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Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE,
No. 139.

FIRST AMENDED NOTICE OF
FORMAL PROCEEDINGS

To JUDGE JOSE ANGEL VELASQUEZ, a judge of the Monterey County Municipal Court, Salinas Division, from June 8, 1995, 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, conduct prejudicial to the administration of justice that brings the judicial office into disrepute and improper action within the meaning of Article VI, section 18 of the California Constitution, which provides for removal, censure and public or private admonishment of a judge, to wit:

COUNT ONE

On a date between December 26, 1995, and January 31, 1996, you displayed a crucifix on a wall in your courtroom in Salinas, while court was in session. The crucifix was visible to the

1 public. By displaying the crucifix, you created the appearance of bias and of improperly injecting
2 religion into the judicial process.

3
4 COUNT TWO

5 In December 1995, you received a form letter from a group called the Reproductive Rights
6 Coalition. The letter solicited the listing of your name in an upcoming newspaper advertisement in
7 the *Monterey Herald*, in support of the 23rd anniversary of the U.S. Supreme Court decision in *Roe*
8 *v. Wade*. A form for those who wished to have his or her name included in the advertisement was
9 attached to the letter. You returned that form to the Reproductive Rights Coalition, writing your
10 name as "Judge Jose Angel Velasquez." The advertisement appeared in the *Monterey Herald* on
11 January 22, 1996. Your name was included in the advertisement as "Judge Jose Angel Velasquez."
12 By allowing your title and name to be included in this advertisement, you improperly endorsed a
13 political cause and thereby created an appearance of a lack of impartiality concerning cases that
14 could come before you which involve the abortion issue.

15
16 COUNT THREE

17 Effective December 26, 1995, you were assigned to a trial department in Salinas. In January
18 1996, you made it known publicly that effective February 8, 1996, you would impose certain
19 specified sentences for defendants convicted of misdemeanor "driving under the influence" (DUI)
20 charges. You made this publicly known by, among other means, making a general announcement in
21 open court on January 30 that:

22
23 "I further have another announcement to make ... effective February 8, 1996, for a first
24 DUI offense you will receive 31 to 45 days in county jail plus 30 AA meetings. It will no
25 longer be five days. On second DUI offenses, you will be sentenced to 75 to 90 days in
26 county jail, plus 45 to 60 AA meetings. It will no longer be 31 days. On third DUI
27 offenses, you will be sentenced to 180 days on each count, plus 90 AA meetings. It will
28 no longer be 180 days."
29

1 This action created the appearance that you had prejudged DUI cases. Because of this, many
2 defendants disqualified you from hearing DUI cases, pursuant to Code of Civil Procedure sections
3 170.1 and 170.6.

4
5 COUNT FOUR

6 Between February 1, 1996, and April 30, 1996, you made public statements disparaging
7 your fellow Monterey County judges on the municipal court bench and superior court bench, as well
8 as certain attorneys who appeared before you. You made disparaging statements about your fellow
9 judges both on and off the bench, in open court, in documents you filed in superior court, to
10 newspaper reporters and on television broadcasts. Your statements impugned the integrity and
11 impartiality of the judiciary. Your comments about attorneys occurred in March 1996, while you
12 were on the bench and court was in session.

13 You made the following disparaging statements:

14
15 a. On the morning of February 23, 1996, in the DUI cases of defendant Pinney, you made
16 disparaging statements in open court that include but are not limited to the following:

17
18 “... and the reason why I am going on the record is that Jose Angel Velasquez in
19 Department 4, who was elected by the people, has been treated unfairly and unjustly by
20 Presiding Judge Stephen Sillman, in making special treatments and calendaring
21 assignments for various cases. I don’t critique or criticize this particular case, but just the
22 activities of a presiding judge with respect to 170.6s.”

