

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE FRANCISCA P. TISHER

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Francisca P. Tisher, a judge of the Napa County Superior Court since June 1998. She was previously a judge of the Napa County Municipal Court from May 1995 to June 1998. Her current term began in January 2003. Following the appearance of Judge Tisher and her attorney, Mr. James A. Murphy, on March 30, 2004, pursuant to rule 116 of the Rules of the Commission on Judicial Performance, 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 upon the following Statement of Facts and Reasons:

STATEMENT OF FACTS AND REASONS

On the afternoon of October 3, 2002, Judge Tisher was sent an e-mail message by a commissioner of her court concerning a family law case, *Maroney v. Ruiz*, then being handled by the commissioner.

Maroney v. Ruiz involved a couple who had divorced in Texas; the father had moved to New Jersey and the mother had moved to California. In February 2002, the parties stipulated in the Napa County Superior Court that the parties would take certain actions and that California would retain jurisdiction over custody issues. However, in July 2002, the father asked the New Jersey court to assume jurisdiction over the custody dispute. The New Jersey court did assume jurisdiction, on August 30, 2002, but the order assuming jurisdiction was stayed by a New Jersey appellate court on September 5, 2002. After the stay went into effect, the New Jersey trial court judge communicated with the California commissioner handling the case, and the commissioner agreed to prepare an order declining California's jurisdiction. On October 3, 2002, while the New Jersey appellate court's stay was still in effect, the father removed one of the children from school in California and took him back to New Jersey, without notifying the mother or school officials. The police, Napa Child Abduction Unit, and FBI were contacted. Later that day, the commissioner sent Judge Tisher the e-mail message mentioned above.

The e-mail message the commissioner sent to Judge Tisher on the afternoon of October 3 read, "The judge in New Jersey asked me to prep an order declining jurisdiction. Here is what I have written. I forgot to do it and now someone came and picked up the kid and it sounds like it is going to heat up but I would like to have it heat up in NJ." Judge

Tisher replied on October 4 at 9:45 a.m. She wrote, "It looks fine. I don't exactly know what you mean by the sentence 'The law of venue jurisdiction differs from venue for custody and visitation and that issue is not yet upon us.'" The commissioner replied one minute later, at 9:46, "The rules for child SUPPORT are different from the rules for CUSTODY. It is entirely possible Napa will be the appropriate jurisdiction for child support." A minute later, at 9:47, Judge Tisher e-mailed the commissioner, "OK. We'll keep it in. [A clerk] is in my office and I'll tell her to fax it off." The commissioner replied one minute later, at 9:48, with the fax number, and added, "They are waiting by the fax for it in NJ. Also [the mother's attorney] has an ex parte for today in this case and she is not stippling to a Commish."

The order was then signed by the commissioner, dated September 30, 2002, and file-stamped September 30, 2002. A copy was transmitted by fax to New Jersey.

Later the same morning (October 4), Judge Tisher presided over the ex parte hearing set by counsel for the mother. The transcript of that hearing shows that Judge Tisher called the case before the father's attorney arrived, and stated to the mother's attorney:

THE COURT: ...I have had a chance to review the order to show cause for modification of child custody, visitation, attorneys fees and costs and immediate return of the child and other orders and the injunctive order.

(10/4/02 R.T. 3:21-24.)

Shortly thereafter, Father's attorney arrived, and Judge Tisher said:

THE COURT: What I was indicating is that I understand that we have some serious issues here and I have had a chance to look at the paperwork and I'm not sure that you have.

MR. ROTHSCHILD [Father's attorney]: I have not.

THE COURT: *I also have the file in front of me, which indicates that there was an order filed by Commissioner Boyd on September 30th, 2002. I don't know if you both have copies of that, but it is an order where she declined jurisdiction.*

MS. RICHARDS: I have never received that, your Honor.

MR. ROTHSCHILD: Nor have I.

THE COURT: Okay.

MR. ROTHSCHILD: And--

THE COURT: I don't see the proof of service attached to this.

(10/4/02 R.T. 5:1-17; emphasis added.)

A short time later, Judge Tisher stated that she was not going to make any orders that day, and asked mother's counsel what she would like to do. After the attorney began to reply, Judge Tisher interrupted the attorney and stated:

THE COURT: I'm not going to make an order *when one was made September 30th*, the order having the child returned. It looks like the child was just taken to New Jersey. I'm not saying it's right or wrong and I understand that your client would like to have the matter resolved one way or the other, but certainly I cannot do that on an ex parte.

(10/4/02 R.T. 7:9-15; emphasis added.)

Mother's counsel then asked that the matter be put on calendar for the following Monday. Judge Tisher responded:

THE COURT: One of my problems is that I have an order here in the court file *from September 30th* indicating that jurisdiction has been declined by the Superior Court of California, County of Napa. So I think this really goes back as to how you wish to proceed.

(10/4/02 R.T. 8:9-13; emphasis added.)

At the time that she presided at the October 4 hearing, Judge Tisher knew that the order declining jurisdiction had been signed and filed earlier that same morning, not on September 30, 2002. During the hearing, she made misleading statements repeatedly indicating to the parties that the order had been filed on September 30, 2002. The making of these misleading statements was contrary to canon 2A of the Code of Judicial Conduct, which provides that judges should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commission members Justice Vance W. Raye, Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. Mrs. Crystal Lui did not participate in this matter. There is currently one public member vacancy on the commission.

Dated: April 8, 2004

Honorable Vance W. Raye
Chairperson