STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Former Judge William H. Sullivan, No. 163	DECISION AND ORDER IMPOSING PUBLIC CENSURE AND BARRING JUDGE SULLIVAN FROM RECEIVING ASSIGNMENTS

This is a disciplinary matter concerning Judge William H. Sullivan, a judge of the Riverside County Superior Court from November 17, 1987, to December 31, 1999. Formal proceedings having been instituted, this matter came before the Commission on Judicial Performance pursuant to rule 127 of the Rules of the Commission on Judicial Performance.

The commission concludes, based on Judge Sullivan's stipulation, that Judge Sullivan engaged in a pattern of improper financial dealings and fiduciary activities prior to his retirement. The commission hereby publicly censures Judge Sullivan and bars him from receiving an assignment, appointment or reference of work from any California state court.

APPEARANCES

Judge Sullivan is represented by Edward P. George, Jr. Trial Counsel for the Commission on Judicial Performance is Jack Coyle.

PROCEDURAL HISTORY

A Notice of Formal Proceedings was filed on October 29, 2001, charging Judge Sullivan with four counts of unethical conduct. Judge Sullivan filed his verified answer on November 15, 2001. Pursuant to rule 121, the commission requested the appointment of three special masters, and the Supreme Court appointed Justice Norman L. Epstein, presiding, Justice Judith Lynette Haller, and Judge Thomas Pearce Anderle as masters. The masters held a pretrial conference on January 25, 2002, in Los Angeles, and the case was scheduled for an evidentiary hearing commencing on March 25, 2002, in Pasadena.

On March 21, 2002, Judge Sullivan and Trial Counsel submitted a Stipulation for Discipline by Consent pursuant to rule 127 of the Rules of the Commission on Judicial Performance. On the same day, the commission issued an order vacating the hearing date in order that the commission might consider the Stipulation at its May 2002 meeting.

THE STIPULATION FOR DISCIPLINE BY CONSENT

A. Judge Sullivan's Agreement to Discipline

Judge Sullivan and Trial Counsel propose that the commission dispose of this matter by issuing a censure and bar from receiving an assignment, appointment or reference of work from any California state court. Judge Sullivan understands that if the commission accepts the proposal, the commission may articulate the reasons for its decision and he agrees to accept any such explanatory language.

The Stipulation notes that Judge Sullivan is no longer on the bench, having retired effective December 31, 1999.

Judge Sullivan has signed and submitted an affidavit consenting to the sanction of a censure and bar from any assignments, stating that his consent is freely and voluntarily given, admitting to the truth of the charges as alleged, and waiving review by the Supreme Court.

B. The Findings of Fact

The Stipulation for Discipline sets forth the following factual stipulation, which tracks the allegations set forth in the Notice of Formal Proceedings. The commission adopts the following as its findings.

Count One

A. Respondent (Judge Sullivan) became the trustee for the Frances Campbell Living Trust in November 1984. Despite assuming judicial office in November 1987, he continued to act as trustee for the Campbell Trust until September 29, 1995, when he resigned as trustee. Respondent paid himself annual trustee fees throughout this period. (In 1996, after he resigned as Trustee, respondent refunded to the Trust all of his trustee fees.)

B. Between 1990 and 1994, respondent loaned himself $186,000 from the Campbell Trust account at PaineWebber, by writing checks from himself as trustee to himself as an individual. The dates and amounts were as follows:

April 14, 1990	$30,000
July 21, 1990	$11,000
November 20, 1990	$21,000
January 24, 1991	$11,000
April 15, 1992	$ 8,000
July 13, 1992	$22,000
July 24, 1992	$28,000
March 8, 1994	$25,000
March 28, 1994	$30,000

These loans were not authorized by Frances Campbell and were unsecured. Around November 20, 1990, he set an interest rate of 8% for the amounts loaned as of that date. Effective February 20, 1995, he increased the interest rate to 9.25%.

