

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**INQUIRY CONCERNING
JUDGE DEANN M. SALCIDO,**

No. 189

**DECISION AND ORDER
IMPOSING PUBLIC CENSURE
PURSUANT TO STIPULATION
(Commission Rule 127)**

I

INTRODUCTION AND SUMMARY

This disciplinary matter concerns Judge DeAnn M. Salcido, a judge of the San Diego Superior Court since 2002. The commission filed a Notice of Formal Proceedings on September 20, 2010, charging Judge Salcido with allowing herself to be videotaped while conducting proceedings in her courtroom for the purpose of promoting herself for a role in a potential television entertainment program and telling an entertainment attorney representing the producer that she would set her more interesting cases on the day of the filming; making numerous improper remarks and engaging in improper conduct while court proceedings were being filmed; engaging in a pattern of improper conduct on other occasions, including making demeaning and discourteous remarks regarding litigants, court staff, attorneys and others; and placing a defendant into custody for contempt without affording her due process or complying with the legal requirements for contempt.

By Stipulation for Discipline by Consent (Stipulation), executed October 18, 2010, Judge Salcido and her counsel, Heather Rosing, Esq., and the examiner for the commission, Gary Schons, Esq., have requested that the commission resolve this matter by imposition of a public censure provided that Judge Salcido resign from the bench and not seek or hold judicial office and not seek or accept judicial assignment, appointment, or reference of work from any California state court. Pursuant to the Stipulation, Judge Salcido has agreed to tender her irrevocable resignation from judicial office within five days of the issuance of this decision, said resignation to be effective immediately. By

signed affidavit, Judge Salcido renders her free and voluntary consent to the Stipulation, admits the truth of the stipulated facts and waives all further proceedings and review by the Supreme Court. (Rule 127(d).) The Stipulation provides that if Judge Salcido fails to comply with any of its terms and conditions, the commission may withdraw the censure and proceed with formal proceedings, and her failure to comply with the terms and conditions of the Stipulation may constitute additional and independent grounds for discipline.

II

STIPULATED FACTS AND LEGAL CONCLUSIONS

The following findings of fact and conclusions of law are based on the Stipulation. In the signed Stipulation, Judge Salcido “expressly admits that the foregoing facts are true and that she agrees with the stated legal conclusions.”

COUNT ONE

On January 26, 2009, Judge Salcido had the husband of her courtroom bailiff videotape her on the bench presiding over a variety of matters for approximately one hour. She did so to promote herself for a role in a potential television entertainment program featuring a judge. She provided the January 26 tape to an entertainment lawyer, who showed it to a production coordinator for existing television shows featuring judges (hereafter “the producer”).

Judge Salcido thereafter was informed by the entertainment attorney that the producer would be interested in filming her conducting proceedings in the courtroom. On May 1, 2009, she allowed the producer to film proceedings in her courtroom for the entire day. The purpose of the filming was to promote herself for a role in a potential television entertainment program featuring a judge.

No request was made pursuant to California Rules of Court, rule 1.150, to record any portion of proceedings on January 26, 2009, or on May 1, 2009, nor would an order granting such a request have been properly issued as the filming was for the judge’s personal purposes. The judge did not provide advance notice of the filming to the litigants or counsel whose cases were heard during filming on January 26, 2009; advance

notice of the filming was provided to some of the litigants or counsel whose cases were heard on May 1, 2009.

In an email message dated March 5, 2009, sent by the judge to the entertainment lawyer, the judge suggested that filming in her courtroom be scheduled for April 24. She told him that she has “been setting my more interesting defendants and those with substance abuse issues for Friday April 24th.” On March 9, 2009, following his suggestion that filming occur on May 1, Judge Salcido sent an email message in which she told him that “I will line up my most interesting cases for the afternoon of [Friday] May 1st.” These statements give the appearance that the judge was scheduling cases based on their possible appeal in a videotape to be used to promote herself for a television program. It also creates an appearance of impropriety for the judge to represent that she would manipulate her calendar for non-judicial purposes.

The conduct described above violated canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(2) (improper use of the prestige of judicial office) and 3A (a judge’s duties shall take precedence over all other activities). The conduct constitutes prejudicial misconduct within the meaning of the California Constitution, article VI, section 18, subsection (d), which provides that a judge may be disciplined for “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Prejudicial misconduct includes “conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office...” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1104, citing *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 312.)

COUNT TWO

A. Count Two A

On May 1, 2009, while proceedings in her courtroom were being filmed, Judge Salcido made the following improper remarks:

1. Around 10:43 a.m., she asked defendant Faustino Valdez, who was entering a change of plea to a charge involving marijuana, “You were born in 1980?” After he responded “yes,” she remarked, “You look older than me. That’s what smoking will do to you.”

