

COPY

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE)

No. 68)

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE RICHARD J. RYAN:

IT APPEARING THAT from January 8, 1979, to January 3, 1983, you were a Judge of the Justice Court, Foresthill Judicial District, and from January 3, 1983 to the present, a Judge of the Municipal Court, Roseville-Rocklin Judicial District, Placer 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 and persistent failure or inability to perform your duties as a judge, all in disregard of your oath to well and faithfully discharge the duties of your office. The particulars of the charges are as follows:

COUNT ONE

You are charged in Count One with wilful misconduct in office:

A. You have improperly interjected yourself into criminal proceedings thus interfering with the function of the prosecutor to the detriment of the administration of justice in Placer County.

1. During defendants' initial appearances in several misdemeanor citation cases in which the District Attorney had not yet filed charges, you have knowingly restricted the prosecution's statutory discretion by ordering the cases continued to a date certain with the statement that you would not allow the Prosecutor to file charges after that date. Those cases include People v. Charles Beatty, RX 71885; People v. Patrick Mitchell, RX 71785; People v. Miranda, et

al., CR 2-3436.

2. It is your usual practice at misdemeanor pretrial hearings to devise and communicate suggested pleas and dispositions to the prosecution and defense without prior participation or agreement of the parties. This invades the prerogatives of the prosecution and creates the impression of a non-neutral arbiter.

3. On August 8, 1984, at the preliminary hearing in People v. Robert E. Jacks, CR 2-2361, you held the defendant to answer on felony forcible sodomy charges. After you later learned that the District Attorney chose not to file felony charges, you contacted District Attorney Jack Shelley by telephone ex parte, protested the decision, and urged him to pursue the case as a felony, or in the alternative, that a misdemeanor charge be filed and the case returned to your court.

B. You have conducted investigation and have received evidence in excess of your authority and in such a manner as to create the appearance that you abandoned your judicial neutrality.

1. In People v. Handcock, Crim. A-57242, (1982), without the knowledge or permission of the parties, you directed your bailiff to go out during a recess and investigate an aspect of the evidence. During a lunch recess, you personally investigated the same matter. Later, over the

objections of both parties to the case, you interrupted the defendant's testimony and called your own witness to question him about the evidence that you had discovered. The defendant's conviction was subsequently reversed on appeal based on your actions. (People v. Handcock (1983) 145 Cal.App.3d Supp. 25.)

2. In Foresthill Unified School District v. Mohammed Garcia, Foresthill #388, in February 1981, in ruling on the plaintiff's demurrer, you solicited opinions from unsworn courtroom spectators who were members of the Foresthill Unified School District Board.

C. You have abused your contempt power, to wit:

1. On or about October 29, 1984, during the arraignment of unrepresented defendant Charles Jergo, Attorney Dean Starks addressed you regarding his acquaintance with the defendant and the defendant's dependability in making court appearances. You thanked Starks, then sentenced Jergo to jail and recessed. After you left the courtroom, Starks asked another attorney in the courtroom the date of the next election for your judicial office. This remark was overheard by your clerk, Samantha Spangler, who argued with Starks and reported the incident to you in your chambers. You then convened in chambers, took unsworn testimony on the matter, accepted Starks' apology, and found him in contempt. You sentenced him

to three days in jail or a \$200 fine in a written order dated October 29, 1985.

Starks pursued a Habeas Corpus action, In re Starks, Placer County Superior Court #70210, and an order to show cause issued on October 31, 1984. You issued a minute order dated November 1, 1984, vacating the contempt finding, which order was not mailed to the parties until November 16, 1985. The petition for habeas corpus relief was granted on January 9, 1985.

2. In April of 1982, you threatened Deputy Public Defender T. S. Hand with a contempt order and a fine for using the phone in your courtroom chambers. When Hand indicated he would challenge any such order, you did not pursue the matter.

3. Following a small claims action, Payless Drug Store v. Maxine Hiter, S.C., #4411, on April 21, 1982, in which you had ordered defendant to pay a judgment and she had indicated an inability to pay, defendant made a comment as she was leaving the courtroom regarding her inability to pay. You overheard the remark and immediately ordered the bailiff to take her into custody for contempt. Ms. Hiter spent 24 hours in the county jail pursuant to your contempt order.

4. On or about October 16, 1984, the scheduled preliminary hearing in People v. Hinzman and Paul, CR #2-2682, was delayed due to your unexplained two-hour absence from the

courtroom. When you took the bench, the attorneys for defendants requested a continuance due to there being insufficient time remaining in which to present the case, for which you threatened them with contempt.