Respondent made sporadic and insufficient payments toward the monies owed, while continuing to loan himself more money. As of approximately mid-1995, he owed the Campbell Trust over $200,000 in principal and interest on these loans. The loans to respondent caused the Campbell Trust account at PaineWebber to incur interest charges. (During the accounting, respondent repaid these loans.)

C. Between 1986 and 1992, inclusive, respondent purchased for the Campbell Trust eight promissory notes secured by land originally purchased from the Johnson Heirs Trust. On several of these promissory notes, the Campbell Trust made payments to the Johnson Heirs Trust, on first deeds of trust assumed by the Campbell Trust.

Respondent made and held these promissory note investments for the Campbell Trust despite a conflict of interest. He had been a trustee of the Johnson Heirs Trust since its formation in 1981. In May 1986, he had also become a beneficiary of the Johnson Heirs Trust, as trustee of the T.H.S. Trust. (Respondent owned a one-third beneficial interest in the T.H.S. Trust, which was a business that invested in promissory notes secured by deeds of trust.) The main asset of the Johnson Heirs Trust was unimproved land near Anza, California, which the trust sold for development. Between approximately 1988 and 1993, inclusive, he purchased from the Johnson Heirs Trust many deeds of trust given for the purchase of trust land, either in his own name as an individual or as trustee of the C.T.S. Trust. (Respondent owned a one-third beneficial interest in the C.T.S. Trust, which was a business that invested in promissory notes secured by deeds of trust.)

D. Despite assuming judicial office in 1987, respondent continued to act as a trustee of the Johnson Heirs Trust until about 1996, when the trust was terminated.

E. One of the promissory notes that respondent purchased for the Campbell Trust was known by the payor name of Richardson. With a check written on the Campbell Trust account, he acquired the Richardson note in his own name as an individual, not as trustee of the Campbell Trust. He continued to hold this note in his own name, and not as trustee, until it was assigned to respondent's successor trustee in 1995.

Between 1989 and 1990, respondent failed to deposit into the Campbell Trust account at least three payments that were made on the Richardson note. In 1994, he failed to deposit into the Campbell Trust account at least two payments

that were made on another promissory note that he had purchased for the trust, known by the payor name of Hunt.

F. In June 1989, respondent purchased seven promissory notes from a man named Jess Watkins, who since 1982 had been involved in purchasing and reselling unimproved land originally owned by the Johnson Heirs Trust. At least six of the promissory notes he purchased from Watkins were secured by land originally owned by the Johnson Heirs Trust, including a note known by the payor name of DiNardo.

The total cost of the seven notes was $230,000. The money came from various trusts for which respondent was the trustee; he deposited the funds into his own bank account and obtained a cashier's check for Watkins. The funds included a check for $51,000 to himself from the Campbell Trust account, dated June 12, 1989. Respondent purchased each of the seven notes from Watkins in his own name as an individual, not as a trustee for any trust. He purchased each note at a discount from the face value of the note.

In November 1989, respondent sold the DiNardo note to the Campbell Trust. He had purchased the DiNardo note from Watkins at a 10% discount. He subtracted the face value of the DiNardo note from the $51,000 he had paid to himself from the Campbell Trust account, and paid the Campbell Trust the difference, with a check from his personal account dated November 1, 1989. He retained the difference between the face value of the note and the discounted value he had paid for it in June 1989, which was approximately $3,400. He did not pay the Campbell Trust interest on the trust money that he withdrew in June 1989.

Included in the check from his personal account dated November 1, 1989, was reimbursement to the Campbell Trust for four payments on the DiNardo note that he had deposited into his personal account. He did not pay the Campbell Trust interest on the four payments for the period of time that he retained the monies.

Respondent continued to hold the DiNardo note in his own name, and not as trustee, until it was transferred to his successor trustee in October 1995.