2. Around 10:53 a.m., defendant Juan Molina pled guilty to engaging in lewd conduct in public. The judge asked counsel for information about the case and was informed that the defendant had urinated in public and then turned around, exposing himself. After noting the number of days the defendant spent in custody, she joked, “Wow. Seventy-two days in custody giving new meaning to the term zip it.” After ordering the defendant to stay away from a certain location, she joked, “Because I think they’ll recognize you in more ways than one.” She later joked, “again, new meaning to the term zip it.”

3. Around 11:07 a.m., after placing Rodolf Rodriguez on probation, Judge Salcido made the following remark: “What that means is don’t come before the court on another case ... ‘cause you will definitely be screwed and we don’t offer Vaseline for that.”

The judge used the term “screwed” on other instances on May 1. Around 10:22 a.m., after defense counsel stated that defendant John Hedley had not been given written proof of attendance at AA meetings, she stated, “Then he would be screwed.” Around 2:48 p.m., she remarked to defendant Shell, who had not appeared in court as ordered, “you basically screwed yourself by not coming in.” She also used the word “screwed” in the Jason Chavez matter, as set forth below.

4. Around 11:13 a.m., after being informed that Deputy Public Defender Longman wanted a chambers conference in *Sparks*, she stated, “Sidebar please,” then

asked, "Did I roll my eyes at the camera?" and laughed. The statement about rolling her eyes at the camera was made in a low voice to court staff, off the record.

5. Defendant Dustin Coombs appeared to request early termination of probation so that he could enlist in the military. His stepfather appeared with him. When the judge asked defendant Coombs why he had needed a reassignment for public service work, he explained that his mother had lost her home and that he had moved to North Carolina with her. Around 11:24 a.m., Judge Salcido remarked, "I'm supposed to put my national defense in your hands, but you can't come up here without your stepdad and you're [¶] ... [¶] tied to the hip with your mom? And I'm supposed to put my national security in your hands."

6. Around 2:34 p.m., while presiding over the *Dupre* family law matter in which an order modifying child visitation had been requested, the judge remarked to the parents, "I don't mean any disrespect to either one of you, but thankfully I don't live with either one of you. So I don't know where the daughter has been."

7. Around 2:44 p.m., after defendant Stephen Stoflitt admitted a probation violation and requested reinstatement in a domestic violence program, the judge told him that she could sentence him to 60 days in jail instead. When he said that he would prefer to do the program, she warned him twice that if he returned with another excuse she would slam him "like a tidal wave." The judge asked him if he understood that he was "going to do double or nothing" and whether he was "a gambling man." When the defendant replied that he was not a gambling man, she said, "Well, you're gambling, you're gambling right now." When the defendant said that he was "trying to show that I can do what I'm supposed to," Judge Salcido had the audience read aloud a slogan posted in the courtroom, "Do or do not, there is no try." Before reinstating the defendant into the program, she said, "I will put you in jail and we're doing double or nothing now. [¶] ... [¶] You're prepared to double down? [¶] ... [¶] Sixty days now or 120 minimum later. You want to take 120 later?"

8. Around 3:21 p.m., defendant Daniel Lopez appeared in custody and admitted a probation violation. Judge Salcido gave him the option of an immediate 60-

day jail sentence or reenrolling in a program, but facing a longer jail sentence if he failed to complete that program. After the defendant said that he wanted to reenroll in the program and his counsel requested a moment to confer with his client, the judge remarked to the courtroom audience, "You guys know he doesn't want to do that don't you? Yeah. Does he need to call the lifeline? Try to tell him. Let's make a deal. I think he needs to call the lifeline. Yeah. Want to poll the audience? What should he do? Take the deal, take the deal, take the deal. The audience says, of course, the audience isn't going into custody. Really easy for you to tell him to take the deal because you're going to go home tonight and sleep on your pillows." The judge and the courtroom audience repeatedly laughed at these comments. Counsel then said that defendant Lopez was not choosing the custody option because he was the only person available to take care of his 75-year-old mother, who was in poor health. The judge remarked, "Then God help her." She later said to the defendant, whom she appeared to think had called her "sir," "did you say sir? [¶] ... [¶] I was like, I know I shaved this morning," to laughter from the audience.

9. Around 3:29 p.m., the judge was told that defendant Jason Chavez, who had appeared before her earlier in the day, had tested positive for marijuana. The judge remarked to the courtroom, "He's not too clean?" to which the audience responded with a loud "woo." She said "THC," and the audience again said "woo." The judge then asked the audience, "Can I get a woo, woo, woo?" The audience responded as requested, and the judge and others in the courtroom laughed. The judge remarked, "See why my sons are screwed? I can just look at someone and I can tell." As she recalled the matter she remarked, in reference to the defendant and quoting him, "'It's been years, Your Honor.'" The judge then told the defendant that it was her job to judge credibility, and remarked, "Did you take me for a fool?" After the defendant responded, "No, Your Honor," she asked, "Did you think I don't know what I'm doing?" After the defendant said he was going to try to do what is right, Judge Salcido said to the audience, "Here's that word again, it's pretty famous," and over the defendant's attempts to explain, had the courtroom audience repeat the slogan "Do or do not, there is no try." When calling the

next case, she said, in apparent reference to this case, "If I had a dollar for everybody who told me they were clean I wouldn't need to work anymore."

