

COPY

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

No. 67

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE L. EUGENE RASMUSSEN:

IT APPEARING THAT from January 3, 1977, to the present, and at all times herein, you have been a Judge of the Justice Court, Lake Valley Judicial District, El Dorado County, and

Preliminary investigation having been made pursuant to the provisions of Rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission as a result of said preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to Section 18 of Article VI of the California Constitution and in accordance with Rules 901-922 of the California Rules of Court;

NOW, THEREFORE, you are hereby charged with wilful

misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, persistent failure or inability to perform your duties as a judge and disregard of your oath to well and faithfully discharge the duties of your office. The particulars of the charges are as follows:

COUNT ONE

It is charged in Count One that you have violated Canon 2 of the California Code of Judicial Conduct, "A judge should avoid impropriety and the appearance of impropriety in all his activities. A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

A. At a youth soccer game on 10/27/84, you repeatedly denounced one of the coaches as a convicted child molester to parents of the players and others in attendance based on your personal attitude toward the coach. The coach, Terry DeSanders, is a South Lake Tahoe resident. He is married and a parent, is self-employed locally and has been active as a coach, umpire and referee in youth sports for several years.

On March 29, 1984, DeSanders had been placed on probation, subject to certain terms and conditions, by Judge Fugazi in Case number 32711 following his misdemeanor conviction upon his guilty plea of violation of Penal Code section 647a (annoying or molesting a child under eighteen). The offense involved DeSanders' stepdaughter, then aged seventeen and one-half.

During the soccer game, you approached DeSanders, who was the coach of the team opposing your son's team, followed him closely, repeatedly and loudly suggested to him he should not be around the children playing soccer and informed him that you would tell everyone on the field about his conviction. After the game had ended, you informed several parents in attendance that DeSanders had been convicted of a crime and should not be around children. A heated discussion ensued and you were asked by the referee to leave the area of the playing field.

As a result of your statements at the game and afterwards, DeSanders was told by youth athletics board members that he could no longer participate in youth sports.

B. Following the events set forth in paragraph A., you initiated legal proceedings against DeSanders for personal reasons:

1. Less than two weeks after the soccer-field incident, on November 9, 1984, you issued an Order to Show Cause requiring DeSanders to appear in court for a hearing regarding violation of the terms of his probation. At this hearing on January 22, 1985, the People presented no evidence of any violation and Judge Fugazi found the defendant not to be in violation of probation.

2. On November 20, 1984, you again initiated legal action against DeSanders when you ordered his arrest for failure to appear at an Appearance and Examination of Judgment Debtor in a civil action denominated Tahoe - Ford - Lincoln Mercury, Inc. v. Terry DeSanders and Lynn DeSanders, #9751. The arrest had not been preceded by an order to show cause. DeSanders was arrested pursuant to your order and advised that you had ordered cash bail only. DeSanders posted \$1,500. cash bail.

In the Tahoe-Ford case, Terry and Lynn DeSanders were represented by counsel of record personally known to you when you ordered the arrest, and your order for the arrest of Terry DeSanders followed your ex parte discussion of the case with Counsel for plaintiff.

You later distributed the posted bail to counsel for plaintiff pursuant to a stipulation.

C. You threatened a criminal defendant with a maximum sentence because of your annoyance at an attorney's assertion of rights on the defendant's behalf.

On June 27, 1984, in People v. Richard R. Reber, #31668, the defendant appeared for sentencing following his plea of guilty to a misdemeanor charge of receiving stolen property. A probation officer was in attendance prepared to deliver an oral report in accordance with your direction at a prior appearance. Defendant's Attorney objected, asserting the defendant's statutory right to a written report. After discussion, you recessed until later that day. When the attorney left, you told to the defendant that he was likely to get the maximum penalty of one year. The Attorney returned to find the defendant in tears. On July 6, 1984, you sentenced defendant to probation and imposed 120 days incarceration as a condition.

D. You have improperly invoked your judicial position:

1. Susan Abram is a local realty agent who had sent letters to the Clerk's Office in which she sought to postpone jury duty. She had requested that her last letter be date-stamped, which had initiated a heated discussion between the Clerk and Abrams. In August, 1982, you telephoned Abrams and in a raised voice ordered her not to tell your clerks what to do. When she tried to explain that she had twice previously written the Clerk and had received no reply, you told her that she did not have your permission to talk and that she was to obey your instructions.

2. In 1983, you followed Reid Badgely, a local contractor, to his job site in Nevada, where you described yourself by your judicial title, told Badgely that he had cut you off with his vehicle and warned him not to come before you in your courtroom. About a year later, Badgely appeared in your court for failing to provide proof he had corrected a defective taillight; after imposing a \$90 fine, you warned him he would receive a jail sentence if he appeared in your courtroom again.

E. There have been occasions when you have

challenged and resisted compliance with the law:

1. In People v. John Edward Olson, Jr., #28716, you verbally challenged and disregarded a superior court stay order filed December 21, 1982. Further allegations, set forth in Count Two, paragraph C., are incorporated by this reference as if set forth in full herein.