G. In November 1989, respondent sold another one of the seven promissory notes purchased from Watkins to the Follansbee Marital Trust, for which he also was the trustee. (The Follansbees were his in-laws.) This note was known by the payor name of Lollis. The Lollis note was secured by land originally purchased from the Johnson Heirs Trust. The Follansbee Marital Trust had contributed $51,000 to the transaction with Watkins in June 1989. Respondent had purchased the Lollis note at a 10% discount. He subtracted the face value of the Lollis note from the $51,000 contributed by the Follansbee Marital Trust, and paid the Follansbee Marital Trust the difference, with a check from his personal account dated November l, 1989. He retained the difference

between the face value of the note and the discounted value he had paid for it in 1989, which was approximately $3,900.

H. An accounting for the Campbell Trust was begun in approximately March 1995, at the request of Frances Campbell. In November 1995, respondent told Ms. Campbell's accountant that he would pay off about $11,000 in loans to himself from the Campbell Trust by paying off the first deed of trust on a note known by the payor name of Hein/Turner. He did so. However, this also benefited respondent and/or the C.T.S. Trust; in 1992, he had purchased the first deed of trust from the Johnson Heirs Trust, as trustee of the C.T.S. Trust.

Count Two

A. In March 1987, before respondent assumed judicial office, he witnessed the will of Olga Bye of Riverside, California. The Bye will contained a provision establishing a 12-year testamentary trust that benefited established charities. The will provided that John Neblett (a former Riverside County Superior Court judge) was to be the trustee, and that respondent had the power to appoint himself as the successor trustee should Neblett be unable or unwilling to act as trustee. The will also provided that respondent was to be the executor should Neblett be unable or unwilling to act as executor.

Respondent assumed judicial office in November 1987. In February 1988, Olga Bye died. In March 1988, the Bye will was admitted to probate in the Riverside County Superior Court.

In December 1988, executor Neblett filed the Bye estate's First and Final Account and Petition for its Settlement. In January 1989, executor Neblett filed the estate inventory. The Bye estate was valued at over one million dollars. Respondent had been managing Bye's financial affairs before her death; her estate included six promissory notes, three of which were secured by land originally purchased from the Johnson Heirs Trust, and one of which, known by the payor name of Teixeira, was originally owned in part by respondent.

Despite his conflict of interest, respondent presided over the Bye probate matter. On January 25, 1989, respondent signed an Order Settling First and Final Account, which approved the accounting for the Bye estate. Respondent's order established the Bye Testamentary Trust, and confirmed his own power to appoint himself as successor trustee to Neblett. On April 28, 1989, respondent signed an amended Order Settling First and Final Account, which also confirmed his power to appoint himself as successor trustee.

Respondent continued to preside over the Bye Trust matter until approximately August 27, 1991, while the Bye Trust was under the supervision of the Riverside County Superior Court and while annual accountings by the trustee were required. During that time, he continued to manage the Bye finances.

B. As described above in Count One (F), in June 1989, respondent purchased seven promissory notes from Jess Watkins, in his own name as an individual, at a discount using money from various trusts for which he acted as trustee. In November 1989, he sold to the Bye Trust two of those promissory notes, known by the payor names of Fletcher and Robinson. Each note was secured by land originally purchased from the Johnson Heirs Trust. Respondent had purchased the Fletcher note at a 15% discount and the Robinson note at a 10% discount. He sold the Fletcher and Robinson notes to the Bye Trust at face value. He retained the difference between the face value and the discounted value he paid, which was approximately $7,400. (This was done by subtracting the face value of the Fletcher and Robinson notes from the 1989 payoff of the Teixeira note owned by the Bye Trust, then depositing the remainder of the Teixeira payoff into the Bye Trust account at PaineWebber.)

In April 1990, respondent reimbursed the Bye Trust for payments made on these notes during the fourth quarter of 1989, which he had deposited in his personal account; he did not include interest. In August 1990, he reimbursed the Bye Trust for payments made on these notes during the first quarter of 1990, which he had deposited in his personal account; he did not include interest. Respondent continued to hold the Fletcher and Robinson notes in his own name, and not as trustee, until they were paid off in 1992 and 1997, respectively.

The 1989 trust accounting, filed by trustee Neblett, reflected the purchase of the Fletcher and Robinson notes and the Teixeira payoff. It did not disclose that the Fletcher and Robinson notes had been purchased from respondent, that they had been acquired by him at a discount and sold by him to the trust at face value, or that respondent continued to hold the notes in his own name as an individual. On June 13, 1990, respondent signed an Order Settling First Account, which approved the 1989 accounting.

