

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
FORMER JUDGE ROBERT A.
SCHNIDER

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns former Judge Robert A. Schnider, a retired judge of the Los Angeles County Superior Court. Judge Schnider and his attorney, James A. Murphy, appeared before the commission on August 19, 2009, to contest the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Judge Schnider and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

Judge Schnider was a commissioner of the Los Angeles County Superior Court from 1981 until 2002. He was a judge with the Los Angeles County Superior Court from 2002 until his retirement on December 15, 2008.

Between January 1, 2005, and December 31, 2007, Judge Schnider was the Family Law Supervising Judge for the Los Angeles County Superior Court. His duties included the supervision of then-Commissioner Ann Dobbs, a commissioner in the Family Law Department from March 2001 until October 31, 2007, when she retired. As the Family Law Supervising Judge, Judge Schnider was aware that Commissioner

Dobbs was not deciding all of her cases in a timely manner, but failed to take sufficient action to ensure that she did so. When Commissioner Dobbs retired in 2007, 15 cases over which she had presided had been under submission for over 90 days without her having decided them, and another 14 cases that she had under submission for less than 90 days had not been decided. Commissioner Dobbs never decided any of these cases. Prior to Commissioner Dobbs's retirement, Judge Schnider was aware of Commissioner Dobbs's failure to timely decide many of these cases. The commission determined that Judge Schnider violated California Rules of Court, rule 10.603, by failing to adequately supervise Commissioner Dobbs. The commission also determined that Judge Schnider violated California Rules of Court, rule 10.703, by failing to promptly respond to at least three complaints about Commissioner Dobbs's delay, as was required of him as her supervising judge. Judge Schnider's conduct violated canon 3C(3) of the California Code of Judicial Ethics, which requires judges with supervisory authority for the judicial performance of other judges and commissioners to take reasonable measures to ensure the prompt disposition of matters before them; canon 3D(1), which requires judges to take appropriate corrective action when they have reliable information that another judge has violated a provision of the Code of Judicial Ethics; canon 2A, which requires judges to comply with the law and act in a manner that promotes public confidence in the integrity of the judiciary; and canon 1, which requires judges to uphold the integrity of the judiciary.

Under California law, judges are expected to decide matters submitted to them within 90 days of submission, and are prohibited from receiving a salary while any cause remains "pending and undetermined for 90 days after it has been submitted for decision." (Cal. Const., art. VI, § 19; *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477, fn. 4.) While the 90-day period is not absolute, it has been used by the commission as a benchmark for determining delay in submitted cases. (See *Inquiry Concerning Judge Robert B. Freedman*, No. 179, Decision and Order Imposing Public Censure (2007) and *Inquiry Concerning Judge Robert G. Spitzer*, No 182, Decision and Order Removing Judge Spitzer from Office

(2007).) Canon 3B(8) of the California Code of Judicial Ethics requires judges, including commissioners, to dispose of all judicial matters “fairly, promptly, and efficiently.” The Advisory Committee commentary to canon 3B(8) states that a judge “should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs,” and requires judges to be “expeditious in determining matters under submission.” The commission has stated that inordinate delay in deciding cases is unacceptable in all cases, but a judge’s failure to decide family law matters can be particularly egregious in light of the harm to the parties caused thereby. (Public Reproval of Judge Thomas P. Breen (1995).)

As Family Law Supervising Judge for the Los Angeles County Superior Court, Judge Schnider had been delegated the duty of the presiding judge under California Rules of Court, rule 10.603(c)(3), to supervise and monitor the number of cases under submission before Commissioner Dobbs and to ensure that no case under submission remained undecided and pending for longer than 90 days. When Commissioner Dobbs was hired in 2001, the Los Angeles County Superior Court had a tracking system in place whereby reports were generated at the end of each month showing the cases each bench officer had under submission between 30 and 60 days, between 60 and 90 days, and for more than 90 days. These reports were, and still are, given to all bench officers of the Los Angeles County Superior Court each month. If Commissioner Dobbs had any cases under submission for 30 to 60 days, Judge Schnider was required by rule 10.603(c)(3)(D) to contact and alert her, and to discuss ways to ensure that cases in that category were timely decided. Between 2005 and 2007, the Cases Under Submission reports identified 34 of Commissioner Dobbs’s cases as being in the 30-60-day category. Judge Schnider did not contact and alert Commissioner Dobbs and discuss ways to ensure that these cases were timely decided.

If Commissioner Dobbs had cases under submission from 60 to 90 days, rule 10.603(c)(3)(E) required Judge Schnider to consider providing assistance to her. Between 2005 and 2007, the court’s monthly Cases Under Submission reports identified 33 of Commissioner Dobbs’s cases as being in the 60-90-day category. Of

these, 16 had been under submission for more than 90 days at the time the report was issued. Judge Schnider informed the commission that when he contacted Commissioner Dobbs about cases appearing on the Cases Under Submission reports, she told him that the cases had been decided or that the submission dates were erroneous or had been vacated. Judge Schnider did not verify her representations. Judge Schnider also took no action to determine whether Commissioner Dobbs was in compliance with the law governing the vacating of submission dates, which she often was not. In 2006, Judge Schnider reduced the number of cases assigned to Commissioner Dobbs. In 2006 and 2007, he transferred 354 of her cases to another judge. Commissioner Dobbs still did not complete all of her submitted cases on time. On two occasions in 2007, Judge Schnider also gave Commissioner Dobbs one week off during which she was to complete her submitted cases. During that time off, Commissioner Dobbs did not decide any submitted cases, and Judge Schnider took no action to determine whether she had decided any cases.