23 In the afternoon of February 23, 1996, in the same cases, you made disparaging statements
24 in open court that include but are not limited to the following:

25
26 “In this case Judge, Presiding Judge Stephen Sillman called me to his chambers and we
27 had a rather heated discussion in terms of filing the 170.6s, and a discussion about special
28 treatment or not treatment. For the record ... the Presiding Judge had changed the orders
29 on several occasions... The procedure for the filing of 170.6s he says it’s a special, it’s
not special arrangements, I say that as against me, it’s being racially discriminatory, that’s
a factual finding, and that he’s been meaning to maneuver my calendar for whatever
purposes he may have ... and I told him to his face that he is racially discriminatory as

1 against me ... and that it has been his doing to give me every individual clerk to work
2 with my calendar not allowing me to have a continuity ... and there's been changes of
3 policy on a daily basis and on a case per case basis and there have been special
4 arrangements made in this particular court today, on a special case which is unique at his
5 doing. He claims not to, but that is what I am stating on the record and he can challenge
6 me on it."

7 b. On March 7, 1996, defense attorney Lawrence Biegel appeared before you regarding
8 defendants Pinney and Zaouk. Mr. Biegel wished to disqualify you pursuant to Code of Civil
9 Procedure section 170.1 because he represented Court Administrator Kay McCormick regarding
10 matters that directly involved you. You made disparaging statements in open court about your
11 fellow judges and about attorney Biegel, including but not limited to the following:

12 "I have made allegations on the record that there is racial discrimination being aimed and
13 targeted by or towards me, there is an actual conspiracy between several members of the
14 municipal court bench and superior court bench and I know that it's extended to
15 members of the California Bar ... My question for the record is, in the commission of
16 legal malpractice, has this client been advised, that is Mr. Morgan Patrick Pinney, for this
17 commission of legal malpractice by your law firm, and if it hasn't, why hasn't that
18 happened? Now I am making blatant and open accusations that the presiding judge of the
19 Municipal Court, Stephen A. Sillman, is part of a conspiracy with members of the
20 Superior Court bench ... also with administrators from this court and heads of other
21 departments in their manipulations and maneuvering of my court calendar to make me
22 look bad because of politics. ... for me to disqualify myself ... would be to engage in the
23 perpetration of what I see a conspiracy by various members. ... my reason for making
24 this record clear is that I detect and I suspect, and this is on the record, that there is
25 collusion with respect to the maneuvering between Sillman, McCormick and your law
26 office to circumvent to the idea of 170.6 and to legally get this case out of my court ..."

27 c. On March 18, 1996, you filed in municipal court an "Answer To Motion To Recuse" in
28 the DUI cases of defendant Pinney and the case of defendant Zaouk. In each answer, you made
29 disparaging statements about your fellow judges and about the Cominos and Biegel law firm,
including but not limited to the following:

30 "So, having committed legal mal-practice, as publicly advised by a locally well-known
31 certified criminal law attorney ... one of the only legal ways to circumvent this problem
32 is to represent a trumped-up client against me ... I have publicly called upon a thorough
33 investigation into a clandestine conspiracy formed by several judicial members of the

1 Municipal and Superior Courts of Monterey County to publicly make me look bad. It
2 is public knowledge that both presiding judges for the Municipal and Superior Court are
3 publicly working against me because of their personal discontent with my election. ... I
4 feel that for me to acquiesce to this disqualification which in effect is a pretext and cover-
5 up to the commission of legal mal-practice by the Cominos and Biegel Law Office ...
6 would be tantamount to my own perpetration of an unethical and illegal furtherance of a
7 crime and conspiracy ... the entire Monterey County judiciary is presently involved in a
8 major internal dispute ... it is my position that several judicial branch members, elected
9 officials and court administrators have 'huddled' and decided to engage [defense attorney
10 Biegel's] services, so as to give him the legal way out of having failed to timely file his
11 170.6s."

12 d. On March 21, 1996, in open court, in the DUI case of defendant Wyatt, you made
13 statements criticizing the DUI sentences imposed by your fellow judges, and also made statements
14 that implied that the District Attorney's Office did not want defendants who were guilty of DUI
15 charges to be appropriately punished. Your statements include but are not limited to the following:
16

17 "... let me explain to you. I've been a lawyer before, now I'm a judge. I'm a tough judge.
18 One state, the toughest in the State of California. So my colleagues here are complaining
19 that I'm being too tough. The DAs are complaining that I'm too tough.... All the lawyers
20 in the State of California are complaining that I'm too tough on people that are convicted
21 for drunk driving. So, even though the public wants to be protected from drunk drivers
22 and you're innocent until proven guilty, I am giving you - I'm fully disclosing to you that
23 if you go next door, you will be given five days by another judge."