The 1990 trust accounting, filed by trustee Neblett, reflected the 1989 and 1990 payments on the Fletcher and Robinson notes that had been paid to the Bye Trust by respondent. It did not disclose that these were reimbursements for payments that respondent had deposited into his own account. It did not disclose that respondent continued to hold the Fletcher and Robinson notes in his own name as an individual. (Nor did any subsequent accounting.) On April 1, 1991, respondent signed an Order Settling Second Account, which approved the 1990 accounting.

Respondent's acquisition of these promissory notes for the Bye Trust, as well as other promissory notes secured by land originally purchased from the Johnson Heirs Trust as described in (D) below, involved a conflict of interest, as set forth in Count One (C).

C. Respondent continued to preside over the Bye Trust matter until approximately August 27, 1991, when Neblett resigned as trustee. Despite having assumed judicial office, on that date, respondent nominated himself as trustee, and

began acting as sole trustee. He continued to act as trustee of the Bye Trust through July 30, 1999, when he resigned as trustee. Respondent paid himself annual trustee fees throughout this period. (When respondent resigned as Trustee, he refunded to the Trust all of his trustee fees.)

D. In 1992, respondent sold to the Bye Trust five promissory notes that he owned in his own name as an individual. Each involved land originally purchased from the Johnson Heirs Trust. Respondent sold these notes to the Bye Trust at face value, for a total of approximately $140,000. The price paid to respondent by the Bye Trust, and the 1992 loan of trust funds described below in (E), caused the trust to incur cash expenses to finance its purchases from him.

Respondent filed the verified Bye Trust accounting for the year 1992, as trustee for the Bye Trust. In the accounting, he described these five notes as "seasoned obligations with good payment records." However, one of the notes, known by the payor name of Delgado, had been in default since at least April 1992.

E. The 1992 Bye Trust accounting, in reference to a promissory note known by the payor name of McFall, stated that respondent "purchased a $50,000 promissory note from an individual investor." This statement was misleading. Around March 13, 1992, respondent loaned $50,000 of Bye Trust funds to McFall, for which she executed a promissory note to him for $50,000, secured by a deed of trust to land that she owned. The promissory note set an interest rate of 14% and provided that payments of $1,750 were due quarterly starting on June 15, 1992, with the balance due on June 15, 1995.

Only one $1,750 payment was made on the McFall note, on June 15, 1992. On respondent's handwritten payment ledger, he allocated this payment entirely to interest. At an unknown point, he wrote on the payment ledger, "Interest moratorium to 6/15/95." On December 27, 1993, respondent wrote a $50,000 check on the C.T.S. Trust account to the Bye Trust account to purchase the McFall note; he did not pay to the Bye Trust any of the unpaid interest that had been due to it under the terms of the promissory note from McFall.

Respondent filed the verified Bye Trust accounting for the year 1993. It reflected that the entire principal of the McFall note had been repaid. The accounting was misleading, as it did not disclose that the McFall note had been purchased by the C.T.S. Trust, or that respondent had an ownership interest in the C.T.S. Trust.

F. On April 8, 1994, respondent loaned the C.T.S. Trust $44,500 from the Bye Trust funds. He executed a promissory note that set an interest rate of 8% and provided for quarterly payments, with the balance due in five years. The loan was unsecured.

Respondent filed the verified Bye Trust accounting for the year 1994. In the accounting, he stated that this note was "maintained current and was thereafter repurchased by the CTS Trust on December 31, 1994"; the accounting also stated that he was the trustee of the C.T.S. Trust. These statements were misleading and incomplete. His interest payments on the loan were late, and the accounting did not disclose that he had an ownership interest in the C.T.S. Trust.

G. Between May and July 1994, respondent loaned himself a total of $110,000 from the Bye Trust account. He did so by writing three checks to himself: on May 9, 1994, for $48,000; on May 12, 1994, for $12,000; and on July 12, 1994, for $50,000. At least the first two of these loans were not secured at the time made.

