedings result

from a politically motivated and discriminatory complaint.

XXIV.

As and for a tenth affirmative defense, Respondent alleges that the proceedings were commenced as a result of third-party complaints, but that said complaints were not verified, in violation of Rule 904, California Rules of Court.

XXV.

As and for an eleventh affirmative defense, Respondent alleges that the Commission is guilty of laches.

XXVI.

As and for a twelfth affirmative defense, Respondent alleges that none of the behaviour complained of has continued or is persistent.

XVII.

As an for a thirteenth affirmative defense, Respondent alleges that he has been determined by the electorate to be qualified for re-election, notwithstanding extensive public discussion of the matters which are the subject of these proceedings.

WHEREFORE, Respondent prays relief as follows:

1. That the allegations of the "Notice" and each of them be dismissed for lack of jurisdiction;

2. That the allegations of the "Notice" be

determined to be without merit;

3. That no adverse action be taken against Respondent;

4. For costs, including reasonable attorney fees; and

5. For such other and further relief as is deemed proper under the circumstances.

Dated: January 14, 1986.

Respectfully submitted,

EPHRAIM MARGOLIN
NICHOLAS C. ARGUIMBAU

By: _____
Ephraim Margolin

Attorneys for Respondent.

VERIFICATION

I, EPHRAIM MARGOLIN, under penalty of perjury, say:

I am attorney to JUDGE L. EUGENE RASMUSSEN, Respondent in the within proceedings.

I verify the within pleadings for the reason that my client does not reside in the county in which I have my offices.

I have read the within answer. I am informed and

believe and thereon allege that the matters stated therein are true.

Executed January 14, 1986, in San Francisco, California.

EPHRAIM MARGOLIN

Rasmussen

PROOF OF SERVICE BY MAIL
C.C.P. 1013a, 2015.5

I declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States and employed in the City and County of San Francisco. I am over the age of eighteen (18) years and not a party to the within above-entitled action; my business address is 240 Stockton Street, San Francisco, California; I served the within document in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid on the date set forth below in the United States Post Office mail box at San Francisco, California, addressed as follows:

Gary Binkerd, Esq.
Deputy Attorney General
Department of Justice
1515 K Street, #511
Sacramento, CA 95814

Executed this 14th day of January, 19 86, at San Francisco, California.

DEANNA T. GALESTIAN