24 e. On March 21, 1996, in the DUI case of defendant Tavares, you made statements in open
25 court criticizing the DUI sentences imposed by your fellow judges, including:
26

27 "Mr. Daniel Tavares, they're going to be filing a paper to disqualify me so that you can
28 be taken to another judge in this county and be given a slap on the wrist - five days. You
29 don't have to go to jail at all. That's how Monterey County are going to be protected by -
30 from drunk drivers."

31 f. On March 21, 1996, in the case of defendant Russell, you made disparaging statements in
32 open court about the judge who previously had the case, including stating that the judge may have
33 committed "legal malpractice" in handling the case.

1 You also made disparaging statements about the deputy district attorney who had previously
2 handled the case, including stating that the deputy district attorney may have committed "legal
3 malpractice." The deputy district attorney you referred to was not present when you made those
4 statements.

5
6 g. On March 29, 1996, in the case of defendant Picazo, you made statements in open court
7 disparaging Deputy Public Defender Ruth McVeigh. These statements were made in Ms.
8 McVeigh's absence. These statements include but are not limited to the following:

9 "... it's been a problem, with her comportment, with her demeanor and with her lack of
10 respect for any in-chambers conversations. Not only with me the individual or as a judge,
11 but also with her continuous disrespect for the Deputy DA.... Ms. McVeigh has
12 contemptuously, intentionally and we'll find out, she is next door. If she is next door she
13 has a right to be there and I will wait, but I believe Ms. McVeigh has a personal problem
14 with - and I will have my secretary (unintelligible) call Ms. McVeigh's boss and ask
15 whether she is in her office and she has problems with this court. Maybe she should be
16 reassigned."

17 h. On March 29, 1996, after a deputy public defender filed a peremptory challenge or
18 disqualification in the cases of defendants Picazo, White and Rosas, you made statements in open
19 court disparaging the deputy public defenders to their clients. No deputy public defender was
20 present when you made these statements, which include but are not limited to the following:

21 "... your attorneys have failed to look into the files and see what is in them and their fault
22 and their demeanor in here and failure to (unintelligible) of the court.... I think, in this
23 case you may have a case against them for their abandoning you in court ... you may want
24 to hire a lawyer to sue the public defender's office for their reckless disregard of your due
25 process rights.... I'll say that to Mr. Lawrence [the Public Defender] himself. ... I think
26 individual people within the public defender's office are having their personal problems
27 brought in here and they're attacking various members, including the deputy public -
28 district attorney in cases, simply because they are not getting their way. And today I am
29 telling you that I feel sorry for you as ... a judge, because your rights are being trampled
upon by your own lawyers. They are failing to represent you.... I'll tell you one thing,
this tape recording you can pay \$10 and ... go get yourself a lawyer and copy it. Okay?
And if they want to talk to me they have a pager they can call my family and I will come
back from wherever I am. You may hire yourself a real lawyer that's going to represent
your rights. The public defenders are real lawyers but in this county several of them are

1 just disrespecting you as a human being. And I think that's offensive and that's a crime
2 and that's a legal malpractice.... Three of the lawyers have come in here and abandoned
3 you without even bothering to tell you what they have done or explained to you what the
4 procedure is ... But I am just trying to explain to people here that your lawyers are not
5 doing their jobs for you. And I say that about Mr. Kleinkopf who was in here, I say that
6 about Ms. McVeigh ... All three of you can have a copy of this tape for free at the court's
7 expense and ... and you should actually file a Morrissey [sic] hearing because you can say
8 these lawyers are not representing your rights, they are just abandoning. I am making all
9 these legal - factual findings because I am here talking to you. You may want to talk to
10 the next judge and then ask for help because right now you have been abandoned, you've
11 been left naked.... Because your lawyers chose to disrespect and disregard your files and
12 they want to make me to be the bad guy and I'm not the bad guy.... They chose to leave
13 you in a courtroom with a judge and with a deputy DA without even telling you what was
14 going on. That's the worst of representation that any lawyer can give in the State of
15 California."

16 In addition to disparaging the deputy public defenders, these statements improperly
17 interfered with the attorney-client relationship.