10. Around 3:37 p.m., Judge Salcido remarked to defendant Gregory Armstrong, who had failed to appear in court the day before, "Do you want tissue now or later because you're going into custody right now." Before remanding him, she stated, "Did you think by coming in the next day, they wouldn't let you see me? You thought by coming in the next day, oh, I won't see Judge Salcido, they'll send me next door. How do you like me now? Things don't work that way."

11. Around 3:45 p.m., defendant Ana Earls appeared and admitted to having an alcohol and drug abuse problem. Judge Salcido asked her what type of alcohol and she said it was vodka. The judge then asked, "Any type of vodka?" After Earls said, "Any type," the judge said, "Blame it on the a-a-a-a-alcohol," to laughter from the court audience.

12. Around 3:51 p.m., a defendant appeared who had mental health issues. After ascertaining that he had been hearing voices, the judge asked, "Okay. And we talked, right? You're going to tell me if they say 'hurt the judge, hurt the judge.'"

13. Around 4:06 p.m., the judge asked defendant Jay Anderson, "Do you smoke a little chronic every now and then?" The audience laughed. After adding as a term of his probation that he not consume alcohol and that he be subject to random testing, she said, "So that means if you come here and you test at your DV classes and they find that you had some Budweisers, not only will I put you in jail because it was Budweiser instead of Heineken, you will be in jail because it's a violation of your probation."

14. Around 4:10 p.m., Judge Salcido commented that defendant Tyrone McCoy was smiling, and then remarked to him that "they might like your smile in jail," to which the audience responded with a loud "oooo" and then laughter.

15. Around 4:10 p.m., defendant Jemeelah Coleman appeared unrepresented; she apparently had failed to comply with a condition of probation. Judge Salcido advised her that she would allow her to serve 24 hours in custody, instead of the

customary 48 hours, for the violation of probation. The judge advised Coleman that she had a right to be counseled by an attorney before admitting the violation and being sentenced, and informed her that she would have to come back on Monday if she wanted to speak with an attorney. At one point the judge told her, "But I might not be so gracious on Monday." After further discussion, the defendant said that she wanted to "do the 24 hours." When the defendant paused after the judge said that this meant she would waive her right to speak with an attorney, the judge asked, "You want to ask the lifeline? You need a lifeline?" The audience laughed at these remarks.

16. Around 4:27 p.m., defendant Ladonte Wilson appeared without proof of volunteer work, and blamed his mother for not following through. Judge Salcido asked if his mother was at court, and Wilson said she was at work. The judge responded, "I'm surprised, she hasn't cut the cord obviously. Cut the cord, Mom. Cut the cord." After Wilson was remanded, the judge concluded proceedings by stating, "I suggest you don't call your mama."

17. Around 4:29 p.m., defendant Leo Clemens appeared and responded to the judge's earlier request (3:57 p.m.) that he identify a "tool" that he had learned to use to control his anger. He had previously been unable to do so. Judge Salcido said, "Hallelujah, amen, praise the Lord, thank you very much," and the audience applauded. She then said to the audience, "can I get a woo woo?" and the audience responded as asked.

B. Count Two B

Between April 2009 and April 2010, Judge Salcido engaged in improper conduct and made improper remarks regarding litigants, court staff, attorneys and others, as follows:

1. On April 21, 2009, around 3:09 p.m., in-custody defendant John Love appeared and entered a guilty plea to battery. During the sentencing discussion that followed, the case was passed because of Love's attitude. When Judge Salcido recalled the case about 20 minutes later, she ascertained that a woman sitting in the audience was with Love, then told her that she had to leave the courtroom, saying, "You need to wait

outside because he's agitated ... he's not behaving well." After taking a guilty plea from Love again, the judge elicited during sentencing that he was from St. Louis and said, "I like the accent, it's working for me."

2. On June 9, 2009, around 10:27 a.m., Judge Salcido raised concerns regarding an August 7, 2008 order entered by Judge Peter Gallagher in a criminal case involving defendant Sean Strange. After checking the court file, the judge commented, "Ah, Judge Gallagher, aka assistant public defender." At 10:34 a.m., the *Strange* case was trailed, and several other matters were heard. At 10:39 a.m., during a pause in proceedings in one of those other matters, the judge commented to court staff in a low voice, "Is that ridiculous that Judge Gallagher did that. I mean it's a sex offender case. Yeah, whatever, you know. A DV statute says it's mandatory but, you know, we're the judge, we can do what we want. Quote. Justice be damned."