Respondent executed a promissory note dated May 12, 1994, for $60,000 and a promissory note dated July 12, 1994, for the total loan amount of $110,000. The promissory notes set an interest rate of 8% and required quarterly payments, with the balance due in five years. The amount of these loans and the loan described above in (F) caused the trust to incur cash expenses to finance its loans to respondent and/or the C.T.S. Trust.

The $110,000 in loans was eventually secured by the assignment to the Bye Trust of a half interest in a promissory note known by the payor name of Roome. The trust accounting for the year 1994 did not disclose the fact that the Roome note was originally given to respondent by the Roomes for their purchase of a residence owned by him.

The 1994 trust accounting, filed on April 24, 1995, stated that the first two loans (totaling $60,000) were unsecured when made and that the entire obligation was currently secured, but did not state when that occurred. On the document assigning the half interest in the Roome note to the Bye Trust, the date July 12, 1994, is typed next to respondent's signature; however, the signature was notarized on April 5, 1995, and the document was recorded on April 11, 1995.

In the verified Bye Trust accounting respondent filed for the year 1995, he stated that the $110,000 loan had been "satisfied." However, he structured that transaction so as to receive additional cash from the Bye Trust. In August 1995 he increased the trust's interest in the Roome note to 75%, or approximately $163,000, which was about $51,000 greater than the amount then owed his $110,000 loan. Respondent had previously foreclosed on the Delgado deed of trust and taken title to the real property securing the Delgado note, for about $43,000, which was the total amount then due on the note. He subtracted the approximate $43,000 he owed the trust for the Delgado transaction from the approximate $51,000 difference between the increased interest in the Roome note and the amount owing on the $110,000 loan to himself; as a result he took $7,900 in cash from the Bye Trust.

H. Respondent filed the verified Bye Trust accounting for the year 1996. In the accounting, he stated that the note known by the initial payor name of Gregory had been purchased from the Bye Trust by the T.S. Trust, of which he was also trustee. This was misleading, as he did not disclose that he held a one-half beneficial interest in the T.S. Trust, which was a business that invested in promissory notes secured by deeds of trust.

Count Three

On April 7, 1992, while presiding over *Conservatorship of Harry Dostal*, case No. 59398, respondent signed an order authorizing the sale of the conservatee's home located at 4340 Glenwood Drive in Riverside, California. Despite respondent's conflict of interest, on approximately June 5, 1992, he entered into an agreement to purchase the property and thereafter continued to preside over the *Conservatorship of Harry Dostal* case.

On June 20, 27 and 29, 1992, a Notice of Intention to Sell Real Property at a private sale on July 3, 1992, was published. On July 9, 1992, the conservator filed a petition for court confirmation of the sale to respondent. On or about July 23, 1992, he entered an order on his own motion, which advanced the date for hearing the conservator's petition for court confirmation of the sale, from August 11, 1992, to July 27, 1992. As a result of his order advancing the confirmation hearing, the notice of the proposed sale required by law was not given, and the opportunity for third parties to appear and make competing bids to purchase the property was reduced or denied.

An order confirming the sale to respondent was signed by another judge on July 27, 1992. He continued to preside over the Dostal case. On May 10, 1993, he signed an order approving the second accounting of the conservator. This included the 1992 sale to respondent of the property located at 4340 Glenwood Drive, Riverside, California. On January 14, 1994, he signed an order approving the third accounting of the conservator. On May 27, 1994, he signed an order of final discharge of the conservator.

Count Four

On respondent's verified Statements of Economic interests required by California Government Code section 87203, in the applicable years, he failed to disclose the following:

A. Trustee fees he received from the Campbell Trust;

B. Trustee fees he received from the Bye Trust;

C. Loans to himself from the Campbell Trust of $186,000 in 1990-1994;

D. Loans to himself from the Bye Trust of $110,000 in 1994; and

E. Interest in the following real properties:

(1) Property conveyed by September 13, 1989, Grant Deed from Celesta Aragonez and Ernie Aragonez to William H. Sullivan, a widower, described as:

Block 12, Range 10, Map of Town of Riverside, San Bernardino County.

