

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE STUART SCOTT**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Stuart Scott, a judge of the Santa Clara County Superior Court. Judge Scott and his attorney, James A. Murphy, appeared before the commission on January 28, 2016, to object to the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Judge Scott has waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by Judge Scott 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 conclusions.

STATEMENT OF FACTS AND CONCLUSIONS

Judge Scott has been a judge of the Santa Clara County Superior Court since January 2015. His current term began in January 2015.

Shortly before noon on February 27, 2015, the jury returned a verdict in the case of *People v. Howard*, No. C1490791, which had been tried in Judge Scott's courtroom that week, finding the defendant guilty of violating Penal Code section 148. The same afternoon, Deputy District Attorney (DDA) Kelly Meeker, who had tried the case for the People, returned to the courtroom to pick up equipment she had left in the courtroom. DDA Meeker, who had several readiness matters on the afternoon calendar in the department next door to Judge Scott's, checked in there and then returned to

Judge Scott's department at approximately 2:00 p.m. to 2:15 p.m. to collect her equipment.

When DDA Meeker entered Judge Scott's courtroom, he was seated at the court reporter's desk, chatting with the bailiff and a court clerk. DDA Meeker said hello to everyone and began to gather her things. Judge Scott stood to leave the courtroom and asked DDA Meeker to come speak to him when she had a second. DDA Meeker, who was holding her equipment and preparing to leave, asked when he would like her to drop by. Judge Scott responded, "Right now." DDA Meeker put down her equipment and walked to Judge Scott's chambers. While standing in the doorway, she told Judge Scott that she was really looking forward to getting his feedback on her performance in trial, but that several people in her office had told her that it was necessary to wait until after sentencing. Judge Scott told DDA Meeker not to worry and that he and she would be "discreet," or words to that effect. Judge Scott then closed his chambers door and told her to sit down.

Judge Scott first spoke about office history and the changing relationship between the public defender's office and the district attorney's office. He said that judges used to tell deputy district attorneys more about what to do in trial while trials were ongoing; he said that things were different now, and that it was hard for him to sit and watch a deputy district attorney in trial when he would do things differently. Judge Scott told DDA Meeker that she had done a great job in her trial. DDA Meeker, who was aware that she and Judge Scott should not be discussing the case, interrupted to say that she had several readiness conferences in the department next door with the deputy public defender who had opposed her in the *Howard* trial, and that the deputy public defender might be waiting for her. Judge Scott again said not to worry, that he and she would be discreet, and that she should just "sit tight."

Judge Scott then gave DDA Meeker additional feedback on her trial technique, complimenting her style, suggesting that she could make her direct examinations shorter, and telling her that if he were the prosecutor, he would have been much more aggressive on rebuttal in response to arguments defense counsel had made. Judge Scott

told DDA Meeker that being subdued in closing argument was in keeping with her style, that she had tried the case in a professional manner, and that the jury had liked her.

Judge Scott then spoke about the deputy public defender's performance as defense counsel. The judge asked DDA Meeker what she thought of defense counsel's performance; she gave her opinion that it was poor and that defense counsel was unprepared. DDA Meeker mentioned being surprised that defense counsel had admitted on the record that she had not read a case she cited in support of a request for a certain instruction. Judge Scott said that defense counsel was either incompetent or lazy and did a terrible job; he said he thought that the jury hated her and this was why a guilty verdict was returned quickly. DDA Meeker again told Judge Scott that she might have to go, and he said not to worry, that this would be discreet. DDA Meeker and Judge Scott then engaged in some discussion of what sentence might be imposed on the defendant.

DDA Meeker told Judge Scott that she had several readiness conferences next door and had to go. Judge Scott asked DDA Meeker if he was "jamming her up" by keeping her in his chambers. She said that he was not, but that she had cases on calendar and did not want to keep the deputy public defender waiting. DDA Meeker stood up and told Judge Scott that she hoped to meet with him another time so that she could get further feedback on her performance. Judge Scott mentioned that he would be out the following week, and that he knew she would be in Palo Alto; he suggested that she would not be able to get feedback at a later time because of scheduling. DDA Meeker said that if she was in Palo Alto, she would make time to meet with Judge Scott to get further feedback after sentencing.