D. You have exercised your judicial power in criminal cases for improper personal reasons.

At a hearing on June 6, 1984, in People v. Madeline Merkle, CR #2-1126, the Probation Department sought to have the defendant's drug diversion status terminated due to her noncompliance with conditions of the program. After the parties adjourned to chambers, and the defendant spoke with you, you dismissed the case. When asked why you had done so, you made a remark to the effect that defendant Merkle had allowed you to look down her blouse.

E. You have capriciously issued orders when you knew or should have known they were beyond your lawful authority.

1. On January 26, 1984, in People v. Deborah Mitchell, RO #6962, you unlawfully sentenced the defendant to a term in the county work release program. When she was later terminated from the program by the County Probation Department for medical reasons, you scheduled and held a hearing on May 24, 1984, at which, over the objection of the Probation Department, you reinstated her in the program. When the

Probation Department again terminated her from the program, you scheduled the matter for another hearing. After being advised by a Deputy County Counsel that you had no authority to act in the matter, you threatened to obtain "the highest-priced lawyer in the state," or words to that effect, if the County were to challenge your authority by Writ. Writ proceedings were subsequently brought by the County Counsel and you hired a private attorney to represent you at county expense. On January 23, 1985, the Placer County Superior court issued an order in case number 69003 granting the petition of the County on behalf of the Probation Department for a writ of mandate.

2. In People v. Stanley Risind, CR 2-2861 (November 28, 1984), you dismissed a case of public intoxication with an order that the defendant leave town.

3. In a revocation of probation proceeding in People v. Frey Swaney, CR 2-1411 (April 25, 1984), you ordered that you would not find the defendant to be in violation of his probation provided he would stay out of Placer County.

4. In McGinnis v. Shaw, SC #2-1326 (October 18, 1984) you awarded "joint custody" of a dog to which the defendants had no legal claim to ownership after you had coerced a stipulation to this arrangement from the plaintiff.

F. You have acted in knowing disregard of and have improperly discouraged defendants' exercise of their

Constitutional rights.

1. In People v. Cabrera, CR 2-2949 (January 2, 1985), the defendant was represented by counsel at the time of his guilty plea. The defendant failed to appear for sentencing and was later apprehended on a bench warrant. The defendant was brought before your court without notice having been given to his counsel of record. You accepted his purported waiver of rights and sentenced him to county jail. This sentence was later set aside in a habeas corpus action brought in Superior Court (In re Cabrera, Placer County Superior Court No. 71484).

2. In People v. Wiggins, AU #6492, (1984), at a pre-trial conference in a driving-under-the-influence case, you offered the defendant "no time" if he would plead Guilty. After the offer was rejected, you told a Deputy District Attorney that you would take action to penalize the defense attorney for going to trial. The case subsequently proceeded to jury trial, the defendant was convicted, and you sentenced him to 30 days in jail and a fine and penalty assessments. (The usual sentence for a first offense in Placer County is either a license restriction for 90 days and terms and conditions of probation, or a two-day jail sentence and fine and probation.) The sentence was subsequently set aside in a habeas corpus action in Superior Court and the case was returned to you for re-sentencing. You again sentenced the defendant to 30 days, which sentence you said you had based on

your belief that defendant had committed perjury. This sentence and your reason therefor appeared to be in justification of your earlier sentence.

3. In People v. Glen Burgess, CR #6931, the defendant had been represented by counsel when he had pleaded guilty and was admitted to probation. A subsequent petition to revoke his probation was brought before you. On March 21, 1984, you met in chambers with the defendant and a deputy probation officer. You told Burgess that no lawyer was needed because he had clearly violated his probation. Defendant admitted the probation violation. On June 6, 1984, Burgess again appeared without counsel and you sentenced him to one year in the county jail.

G. You have persistently failed to provide court reporters when proper to provide them or have offered resistance to requests by the representatives of the District Attorney's office and others that you provide court reporters in cases including the following:

1. In People v. Bremer, CR #2-1427 (January 17, 1984), you accepted the waiver of a preliminary hearing by a defendant without a court reporter being present. The Superior Court subsequently ordered the case returned to you for further proceedings because of the absence of a record.

2. In People v. Mitchell, CR #6962, on May 24,

1984, you refused the request of the Probation Department for a court reporter (see paragraph G. 1., supra).