18 i. In an interview with KCCN television, you made disparaging statements about Judges
19 Sillman, Duffy, Curtis and Scott that were broadcast on the evening news on April 1, 1996,
20 including but not limited to the following:

21 "And even though I say that Judge Sillman is racist, and Wendy Duffy is racist, and
22 Richard Curtis is racist and Russell Scott is racist, I have told them that it will be my
23 intent to make friends of them. ... They're wanting to use statistics against me; that I am
24 not carrying my own weight, that is caseload. But the reason for that is the defense
25 attorneys are disqualifying me because I will give convicted drunk drivers a serious
26 sentence and not a slap on the wrist."

27 j. In an interview with KCBA Fox 35 television, you made disparaging statements that were
28 broadcast on the evening news on April 3, 1996, including but not limited to the following:

29 "My colleagues have resisted to accept the results of a valid district election that was as a
result of the democratic process. ... Now I am the beneficiary of much of the hatred and
distaste of many of my colleagues on the bench. ... My colleagues on the municipal court
bench have chosen to make my life miserable and at the present time are wanting to

1 coerce me by yanking me out of the department that I have been handling effectively,
2 efficiently and competently because of my ... strong stance on DUI.”

3 k. In an interview with KCCN television, you made disparaging statements about your
4 fellow judges that were broadcast on the evening news on April 3, 1996, including but not limited to
5 the following:

6 “They are racist and they distaste me and have publicly tried to humiliate me with the
7 intent to assassinate my character and to disparage my reputation.”

8
9 l. You made disparaging statements which appeared in an April 4, 1996, article in the *Coast*
10 *Weekly* entitled “Legal Briefings,” including but not limited to the following:

11
12 “There’s a conspiracy amongst local judges ... They dislike me and will do anything they
13 can to assassinate my character and disparage my reputation.... There’s tampering going
14 on with my computer ... and things being moved around my office. My fear is that these
15 guys and ladies will come in here and plant something. In their quest to assassinate my
16 character, they will do anything.... We all make mistakes ... but all these guys make it
17 seem like I’m a total animal out of control.”

18 m. You made disparaging statements which appeared in an April 5, 1996, article in *The*
19 *Californian*. You compared your colleagues’ treatment of you to a recently videotaped beating of
20 illegal immigrants in Southern California, and stated: “[b]ut the battering these people have
21 performed on me has been emotional.”

22 THEREFORE, you are charged with willful misconduct in office, conduct prejudicial to the
23 administration of justice that brings the judicial office into disrepute and improper action within the
24 meaning of Article VI, section 18 of the California Constitution providing for removal, censure, or
25 public or private admonishment of a judge.

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

4
5 Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to
6 the charges against you within fifteen (15) days after service of this notice upon you. An original
7 and eleven (11) legible copies of the answer may be filed with the Commission on Judicial
8 Performance, 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be
9 verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice
10 of formal proceedings and answer shall constitute the pleading. No further pleadings shall be filed
11 and no motion or demurrer shall be filed against any of the pleadings.

12
13 This notice of formal proceedings may be amended pursuant to California Rules of Court,
14 rule 911.

15
16 BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

17
18 DATE:

Oct 29, 1996


CHAIRPERSON

19 velasque/nfpamend.doc
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PROOF OF SERVICE BY MAIL

I, Kathleen A. Vota, declare:

I am over the age of 18 years and am not a party to the within cause. My business address is 101 Howard Street, Suite 320, City and County of San Francisco, CA 94105, where this mailing occurs. That on the 4th day of November, 1996, I served the following document:

First Amended Notice of Formal Proceedings

on the following people:

Ephraim Margolin, Esq.
Law Offices of Ephraim Margolin
240 Stockton Street, Third Floor
San Francisco, California 94108-5300


James E. Friedhofer, Esq.
Lewis, D'Amato, Brisbois & Bisgaard
550 West "C" Street, Suite 800
San Diego, California 92101-3540

Copy provided to:

Roland Selman, Esq.
Office of Commission Counsel
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, California 94105

by placing true copies thereof in sealed envelopes with first class postage thereon fully prepaid, by addressing said envelopes as set forth above, and by depositing said envelopes in the U.S. Mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed this 4th day of November, 1996.



Kathleen A. Vota