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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE
SUSANNE S. SHAW,
NO. 156.

FIRST AMENDED NOTICE OF
FORMAL PROCEEDINGS

To Susanne S. Shaw, a judge of the Orange County Municipal Court from January 7, 1985 to August 7, 1998, and a judge of the Orange County Unified Superior Court from August 10, 1998 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, improper action, and dereliction of duty 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

In December 1993, in the case of *People v. Cleary*, you became angry at a deputy district attorney who would not offer a DUI defendant a reduced charge. In open court, you stated that the prosecutor lacked discretion and human kindness and would regret her decision when she was twenty years older. You called the prosecutor a hypocrite for prosecuting the same type of conduct that the prosecutor engaged in on the weekends, and also referred to the drinking habits of the prosecutor's future father-in-law, a former judge.

Your comments were intimidating, demeaning, undignified and discourteous, and appeared to reflect bias and embroilment, in violation of the former Code of Judicial Conduct, canons 1, 2A and 3B(4).

COUNT TWO

In May 1996, following the arraignment of co-defendants on the misdemeanor case of *People v. Livernois, et al.*, you spoke about the case to two deputy district attorneys who happened to be in court on unrelated matters. You told the prosecutors in chambers that you had just arraigned the defendants and had offered them a thirty-day sentence if they pled guilty, and that you did not want the district attorney's office to undercut your offer. No one was present on behalf of the defendants when you made those comments.

Your conduct constituted improper ex parte communication, and gave the appearance of bias and embroilment, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(7).

COUNT THREE

In 1996 and 1997, you frequently began arraignment calendars with a speech regarding the use of alcohol, using a shot glass and a placemat with a picture of an eagle on it as props. Your speech included invitations to defendants to "fly with the eagles rather than trot with the turkeys," references to the

defendants' "inner child" and "taking personal responsibility," and referred to alcohol as a "toxin."

Your comments were undignified and created the appearance of prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT FOUR

On July 3, 1996, at the beginning of the morning arraignment calendar, you called a DUI case and before asking the defendant how he wished to plead asked if the defendant's wife was in the audience. When the defendant's wife raised her hand, you pointed a shot glass at her and asked if she would like to stand at her husband's graveside.

Your comments were undignified and discourteous, and created the appearance of prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT FIVE

On July 3, 1996, during the afternoon arraignment calendar, you urged all of the defendants to take responsibility for their actions, and said that anything else was "whining."

Your comments improperly suggested that the defendants should plead guilty, and created the appearance of prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1 and 2A.

COUNT SIX

On July 3, 1996, during the afternoon arraignment calendar, in the DUI case of *People v. Landavazo*, you overheard an exchange where the defendant's mother told the deputy public defender that her daughter wanted to enter a not guilty plea and the attorney responded that the daughter was guilty. You then told

defendant Landavazo that it was not in her best interest to enter a not guilty plea, and told the defendant's mother, "you could be paying for a coffin in addition to bail."

Your comments were undignified and discourteous, and created the appearance of embroilment, prejudgment and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT SEVEN

On November 13, 1996, during a jury trial in the DUI case of *People v. Alexander*, you interrupted a defense witness who testified that she had been driving the vehicle, asked a few questions, then, before the witness could answer, read the Penal Code section for perjury out loud in front of the jury, as follows:

Every person that's having taken an oath that he or she will testify or truly certify before any competent tribunal officer in any cases in which the oath may be by law of the State of California be administered willfully and contrary to the oath, willfully and contrary to the oath, states as true any material matter which he knows to be false is guilty of perjury and a felony . Do you understand that? Do you understand that?

By this conduct, you assumed the role of an advocate and abandoned your duty to be impartial, and displayed bias and embroilment, in violation of the Code of Judicial Ethics, canons 1, 2A, and 3B(4).

COUNT EIGHT

On January 15, 1997, during the arraignment calendar, in the DUI case of *People v. McMillen*, after you remanded the defendant as a result of an increase in bail, you made a comment that referred to the defendant's physical appearance in connection with the prospect of incarceration. It was understood that you were

suggesting that the defendant might be subjected to unwanted sexual activity in jail.

Your comments were intimidating, undignified and discourteous, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT NINE

On April 9, 1997, during an arraignment calendar, you stated to a DUI defendant before he entered a plea, "You better think about what you've done. You could have killed somebody."

Your comments were discourteous, and reflected prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT TEN

On May 19, 1997, during the morning arraignment calendar, in the DUI case of *People v. Altstadt*, you stated to the defendant as you remanded him into custody, "How could you do that? You might have killed somebody." (The defendant was being remanded as a result of an increase in bail; he had not entered a guilty plea or otherwise been convicted.)

Your comments were discourteous, and reflected prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT ELEVEN

On June 16, 1997, a defendant charged with petty theft appeared before you. During a pause in the proceedings, you began singing, "when you're stealing, when you're stealing," to the tune of "When You're Smiling (The Whole World Smiles With You)."

On December 26, 1997, defendant Joe Eimers appeared before you on a bench warrant for a speeding ticket. When the defendant questioned your indicated sentence of 30 days by saying words to the effect of, "you're going to

put me in jail for 30 days on Christmas?”, you sang in response, “fa la la la la.” When Eimers appeared in early February 1997, for arraignment on a disturbing the peace charge which arose out of an arrest on Christmas 1996, you again sang “fa la la la la” to him.

On other occasions in court, you also sang at the expense of defendants, e.g., “bye-bye, you’re going to jail.”

Your conduct was undignified and demeaning, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

COUNT TWELVE

On June 30, 1997, during the morning arraignment calendar, in the case of *People v. Reilly*, in which a young defendant was charged with being drunk in public outside a club for young people, you commented, “this looks real bad.” You then commented about the hazards of drunk driving, using a shot glass as a prop, although you acknowledged that the defendant was not driving. While reviewing the police report, you stated, “I see you had a childhood accident, so you should know the dangers of drunk driving.” In fact, the childhood traffic accident which was noted on the first page of the police report did not involve drunk driving. You finished by stating, “What would your parents have done if the officers had come to your house to tell them that you were dead? This club isn’t a place for you to go.”

Your comments were gratuitous, undignified, discourteous and intimidating, and reflected prejudice and a lack of impartiality, in violation of the Code of Judicial Ethics, canons 1, 2A and 3B(4).

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. The answer shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. 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: October 7, 1999



CHAIRPERSON

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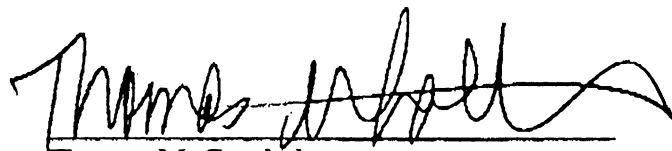
STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE SUSANNE SHAW,
NO. 156.

ACKNOWLEDGMENT OF SERVICE
OF THE FIRST AMENDED NOTICE
OF FORMAL PROCEEDINGS

I, Thomas M. Goethals, on behalf of my client, the Honorable Susanne Shaw, hereby waive personal service of the First Amended Notice of Formal Proceedings in Inquiry No. 156 and agree to accept service by mail. I acknowledge receipt of a copy of the First Amended Notice of Formal Proceedings by mail and, therefore, that Judge Shaw has been properly served pursuant to Rules of the Commission on Judicial Performance, rule 118(c).

Dated: 10/25/99



Thomas M. Goethals
Attorney for Judge Susanne Shaw,
Respondent