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FILED

MAY 27 1999

Commission on
Judicial Performance

ATTORNEYS FOR SUSANNE SHAW

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE)	ANSWER
SUSANNE S. SHAW,)	
NO. 156)	
)	
)	
)	
_____)	

COMES NOW THE HONORABLE SUSANNE SHAW, JUDGE OF THE ORANGE COUNTY UNIFIED SUPERIOR COURT, to answer the allegations in the above-referenced NOTICE OF FORMAL PROCEEDINGS as follows:

COUNT ONE

Judge Shaw admits that she presided over People v. Cleary. She denies that she ever became angry with the deputy district attorney assigned to prosecute the matter. She admits that, at times during the pendency of the matter, she became frustrated with both parties and encouraged each to settle the matter. Judge Shaw specifically incorporates by reference herein the verbatim transcripts that relate to this matter that she has already forwarded to the

Commission. She denies that she ever made comments that she intended to be intimidating, demeaning, undignified or discourteous, or that appeared to reflect bias or embroilment, or that were in violation of any canon of the former Code of Judicial Conduct.

COUNT TWO

Judge Shaw admits that she presided over the arraignment of co-defendants in *People v. Livernois et al.* At that arraignment, Judge Shaw initially indicated to all defendants that she intended to release each of them on his or her own recognizance if each would agree to stay away from the location at which the alleged offense had occurred (UCI) until such time as the matter was completely adjudicated. Judge Shaw believed then, and believes now, that such an order was appropriate and lawful. The defendants declined to agree to such an order and Judge Shaw then indicated to each that she felt compelled, under the circumstances, to set bail for each. Thereafter, Judge Shaw called for both a deputy district attorney and a deputy public defender to respond to her courtroom. Two deputy district attorneys, apparently by chance, arrived first. Judge Shaw may have had a brief, spontaneous conversation with one or both of them. Her recollection as to this is insufficient for her to respond to that aspect of this allegation with either an affirmation or a denial. Judge Shaw denies that she intentionally engaged in any improper *ex parte* communication or that her conduct gave the appearance of either bias or embroilment in violation of any Canon of the Code of Judicial Ethics.

COUNT THREE

Judge Shaw admits that she presided over the misdemeanor arraignment calendar in Harbor Court at certain times during 1996 and 1997. Judge Shaw admits that, prior to the calling of individual cases on this calendar, she did at times make general statements to the assembled audience in which she encouraged those in attendance in her courtroom, as defendants or

otherwise, to elevate their daily levels of performance. She admits that at times during these comments she referred to eagles and turkeys. She further admits that she encouraged those present in whatever capacity to take personal responsibility for themselves and their lives. Judge Shaw also admits that she was then and is now thoroughly familiar with section 1821 of the California Vehicle Code in which the legislature declared its belief that “(d)river’s under the influence of drugs or alcohol continue to present a grave danger to the citizens of this state” and that the Legislature, with an intent to “deter this crime and punish its offenders...has provided a range of sanctions to the courts to use at their discretion.” Judge Shaw admits that, when evaluating matters such as bail which relate to the many driving under the influence cases which pass through her courtroom, she is mindful of this statute. Judge Shaw denies that her comments, when considered in their true and proper context, were undignified or inappropriate, or that they created an appearance of prejudgment or lack of impartiality which violated any canon of the Code of Judicial Ethics.

COUNT FOUR

Judge Shaw is unable to either admit or deny this allegation, as it contains no particular case reference. During her time on the Harbor Court arraignment calendar, Judge Shaw handled thousands of cases and cannot recall the specifics of any particular case without the assistance of a particular case citation. As a result, Judge Shaw must deny this allegation. Judge Shaw hereby also incorporates by reference her Answer to Count Three into her Answer to Count Four. Judge Shaw denies intentionally making any comment that was either undignified or discourteous, or that created an appearance of prejudgment or impartiality, or that was in violation of any canon of the Code of Judicial Ethics.

COUNT FIVE

Judge Shaw admits that she presided over the arraignment calendar at Harbor Court on July 3, 1996. She denies making the specific statement set forth in Count Five, or intentionally making any comment which improperly suggested that any defendant should plead guilty, or that created an appearance of prejudgment or indicated a lack of impartiality which violated any canon of the Code of Judicial Ethics.

COUNT SIX

Judge Shaw admits that she presided over *People v. Landavazo* on July 3, 1996. Judge Shaw denies that she overheard any confidential communication between attorney and client related to that matter. She admits that, during the arraignment process, a woman who was apparently the defendant's mother interrupted the proceedings with comments from the audience section of the courtroom, and Judge Shaw admits responding to these uninvited and inappropriate comments in an attempt to restore order in her courtroom. Judge Shaw incorporates by reference her Answer to Count Three into her answer to Count Six. Judge Shaw denies intentionally making any comments which were either undignified or discourteous or that indicated any lack of impartiality on her part, or that were in violation of any canon of the Code of Judicial Ethics.

COUNT SEVEN

Judge Shaw admits that she presided over *People v. Alexander* on November 13, 1996. She admits knowing that the defendant in that action had a high blood alcohol level in the pending case as well as prior driving under the influence convictions, including a felony. She admits reading the passage quoted in the allegations contained in Count Seven.

She admits that she read this material because she honestly and in good faith believed that a crime was being committed in her presence in her courtroom in that she believed that a witness was committing perjury, and she therefore felt compelled as a judicial officer to discourage or prevent the ongoing commission of a crime in her presence. Judge Shaw denies that she intentionally either assumed the role of an advocate or abandoned her duty to be impartial, that she displayed either bias or embroilment, or that her conduct violated any canon of the Code of Judicial Ethics.