3. On June 9, 2009, around noon, defendant Andrew Davis entered a guilty plea to a charge of violating Penal Code section 148. The judge asked the defense counsel to describe the facts of the case before imposing sentence; after he did so, she said, in reference to Deputy District Attorney Richard Huffman, who was not present, "and you couldn't get a 415 out of Mr. Huffman? [¶] ... [¶] Did you tell him he was going into the military? [¶] ... [¶] Mr. Huffman, if you're going into the military, he practically drives you there." (Defendant Davis was not going into the military.)

4. On June 9, 2009, around 3:28 p.m., the defense attorney in *Nicolazzo* argued that there was no dating relationship for purposes of the domestic violence statutes. In summarizing the cases the attorney had cited, Judge Salcido said that certain authorities would "tell me that booty calls are exempt from domestic violence statutes," and continued to use the phrase "booty call." She later remarked, "Yeah well, he got a taste of it though right? [¶] ... [¶] That's what I'm saying. If he's stalking her, he got a taste of it. They don't stalk unless they've got something."

5. On June 30, 2009, around 3:11 p.m., attorney Alan Spears appeared regarding his pregnant client Justine Means, who was in Maine. Attorney Spears, who was seeking a continuance, said that his client felt unable to travel because of the

pregnancy, and gave the judge a physician's letter that noted her due date. Judge Salcido stated that pregnant people traveled all the time, and noted that the physician's letter did not say that the defendant was at high risk or subject to bed rest. After the prosecutor said that she did not object to a continuance, the judge said that she would grant it. As the judge explained that she was granting the continuance for discovery reasons, not because Means was pregnant, she ripped up the physician's letter, and either threw the pieces in the trash herself or handed the pieces to her clerk to put into the trash.

6. On July 6, 2009, around 2:08 p.m., when defendant Steve Moore appeared in court wearing an Oakland Raiders jersey, Judge Salcido remarked, "You did not come in here with that shirt," and asked, "Which doors you want to walk out with, that's the Charger door [the public exit], that's the Raider door [the door for defendants going into custody]?" She then said, "Chargers door? Raiders door? Chargers door? Raiders door?" and repeatedly asked the defendant which door he wanted to go through when he left. She remarked, "365 days of the year I'm a Chargers fan. Hello, we don't take a break." The judge asked a woman present in the courtroom who was connected with the case, "Would you say he's smart, coming here in a Raiders shirt? No? What does that say about you, Dena, and the kind of men you pick?"

7. On July 6, 2009, around 2:38 p.m., while reviewing a request for modification of the terms of a protective order in the *Houmi* case, the judge remarked, "I can't do this because it's not consistent with the statute. [¶] ... [¶] I mean I can send it up to Judge Deddeh since he's the one who doesn't want to follow the statute."

8. On July 8, 2009, around 2:08 p.m., defendant Dawn Elliott appeared on an adjudicated driving under the influence case. Judge Salcido questioned her as to whether she had brought proof of attendance at AA meetings. When Elliott began to explain, the judge remarked, "I really feel like I need some popcorn to listen to this." She later stated that if Elliott failed to bring proof of the AA meetings to the next court appearance, "you will go to jail," and also said, "then you're going to go to jail."

9. On July 8, 2009, Judge Salcido made several remarks criticizing DPD Longman, some of which also created the appearance of discouraging the exercise of the

right to counsel. Around 2:12 p.m. on July 8, 2009, defendant Marilyn Hanbury appeared without counsel. Her father was present in court. After the defendant appeared to look to her father for guidance before responding to a question from the judge, the judge remarked, "Proud moment there Dad, huh," in a joking manner. She then asked the defendant if she wanted to wait for the "luxurious opportunity" to speak to an attorney that day or whether she wished to continue the case so she would not have to wait all day.

The judge passed the *Hanbury* case until about 2:21 p.m., at which time she was told that the defendant had gone to talk to an attorney. The judge remarked to the defendant's father, "You're going to be stuck here for two more hours, Dad. He's named Mr. Longman for a reason." She also said, "All she had to do was say 'not guilty' and you can come back and be real quick. But now you got Mr. Longman, also known as Mr. Federal Case." The judge and others in the courtroom laughed after these remarks.

Next, around 2:22 p.m., Judge Salcido told defendant Uriel Rivera that there was an infraction offer on his case. She said that if he wanted to consult "the public defender, Mr. Longman, it might take you a few hours, you see how long it takes for him to get to you"; she also told Rivera he could enter a not guilty plea and return on another date.

