

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JOSE A. VELASQUEZ,

NO. 180.

NOTICE OF FORMAL PROCEEDINGS

To Jose A. Velasquez, a judge of the Monterey County Superior Court from June 18, 1995, to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, 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 and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

In each of the following misdemeanor cases, the defendant was before you for something other than a noticed violation of probation hearing. Without affording due process, you found the defendant in violation of probation and sentenced him to jail. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3B(7) and 3B(8).

A. *People v. Ortega*, No. MS219836A

In December 2003, defendant Adolfo Ortega was placed on probation for driving under the influence of alcohol (DUI). He was ordered to either enroll in the work alternative program or surrender to serve five days in jail by January 15, 2004. On March 26, 2004, defendant Ortega appeared before you, unrepresented, to request a new surrender date. You remanded the defendant and ordered him to serve the five days he was sentenced to in December 2003. You also found a willful failure to comply with the terms of probation and sentenced the defendant to an additional five days for that violation of probation, as follows:

Judge: Why did it take you about three months to -- or when did you come back? When did you leave?

Defendant: The 20th of February.

Judge: How long were you out there?

Defendant: In Mexico?

Judge: Right.

Defendant: I came back the 23rd of March.

Judge: Well, if you went down there, what was it, February 20th? Is that when you took off to see your mom?

Defendant: Yes.

Judge: Okay. You were -- you pled guilty in December, your surrender date was January 15th, a month -- that was to serve five days, credit one. That was a month before your mom got sick. So you'll be remanded to serve out your days. That'll be five days, and there'll be a five day penalty for your willful failure to comply. So it'll be ten days, credit one.

B. *People v. Manzo*, No. MS223533A

In April 2004, defendant Jose Manzo was placed on probation for DUI. He was ordered to either enroll in the work alternative program or surrender to serve five days in jail by May 13, 2004. On July 23, 2004, defendant Manzo appeared before you, unrepresented, to request a sentence modification. The matter was continued to July 30, 2004. On July 30, 2004, the defendant appeared before you, unrepresented. He asserted that he had completed the work alternative program hours. You concluded that the defendant had not completed those hours. You ordered the defendant to serve additional time for a willful failure to comply with the terms of probation, for a total of 20 days.

C. *People v. Gonzalez*, No. MS221089A

In January 2004, defendant Guillermo Gonzalez was placed on probation for DUI. He was ordered to attend 30 Alcoholics Anonymous (AA) meetings. In September 2004, he was re-referred to AA meetings and ordered to appear for a review hearing on October 29, 2004. On October 29, 2004, defendant Gonzalez appeared before you, unrepresented, with proof of 27 AA meetings. You found a willful failure to comply with the terms of probation for the failure to attend the remaining AA meetings, and sentenced the defendant to six days in custody and 10 AA meetings for that violation of probation, as follows:

Judge: What did I tell you if you didn't go to your 30 AA meetings? That was the second time I gave you a chance. What was going to happen?

Defendant: I don't remember, but my boss was going to fire me if I didn't go along with that.

Judge: Well, last time you were supposed to have done your 60 AA meetings and file proof by February 5th. You came back and I forgot what the story was so I gave you an extension and I told you you would have to do 30 AA meetings or for each AA meeting that you did not complete, you were going to go to jail for two days. Do you remember that?

Defendant: Yes.

Judge: Okay, fine. So let me see how many meetings you gave me. 24. 27. You'll be taken into custody. You'll serve out six days. Then after that you will attend 10 AA meetings. 10 new AA meetings and file proof of compliance with the clerk's office by November 29, year 2004.

Defendant: Okay.

Judge: [calls next case] And that's for your willful failure to comply.

D. *People v. Narez*, No. MS224105A

In April 2004, defendant Sigifredo Narez was placed on probation for DUI. On October 29, 2004, defendant Narez appeared before you, unrepresented, seeking modification of the condition of his probation that he install an ignition interlock device. You found a willful failure to comply with the conditions of probation as to the interlock device, and as to the requirement that he attend AA meetings, and told the defendant that he was going to be taken into custody for 20 days. When the defendant attempted to offer information in his defense, you increased his jail time for the willful failure to comply to 30 days, then 60 days, then 75 days, and threatened to increase it to 120 days, as follows:

Judge: Sigifredo Contreras Narez? Sir, you have this matter on for modification requesting to have the interlock installed?

