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FILED

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Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

11 INQUIRY CONCERNING A JUDGE,)

12 No. 139.)

VERIFIED ANSWER TO FIRST
AMENDED NOTICE OF FORMAL
PROCEEDINGS

14 This is Judge Jose Angel Velasquez' response to the First Amended Notice of Formal
15 Proceedings signed by the Commission on October 29, 1996, and served on him via certified mail
16 on November 4, 1996. Judge Velasquez is a Judge of the Monterey County Municipal Court,
17 Salinas Division, and has held that position from June 18, 1995 until the present. Judge
18 Velasquez denies any willful misconduct in office or conduct prejudicial to the administration of
19 justice which may bring the judicial office into disrepute. At all times during his tenure in office,
20 he has attempted to act in a manner which is consistent with the proper administration of justice
21 and in a manner which is fair, non-prejudicial, and responsible to all litigants, to the voters who
22 elected him into judicial office as their representative, and to the people of the State of California.

23 COUNT ONE

24 1. Judge Velasquez admits that he briefly displayed a crucifix on a wall in his Salinas
25 courtroom during one court day between December 26, 1995, and January 31, 1995. He admits
26 the crucifix was visible to the public for a period of time. To the best of his present recollection,
27 the crucifix remained visible for between one and three hours.

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1 2. Judge Velasquez' deep religious convictions are well-known in his community. Self-
2 expression was the sole purpose for Judge Velasquez' display of the crucifix, just as wearing
3 traditional Latino clothing at his judicial swearing-in ceremony was an act of self-expression.
4 There was no intent for the display to convey governmental sponsorship of a religious point of
5 view. There was no attempt to proselytize. There was no case being litigated at that time for
6 which questions of religious beliefs were issues. There was no reference in court by Judge
7 Velasquez to the display.

8 3. Significantly, there was also no intent to offend any person or make any person
9 uncomfortable. When two attorneys appearing in Judge Velasquez' department on the day of the
10 display suggested to him that the display was not appropriate in their opinion, Judge Velasquez
11 promptly removed the crucifix and has not displayed it in his courtroom since. Though he denies
12 the display constituted judicial misconduct, he has pledged to not put such a display in his
13 courtroom again. If the display constituted error at all, it was "legal error" regarding a legal
14 issue (as to the extent of Judge Velasquez' First Amendment rights) which was open to debate at
15 the time of the display.

16 4. Prior to the display, Judge Velasquez received no specific guidance from his judicial
17 peers as to proper conduct in this regard. Judge Velasquez had been on the Bench approximately
18 seven months when the incident occurred, but had only recently been assigned to a municipal
19 court department.

20 5. The display of the crucifix was not willful misconduct nor was it conduct prejudicial
21 to the administration of justice which may bring the judicial office into disrepute.

22 COUNT TWO

23 6. Judge Velasquez admits he agreed to have his name listed in a public announcement
24 of support for "pro-choice" issues. As to the details of that agreement, he presently does not have
25 independent recollection of exactly when he received any form and/or exactly what was indicated
26 on the form. He admits an advertisement appeared in the *Monterey Herald* in support of the *Roe*
27 *v. Wade* decision and that his name and title was listed as a supporter. He denies seeing this
28 advertisement until a copy was provided to him by the Commission.

1 7. Judge Velasquez denies that inclusion of his name in the advertisement gave an
2 appearance of a lack of impartiality in cases regarding an "abortion" issue -- just as the display of
3 a crucifix gave no such appearance. Judge Velasquez denies, given the totality of the
4 circumstances, that a reasonable person would conclude that Judge Velasquez has any particular
5 predisposition on any so-called "abortion" issue. He simply has recognized the validity of the
6 *Roe* precedent, just as has a recent California Supreme Court appointee. To the extent that he has
7 given the impression he intends to follow the *Roe* precedent, such is not judicial misconduct.

8 8. The conduct described in this Count was not willful misconduct nor was it conduct
9 prejudicial to the administration of justice which may bring the judicial office into disrepute.

10 COUNT THREE

11 9. Judge Velasquez admits he was not assigned to a trial department in Salinas until
12 approximately December 26, 1996, despite the fact that his tenure as a judge began over six
13 months before that time.

14 10. Judge Velasquez admits that in January 1995 he made it known publicly that the
15 previous and prevailing sentencing policy of the other Salinas Municipal Court judges regarding
16 DUI offenses would not be adopted as his own. As a matter of fairness, he announced his
17 different policy in open court on or about January 30, 1996 (though he cannot presently confirm
18 the accuracy of this date), using substantially the words quoted in this Count.