Around 2:25 p.m., the judge remarked to defendant Rodney Rouse that if he wanted to resolve the matter that day he had "to wait for Mr. Longman and he's the slowest public defender we have in the courthouse." When the defendant said that he wanted to resolve it that day, she said, "Oh Lordy. FYI, if he takes too long, I get grumpy." After the judge conveyed the offer to defendant Rouse, he said that he would "take it right now." She commented shortly thereafter, "Then you don't need to wait for Mr. Longman, who takes years off your life." The judge and others in the courtroom laughed after these remarks about DPD Longman.

Similarly, on July 28, 2009, near the end of the court day, during a discussion in open court not connected to a particular case, Judge Salcido repeatedly referred to DPD Longman as "Mr. Federal Case" and complained that she never got out of court early when he was in her department. And, on May 1, 2009, while waiting for DPD Longman, the bailiff jokingly asked the judge if she wanted her to Taser him; after the judge

responded in a bantering manner that she did not want her to Taser him, the judge asked either the bailiff or someone else present in the courtroom, "Do you want to Taser him?"

10. On July 28, 2009, at about 10:06 a.m., during a case discussion with a privately retained attorney, Judge Salcido remarked regarding football player Shawne Merriman, "Although I do have it on a reliable source he likes to play with Ecstasy pills." She further remarked, "A friend of mine personally observed it, it was at his house."

11. On October 26, 2009, around 9:38 a.m., the judge called the Paul Cody matter. Cody claimed that the East County Court was not allowing him to complete his program. Judge Salcido stated that "East County Court is being immature. Being sore losers." There was laughter in the court. She then stated that "You don't want to give them your money anyway. [¶] ... [¶] Okay. Sorry, sir. You know we can't force people to be mature."

12. On October 26, 2009, around 9:48 a.m., defendant Raul Castaneda had difficulty answering Judge Salcido's inquiry as to whether he had discussed the case with his attorney. The judge stated, "I need some aromatherapy spray right now." She sprayed a substance from a bottle and said, "This is my stress relief spray"; she then sighed heavily and laughed. During her subsequent questioning of Castaneda, after he said that he had not talked to anyone that day about his case, she stated, in reference to his attorney, "What do you think she was, your secretary?"

13. On October 27, 2009, around 8:36 a.m., before calling the calendar, Judge Salcido stated to the audience, "You guys have no sense of humor. Did we steal it when you came through the electronic metal detectors or something? Yeah. Get back your sense of humor, you're allowed to have one in court, even though they try to suck the life out of you here in the courthouse. God, you guys are dead, you guys are like, dead. I'm like, God, I need a warm up, I need a warm up comedian before I come out. Okay. Yes, sir. Are you ready? You're volunteering? All right. See? Okay. We're getting the fun back in the courthouse. Fun, courthouse, they don't have to be separate."

14. On October 27, 2009, around 8:59 a.m., Judge Salcido called the case of Emilia Bryant. When Bryant said that she was attempting to get a job in a restaurant,

the judge stated, "And this is a restaurant to be a waitress where you actually get to wear clothes?" After correcting the spelling and grammar of her resume in front of the courtroom audience, the judge told Bryant that she could "take my suggestions or you can leave it," but added, "You can see where my effort has gotten me. So maybe you might want to take my suggestions." When she asked defendant Bryant what she had been doing and she started to answer "School and --," the judge interrupted, "No, you've been hanging out with dogs and wondering why you get fleas." The judge commented several times that the shoes Bryant was wearing were "hoochie shoes."

15. In approximately early 2010, the judge made remarks in court disparaging the general clerical staff as follows. On a number of occasions, she referred to the business office staff as "cucumbers." For example, on one occasion around March or April 2010, when it was suggested that a case be postponed to the afternoon, she said words to the effect that "no, because the cucumbers might lose the file." On another occasion around March or April 2010, after referring to the clerical staff as "cucumbers," the judge then added that "they aren't even potatoes because potatoes have eyes." On more than one occasion around March or April 2010, she made the "potatoes" comment to the courtroom audience and added that "they aren't corn because corn has ears." On January 7, 2010, around 10:32 a.m., after a defendant appearing on a warrant referred to information he had received from a clerk, Judge Salcido stated, "Sir, most of those clerks, I wouldn't trust a guinea pig to. Let alone my freedom."

On May 20, 2010, around 2:30 p.m., during a discussion about a paperwork mix-up in a certain case, Judge Salcido sarcastically said, "however, I was going to say another word, the brilliant people in the back office decided not to file your paperwork in the court's file" Judge Salcido later commented "Aye, aye, aye, aye, aye. This is what I have to work with, all right, every day."

16. On February 22, 2010, around 10:11 a.m., Judge Salcido engaged in banter with the courtroom audience regarding Tiger Woods, during which she stated, "I'm sure he's nice. Ask all the hookers in the nation, he's very nice to them."