Defendant: Si [continues to speak Spanish, judge continues before interpreter speaks]

Judge: Did you have a car before?

Defendant [through interpreter]: Your Honor --

Judge: You pled guilty on April 30th of this year. Did you own a car at that time?

Defendant: Yes, I have one, but I don't -- I don't use it because I don't have a license.

Judge: Did you go to the ignition interlock device people to get, to install the ignition interlock device in the car?

Defendant: I didn't go because I was attending some classes and they told me I didn't have to do it until I finished the programs.

Judge: Well, let me tell you what I told you. You remember being in court April 30th, 2004, at 8:15?

Defendant: Yes.

Judge: You pled guilty to driving with a blood alcohol level of .08 or higher. Your BA was .21/.20. Do you remember that?

Defendant: Yes.

Judge: I know that I told you to install an ignition interlock device on any motor vehicle that you own or operate for a period of two years. Do you remember hearing that?

Defendant: [Defendant responds in Spanish; before interpreter speaks, judge continues]

Judge: Hold on. So did you own a car at that time?
Did you own a car, yes or no?

Defendant: Yes, I own a car.

Judge: And you haven't installed the ignition interlock device?

Defendant: That's what I wanted to say, is that they told me in the school that I was going to that I didn't have to install it until I finished the class.

Judge: Let me tell you what I'm going to do. I gave you a specific order on April 30th. You're going to be taken into custody today for your willful failure to comply. I'm the one that ordered you to install this ignition interlock device on any car that -- Mr. Narez. Let me ask another question. You were also ordered to attend 30 AA meetings. Have you completed any?

Defendant: I am doing that. I bring some proof here.

Judge: You were to submit those by August 30th of this year. It's now almost two months after. What happened? Did the school tell you not to go to them? Did the school tell you not to go to them?

Defendant: No. I'm going to the school. I have all my notes here.

Judge: Your request will be denied. You will be remanded to the custody of the sheriffs effective immediately for your willful failure to comply with the specific order to install an ignition interlock device on any motor vehicle. Hold on. Mr. Narez. You're looking at 20 days. You continue to interrupt me, you'll be at 45 in a hurry. Do you understand?

Defendant: I didn't know because I was going to the classes and they told me to wait until I finished.

Judge: Mr. Narez.

Defendant: I can take care of it if you --

Judge: You told me you did know, but the school told you different. So you decided to ignore what the court told you and to listen to what the school told you. Mr. Narez, I need to move on. Let me tell you what's going to happen to you. I told you you're at 20 days, you insist, you'll be at 45 and you'll get to 60 in a hurry. For your willful failure to comply with installing the ignition interlock device timely on any motor vehicle that you own or operate, you're going to be ordered to serve 20 days for your willful failure to comply. On the order of attending 30 AA meetings and filing proof of completion by August 30th, I'm going to just order 20 days in county jail. Upon your - - and there's no programs. Within three days of your release from Monterey County Jail, within three working days, you must start attending 30 new AA meetings and you must file proof of compliance with the clerk's office by January 20th, year 2005. If not, for every AA meeting that you miss, starting today forward to January 20th, I will put you in jail for two days for each AA meeting you miss. Do you understand?

Defendant: May I say something?

Judge: When I finish. First listen to what I'm telling you. Within three working days from the date that you are released from county jail, you must install an ignition interlock device on any motor vehicle that you own or operate. Do you understand?

Defendant: Yes. But I've been going to the classes and I was given a date to finish and --

Judge: You will have to get an extension of your time. On reconsideration, you will be ordered to serve 30 days in Monterey County Jail. If you'd like to take more of the court's time, and you'll be at 60. Did you understand what I've been telling you?

Interpreter: Your Honor, the interpreter did not hear all of that.

Judge: Okay. On reconsideration, you're now going to be ordered to attend -- to serve 30 days in Monterey County Jail for your willful failure to comply. If you care to keep talking about the same issue, I'll give you 60 days. Keep talking. Did you understand? Did you understand, yes or no?

Defendant: Well, I just wanted to explain that --

Judge: You will now be going to jail for 60 days. Do you understand?

Defendant: [speaking Spanish, before interpreter speaks, judge continues]

Judge: You're now in court 75 -- jail, jail for 75 days. Do you understand? Do you understand, yes or no? That's a question; yes or no? If not, you'll be in jail for 120. Answer the question. Do you understand?

Defendant: Yes, I understand.