(This property was erroneously described in the original August 10, 1988, deed from Celesta Aragonez and Ernie Aragonez to William H. Sullivan, a widower, as Block 12, Range 10, Map of Town of San Bernardino. Book 7, page 17 of Maps, records of San Bernardino County Maps.)

(2) Property conveyed by December 1, 1989, Grant Deed from Israel J. Arriaga and Linda M. Mayer to William H. Sullivan, a widower, described as:

A Condominium consisting of Unit 166 as shown and defined on the Condominium Diagrammatic Plan recorded October 21, 1977 as Instrument 209851.

(In a subsequent deed, this property is described as Unit 166 as shown and defined on the condominium plan of Tract No. 4528, said plan being recorded October 21, 1977 as Instrument No. 109851 and amended November 15, 1977 as Instrument No. 1282-59, both of official records of Riverside County.)

(3) Property conveyed by June 28, 1993, Grant Deed from Thayne B. Grover and Amy L. Grover to Edward Vincent Talbot and Lisa Marie Talbot, husband and wife, joint tenants, as to an undivided one-half interest, and William H. Sullivan, a widower, as to an undivided one-half interest as tenants in common, described as:

Lot 225 of Brockton Heights No. 4, City of Riverside, as per Map recorded in Book 30, page 3 and 64 of Maps in the Office of the County Recorder of said county, with a street address of 4092 Manchester Avenue, Riverside, California.

(4) The following units which appear to be part of the Racquet Club of Palm Springs, located at 2743 N. Indian Canyon Drive, Palm Springs, California:

Unit 2A in Lot l, Tract 4320, as per map in Book 69, pages 68 & 69, Records of Riverside County, APN: 504-300-002-5, conveyed by January 20, 1993 Corporation Grant Deed from Racquet Club of Palm Springs, a California corporation, to William H. Sullivan, a widower;

Parcel 3, Record of Surveys, as per map in Book 33, page 18, Records of Survey of Riverside County, APN: 504-131-025-1, conveyed by May 6, 1993 Corporation Grant Deed from Racquet Club of Palm Springs, a California corporation, to William H. Sullivan, a widower; thereafter conveyed by May 24, 1993 Grant Deed from William H. Sullivan, a widower, to Racquet Club of Palm Springs, a California corporation;

Parcel 15, Record of Surveys, as per map recorded in Book 33, page 18, Records of Survey of Riverside County, conveyed by May 24, 1993 Corporation Grant Deed from Racquet Club of Palm Springs, a California corporation, to William H. Sullivan, a widower, showing that it was recorded to convey the "correct unit" to buyer;

Parcel 14, Record of Surveys, as per map in Book 33, page 18, Records of Survey in office of Riverside County Recorder, APN: 504-131-036-1, conveyed by September l, 1993 Corporation Grant Deed from Racquet Club of Palm Springs, a California corporation, to William H. Sullivan, a widower, also identified as 2743 N. Indian Canyon Drive, # 229-230.

(5) Property conveyed by April 6, 1993, Grant Deed from James R. Haley and Georgette C. Haley to William H. Sullivan, a widower, described as: Parcel 3 of Parcel Map No. 21316, as shown by map on file in Book 141, pages 56 and 57 of Parcel Maps, Records of Riverside County, California.

(6) Property in the City of Palm Springs conveyed by November 18, 1993, Grant Deed from Nancy Shane to William H. Sullivan, a widower, described as:

Parcel 29, Record of Surveys as per map recorded in Book 33, page 18 of Records of Survey in the Office of the County Recorder in Riverside County, APN: 504-131-051.

(7) Property in the City of Palm Springs conveyed by November 22, 1994, Individual Grant Deed from Roland I. Richman, Trustee of the Roland I. Richman Revocable Trust to William H. Sullivan, a widower, described as:

Parcel 28, Record of Surveys in Book 33, page 18, Records of Survey of Riverside County, APN: 504-131-050.