In 2007, in addition to the information regarding Commissioner Dobbs's cases that was contained in the court's Cases Under Submission reports, Judge Schnider was aware of several cases that had not been decided by Commissioner Dobbs within 90 days of submission but were not listed on those reports. Judge Schnider took no action to determine why these cases were not being reported on the court's monthly reports. Had he done so, he likely would have learned that Commissioner Dobbs was preparing the case status information for those reports herself, rather than allowing her courtroom clerk to do so in accordance with the standard court practice. Also, he likely would have discovered that her reporting did not accurately reflect the status of the cases she had under submission.

Judge Schnider also failed to promptly respond to at least three complaints from family law litigants about Commissioner Dobbs's delays, as required by rule 10.703. Tracy Harris complained to the court on June 11, 2007, about Commissioner Dobbs's delay of nearly five years in ruling on her case. Judge Schnider did not respond to the allegations in Ms. Harris's complaint until January 4, 2008, when he acknowledged

the delay. Suzanne Lynch complained to the court on August 13, 2007, about a delay by Commissioner Dobbs of eleven months in ruling on her case. Judge Schnider never responded to the allegations in Ms. Lynch's complaint. Julia (Bandrapalli) Stokes complained on September 28, 2007, about Commissioner Dobbs's delay of six months in entering judgment on her case. Judge Schnider never responded to the allegations in Ms. Stokes's complaint.

In addition, Judge Schnider received letters dated January 9, 2007, and April 19, 2007, from attorney Margalo Ashley-Farrand complaining about Commissioner Dobbs's delays in two of her cases. In those letters, Ms. Ashley-Farrand reported that Commissioner Dobbs had not decided certain issues that were submitted in February 2003 and other issues that were submitted in 2005, and that this was causing serious problems for her client, who had continued to pay child support to a noncustodial parent. Ms. Ashley-Farrand also informed Judge Schnider that Commissioner Dobbs had initially set a trial date of March 14, 2005, in one of her cases but had continued the trial several times until February 17, 2006, that the trial had been continued several times thereafter, and that Ms. Ashley-Farrand was unable to receive a new trial date to complete the case. She also informed Judge Schnider that she had told Commissioner Dobbs in late 2005 that she would be moving to Oregon in the spring of 2006, but that the commissioner still did not set a date to complete the trial. In the meantime, Ms. Ashley-Farrand wrote that she had to pay for several trips to Los Angeles herself, including airfare, rental car and motel, pending Commissioner Dobbs's completion of her cases. Judge Schnider never responded to Ms. Ashley-Farrand's letters.

At his appearance before the commission and in his written objections, Judge Schnider maintained that he discharged his duty with respect to these complaints by repeatedly asking Commissioner Dobbs for her response to the complaints and taking her at her word when she assured him that she would respond to him within a short amount of time. In Judge Schnider's view, the commissioner's failure to provide a response to him relieved him of his obligation to investigate the complaints himself or to respond to the complainants. The rules do not require the presiding judge or

designee to wait indefinitely for a response from the subordinate judicial officer before responding to a complainant. To the contrary, rule 10.703(d) requires that complaints against subordinate judicial officers be processed promptly, and “to the extent reasonably possible,” that the court “complete action on each complaint within 90 days after the complaint is submitted.”

Further, Judge Schnider argued that he was justified in relying on the representations of a well-respected subordinate judicial officer. However, when Judge Schnider began his duties as supervising judge, he was informed that Commissioner Dobbs had problems with delay. Time after time, Commissioner Dobbs assured Judge Schnider that she would promptly decide her delayed cases and provide him with her responses to complaints from litigants. Yet, she repeatedly and consistently failed to follow through on these assurances. Under these circumstances, Judge Schnider’s continued reliance on her promises was unreasonable. In the commission’s view, Judge Schnider should have proceeded with an investigation of each complaint when Commissioner Dobbs failed to respond to him within a reasonable amount of time. Instead, Judge Schnider waited over six months to respond to the complaint from Ms. Harris, and never responded to or conducted an investigation into the complaints from Ms. Lynch, Ms. Stokes, or Ms. Ashley-Ferrand.