19 11. Judge Velasquez contends the sentencing guidelines he announced were and are
20 lawful.

21 12. Judge Velasquez contends the substance of his policy has widespread support in his
22 community and his policy was in keeping with his representative capacity as an elected judge.

23 13. Judge Velasquez flatly denies that *any* sentencing policy of any judge, whether stated
24 publicly as a policy or not, *ever* gives an improper appearance of prejudgment on any matter.

25 14. Judge Velasquez contends the other judges of the Municipal Court in Salinas had a
26 similar DUI sentencing policy, yet that policy provided for far less jail time and/or punishment.
27 He contends that neither his policy nor their policy gave an improper appearance of prejudgment
28 on any matter. He contends that the other judges' standard policy was as well known in the legal

1 community as his own policy was known (which is exactly why so many 170.6 motions were
2 subsequently filed). He contends on information and belief that at least some of the other judges
3 announced their DUI sentencing policy from the Bench.

4 15. Judge Velasquez admits that many defendants, for a period of time, disqualified him
5 from hearing cases pursuant to Code of Civil Procedure sections 170.1 and 170.6. He denies that
6 defendants presently disqualify him in this regard. At present, and since this past Summer, Judge
7 Velasquez has abandoned his previously announced policy, finding it “unworkable” due to the
8 provisions of the Code of Civil Procedure and the unwillingness of the other judges of the
9 Municipal Court in Salinas to follow his lead or even sustain a meaningful dialogue with him on
10 the subject.

11 16. The conduct described in this Count was not willful misconduct nor was it conduct
12 prejudicial to the administration of justice which may bring the judicial office into disrepute. In
13 particular, Judge Velasquez strongly disputes the charge’s apparent contention that the discipline
14 of any judge can be influenced by or premised on any litigant’s use of challenges under Sections
15 170.1 or 170.6.

16 COUNT FOUR

17 17. In general, Judge Velasquez admits to making public statements between February 1,
18 1996, and April 30, 1996, about attorneys and other local judges. The nature of these statements
19 which have been identified in the body of this Count, is that of private opinions concerning
20 matters of significant public interest.

21 18. The opinions were communicated on and off of the Bench, in open court, in
22 documents filed in the Superior Court, to newspaper reporters, and on television broadcasts.
23 Judge Velasquez makes no response to the characterization of these comments as “disparaging,”
24 as that characterization is merely argumentative.

25 19. Judge Velasquez denies that any of his publicly stated opinions impermissibly or
26 unethically impugned either the integrity or the impartiality of the *judiciary*.

27 20. Judge Velasquez admits that he made comments substantially the same as those
28 detailed verbatim in Sub-Count 4(a). He denies making any other comments which the

1 Commission does not identify but merely alludes to some possible existence.

2 21. Judge Velasquez admits that he made comments substantially the same as those
3 detailed verbatim in Sub-Count 4(b). He denies making any other comments which the
4 Commission does not identify but merely alludes to some possible existence. Judge Velasquez
5 presently has insufficient information on which to base a conclusion as to Mr. Biegel's motivation
6 for filing the Section 170.1 motion, and on that basis denies the allegation made regarding the
7 motivation.

8 22. Judge Velasquez admits that he made comments substantially the same as those
9 detailed verbatim in Sub-Count 4(c). He denies making any other comments which the
10 Commission does not identify but merely alludes to some possible existence.

11 23. Judge Velasquez admits that he made comments substantially the same as those
12 detailed verbatim in Sub-Count 4(d). He denies making any other comments which the
13 Commission does not identify but merely alludes to some possible existence.

14 24. Judge Velasquez admits that he made comments substantially the same as those
15 detailed verbatim in Sub-Count 4(e). He denies making any other comments which the
16 Commission does not identify but merely alludes to some possible existence.

17 25. Regarding Sub-Count 4(f), Judge Velasquez admits that he made comments
18 regarding a judge who previously handled a case and a deputy district attorney for a case
19 involving a defendant with the surname of Russell. Other than such admission, the charge is too
20 vague to either admit or deny, and on that basis Judge Velasquez denies the allegation.

21 26. Judge Velasquez admits that he made comments substantially the same as those
22 detailed verbatim in Sub-Count 4(g). He denies making any other comments which the
23 Commission does not identify but merely alludes to some possible existence.

