

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE KEVIN A. ROSS,

NO. 174.

FIRST AMENDED NOTICE OF
FORMAL PROCEEDINGS

To Kevin A. Ross, a judge of the Los Angeles County Superior Court
from January 2, 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.

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 – Conduct Toward Defendants

A. On August 23, 2001, defendant Lenore Carrillo appeared before you in custody at the Central Arraignment Court in Los Angeles. Carrillo was represented by counsel. She appeared on three misdemeanor cases where she was charged with being under the influence of drugs (Nos. 1CR10187, 1AL01464, and 1CR10882). You ordered that Carrillo be released and report to the Community Assessment Service Center the next day, August 24, 2001. You ordered that she return to court on August 29, 2001.

Carrillo was released from custody on August 23, 2001. At some point thereafter, not later than August 30, 2001, you contacted Carrillo by telephone and engaged in an improper ex parte communication regarding her criminal cases.

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

B. In October 2001, defendant Wilfred Aka was charged with misdemeanor violations of the Los Angeles Municipal Code in connection with holding religious services in his home (No. 1CR01361). In March 2002, Aka and the Los Angeles City Attorney's Office agreed to informal diversion, on condition that Aka obey all laws and move the services to a different location. In June 2002, diversion was extended until October 2002, and a progress report was set for September 26, 2002.

Defendant Aka first appeared before you on September 26, 2002. He appeared without an attorney, as he had on previous court dates. The deputy city attorney said that Aka had not complied with the condition of diversion that he relocate the services. Neighbors of Aka were present in court. The deputy city attorney filed petitions from Aka's neighbors objecting to ongoing services, and asked that a not guilty plea be entered and that the case be set for trial. He also asked that you order Aka to stop holding religious services on the property, as a condition of his continued own recognizance release.

You told Aka that he was being arraigned, and advised him of his right to counsel. Aka said that he wanted to seek legal representation. Thereafter, you questioned Aka as set forth in the transcript attached as exhibit 1, and arraigned him. In doing so, you abandoned your judicial role, became embroiled, and disregarded defendant's right to counsel.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4) and 3B(8).

C. Defendant Hector Salcido was charged with misdemeanors in three cases (No. 1CR09828, filed in July 2001; No. 1SF05342, filed in December 2001; and No. 2CR12229, filed in September 2002). On September 30, 2002, Salcido appeared before you on the three cases, in custody, at the Central Arraignment Court in Los Angeles. He entered a no contest plea on the newest case, No. 2CR12229, and admitted a probation violation on the other two cases. You sentenced him on case No. 2CR12229, which included placing him on probation, and revoked and reinstated probation on the other two cases. You ordered him to return to court on October 18, 2002, to show compliance with the conditions of probation.

On October 18, 2002, Salcido did not appear in court. On October 21, 2002, his probation was revoked and bench warrants were issued. On October 23, 2002, Salcido appeared before you in custody. The three cases were continued until October 29, 2002, for a violation of probation hearing. Misdemeanor probation violations ordinarily were handled at the Central Arraignment Court informally, unless a formal hearing was requested.

On October 29, 2002, Salcido appeared before you on the three cases, represented by Deputy Public Defender Lisa Gordon. You offered to resolve the violation of probation cases by imposing 90 days of jail time and terminating probation on case No. 1CR09828, and by revoking and reinstating probation on the other two cases. DPD Gordon argued against this proposed resolution.

When you did not agree to a different resolution, DPD Gordon asked for a formal violation of probation hearing. You refused to set the matters for a formal violation of probation hearing. You stated that you were imposing sentence (including jail time) for a probation violation on case No. 1CR09828, despite the fact that the defendant did not admit the probation violation, as follows:

Ms. Gordon: Well, I can put on witnesses, and I'm going to ask to subpoena witnesses and ask for a hearing. I don't think this is --

The Court: The bottom line is he failed to comply with the court's order when he is not here on the date that he was told to be here, and based on that, the court will find that he is in violation of probation.

Ms. Gordon: I'm asking to set it for a hearing, and I'm going to ask to subpoena witnesses.

The Court: That request is denied. He was not here when I instructed him --

Ms. Gordon: That is not the only issue.

The Court: It's denied, Ms. Gordon. That's it.

Ms. Gordon: Your honor --

The Court: Ms. Gordon --

Ms. Gordon: -- I have an opportunity to have a defense. I have an opportunity to put on a defense --

The Court: Ms. Gordon --

Ms. Gordon: -- I have an opportunity to have a hearing. I have an opportunity to put on witnesses.