17. On February 22, 2010, court operations supervisor Beverly Harris had assigned a backup clerk to Judge Salcido's department who had to leave at 3:30 p.m. Around 3:50 p.m., while waiting for a replacement clerk, the judge made disparaging comments about Harris in open court, some of which referred to an email she had sent to the courtroom clerk earlier that day. The judge's remarks included, "the supervisor decided to send us a clerk that had to leave at 3:30," "That was what they taught them at Management 101 seminars that they go to," and "How to get the most of your employees. Let them know they could be fired." Harris then entered the courtroom; the judge asked her, "Did you know we finish at 5:00?"

18. On February 24, 2010, the defendant in *People v. Henson* appeared without counsel for arraignment on an alleged probation violation. After asking defendant Henson about his relationship with the subject of a protective order issued in the case, Judge Salcido made the following comments:

Court: Are you guys together or not together?

Defendant: Nope. We haven't been together for like over a year now. But she's the whole reason why I have to keep coming back to court.

Court: She is, or the fact that you broke the law?

Defendant: No, she is. She's –

Court: Oh, you didn't break the law? You're an innocent man on probation?

Defendant: -- All's I've been doing is trying to influence –

Court: You're an innocent man on probation?

Defendant: Yes.

Court: Is that what you're trying to tell me, you're an innocent man? I've met my first innocent man on probation. He's completely innocent, he's on probation?

Defendant: Have, have you went over the case?

Court: Oh my gosh, you're innocent.

19. Between October 2009 and March 2010, when a defendant appearing in department 3 accidentally called Judge Salcido "sir," the judge pushed herself away from the bench while seated in her chair and stated, "Do these look like the clothes of a sir?" She then raised her leg above the bench, holding her leg by the ankle, and stated, "Do these look like the boots of a sir?"

20. On April 27, 2010, around 9:58 a.m., the defendant in case number C267890 appeared without counsel, seeking to modify a term of his probation to allow him to travel out of state. After explaining to him that he was required to "formally notice" a motion to modify the terms of probation, Judge Salcido reappointed the public defender and continued the matter to May 4. After the defendant left the courtroom, the judge handled four other matters, and the recording was stopped at approximately 10:13 a.m. Shortly thereafter, before the recording was restarted, the judge stated to the audience of approximately 30 people, from the bench, words to the effect of: "Do you remember that guy on formal probation?" After someone in the audience said "yes," she said words to the effect of: "You know why I wouldn't modify his probation without going through required procedures?" then said words to the effect that "Because he's a sex offender."

The conduct described above under Count Two demonstrated a pattern of misconduct and violated canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall promote public confidence in the integrity and impartiality of the judiciary), 3B(3) (a judge shall require order and decorum in proceedings), and 3B(4) (a judge shall be patient, dignified, and courteous). It constitutes prejudicial misconduct.

COUNT THREE

On January 7, 2010, around 10:03 a.m., defendant Chadira Gipson appeared in case number C287545 for a change of plea. As set forth below, Judge Salcido took

Gipson into custody for direct contempt without affording her due process or complying with the legal requirements for direct contempt, and without sentencing her; she also directed comments to the courtroom audience that failed to uphold a high standard of conduct:

Court: Oh, Chadira Gipson.

Counsel: Good morning, Your Honor, Michael Kern appearing on behalf of Ms. Gipson, who's present for the court, before the court out of custody for change of plea to a 415(2) as a misdemeanor.

[¶] ... [¶]

Court: So, the *Chadira Gipson* matter. All right. And it's going to be an added -- what count five?

Counsel: I think that's correct, Your Honor.

Court: A 415(2)?

Counsel: Yes.

[¶] ... [¶]

Court: All right. So, Ms. Gipson, is that how I pronounce your last name?

Defendant: Yes.

Court: Why don't you have her speak next to the microphone. Ms. Gipson, have you had a chance to talk about the facts of this case with your court-appointed attorney?

Defendant: Yes.

Court: Did you get all of your legal questions answered?

Defendant: Yes.

Court: I can't hear you. You need to speak up or use the microphone.

Defendant: Yes.

Court: Thank you. Were the consequences of pleading guilty explained to you?

Defendant: Yes.

Court: Oh, no, no, no, no. Counsel?

Counsel: Yes.

Court: You know how I am with the defendants who don't show the proper respect to the judge. I don't deal well with eye-rolling attitudes. And I am about to sentence her. So maybe you want to take her outside and let her know whose courtroom this is.

Counsel: Sure. We've discussed the case, Your Honor, I just need to --

Court: I just directed you to take her outside --

Counsel: Sure.

Court: And let her know whose house she's in.

Counsel: Thank you.

Court: Mm-hmm. I'm about to sentence her.