3. In People v. Burgess, you failed to provide a court reporter at sentencing (see paragraph F.3., supra).

COUNT TWO

For a further and separate cause of action, you are also charged in Count Two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute:

A. In support of this cause of action, paragraphs A through G of Count One are hereby incorporated by this reference as if fully set forth herein.

B. You have made improper and unseemly comments in the press about pending cases before you and have used that medium as a forum in which to justify certain of your actions and case dispositions.

1. In Placer Co. Nutrition Services Council v. Roseville, S.C. #4619, you took the case under submission on 8/10/85 and told the parties you would notify them by mail of your decision. On that same day, you released your decision and opinion to the local press.

2. While the Dean Starks contempt matter was pending in the Placer County Superior Court, you attempted to

defend your ruling in the local press. (See Count I, paragraph C. 1., supra.)

3. At the time you issued your ruling in McGinnis v. Shaw, S.C. #2-1826, you related to the local press your role in the stipulated judgment between the parties. As a result, your handling of this case received widespread publicity and became a subject of ridicule in the local legal community (see Count One, paragraph E.4., supra).

4. At the close of the Wiggins trial (see Count I, paragraph F.3. supra), you refused to provide reasons for your sentence when requested to do so by defense counsel, but later discussed your reasons with a newspaper reporter: the Roseville Press Tribune reported on 9/18/84 that you said, "Persons who plead guilty without putting the county to the expense of a jury trial will get a 'break' in sentencing... There has to be some incentive not to go to trial... If two percent (of all defendants) go to trial, the system will not work. We'd need three times as many judges, attorneys and everyone else."

After there was Editorial criticism of your remarks in the local press, you offered a different reason in a letter you wrote the newspaper in which you said, "Anyone who lies, and whom neither I nor the Jury believe, and who is found guilty, will be given a more severe sentence..." Roseville Press Tribune, 10/12/84.

C. You have engaged in offensive and vulgar conduct toward female attorneys.

1. In April of 1983, in chambers, you told Attorneys Karen Brashears and Remona Kostakis an off-color joke about "Adam" and "Eve." They were offended by your remarks.

2. In 1983, in chambers, you told Attorneys Remona Kostakis and Joan Hayes an off-color joke about oral copulation. They were offended by your remarks.

3. In August or September of 1983, you repeatedly attempted to persuade Karen Brashears to sit in a chair in your chambers to be handcuffed. She repeatedly refused and was frightened by your conduct.

D. You have been frequently and regularly absent from the courthouse during normal court hours. This has resulted in an increased burden on your fellow judges and has rendered you unavailable to provide many judicial services to litigants, attorneys, and law enforcement personnel. Your absences have injured the administration of justice in Placer County.

E. You have made appointments which appeared to have been based on factors other than merit, and which have created the appearance of favoritism and nepotism.

1. In November of 1984, you appointed Attorney

Carol Medof, with whom you were conducting a personal relationship and who was visiting you from Southern California, as a pro-tem judge in traffic and small claims cases in your court. Medof had no prior experience as a judge or in the kind of cases over which she presided.

2. You have appointed Placer County Deputy District Attorney Dan Kane as an expert advisor to you in small claims cases concerning automobiles. Kane lacks requisite qualification as an expert, and was an active supporter in your campaign for judicial office. He has appeared before you in his full-time position as a Deputy District Attorney. Your appointments of Kane, who supplied you with his findings of both fact and law, were unauthorized delegations of your judicial function.

COUNT THREE

For a further and separate cause of action, you are charged in Count Three with persistent failure or inability to perform your judicial duties.

A. In support of this cause of action, paragraphs A through G of Count One are hereby incorporated by this reference as if fully set forth herein.

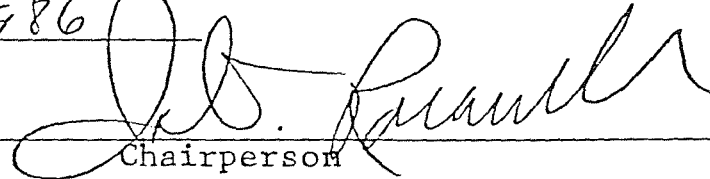
B. In support of this cause of action, paragraphs B through E of Count Two are hereby incorporated by this reference as if fully set forth herein.

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 on Appeal, and must consist of an original and eleven (11) legible copies.

By Order of the Commission on Judicial Performance.

