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FILED

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Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE, No. 139.	**VERIFIED ANSWER TO FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS**

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

COUNT ONE

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

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

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

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

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

COUNT TWO

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

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

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

COUNT THREE

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

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

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

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

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

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

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

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

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

COUNT FOUR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. The conduct described in this Count was not willful misconduct nor was it conduct 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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FIFTH AFFIRMATIVE DEFENSE

(First Amendment Freedom of Speech and Expression)

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

SIXTH AFFIRMATIVE DEFENSE

(First Amendment Freedom of Religion)

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

SEVENTH AFFIRMATIVE DEFENSE

(Protected Speech of a Government Employee in the Workplace)

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

EIGHTH AFFIRMATIVE DEFENSE

(Conduct was Proper in the Judge's Representative Capacity)

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

NINTH AFFIRMATIVE DEFENSE

(Violation of Due Process)

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

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

TENTH AFFIRMATIVE DEFENSE

(Improper Denial of Discovery Rights)

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

ELEVENTH AFFIRMATIVE DEFENSE

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

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

TWELFTH AFFIRMATIVE DEFENSE

(Mitigation)

Judge Velasquez alleges that other matters not pled as facts in the Notice of Formal Proceedings render the charges invalid and/or serve to mitigate against any act which could 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