Defendant: For what? [or So what?]

Court: Excuse me, go grab her. Yeah, go grab her for direct contempt of court.

Bailiff: Come back in.

Court: I don't play in here. I don't know who you think you're playing with.

Bailiff: Come back in, take a seat.

Court: Put her in, in the tank.

Bailiff: Okay. Come on over here actually.

Court: She's in direct contempt of court.

Bailiff: Come on over here.

Court: For saying "so what" when I said I was about to sentence her.

Defendant: I didn't say it, I said "do what."

Court: Be quiet. Anybody else feel like they're lucky today?
[Laughter] I guarantee you we're not in Las Vegas people.

The judge then called a few other matters. Around 10:12 a.m., outside the presence of the defendant, she told defense counsel, "I'm not trying to punish you, counsel, but I'm not ready to deal with her yet." After further discussion, counsel asked Judge Salcido if she would recall the case. The judge said, "Not right now," and then called two other matters.

At 10:22 a.m., Judge Salcido asked defense counsel if he needed "to go somewhere else because I'm not intending to call her case for a while. [¶] ... [¶] I think she needs some time to reflect. [¶] ... [¶] She has a lot of reflection to do. So, um, do you have to go to any other courtrooms?" When defense counsel responded that he did not, the judge said, "All right. Well, unfortunately, she don't know how to act." Shortly thereafter, Judge Salcido told court staff that she was recusing herself and the case was sent to department 11, where Gipson was released and entered her change of plea. The contempt proceeding was not pursued.

Judge Salcido's conduct in *Gipson* constituted an abuse of authority and demonstrated embroilment. It violated canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a

judge shall promote public confidence in the integrity and impartiality of the judiciary), 3B(2) (a judge shall be faithful to the law), 3B(4) (a judge shall be patient, dignified, and courteous) and 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding the right to be heard). The judge's conduct, at a minimum, constitutes prejudicial misconduct.

III DISCIPLINE

Article VI, section 18, subsection (d) of the California Constitution provides that the commission may “censure a judge ... for action ... that constitutes willful misconduct in office, ... or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Judge Salcido concedes that her conduct as stipulated in the first two counts was prejudicial to the administration of justice that brings the judicial office into disrepute (prejudicial misconduct) and that her conduct as stipulated in the third count constitutes, at minimum, prejudicial misconduct. The purpose of a commission disciplinary proceeding is “the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity ... of the judicial system.” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.) The commission concludes that this purpose is best served by the discipline proposed in the Stipulation: a public censure with an agreement that Judge Salcido will resign and will not at any time seek or hold judicial office in California or seek or accept judicial assignment from any California state court.

Judge Salcido admits that she engaged in thirty-nine separate instances of prejudicial misconduct. “The number of wrongful acts is relevant to determining whether they were merely isolated occurrences or, instead, part of a course of conduct establishing ‘lack of temperament and ability to perform judicial functions in an even-handed manner.’[Citation.]” (*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 653; *Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 296.) The numerous incidents of misconduct as described in the stipulated facts

cannot be characterized as isolated occurrences. Rather, they establish a pattern of misconduct which demonstrates a temperament ill-suited for judicial office.

In many instances, Judge Salcido's misconduct made a mockery of the judicial system. She used her court proceedings as an audition for her own television entertainment program, giving the unseemly appearance of playing to the cameras and the audience. While the cameras were rolling, the proceedings took on the atmosphere of a game show. Defendants were asked if they wanted to use "a life line," and "which door" they wanted to walk out. Another defendant was told "we're doing double or nothing now," and asked if he was prepared to "double down." The judge repeatedly solicited audience participation and even polled the audience: "Can I get a woo, woo?"; "Does he need to call the lifeline?"; asking the audience to repeat the slogan, "Do or do not, there is no try."; "What should he do? Take the deal, take the deal, take the deal." In response, the audience laughed and "wooded" without admonishment from the court. Judge Salcido failed to appreciate that "a courtroom is not the Improv and the president's role model is not Judge Judy." (*Haluck v. Ricoh Electronics, Inc.* (2007) 151 Cal.App.4th 994, 1008.) The judge's showmanship behavior together with her statement to the producer that she would line up her more interesting cases for the day of the filming created the appearance that she was more interested in promoting herself for a role in a television show than in delivering justice to those who appeared before her.

It is self-evident that crude comments and sexually suggestive jokes from a judge have no place in a courtroom. Yet, Judge Salcido made manifestly inappropriate remarks of a lewd nature in an open courtroom as the proceedings were being filmed. For instance, she ordered a defendant charged with exposing himself in public to stay away from a certain location because "they'll recognize you in more ways than one." When a defendant smiled, she remarked to him that "they might like your smile in jail." In a particularly offensive instance, she told a defendant that he would be "screwed" if he violated his probation and "we don't offer Vaseline for that." We have previously condemned joking or making a casual comment about the possibility of an inmate having to endure same gender rape while incarcerated, which "may be perceived as not only an

indifference to and acceptance of a tragic reality in our criminal justice system, but as a perhaps unintended admission of its inevitability under present conditions.” (*Public Admonishment of Judge Susanne S. Shaw* (2000), p. 15.)