DATED:

Jan. 13, 1986



Chairperson

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

No. 68

AMENDMENT TO NOTICE
OF FORMAL PROCEEDINGS

TO: JUDGE RICHARD J. RYAN:

Pursuant to rule 911, California Rules of Court, the notice of formal proceedings filed January 13, 1986, and otherwise fully incorporated herein, is amended to also include the following additional facts:

COUNT ONE

H. You have improperly attempted to establish a social "dating" relationship with a criminal defendant while at the time you maintained continuing jurisdiction over her criminal case.

At a hearing on October 12, 1983, in People v. Shirley Smith, CR2-1005, following her guilty plea, you admitted the defendant to probation on various terms and conditions, including the service of 200 hours of community service at the Roseville courthouse. Defendant was ordered to report back for a review of the disposition on December 12, 1983. Thereafter, between October 12 and December 12, 1983, while she was engaged in court work, you repeatedly asked the defendant for a date despite her

refusals and indications that she was married. Ms. Smith felt intimidated by your conduct.

COUNT TWO

A. In support of this cause of action, paragraphs A through H of Count One are hereby incorporated by this reference as if fully set forth herein.

* * * * *

D. You have been frequently and regularly absent from the courthouse during normal court hours. This has resulted in an increased burden on your fellow judges and has rendered you unavailable to provide many judicial services to litigants, attorneys, and law enforcement personnel. Your absences have injured the administration of justice in Placer County, including, but not limited to, the following cases or circumstances:

1. On January 27, 1986, at 9:00 a.m., you commenced a hearing on an order of debtor's examination in Sovenski v. Lang et al., 1977 S.C. 4147, and directed the parties to a conference room to proceed without you. When the parties were unable to proceed and the plaintiff, one Lucinda Walter, returned to the courtroom, she found that you had absented yourself from the courthouse and were unavailable for the completion or further conduct of those proceedings.

2. On various occasions, at least one of your clerks, Colleen Fitzpatrick, has had to inform members of the public, during business hours, that you are unavailable for the conduct of judicial business.

3. According to reports of Judges John Cosgrove and James Roeder, as well as Court Administrator Bette Keehley, you infrequently attend the weekly judges' meetings of the Placer County Municipal Court.

4. You have continually maintained abbreviated hours at the Roseville Courthouse, necessitating the issuance, by then Presiding Judge John Cosgrove, of Placer County Municipal Court Administrative Order 85.6 on November 1, 1985, which requires that Placer County Municipal Court judges advise the presiding judge when they have completed their judicial duties before 3:00 p.m. and intend to leave their courthouse.

5. Although your fellow municipal court judges have repeatedly expressed concern about the hours you have maintained at the Roseville Courthouse, you have continued to maintain abbreviated hours, resulting in an increased burden on your fellow judges, including, but not limited to, an occasion on or about October 4, 1985, when you and two members of your staff left the courthouse in the morning and flew to Columbia, California, for the rest of the day. No judicial officer was ever advised of your planned absence and your absence on that occasion resulted in part of your calendar being reassigned, without notice, to Judge James Roeder.

6. Your persistent afternoon absences from the Roseville Courthouse have created the impression among Placer County law enforcement officers that you are generally unavailable to sign a search or arrest warrant after 12:00 noon. Your absences have

resulted in officers being forced to obtain judicial authorization for a warrant at other courthouses, according to Roseville police officers Neves, Stump, and Uribe, as well as Judges Cosgrove and Richard Gilbert, and Deputy District Attorneys Marchi, Bedore, Cronin, and Deputy Public Defender Stern. Specifically, you were unavailable to sign a search warrant during business hours, in the following cases:

(1) Rocklin P.D. Case No. 85-057-01, on February 26, 1958 (Officer Elliott and Deputy District Attorney Bedore); (2) Roseville P.D. Case No. 113-84-03577, on May 11, 1984 (Detective Darrell Stump), and (3) Roseville P.D. Case No. 113-84-05341, June 22, 1984 (Detective Darrell Stump, Deputy District Attorney Bedore).

7. You have been late for court business, to the prejudice of litigants, including but not limited to, the preliminary hearing scheduled on October 16, 1984, in People v. Hinzman and Paul, CR 2-2682. (See Count I, paragraph C. 4, supra.)


COUNT THREE

A. In support of this cause of action, paragraphs A through H of Count One are hereby incorporated by this reference as if fully set forth herein.

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 on Appeal, and must consist of an original and eleven (11) legible copies.

By Order of the Commission on Judicial Performance.

Dated: MAR 14 1986



Chairperson