

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE BERNARD J. SCHWARTZ,

NO. 178.

NOTICE OF FORMAL PROCEEDINGS

To Bernard J. Schwartz, a judge of the Riverside County Superior Court from October 9, 2003, 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 July 16, 2005, in Pismo Beach, 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 .08 percent or higher blood alcohol level in violation of Vehicle Code section 23152(b). You had a blood alcohol level of .17, .18 percent, as evidenced by your breath test. On September 6, 2005, upon a plea of no contest in San Luis Obispo County Superior Court case number M376280, you were convicted of violating Vehicle Code section 23152(b).

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

COUNT TWO

Before and after your arrest by the Pismo Beach Police Department for the crimes referenced in count one, you repeatedly attempted to avoid being arrested and incarcerated and to otherwise receive preferential treatment because you were a judge, as exemplified by the following.

Pismo Beach Police Officer Trimble observed your vehicle “swerving all over the road” and pulled you over after you twice violated Vehicle Code section 21460(a) (driving to the left of double parallel solid lines). It appeared to the officer that you had been drinking. When he requested that you take a preliminary alcohol screening (PAS) test, you responded, “Did you run my license yet?” When the officer said that he had not and again asked you to take the PAS test, you responded, “Why don’t you run my license and then we can talk?” When the officer asked if you were trying to tell him that you were a police officer, you responded, “No, I’m a judge.”

Pismo Beach Police Sergeant Portz arrived on the scene and you took a PAS test. Officer Trimble informed you that the test indicated that your blood alcohol level was .15, which was over the legal limit of .08. You asked if you could just go back to the hotel (where you were staying for the weekend) and

leave your car. The officer told you “my hands are tied” and there was “nothing I can do.”

Officer Trimble then asked you questions regarding your drinking and driving. You claimed to have had only “a couple of glasses of wine,” denied being under the influence of alcohol, and asked, “Is this really necessary, all this stuff we have to go through?” Sergeant Portz responded that they had to do their job “unbiased.”

After you performed poorly on field sobriety tests, Officer Trimble asked if you would agree to another PAS test. You again asserted, “I’m really not under the influence. I’ve had a couple of drinks, but I’m really not under the influence.” Sergeant Portz again told you “we’re just trying to do our job, unbiased and fairly to everybody.”

When you took a second PAS test, Officer Trimble informed you that it indicated a higher alcohol level (.18) than the first test. When the officer told you that you were under arrest and asked that you place your hands behind your back, you responded, “Can you consider the circumstances of it, and I can just leave my car here, and take me back to the hotel; is that a possibility?” Sergeant Portz again told you “we have to be fair and unbiased, sir.” You responded, “but you know what this is going to do; this will substantially impair my career.” Officer Trimble said that “if I let you go, it could impair my career.” You then said, “you don’t have to let me drive; you could just let me go home.” Officer Trimble told you “I can’t do that.”

You persisted by asking, “can’t you guys consider the circumstances?” Sergeant Portz responded, “Sir, I’ve already told you that we’ve made our decision. This is the way it’s got to happen.” You again asserted, “this really is going to affect my career, I don’t know if you realize that.” When Sergeant Portz suggested that you would still have a job, you responded, “No, no, I really won’t.” You informed the officers that you would have to “self-report” the DUI to the Commission on Judicial Performance.

After being placed in a patrol car, you said, "You know what? Just leave my car there; just take me back to the hotel and I'll go to sleep. You can have my keys." After Sergeant Portz told you two more times that they had to be "fair" with everyone, you responded, "I know. But, I'm all of a mile away from the hotel. ... I know you guys are doing your job, but this is not good for me. I'm running for election next year and this is not a good time."

After you were taken to the police station, you asked to speak to a "lieutenant or captain." Sergeant Portz told you that you would first have to take the breath test (that you had chosen to take rather than a blood test) to determine your blood alcohol level. Later, but still before taking the breath test, you again asked, "Is there a lieutenant or captain or somebody that I can speak to?" The sergeant again told you that you would first have to take the test.

You again talked about the Commission on Judicial Performance and being up for reelection and losing your judgeship. Sergeant Portz again told you that they had to be "fair and unbiased." You responded, "But, this is a substantial issue with my career. All you have to do is just take me back to the hotel and I'll go to sleep and wake up in the morning and get my car." You again asked the sergeant, "Is there someone I can talk to before I take the test?" He reiterated that you first had to take the test. When the sergeant informed you that the result of the breath test was ".17, .18," you recognized "that's not good" and again asked to speak to a lieutenant or captain.

After Sergeant Portz informed you that you would be held in custody until the next morning or until your wife, who was several hours away, could pick you up, you asked the sergeant if he could telephone the "on-call judge." Despite the sergeant telling you that he could not "because you are a citizen of the State of California and we're treating you like everybody else," you persisted in asking him to call a judge that you could talk to.

Your efforts to obtain preferential treatment having failed, you told Sergeant Portz and Officer Trimble "there is no professional courtesy here

anymore” and used vulgarity. You then stated, “You guys come in and appear before me” in court on certain matters. When the sergeant asked you why you brought that up, you said, “because I’m not being treated fairly.” The sergeant responded, “We’re treating you about as fair as we can, same as everybody else. What you are asking for is special treatment.” You acknowledged, “To some degree, I guess.”

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