2. In People v. Mark Steven D'Andrio, #29704, you verbally challenged and resisted a writ of prohibition issued by the Superior Court on December 21, 1982. Further, you resisted appearing at a show cause hearing scheduled for January 7, 1983, until the Court personally ordered you by telephone to appear.

3. In People v. H. P. Kengla, #30856 B, you refused to comply with applicable law regarding bail and caused a criminal defendant to remain incarcerated as a pre-trial detainee for approximately fourteen days because of your attitude towards his attorney.

H. P. Kengla, a South Lake Tahoe resident and property owner, was arrested on 5/12/83; his bail was set at \$50,000. Pursuant to Penal Code

Sections 1279, et seq., Kengla's attorney, Michael Laub, appeared before you and applied for Kengla's release on bail secured by Kengla's equity in real estate valued at \$300,000 which was encumbered in the amount of \$13,000. You refused bail because the property was not completely unencumbered. Kengla removed the outstanding encumbrance. The following day, in a court proceeding, you again refused to admit Mr. Kengla to bail and required Mr. Laub to give sworn testimony in your chambers as to the source of the funds acquired. Laub denied that he had advanced the funds. A writ was sought and obtained from the Superior Court to obtain Mr. Kengla's release from jail.

You later filed a complaint with the State Bar against Laub on the grounds that Laub had advanced the personal expenses of a client. The State Bar complaint was investigated and subsequently dismissed.

4. You prevented the timely entry of a default judgment in an unlawful detainer action based on your attitude toward plaintiff's law firm in M & M Property Management v. Kathleen Creshrice, et al., #10988. When a writ was filed, you entered judgment prior to

the hearing on the writ.

F. You have demonstrated a lack of impartiality toward certain attorneys by your improper and demeaning comments to and action toward these attorneys and their clients. These attorneys include, but are not limited to, Richard Travis, Michael Laub, Paul Palant, Kim Dodge, William Cole, Richard Specchio, and Michael Roeser. Some examples of your conduct in this regard follow:

1. You have engaged in the practice of withholding and deferring the timely entry of default judgments in unlawful detainer actions based on your attitude towards certain of these attorneys, including Michael Roeser, as was more fully described in Paragraph E., subparagraph 4, above, Donna Travis and Richard Travis.

2. The allegations regarding attorney Michael Laub in Count One, paragraph E, subparagraph 3. above, are incorporated by this reference as if set forth in full.

3. During the hearing in People v. Reber, more fully set forth in Count One, paragraph B., you made a

derogatory comment in open court to defendant about his attorney, Kim Dodge, after Mr. Dodge had left the courtroom.

4. On February 24, 1982, following the filing of a Code of Civil Procedure section 170.6 affidavit by attorney William Cole, who was present in court with his client, you told Cole that you were puzzled at his declaration because you were lenient on the offense charged, that you would no longer be able to hear any of Cole's cases including bail reviews and civil cases and that Cole would be required to practice before visiting judges exclusively.

5. Attorney Richard Specchio had filed C.C.P. Section 170.6 disqualifications on March 14, 1984, (People v. Peterson, Citation Nos. 11248, 12748, 14924, 13778) and March 28, 1984, (People v. Gentry, #32493, #32494); when he requested court dates on those cases which wouldn't conflict with his vacation in Mexico starting April 23, you set each matter on April 24, citing the extra expenditures to have another judge come in especially for a disqualification.

6. On or about August 1981 you became angered at attorney Kim Dodge, interrupted court proceedings and challenged the attorney to meet you outside the courtroom. You thereafter stood before a crowded courtroom, pulled off your judicial robes and strode from the courtroom. Outside the courtroom, you positioned yourself within inches of Dodge, clenched your fists, adopted an aggressive posture and addressed him in a loud tone of voice.

COUNT TWO

You are charged in Count Two with violation of Canon 3 of the California Code of Judicial Conduct, "A judge should perform the duties of his office impartially and diligently, C. Disqualification (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law, or his impartiality might reasonably be questioned, including but not limited to instances where: (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; (b) . . . or the judge . . . has been a material witness concerning [the matter in controversy]; . . ."

A. You have failed to disqualify yourself in proceedings involving parties towards whom your impartiality was reasonably in question.

1. Following the events more fully set out in Count One, paragraph A. and subparagraph 1. of paragraph B., involving Terry DeSanders, you failed to disqualify yourself in the Tahoe - Ford case, ordered Terry DeSanders' arrest for failure to appear at an Appearance and Examination of Judgment Debtor and participated in the disposition of the case.

2. Following the events set forth in Count One, paragraph C., involving Richard Reber, you refused to disqualify yourself and participated in Reber's sentencing.

3. Following the confrontation set forth in Count One, paragraph D., subparagraph 2., involving Reid Badgely, you failed to disqualify yourself from and participated in later criminal proceedings against Badgely, including sentencing.

4. In Retailers Credit Association v. Nick Nasser Fakhimi, #7570, you proceeded to conduct a trial and find for the plaintiff after making a

derogatory comment in open court about the unrepresented defendant.

The defendant filed an appeal based in part on prejudice of the court. The case was ordered re-tried.