24 27. Judge Velasquez admits that he made comments substantially the same as those
25 detailed verbatim in Sub-Count 4(h). He admits those statements were made, and were made
26 necessary, by the fact that no deputy public defender was present at the time. The comments were
27 made in response to questions from the defendants made to Judge Velasquez. Judge Velasquez
28 denies making any other comments which the Commission does not identify but merely alludes to

1 some possible existence. Judge Velasquez denies that any comments improperly interfered with
2 the defendants' attorney-client relationship.

3 28. Judge Velasquez admits that he made comments substantially the same as those
4 detailed verbatim in Sub-Count 4(i). The comments were made outside of the courtroom and did
5 not directly concern any specific pending or impending case. Judge Velasquez denies making any
6 other comments which the Commission does not identify but merely alludes to some possible
7 existence.

8 29. Judge Velasquez admits that he made comments substantially the same as those
9 detailed verbatim in Sub-Count 4(j). The comments were made outside of the courtroom and did
10 not directly concern any specific pending or impending case. Judge Velasquez denies making any
11 other comments which the Commission does not identify but merely alludes to some possible
12 existence.

13 30. Judge Velasquez admits that he made comments substantially the same as those
14 detailed in Sub-Count 4(k). The comments were made outside of the courtroom and did not
15 directly concern any specific pending or impending case. Judge Velasquez denies making any
16 other comments which the Commission does not identify but merely alludes to some possible
17 existence.

18 31. Judge Velasquez admits that he made comments substantially the same as those
19 detailed in Sub-Count 4(l). The comments were made outside of the courtroom and did not
20 directly concern any specific pending or impending case.

21 32. Judge Velasquez admits that he made comments substantially the same as those
22 detailed in Sub-Count 4(m). The comments were made outside of the courtroom and did not
23 directly concern any specific pending or impending case.

24 33. Judge Velasquez denies that any of the comments identified in Count Four have been
25 presented in their proper context. He denies that the statements, quoted out of context, fairly
26 reflect the nature of the circumstances and the import of the comments.

27 34. The conduct described in this Count was not willful misconduct nor was it conduct
28 prejudicial to the administration of justice which may bring the judicial office into disrepute.

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FIRST AFFIRMATIVE DEFENSE

(Lack of Subject Matter Jurisdiction)

35. Judge Velasquez asserts the Commission lacks subject matter jurisdiction to bring all or some of the Counts or their sub-parts, as such concern matters of pure legal error or of purely administrative matters are exclusively reserved for the judicial branch of State government.

SECOND AFFIRMATIVE DEFENSE

(Failure to Allege Charges Involving Violations of Judicial Ethics)

36. Judge Velasquez alleges that the charges brought against him, even if proven to be factually correct, fail to allege violations of the Code of Judicial Conduct, California statutes, or California constitutional provisions.

THIRD AFFIRMATIVE DEFENSE

(Vagueness of Charges - Facts)

37. Judge Velasquez alleges that some or all of the charges or their sub-parts are vague to the point of denying Judge Velasquez the opportunity to adequately defend against the charges. Moreover, no pleading vehicle exists whereby Judge Velasquez may move for a more definite statement. This violates Judge Velasquez' due process rights.

FOURTH AFFIRMATIVE DEFENSE

(Vagueness of Charges - Violations of Judicial Canons)

38. Judge Velasquez contends that all of the charges against him are unconstitutionally vague because none identify which canon or canons of the California Code of Judicial Conduct have allegedly been violated. Such a pleading omission is inconsistent with the Commission's prior practice. Obviously, the Commission has at least a theory as to which ethical canons have been violated in connection with each of the charges. Certainly, the Examiners, the Commission, or both will disclose those theories at some later date. To deny an investigated judge those theories in advance of the evidentiary hearing is a fundamental denial of due process, akin to allowing suit to go forward against a criminal defendant without identifying statutory violations or against a civil defendant without identifying any causes of action.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 **(First Amendment Freedom of Speech and Expression)**

3 39. Judge Velasquez contends that his comments identified in the Notice of Formal
4 Proceedings are statements of fact or opinion, as well as his non-speech expression. They are all
5 are protected by the federal and State constitutional guarantees of free speech and expression.
6 Any canon of judicial ethics prohibiting such is unconstitutional and void.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(First Amendment Freedom of Religion)**

9 Judge Velasquez contends that some of his comments and conduct identified in the Notice
10 of Formal Proceedings were made or taken in his lawful exercise of “freedom of religion” rights
11 protected by the federal and State constitutions. Any canon of judicial ethics prohibiting such is
12 unconstitutional and void.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Protected Speech of a Government Employee in the Workplace)**

15 40. Judge Velasquez alleges he is a government employee and his speech and expression
16 rights are protected as such under the federal and State constitutions and case law precedent
17 including but not limited to *Pickering v. Board of Education*, 391 U.S. 563 (1968), and *Scott v.*
18 *Flowers*, 910 F.2d 201 (5th Cir. 1990).