The Court: Ms. Gordon, 90 days. Ninety days in the county jail --

Ms. Gordon: I'm not going to admit.

The Court: -- credit eight plus four --

Ms. Gordon: He's not admitting to the violation. He's not admitting --

The Court: Ms. Gordon, that's it.

Ms. Gordon: He's --

The Court: That's it. That's it. No more. Ninety days in jail. Probation is revoked and reinstated and under the following terms and conditions: on the 1CR09828 matter, once he does the 90 days, probation is terminated. He has credit for eight plus four. [¶] All right. That one is done.

Ms. Gordon: May I make -- I'm making a record.

The Court: No. Now you need -- if you need to go outside and cool off, then you need to do that, but I don't want to hear anything else. That's it.

Ms. Gordon: Is the court not allowing me to make a record?

The Court: Deputy Robinson, take her outside. Go outside, Ms. Gordon.

(Bailiff Robinson escorted Ms. Gordon out of the courtroom.)

Immediately after DPD Gordon was escorted out of the courtroom, you addressed Salcido directly and told him that on case No. 1SF05342, probation was revoked and reinstated with certain modifications. Deputy Public Defender Michael Berry, who was present in the courtroom, stated, "For the record, Michael Berry for the defendant since his attorney has left." DPD Berry was not prepared to represent Salcido, and you did inquire whether he was prepared. You told Salcido that you were revoking and reinstating probation on case No. 2CR12229 with certain conditions, and ordered him back for a progress report. You imposed sentence without affording due process and interfered with defendant's right to counsel.

You then began to question Salcido about the rehabilitation center he claimed to have checked himself into. You exhibited embroilment, as follows:

The Court: This isn't a rehab center. See, you just said, "I will not lie to you," and you lied to me. This is not a rehab center. What is the California Dream Center?

Defendant: It's a church, sir.

The Court: What did you just say it was?

Defendant: Arehab. That's what they told me it was, and I put myself into it for free, sir.

The Court: See you are lying to me. You keep lying. See, you are making me mad again. You are a pathological liar. You don't get it. You don't get it.

After a discussion off the record, the matter was continued until that afternoon. During the afternoon, you met with the attorneys on the *Salcido* cases. The cases were continued again, until October 30, 2002. Ultimately, the sentences you had imposed on October 29, 2002, were crossed out on the court forms entitled "Probation Violation Proceedings (Misdemeanor Docket)," and on November 5, 2002, Salcido admitted the probation violations. Probation was revoked and reinstated on all three cases; defendant was ordered to attend 12-step meetings and counseling, and jail time was stayed in each case.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3B(7) and 3B(8).

D. In May 1995, citation No. 2025750 was issued in Los Angeles to a Debra M. Fuentes for a violation of Vehicle Code section 27315(d) (no seatbelt), an infraction. Fuentes was described on the citation as 5 feet 4 inches and 250 pounds, with a date of birth of April 25, 1967. Fuentes did not appear before the

deadline on the citation and in July 1995, a misdemeanor charge was added for failing to appear, a violation of Vehicle Code section 40508(a).

In February 1996, citation No. 2466589 was issued in Los Angeles to a Debbie Marie Fuentes for two infractions, Vehicle Code section 12500(a) (no driver's license) and Vehicle Code section 27315(d) (no seatbelt). Fuentes was described on this citation as 5 feet 7 inches and 180 pounds, with a date of birth of April 25, 1965. Fuentes did not appear before the deadline on the citation, and in April 1996, a misdemeanor charge was added for failing to appear, a violation of Vehicle Code section 40508(a).

Defendant Fuentes appeared before you on both cases on April 21, 2003, at the Metropolitan Branch of the Los Angeles Superior Court. She had posted bail on the failure to appear charges, and was out of custody.

Fuentes presented a "Wrong Defendant Declaration" under the name Debbie Fuentes that asserted that she was not the person involved in the traffic citation(s). Fuentes's date of birth and height and weight in the declaration were consistent with citation No. 2025750 and different from citation No. 2466589. (Fuentes did not write a citation number on the declaration.)

You concluded that Fuentes's declaration was false. On both of her cases, you ordered that a misdemeanor count of Vehicle Code section 16030(a) be added, which you described on the April 21 orders for each case as "false evidence." (Vehicle Code section 16030(a) actually makes it a misdemeanor to provide false evidence of insurance to a peace officer or clerk of the court.)

You set bail at \$2,500 in each case and remanded Fuentes into custody. You entered a not guilty plea on Fuentes's behalf on both cases and set a trial date of May 21, 2003, in another division.