When Commissioner Dobbs retired in October 2007, Judge Schnider agreed to allow her to complete work on undecided cases at home. Commissioner Dobbs took approximately 30 undecided cases home with her. Judge Schnider was aware of some, but not all, of these cases. Of the cases Commissioner Dobbs took home with her, the following 15 had been under submission for over 90 days:

1. *Allain* (case no. BD 371793) submitted on March 1, 2006;
2. *Bannan* (case no. BD310701) submitted on June 26, 2005;
3. *Beuerman* (case no. BD055815) submitted on July 16, 2007;
4. *Blackburn* (case no. BD116967) submitted in February 2003 and September 2005;
5. *Dvorin* (case no. YD048141) submission date unclear; date vacated by minute order dated September 22, 2006 but no new submission date set;
6. *Ellis* (case no. BD319194) submitted on July 13, 2005;

7. *Goldman* (case no. BD407997) submitted on November 17, 2006;
8. *Harris* (case no. BD322099) submitted on March 23, 2005 and August 29, 2007;
9. *Lynch* (case no. BD364093) submitted on November 2, 2006;
10. *Mullins* (case no. BD383098) submitted on July 23, 2007;
11. *Needleman* (case no. BD393615) submitted on July 20, 2007;
12. *Perez* (case no. BD379993) submitted on March 27, 2007;
13. *Polo* (case no. BD391297) submitted on February 7, 2007;
14. *Stott* (case no. YD046723) date of submission unclear, probably soon after May 1, 2007;
15. *Striff* (case no. PD037298) submitted on January 22, 2007.

Of the cases Commissioner Dobbs took home with her, the following 14 had been under submission for less than 90 days:

1. *Adger* (case no. BD391595) submitted on October 17, 2007;
2. *Allen* (case no. BD448597) submitted on August 16, 2007;
3. *Aronson* (case no. BD420664) submitted on October 23, 2007;
4. *Birdwell* (case no. BF017596) submitted on September 14, 2007;
5. *Cooper* (case no. BF026368) submitted on August 2, 2007;
6. *Di Paola* (case no. BD377295) submitted on August 29, 2007;
7. *Glassman* (case no. BD240596) submitted on October 31, 2007;
8. *Grifka* (case no. BD413029) submitted on August 29, 2007;
9. *Hamilton* (case no. BD375899) submitted on October 2, 2007;
10. *Kim* (case no. D229695) submitted on October 12, 2007;
11. *Locatell* (case no. BD390299) submitted on October 5, 2007;
12. *Moore* (case no. BD385251) submitted on October 19, 2007;
13. *Nielsen* (case no. BD4007195) submitted on October 22, 2007;
14. *Serrano* (case no. YD032093) submitted on October 26, 2007.

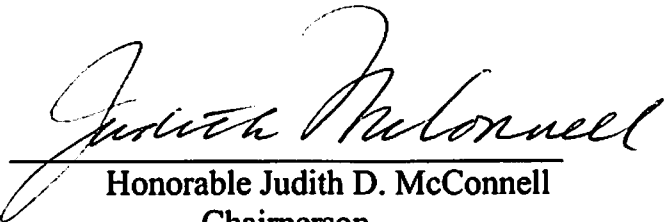
During the three months following her retirement, Commissioner Dobbs completed none of these cases. The court eventually retrieved all of the files she had taken home. Several judicial officers were required to review and complete Commissioner Dobb's undecided cases. Mistrials were declared in at least 15 cases. Some cases were decided based upon the reporter's transcript of previous proceedings before Commissioner Dobbs; however, a number of cases had to be retried.

In the commission's view, Judge Schnider's failure to properly discharge his duty to supervise Commissioner Dobbs resulted in significant financial and emotional

harm to family law litigants and seriously undermined the integrity of the judiciary. Delays in family law matters can be particularly prejudicial to the parties. The commission concludes that Judge Schnider was seriously derelict in discharging his duty to supervise Commissioner Dobbs and demonstrated a disregard for the concerns of litigants who complained about their delayed cases.

The vote of the commission for the imposition of a public admonishment was 9 ayes and 2 noes. Commission members Hon. Judith D. McConnell, Mr. Peter E. Flores, Mr. Marshall B. Grossman, Mr. Samuel A. Hardage, Hon. Frederick P. Horn, Ms. Barbara Schraeger, Ms. Maya Dillard Smith, Ms. Sandra Talcott and Mr. Nathaniel Trives voted for a public admonishment. Commission members Hon. Katherine Feinstein and Mr. Lawrence Simi voted against imposing a public admonishment and would have imposed a private admonishment.

Dated: August 31, 2009


Honorable Judith D. McConnell
Chairperson

PROOF OF SERVICE

I, the undersigned, am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within action. My business address is 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102. I declare as follows:

On August 31, 2009, I served the attached:

**DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT OF
JUDGE ROBERT A. SCHNIDER**

on all interested parties in this matter, by delivering a true copy as follows:

James A. Murphy, Esq.
Murphy, Pearson, Bradley & Feeney
88 Kearny St., 10th Floor
San Francisco, CA 94108
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- (BY U.S. MAIL) I placed the original or a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service, that this mailing will be deposited with the United States Postal Service on this date in the ordinary course of business and that I sealed and placed each envelope for collection and mailing on this date following ordinary business practices.

- (BY FACSIMILE TRANSMISSION) I caused such document to be transmitted to the addressee's facsimile number noted. The facsimile machine I used complied with Rule 2.301(3) and the transmission was reported as complete and without error. Pursuant to Rule 2.301(6), I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration as required by Rule 2.306(g)(4).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on August 31, 2009 at San Francisco, California.



Judith R. Starks