(8) Property in an unincorporated area of Riverside County conveyed in a September 11, 1995, Grant Deed from M. Thomas Bivins, Jr. and Treva F. Bivins to William H. Sullivan, Trustee of the T.S. Trust, described as:

Parcel 4 of Parcel Map 6626, in the County of Riverside, State of California, as per map recorded in Book 20, pages 50-54 inclusive of Parcel Maps, in the Office of the County Recorder of said county, APN: 577-420-001-4.

(9) Property known as 2743 N. Indian Canyon Drive, #105-106, Palm Springs, conveyed in a December 18, 1995, Grant Deed from Arthur L. Gordon to William H. Sullivan, described as:

Parcel 1 of Record of Surveys in the City of Palm Springs, County of Riverside, State of California, as shown by map filed in Book 33, page 18 of Record of Surveys, in the Office of the County Recorder of said county, APN: 504-131-023.

(10) Property conveyed by July 19, 1996, Trustee's Deed Upon Sale from First American Title Insurance Company, Trustee, to William H. Sullivan, described as:

Parcel 3, together with Lot C, of Parcel Map 22891, on file in Book 156, pages 76 and 77 of Parcel Maps, Records of Riverside County, APN: 580-500-050-9.

(11) Property conveyed by November 24, 1998, Trustee's Deed Upon Sale from First American Title Insurance Company, Trustee, to William H. Sullivan, Trustee, described as:

That portion of Parcel 1 and Parcel 3 of Parcel Map 19567 as shown by map on file in Book 123, pages 98 and 99 of Parcel Maps, Records of Riverside County, California [and more particularly described in said deed], APN: 577-270-052-7.

(12) Property conveyed by June 26, 1995, Trustee's Deed Upon Sale from First American Title Insurance Company, Trustee, to William H. Sullivan, thereafter conveyed by March 23, 1999, Grant Deed from William H. Sullivan, a widower, to Barbara Roxanne Coskran, described as:

Parcel 4, of Parcel Map No. 22289 on file in Book 155, pages 16 and 17 of Parcel Maps, Records of Riverside County, California, APN: 577-420-044-3.

C. Conclusions of Law

The Stipulation for Discipline sets forth the following conclusions concerning misconduct, and the commission adopts them as its own.

Counts One and Two

Respondent was disqualified from presiding over the Bye probate proceeding and the Bye Trust matter. He had managed Bye's financial affairs before her death, had witnessed her will, was serving as the backup executor and the backup trustee, and continued to manage the estate and trust financial affairs after her death.

Presiding under those circumstances constitutes willful misconduct. Respondent was acting in his judicial capacity. He violated the former Code of Judicial Conduct, effective January l, 1975, canon 1 (a judge should uphold integrity and independence of judiciary), canon 2 (a judge should avoid impropriety and the appearance of impropriety in all of the judge's activities), and canon 3C(1) (judges should disqualify themselves in a proceeding in which their disqualification is required by law, or their impartiality might reasonably be questioned). He acted in bad faith because the purpose of his conduct was to benefit himself, and because it was beyond his lawful power to preside over a matter where he so obviously was disqualified.

Respondent's conduct also constitutes a pattern of prejudicial misconduct. He violated the canons of ethics over a significant period of time which was prejudicial to public esteem for the judiciary.

Serving as trustee for the Johnson Heirs Trust, the Campbell Trust and the Bye Trust after taking the bench violated the Code of Judicial Ethics, canon 4E(1) (a judge shall not serve as trustee except for trust of a member of the judge's family), the former Code of Judicial Conduct, effective October 5, 1992, canon 4E(1) (a judge should not serve as trustee except for trust of member of the judge's family), and the former Code of Judicial Conduct, effective January 1, 1975, canon 5D (a judge should not serve as trustee except for trust of member of the judge's family).