COUNT EIGHT

Judge Shaw is currently in possession of insufficient information to factually respond to the allegations in Count Eight and therefore denies them generally. She admits that the record in ***People v. Mc Millen*** indicates that the defendant appeared for arraignment on a driving under the influence case in which it was alleged that he had a high blood alcohol level at the time he was arrested. She further admits that the record indicates that he had suffered a prior conviction for the same offense. She also admits that the Uniform Bail Schedule promulgated by the judges of Orange County indicates that appropriate bail for a defendant charged with driving under the influence with a prior conviction is \$10,000. Judge Shaw denies that she intentionally made any comments on January 15, 1997 which were intimidating, undignified, or discourteous, or which were in violation of any canon of the Code of Judicial Ethics.

COUNT NINE

Judge Shaw is currently in possession of insufficient information to factually respond to the allegations set forth in Count Nine and therefore denies them. She further denies intentionally making comments which were discourteous, or which reflected prejudice or a lack of impartiality, or which were in violation of any canon of the Code of Judicial Ethics.

COUNT TEN

Judge Shaw admits presiding over the arraignment in *People v. Alstadt* on May 19, 1997. Judge Shaw further admits that during the course of the defendant's arraignment, she indicated that, despite his excessively high blood alcohol level, she would release the defendant on his own recognizance if he would agree to attend Alcoholics Anonymous sessions during the pendency of his case. Judge Shaw at the time believed, and continues to believe, that this is a common practice that falls within the area of appropriate judicial discretion. The defendant declined this opportunity and Judge Shaw thereafter indicated her intention to require him to post bail. With that in mind, Judge Shaw ordered the defendant into custody until such time as bail could be arranged. Judge Shaw incorporates by reference her Answer to Count Three into her Answer to Count Ten. Judge Shaw denies that she intentionally made any comments which were discourteous, or which reflected prejudgment or a lack of impartiality, or which violated any canon of the Code of Judicial Ethics.

COUNT ELEVEN

Judge Shaw admits presiding over the arraignment calendar at Harbor Court on June 16, 1997. She denies intentionally engaging in any conduct that was either undignified or demeaning to the court or the judicial process, or that violated any canon of the Code of Judicial Ethics, and further respectfully suggests that her judicial conduct and demeanor can only be judged in the context of specific, daily events in her courtroom.

COUNT TWELVE

Judge Shaw admits presiding over the morning arraignment calendar at Harbor Court on June 30, 1997. She admits that she made introductory remarks to the assembled audience before she began to call individual cases.

She denies intentionally making any comments which were gratuitous, undignified, discourteous or intimidating, or which reflected prejudice or a lack of impartiality, or which violated any canon of the Code of Judicial Ethics.

FIRST AFFIRMATIVE DEFENSE

Judge Shaw asserts that none of the conduct described in the Notice of Formal Proceedings filed against her is actionable misconduct as such conduct is discussed and defined in *Oberholzer v. Commission on Judicial Performance (1999) Daily Journal Daily Appellate Report 4463.*

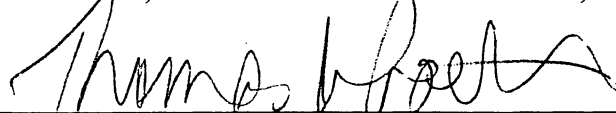
SECOND AFFIRMATIVE DEFENSE

At no relevant time did Judge Shaw intentionally act in bad faith, with bias, in abuse of her authority, in disregard of the fundamental rights of any litigant before her, or with disrespect for the law and, as a result, none of the allegations contained in the *Notice of Formal Proceedings* filed against Judge Shaw set forth a proper basis for imposing any disciplinary action against her.

Dated: 5/24/99

Respectfully submitted,

POHLSON, MOORHEAD & GOETHALS, R.L.L.P.



THOMAS M. GOETHALS

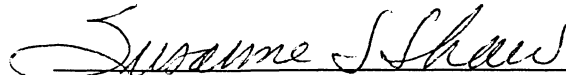
Verification Attached

VERIFICATION

I, the undersigned, declare:

I am a party to this action. I have read the foregoing **Answer** and know its contents. The matters stated in it are true of my own knowledge, except to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

Executed on **May 25, 1999.**



Signature of Declarant

Honorable Judge, Susanne S. Shaw
Type or print full name of Declarant and title, if applicable.

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

PROOF OF SERVICE

I, Sonia A. Jones, declare as follows:

I am employed in the County of Orange, State of California.
I am over the age of eighteen and not a party to the within
action. My business address is 23151 Moulton Parkway, Laguna
Hills, California 92653.

On May 26, 1999 I served the foregoing document
described as: ANSWER
on all interested parties in this action by placing the
() original (X) a true copy thereof enclosed in a sealed envelope
addressed as follows: **See attached Service List:**

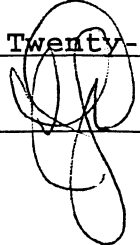
() **By Mail**, I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. It is
deposited with the U.S. Postal Service on the same day in the
ordinary course of business. I know that the envelope was sealed
and, with postage thereon fully prepaid, placed for collection
and mailing on this date in the United States mail at Laguna
Hills, California.

() **By Facsimile**, I caused the above-referenced document(s) to
be transmitted to the below mentioned person(s) at the
following:

(X) **By Personal Service**, I caused such envelope to be delivered
by hand to the attached address:

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct of my
own knowledge.

Executed this Twenty-sixth day of May 1999 at Laguna Hills,
California.



Sonia A. Jones

CASE: INQUIRY CONCERNING JUDGE SUSANNE SHAW
CASE NO: 156

SERVICE LIST

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