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Commission on  
Judicial Performance

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE,  
NO. 134.

NOTICE OF FORMAL PROCEEDINGS

To JUDGE BERT L. SWIFT, a judge of the San Bernardino County Municipal Court, Morongo Basin Division, from January 3, 1989, to the present, and at all relevant times therein:

Preliminary investigation pursuant to California Rules of Court, rules 904 and 904.2, 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, to wit:

On December 16, 1993, Todd Swain and Marion Damiano-Nittoli, law enforcement officers of the National Park Service, appeared at your chambers seeking the issuance of a search warrant. The search warrant and supporting affidavit specified that the premises to be searched were the

1 residence of a Tony Soares, located at 82528 Quail Springs Road in Joshua Tree, and that the items  
2 to be seized were Native American artifacts allegedly stolen from Joshua Tree National Monument.

3 You indicated to the law enforcement officers that the premises described in the search  
4 warrant documents were owned by you and/or your wife, and that Tony Soares was your stepson.  
5 Despite this conflict of interest, you continued to read the search warrant documents and telephoned  
6 your wife from your chambers to inquire as to the whereabouts of your stepson, in the presence of  
7 the law enforcement officers.

8 You then took the law enforcement officers and the search warrant documents to Superior  
9 Court Judge James McGuire in his chambers, for the apparent purpose of turning the decision on the  
10 search warrant over to Judge McGuire. Despite your conflict of interest and your acknowledgment  
11 thereof, you remained in Judge McGuire's chambers and participated in the ensuing decision-making  
12 process regarding the search of the subject premises.

13 You participated in questioning the law enforcement officers regarding the basis of their  
14 knowledge as to the genuineness of the artifacts to be seized. You participated in questioning the  
15 law enforcement officers regarding the possible criminal consequences for your stepson. You  
16 participated in discussions regarding potential political consequences that a search of the subject  
17 premises might have on your judicial reelection campaign. You participated in discussions exploring  
18 possible alternatives to executing the search warrant, including a consent search.

19 These discussions became intimidating and a matter of concern to the law enforcement  
20 officers. Deputy District Attorney Linda Root was called to Judge McGuire's chambers to advise  
21 the law enforcement officers regarding the propriety of a consent search. You, however, failed to  
22 inform Ms. Root that you did not reside at the subject premises. You incorrectly represented that  
23 you had the legal authority to consent to a search thereof. You also represented that you could  
24 obtain your stepson's consent to the search.

25 Judge McGuire, despite appearing to find probable cause to issue the search warrant, decided  
26 to proceed with a search by consent in lieu of a search by warrant. You signed a document  
27 purporting to give your consent to a search of the subject premises. When the law enforcement  
28 officers went to the subject premises to conduct the search, you accompanied them. The law

1 enforcement officers seized some items, but, because they felt restricted by your presence, they  
2 limited the scope and duration of their search.

3       Thereafter, you engaged in conversation with Deputy District Attorney Ray Pyle, in which  
4 you improperly exhibited advocacy and a continuing involvement in the case. You inquired of Mr.  
5 Pyle as to the status of the case against your stepson. When Mr. Pyle informed you that a decision  
6 had not yet been made, you told Mr. Pyle that charges should be filed against your stepson, and that  
7 he would plead guilty. Ultimately, the Office of the District Attorney for San Bernardino County  
8 declined to prosecute your stepson, Tony Soares, for any crime related to the seized items, primarily  
9 because your consent to search was invalid.

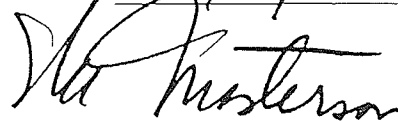
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11       YOU ARE HEREBY GIVEN NOTICE, pursuant to California Rules of Court, rule 905, that  
12 formal proceedings have been instituted and shall proceed in accordance with California Rules of  
13 Court, rules 901-922.

14       Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to  
15 the charges against you within fifteen (15) days after service of this notice upon you. An original and  
16 eleven (11) legible copies of the answer may be filed with the Commission on Judicial Performance,  
17 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and  
18 shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice of formal  
19 proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no  
20 motion or demurrer shall be filed against any of the pleadings.

21       This notice of formal proceedings may be amended pursuant to California Rules of Court,  
22 rule 911.

23  
24       BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

25  
26       DATED: 2/6/96

27  
28       

29       CHAIRPERSON



State of California  
Commission on Judicial Performance  
101 Howard Street, Suite 300  
San Francisco, CA 94105  
(415) 904-3650  
FAX (415) 904-3666  
February 16, 1996

CONFIDENTIAL

Thomas C. Brayton, Esq.  
Jones, Mahoney & Brayton  
150 West First Street, Suite 280  
P.O. Box 940  
Claremont, CA 91711

Re: **Inquiry Concerning a Judge No. 134**

Dear Mr. Brayton:

On February 14, 1996, we sent to you a copy of the executed Notice of Formal Proceedings (Inquiry No. 134) and asked that you sign and return the copy of the cover letter if you were willing to accept service by mail on behalf of your client.

We note that we did not provide you with a copy of transitional commission rule 2, enclosed, which concerns public formal proceedings instituted after March 1, 1995.

In the event you are willing to accept service by mail, please sign and return a copy of this letter. For purposes of transitional rule 2, the five day period pertaining to the issuance of a press statement will begin to run from the date you execute this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sei Shimoguchi".

Sei Shimoguchi  
Staff Counsel

SS:mg/L216marg.doc  
Enclosure

VIA FACSIMILE (909) 399-5959 & CERTIFIED MAIL

I, Thomas C. Brayton, Esq., hereby acknowledge receipt of the copy of the Notice of Formal Proceedings in Inquiry Concerning a Judge No. 134 and agree to accept service of the Notice by mail.

2/23/96  
Date

A handwritten signature in cursive script, appearing to read "Thomas C. Brayton".  
Thomas C. Brayton, Esq.