Respondent misused trust funds for his own benefit, and committed other serious improprieties in his position as trustee. His conduct violated the most basic fiduciary duties and fundamental ethical obligations, as reflected in present canons 1 and 2 (a judge shall uphold integrity and independence of judiciary, shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and former canons 1 and 2 (a judge should uphold integrity and independence of judiciary, should avoid impropriety and the appearance of impropriety).

Respondent's conduct violated the Code of Judicial Ethics, canon 4A(1) (a judge shall conduct all of his extra judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially), the former Code of Judicial Conduct, effective October 5, 1992, canon 4A(1) (a judge should conduct his extra judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially), the Code of Judicial Ethics, canon 4D(1)(a) (a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position), and the former Code of Judicial Conduct, effective October 5, 1992, canon 4D(1)(a) (a judge should not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position).

Respondent's conduct also violated the former Code of Judicial Conduct, effective January 1, 1975, canon 5C(1) (judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the courts on which they serve), canon 5C(3) (judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified), and canon 5D (judges should not serve as fiduciary if it is likely that as a fiduciary they will be in engaged in proceedings that would ordinarily come before them).

Count Three

Presiding over this matter in connection with the property purchase and thereafter constitutes willful misconduct. Respondent was acting in his judicial capacity. He violated the former Code of Judicial Conduct, effective October 5, 1992, canons l, 2 and 3E (a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, or in a proceeding in which disqualification is required by law), and the former Code of Judicial Conduct, effective January l, 1975, canons l, 2 and 3C(1)/3C(1)(c) (a judge should disqualify himself when required by law, or when his impartiality might reasonably be questioned, including instances where the judge has a financial interest in the subject matter). He acted in bad faith by presiding in a matter where he was so clearly disqualified, and by advancing the hearing date for confirmation of asale to himself.

Purchasing property from a conservatorship estate over which he was presiding constitutes prejudicial misconduct. It violated the former Code of Judicial Conduct, effective January 1, 1975, canons 1, 2 and 5C(1)/5C(3) (judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality or exploit their judicial position, should manage their investments and other financial interests to minimize the number of cases in which they are disqualified).

Count Four

Respondent's failure to disclose information on his Statements of Economic Interests constitutes willful misconduct. He was required to file the statements only because he was a judge; therefore, he was acting in his judicial capacity when he completed them. (Gov. Code, § 87203; *Adams v. Commission on Judicial Performance (Adams II)* (1995) 10 Cal.4th 866, 910 [commission's inquiry was directed to respondent because he was a judge, and his reply was required as one of his judicial functions; therefore, judge was acting in judicial capacity in replying to commission inquiry]).

Statements of Economic Interests are filed under penalty of perjury; respondent's omission of information was unjudicial because it violated present

and former canons 1 and 2. He acted in bad faith because his purpose was to conceal information.

DISCIPLINE

Judge Sullivan has stipulated, and the commission concludes, that Judge Sullivan engaged in a pattern of improper financial dealings and fiduciary activities from the time he became a judge in 1987 until he decided to retire in 1999, after learning of the commission's investigation. Furthermore, Judge Sullivan, on a number of occasions, used his judicial position to further his unethical schemes, all of which had the effect, if not the design, of benefiting him financially.

On the basis of these findings, the commission concludes that publicly censuring Judge Sullivan and barring him from receiving an assignment, appointment, or reference of work from any California state court – the maximum sanction it may levy against a former judge – is the minimum sanction necessary for "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system."[1] The commission would be remiss in its responsibilities if it did not root out, expose and discipline such longstanding financially motivated willful misconduct, regardless of the judge's age or health.

This decision shall constitute the public censure of Judge Sullivan and a bar from Judge Sullivan receiving an assignment, appointment, or reference of work from any California state court.

Commission members Judge Rise Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, and Ms. Barbara Schraeger voted to impose this public censure and bar from receiving assignments. Commission members Ms. Gayle Gutierrez, Ms. Ramona Ripston, and Dr. Betty L. Wyman did not participate in this proceeding.

Dated: May 17, 2002

Honorable Rise Jones Pichon
Chairperson

[1] *Broadman* v. *Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.