B. You failed and refused to disqualify yourself for prejudice as required by California Code of Civil Procedure in People v. John Edward Olson, #28716. In an effort to resist disqualification, according to the Superior Court, you made repeated erroneous rulings of law in striking the disqualification statements filed by both the defendant and his attorney, Michael Laub, on November 15, 1982, by striking the disqualification statements filed on December 10, 1982 and you ignored a Superior Court stay order of December 21, 1982, entered in Writ proceedings brought in an attempt to force you to comply with the law (Superior Court v. Rasmussen, #41457). Your resistance to the lawful order of the Superior Court resulted in issuance of an order to you to show cause in re contempt on January 14, 1983. Following this order, and before the hearing, you apologized to the court. Your resistance to compliance with the order, your apology and your subsequent request of the county to reimburse you for over \$3,000.00 in attorney's fees in the case were all matters of local notoriety which received

media coverage.

C. You have failed to disqualify yourself in cases in which you had personal knowledge of disputed evidentiary facts concerning the proceeding or were a material witness concerning the matter in controversy.

In 1982, Peter Caputo was placed on probation from your court. As one of the terms of probation, Caputo was required to abstain from alcohol. In January 1983 you observed Caputo with a beverage in hand outside a restaurant in Harvey's Casino in Nevada and confronted Caputo. On a subsequent date, when it came to your attention that Caputo was in the courthouse, you caused him to be brought into your courtroom where you accused him of drinking at Harvey's Casino in January, 1983, and ordered him to appear for a hearing to determine whether his use of alcohol as alleged by you constituted a violation of his terms of probation. No request for hearing had been made by the District Attorney or the probation office. You subsequently dismissed the proceeding prior to the hearing. No documentation regarding the violation, hearing or disposition had been prepared.

D. You have attempted to discourage the exercise of rights conferred by Code of Civil Procedure sections 170.1, et seq.

1. You have called last on calendar and have instructed Deputy District Attorneys to call last on calendar those cases in which there was on file a declaration requiring your disqualification. Your practice in this regard caused unnecessary inconvenience to those attorneys who disqualified you and to their clients.

2. On February 24, 1982, following the filing of a Code of Civil Procedure section 170.6 affidavit by attorney William Cole, who was present in court with his client, you told Cole that you would no longer be able to hear any of Cole's cases including bail reviews and civil cases and that Cole would be required to practice before visiting judges exclusively, as described in Count One, paragraph F., subparagraph 4.

3. In February, 1983, after working hours, you telephoned Attorney Richard Specchio, who had filed a Code of Civil Procedure section 170.6 disqualification

affidavit against you, inquired in a loud tone if he knew the consequences of his disqualifying you and told him he would have problems in that he would never be able to have you sit as a judge on any case.

COUNT THREE

You are charged in Count Three with violation of Canon 3A(3), Code of Judicial Conduct, which directs that "A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity. . ." In support thereof, the allegations in Counts One and Two are incorporated by this reference as if set forth in full.

A. Your courtroom demeanor as alleged and more particularly described in Counts One and Two has been characterized by a pattern of intolerance to litigants, attorneys, and others in your courtroom. You regularly and customarily have been demeaning, abusive and sarcastic towards litigants, attorneys, and others in your courtroom. Your conduct in this regard has been detrimental to the fair, orderly, and decorous administration of justice and has diminished the integrity of the judiciary in El Dorado County.

B. Your conduct and demeanor as alleged and described have obstructed, impaired and interfered with attorney-client relationships and have caused both personal and professional embarrassment and inconvenience for those attorneys involved.

C. Your conduct and demeanor as alleged and described have persisted despite prior communication from the Commission on Judicial Performance concerning similar reported conduct, including a suggestion by letter dated 10/5/83 that "...you might wish to review your court demeanor."

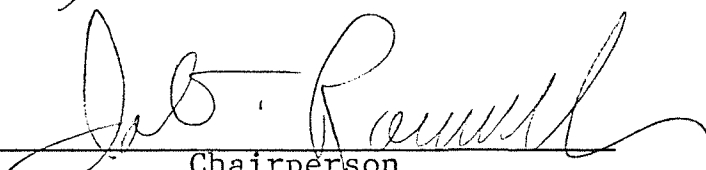
D. Your conduct and demeanor have been a matter of local notoriety and were described in a Statewide publication, the January 1984 issue of California Magazine, in an article entitled, "Court Jesters," which included the incident more fully set forth in Count One, paragraph F., subparagraph 6.

It is asserted that your conduct as charged in this and in each of the preceding counts constitutes wilful misconduct in office, conduct prejudicial to the administration of justice which brings the judicial office into disrepute, and persistent failure or inability to perform your judicial duties within the meaning of subdivision (c) of section 18, Article VI, California Constitution.

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 with the Commission on Judicial Performance, Room 3052 State Building, 350 McAllister Street, San Francisco, California 94102. Such answer must be verified, must conform in style to subdivision (c) of Rule 15 of the Rules of Court, and must consist of an original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE.

DATED: Nov - 14, 1985


Chairperson