Fuentes remained in custody on the misdemeanor charges you added until she posted bail and was released at approximately 7:30 p.m. on April 23, 2003. On May 21, 2003, all of her pending matters were dismissed by another judicial officer in the interests of justice.

By adding a misdemeanor charge to defendant's traffic cases, you intruded into the charging authority of the prosecutor. You abused your authority and became embroiled. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3B(7) and 3B(8).

COUNT TWO – Absences From Court

A. On the morning of Monday, March 6, 2000, you were absent from court (Inglewood) and did not start your 8:30 a.m. calendar until approximately 9:40 a.m. because you were speaking about (juvenile crime) Proposition 21 on a local radio show. You had not asked for or received authorization from the Inglewood site judge to be absent during court hours, or obtained coverage for your morning calendar. During the radio broadcast, you said that you had left people waiting in court.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3A, 3B(8), 4A(2) and 4A(3).

B. While assigned to the Central Arraignment Court in Los Angeles, you submitted an absence request form for April 18 and 19, 2002, a Thursday and Friday. The request form was dated March 20, 2002, and described the purpose of the absence as a California Association of Black Lawyers (CABL) conference in Palm Springs from April 18 - 21, where "I've been asked to serve on a panel and be in attendance." You requested that this be deemed a court related absence, and the request was approved shortly thereafter.

On April 17, 2002, you sent an e-mail message to Commissioner Lousteau, the Central Arraignment Court site judge, reminding her that you would be absent on April 18 and April 19. You entitled the e-mail message "CABL conference." On April 18, 2002, you were absent from court.

In fact, no daytime event was scheduled for the CABL conference on April 18, 2002, only an evening "hospitality suite" to welcome members as they arrived.

You had agreed to participate in other out of court events on April 18, 2002: a “National Inner-City Economic Summit” put on by Operation HOPE, Inc., and a taping of Life and Times Tonight, a general interest public television show on station KCET. You did not seek or obtain authorization to be absent from court for those events.

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

COUNT THREE

In 2001 and 2002, you regularly appeared as an interviewee on Life and Times Tonight, a general interest public television show on station KCET. In that capacity, you improperly commented on pending cases, as follows:

- A. January 15, 2001 (juvenile matter over which you were presiding)
- B. March 4, 2002 (*People v. Superior Court (Patrick Ghilotti)* – California Supreme Court No. S102527)
- C. July 22, 2002 (*People v. Jeremy Morse and Bijan Darvish* – Los Angeles County Superior Court No. BA240316)
- D. August 15, 2002 (*People v. Jeremy Morse and Bijan Darvish* – Los Angeles County Superior Court No. BA240316)

Your remarks are set forth in the transcripts attached as exhibits 2A through 2D.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A and 3B(9).

COUNT FOUR

In July 2002, you entered into a contract with a television production company regarding a potential syndicated commercial television series entitled *Mobile Court*. The premise of the show was that a judge would hold court at the scene of an actual legal dispute.

In approximately July and August of 2002, in the Los Angeles area, you participated in the videotaping of a “presentation” of *Mobile Court*, for which the

contract provided that you would be paid \$5,000 for services as “judge/host.” During the presentation, you presided over cases as “Judge Kevin Ross.”

In one case, called “Revenge and Rotten Eggs,” you held “court” outside in a neighborhood where vehicles had been vandalized, and awarded the plaintiff \$2,175 and dismissed a counterclaim. In a second case, called “Beauty and the Beast,” you held “court” in a strip club, and awarded an “erotic model” \$1,000 for being unfairly disqualified from a “Miss Wet on the Net” contest. These disputes had been filed as small claims cases, and the parties agreed to have their disputes submitted to you for decision and that your decisions would be binding. (Excerpts from a third dispute over which you presided also appear on the presentation.)

Mobile Court was intended to be developed as a syndicated series and sold to television stations. Accordingly, the *Mobile Court* presentation was shown to representatives from television stations around the country in an (unsuccessful) effort to interest the stations in purchasing the *Mobile Court* series with you as “judge/host.” In August 2002, an article appeared in *Variety* which mentioned you, as “Judge Kevin Ross,” as host of *Mobile Court* in connection with syndicated television shows in development for fall 2003.

Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 2B(2), 4A(2), 4D(1)(a), 4D(2) and 4F.

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 subdivision (b) of rule 14 of the California Rules of Court. The First Amended 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 First Amended 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: 8/25/04

/s/
VANCE W. RAYE
CHAIRPERSON