Even when not auditioning for her own television show, Judge Salcido engaged in conduct that was seriously at odds with her duty under the canons to be patient, dignified and courteous to litigants, attorneys, and those with whom she deals in an official capacity and to maintain decorum in the proceedings. (Code of Judicial Ethics, canons 3B(3), (4).) In open court, the judge ridiculed and belittled litigants, referred to court clerical staff as “cucumbers” who “aren’t even potatoes because potatoes have eyes” or “corn because corn have ears,” ridiculed a deputy district attorney, and made several disparaging remarks about an assistant public defender, often in the presence of his potential client. When a defendant accidentally called her “sir,” Judge Salcido demonstrated a disturbing lack of decorum by raising her leg above the bench, holding her leg by the ankle, and stating, “Do these look like the boots of a sir?”

We appreciate that each judge has his or her own style, and that “a modest injection of humor at the appropriate time” can have a place in the courtroom. (Rothman, *Cal. Judicial Conduct Handbook*, (3d ed. 2007) § 3.42, p. 140.) “However, the cultivation of a particular judicial personality may not be used as an excuse for unethical conduct. ... regardless of the judge’s style, she or he must respect the litigants and attorneys who appear in her or his court.” (*Public Admonishment of Judge Susanne S. Shaw* (2000), p. 14.) Judicial humor should never be used in a courtroom, as it was by Judge Salcido, to ridicule, embarrass or disparage others, or in a manner that diminishes the dignity of the judicial process. Judge Salcido’s brand of “humor,” as exemplified by the stipulated facts is, without question, unbecoming a judge.

The utter lack of decorum and inappropriate judicial demeanor exhibited in the stipulated misconduct reflects poorly, not only on Judge Salcido, but on the reputation of the entire judiciary. “The public looks to judges to set the tone of judicial proceedings.” (*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 312.) Unfortunately, the tone set by Judge Salcido was undignified, unprofessional, and

degrading to litigants, attorneys and court staff. Members of the public observing the proceedings on the day the producer was filming could not help but wonder if they were in a courtroom or on the set of a reality television program. On other occasions, her courtroom took on a comedy show atmosphere. She told the courtroom audience that they had no sense of humor, stating: "God, you guys are dead, you guys are like, dead. I'm like, God, I need a warm up, I need a warm up comedian before I come out. Okay, Yes, sir. Are you ready? You're volunteering? ... We're getting fun back in the courthouse. Fun, courthouse, they don't have to be separate." Judges are expected to administer justice and resolve serious issues, not to provide entertainment. Judge Salcido's misconduct cheapens the dignity of the court and undermines public confidence in and respect for the judicial system.

Judge Salcido's misconduct also includes abuse of authority and embroilment through her incarceration of a defendant for direct contempt without affording the defendant due process or complying with the requisite legal procedures. The importance of strict adherence to statutory and constitutional procedural requirements before exercising the "ultimate weapon" of contempt has been repeatedly emphasized by the Supreme Court and this commission. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533; *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1314; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694; *Public Admonishment of Judge Lisa Guy-Schall* (1999), p. 1; see also *Koehler v. Superior Court of San Mateo County* (2010) 181 Cal.App.4th 1153, 1171.) It should have been apparent to Judge Salcido that she could not summarily remand a defendant to custody for what she perceived to be contemptuous conduct without affording the defendant any due process.

Based on the totality of the judge's misconduct, we conclude that the stipulated disposition, including the judge's agreement to resign and not thereafter hold judicial office or accept judicial assignment, is in the best interest of the public and the reputation of the judiciary. In accordance with the terms of the Stipulation, and good cause appearing, we hereby censure Judge DeAnn Salcido.

Commission members Hon. Katherine Feinstein, Mr. Anthony P. Capozzi, Esq., Hon. Frederick P. Horn, Ms. Barbara Schraeger, Mr. Lawrence Simi, Ms. Maya Dillard Smith, Ms. Sandra Talcott, and Mr. Nathaniel Trives voted to accept the Stipulation and to issue this decision and order. Commission members Hon. Judith D. McConnell and Mr. Peter E. Flores, Jr., Esq. were recused and commission member Mr. Samuel A. Hardage did not participate in this matter.

Dated: November 10, 2010

A handwritten signature in blue ink, appearing to read "Katherine Feinstein".

Honorable Katherine Feinstein
Vice-Chairperson