As DDA Meeker left Judge Scott's chambers, he said, "This conversation never happened."

Shortly thereafter, DDA Meeker reported the conversation to her supervisor. A news article about the matter appeared in the San Jose Mercury News on March 17,

2015. Judge Scott subsequently reported his conduct to the commission; his report was received on March 27, 2015.

The commission found that Judge Scott knowingly engaged in improper ex parte communication, contrary to the prohibition on ex parte communications set forth in canon 3B(7) of the California Code of Judicial Ethics, about a case that was pending sentencing before him, and deliberately engaged DDA Meeker in ex parte communication that violated her ethical obligations as an attorney. The commission found that Judge Scott's conduct also was contrary to canon 2A, which requires judges to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In his written objections to the notice of intended public admonishment, Judge Scott asserted that his comments about "being discreet" pertained to his negative critique of the deputy public defender, rather than to the fact that they were engaging in an improper ex parte communication. However, Judge Scott first told DDA Meeker that they would be "discreet," or words to that effect, before he commented on the public defender's performance and in response to DDA Meeker informing him that she had been told she should wait until after sentencing to get his feedback on her trial performance.

In 1998, the commission publicly admonished a judge who engaged in email communications with an attorney about how he might handle a dependency case in which the attorney was appearing. The judge's communication included a statement reflecting the judge's awareness that the communication was improper; when the attorney expressed discomfort about engaging in ex parte communication about a pending case, the judge responded, "chicken." (*Public Admonishment of Judge Gregory M. Caskey* (1998).) The commission found that Judge Scott similarly made comments reflecting his awareness that the conversation was improper.

Judge Scott contends there was significant prejudice in the *Caskey* matter because Judge Caskey was soliciting the attorney's advice on how to handle a matter procedurally. He maintains that his communication with the DDA was not prejudicial

to either party because the trial was over and he had already decided on what sentence to impose. The commission disagrees. Judge Scott engaged in a private discussion with one party about a pending matter that was to be decided in the future. Moreover, the commission notes that the defense had a right to be heard on sentencing before the judge decided the appropriate sentence.

The commission took into account that Judge Scott cooperated with the commission and expressed remorse. Judge Scott urged the commission to also take into consideration that he was a new judge at the time the misconduct occurred and he had not yet attended New Judges Orientation. The commission appreciates that, after attending New Judges Orientation, Judge Scott has gained a better understanding of his role as a judge and the importance of impartiality. However, the commission notes that Judge Scott made statements at the time of the ex parte communication demonstrating that he knew then that it was improper, and he acknowledged he was aware, from his experience as an attorney for many years before becoming a judge, that ex parte communications with judges are improper pursuant to rule 5-300(b) of the State Bar Rules of Professional Conduct.

The commission is charged with protecting the public and maintaining public confidence in the integrity and independence of the judiciary. Judge Scott's misconduct resulted in publicity that reflects negatively on the integrity of the judiciary. Further, the judge's misconduct placed DDA Meeker in the unpleasant position of having to report the conversation to her supervisor. In determining that a public admonishment is the appropriate sanction, the commission considered the fact that Judge Scott engaged in serious misconduct in the judge's official capacity, and that the conduct undermined the integrity of the judiciary and the fair administration of justice.

The commission concluded that Judge Scott's conduct was, at a minimum, improper action.

Commission members Anthony P. Capozzi, Esq.; Ms. Mary Lou Aranguren; Ms. Pattyl A. Kasparian; Hon. Thomas M. Maddock; Dr. Michael A. Moodian; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Ms. Sandra Talcott; and Mr. Adam N. Torres

voted to impose a public admonishment. Commission member Hon. Erica R. Yew was recused from this matter, pursuant to commission policy declaration 6.1. Commission member Mr. Richard Simpson did not participate.

Dated: February 17, 2016



Anthony P. Capozzi
Vice-Chairperson