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Conduct was Proper in the Judge’s Representative Capacity)**

21 41. Judge Velasquez asserts that he is a representative of the people who elected him to
22 judicial office. He asserts that no canon of judicial conduct may interfere with his duties as a
23 representative to his constituents.

24 **NINTH AFFIRMATIVE DEFENSE**

25 **(Violation of Due Process)**

26 42. Judge Velasquez alleges that the Commission’s procedure whereby it investigates the
27 charges on its own motion, drafts the charges against the judge, unilaterally sets the procedural
28 rules for the conduct of discovery and hearings, determines if evidence supports the charge,

1 prosecutes the charge, and imposes discipline on the judge with the judge being given no right of
2 mandatory appellate review, violates federal and State due process guarantees. Judge Velasquez
3 furthers asserts that ex parte communications between the Examiners and the Commission and/or
4 its staff violate the investigated judge's due process rights. Judge Velasquez further asserts that
5 the Commission's act of withholding any portion of its file on the investigated judge denies the
6 judge with an opportunity to fully defend against the charges and, accordingly, violates that
7 judge's due process rights. In particular, the Commission's withholding of the text and
8 circumstances of any complaint filed against Judge Velasquez, as well as the identity of the
9 complaint, denies the judge with an opportunity to fully defend against the charges and,
10 accordingly, violates that judge's due process rights.

11 TENTH AFFIRMATIVE DEFENSE

12 (Improper Denial of Discovery Rights)

13 43. Judge Velasquez alleges that the Rules of Court governing discovery in a judicial
14 misconduct case are legally insufficient and discriminatory. He alleges the discovery procedures
15 which are allowed are insufficient to permit an adequate opportunity to defend against the charges.
16 He further alleges that such rules which give the Commission a "work product" privilege not
17 available to the judge violate the equal protection clause of federal and State constitutions.

18 ELEVENTH AFFIRMATIVE DEFENSE

19 (Violation of Separation of Powers Doctrine and "The Principle of Check")

20 44. Judge Velasquez alleges that rules giving the Commission (with its non-judge, non-
21 lawyer majority) the power to discipline a judge, with the judge having no right of mandatory
22 appellate review, violate the State separation of powers doctrine and the "principle of check."

23 TWELFTH AFFIRMATIVE DEFENSE

24 (Mitigation)

25 Judge Velasquez alleges that other matters not pled as facts in the Notice of Formal
26 Proceedings render the charges invalid and/or serve to mitigate against any act which could
27 otherwise be characterized as judicial misconduct.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Due Process Denial From Implementation of New Court Rules)

Judge Velasquez alleges that new rules unilaterally imposed upon his hearing by the Commission, effective December 1, 1996, violate his due process rights. Additionally, some rule changes exceeded the scope of the Commission's constitutional powers under Article VI, section 18. Among the harmful effects of the new rules are the unjust withholding of relevant discovery documents on the basis of "confidentiality" or "attorney work product," the apparent imposition upon a judge of a heightened duty of "cooperation" with the Commission even after adversarial proceedings have been commenced, and the limitation of an investigated judge's power to subpoena documents or testimony from the Commission or its staff.

Dated: November 19, 1996

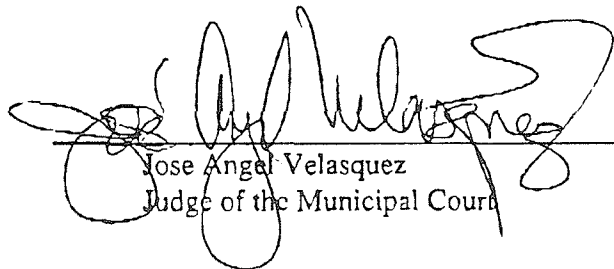
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VERIFICATION

I, Jose Angel Velasquez, have read the foregoing Answer to Amended Notice of Formal Proceedings in Inquiry No. 139 and know its content. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Salinas, California on November 19, 1996.



Jose Angel Velasquez
Judge of the Municipal Court