

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING  
JUDGE ELAINE M. RUSHING,  
  
NO. 177.

NOTICE OF FORMAL  
PROCEEDINGS

To Elaine M. Rushing, a judge of the Sonoma County Superior Court from January 24, 1992, 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**

On the night of June 21, 2005, in Sonoma County, California, you committed the crimes of driving while under the influence of alcohol in violation of Vehicle Code section 23152(a) and driving while having a 0.08 percent or more, by weight, of alcohol in your blood in violation of Vehicle Code section 23152(b). You had a blood alcohol level of 0.20 percent or more. On August 8, 2005, upon a plea of no contest in Sonoma County Superior Court case number SCR-469285, you were convicted of violating Vehicle Code section 23152(b) with an enhancement under Vehicle Code section 23578 (for a blood alcohol level of 0.20 percent or more).

Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

## **COUNT TWO**

In an effort to avoid being arrested for crimes related to your drinking and driving referenced in count one, you engaged in a course of dishonest conduct, as follows. While driving under the influence of alcohol on June 21, 2005, you collided with a wall at 5571 Crystal Drive in Santa Rosa, causing property damage. You left that scene without notifying law enforcement or the property owners, and continued driving for approximately two miles until you drove your car into a ditch on Riebli Road in Sonoma County. When a passerby stopped her car and asked if you were all right, you told her to leave. When a second driver stopped and offered to call for help, you said “we’re fine” (even though you were alone) and told her not to call anyone. You also falsely told her that your husband was with you.

Having been notified by someone other than you, California Highway Patrol (CHP) officers and other emergency personnel arrived at the scene at Riebli Road. When Firefighter Ramos found you sitting in the driver’s seat, you falsely told him that you had not been the driver. You said that an unknown woman had been the driver, and then that an unknown man had been the driver. When

Firefighter Ramos asked you where the keys to the car were, you said that the male driver had taken them when he fled the scene up a nearby hill.

When CHP Officer Holeman arrived on the scene as the investigating officer, he asked you what had happened. You falsely told him that you had not been the driver. You said that there had been two other people in the car with you, a man and a woman, and that the man had been driving. You said that you had met them at a friend's house, but did not know their names. You said that you had been sitting in the back seat (even though the car had no back seat). When Officer Holeman asked you where the keys to the car were, you first told him that you thought they were in the car, then said that the male driver had taken the keys with him when he and the woman left the scene on foot, walking back toward the friend's house. You said that you had let the man drive your car because he and the woman were going to give you a ride home and then drive your car back to the friend's house. When Officer Holeman asked you how much alcohol you had consumed, you first answered "two bottles," then said, "two glasses." When he asked you what you had been drinking, you asked him why he was asking and again asserted that you had not been driving the car.

Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

### **COUNT THREE**

At the scene on Riebli Road, referenced in count two, and while being transported from that scene, you repeatedly invoked your judicial office, and that of your husband, in an effort to avoid being arrested for crimes related to your drinking and driving and to otherwise receive preferential treatment, as follows.

You identified yourself to Firefighter Ramos by showing him your Sonoma County Court Judge identification badge. When you were asserting your false story that you were not the driver to Officer Holeman, you repeatedly told him that you were a superior court judge in Sonoma County. You also repeatedly

requested that Officer Holeman call your husband who, you informed the officer, was an appellate court justice.

When Officer Holeman told you that he had determined that you had in fact been the driver, and that he needed you to answer some questions and perform some field sobriety tests, you responded to the effect of, “but I’m a judge, and I told you I wasn’t the driver.” You then declined to answer any more questions and declined to perform any field sobriety tests.

When Officer Holeman placed you under arrest for driving under the influence, you persisted in telling him that you were a superior court judge. You told him that because you were a judge he should not be arresting you. You also repeatedly requested that he call your husband, the appellate court justice.

When you were handcuffed and placed in a patrol vehicle, you began complaining about the handcuffs and asked Officer Holeman if he had seen your superior court judge identification badge. You asked him if he knew you were a judge. You told him that he did not need to be doing what he was doing and that he could remove the handcuffs. Officer Holeman explained that they could not be removed, pursuant to CHP policy. You then said that the handcuffs were too tight. Officer Holeman helped you out of the car, checked the handcuffs himself and had another CHP officer check them to confirm that they were not too tight and had been placed on you in a manner consistent with CHP policy.

You were helped back into the car, and when Officer Holeman was transporting you to a CHP office, you repeatedly told him that he should remove the handcuffs. Officer Holeman again advised you that he could not do so, pursuant to CHP policy. You then told Officer Holeman that in your courtroom you go against court policies for CHP and other officers, and that he should extend that courtesy to you. You persisted in telling Officer Holeman that you were a superior court judge and that your husband was an appellate court justice.

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

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 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: 2/3/06

/s/  
MARSHALL B. GROSSMAN  
CHAIRPERSON