E. *People v. Nunez*, No. MS227959A

In September 2004, defendant Angel Nunez was placed on probation for DUI, and ordered to serve 60 days in jail. Defendant Nunez missed his surrender date, and appeared before you on October 29, 2004, unrepresented, to request a new surrender date. When the defendant mentioned the ignition interlock device, the installation of which was also a condition of his probation, you elicited an admission that he had not installed it. You ordered that the defendant serve an additional 30 days for willful failure to comply with the requirement that he install the interlock device, as follows:

Judge: That's not my question. Did you surrender on October 12th of this year?

Defendant: No, no I didn't turn myself in.

Judge: You started to tell me about your little girl that got sick.

Defendant: Yes. I told you that my little girl was sick. She's still a little sick and I wanted an extension.

Judge: What's her illness?

Defendant: She's got a cough. She's back there. She's got a lot of throat problems.

Judge: Well, have you taken her to the doctor?

Defendant: Yes. No. No, I haven't taken her yet. I just went to Longs to get some medicine for her.

Judge: So what does that got to do with you not surrendering yourself on the 12th of this month? Mr. -
- Mr. Nunez.

Defendant: Well, that's why, because I lost the paperwork.

Judge: Mr. Nunez.

Defendant: I thought it was on the 20th.

Judge: Mr. Nunez. Don't be playing with me. I'm not going to feel sorry for you because of your little girl. Okay. I can understand that she's sick. Take care of it. Take care of that issue. We're talking about jail time. You started talking about your daughter. I'm not sure that you're trying to use her as an excuse. You just told me that you didn't understand or you forgot it so you're giving me different stories. So it's not because of your daughter that you did not go to jail or did not go to the work alternative program. You just chose not to do it. Is that correct? Deal with me direct or I'm going to put you behind bars.

Defendant: Yes. Yes.

Judge: So why didn't you go to the -- let me ask you. You were released on September 9th.

Defendant: Yes.

Judge: When did you first go talk to the home confinement people, if you did that? Did you go to them?

Defendant: What do you mean the home confinement?

Judge: Well, then why did you not surrender to jail on the 12th?

Defendant: Yes. Well, because I lost the paperwork. But if you want to put me under custody, I'm guilty. I can do those days now if you want to.

Judge: Okay. You will surrender yourself today at 5 o'clock to serve -- I'm not going to give you any additional days. Let me tell you what I'm going to do. You will surrender to Monterey County Jail November 5. You got a week to do whatever you need to do. If you can get into a program, go ahead and get into the home confinement program. November 5, year 2004 at 9 in the morning surrender or get into whatever program. Understood?

[¶] ... [¶]

Judge: Try it, yes. Any other questions that you have?

Defendant: So then if I install the device on my car because if I'm at home I really can't-- if you want me to I can install it. I don't want to have any problems.

Judge: Okay. You're digging yourself in some more. You pled guilty to driving with a blood alcohol level .08 or higher and having one prior conviction and you were asked whether you own or operate any motor vehicle. Have you -- do you own a motor vehicle?

Defendant: Yes, I do have a vehicle.

Judge: Have you installed the ignition interlock device on the vehicle?

Defendant: No, I have not installed it.

Judge: Why not?

Defendant: That's why I wanted to leave home so that I would be able to do that.

Judge: I'm sorry?

Defendant: I wanted to leave home so that I would be able to do that.

Judge: You wanted to leave home? I didn't understand what you said. You were to install --

Defendant: No, out of jail. I wanted to get out of jail.

Judge: Okay. You were in court here on the 9th of September. You were to have the ignition interlock device installed by the 30th of September for two years. Have you done that?

Defendant: No, I haven't done that.

Judge: Okay. You've got more than enough problems. I'm sorry? And why didn't you do that?

Defendant: Because I thought that it was going to be after I finished with my time in jail. And since I don't know how to read, I really don't understand the papers.

Judge: You're going to be remanded to the custody of the sheriff's effective immediately for your willful failure to comply with surrendering to Monterey County Jail. For lying. For trying to use your family as a shield. I don't think that's right. Let me ask you, Mr. Nunez. On September 5, 2004, when you were drinking and driving, where was your daughter?

Defendant: She was at home where I live. A lady takes care of her for me.

Judge: Why weren't you thinking about her at the time when you were drinking and driving?

Defendant: Well, that was a mistake I made.

Judge: Right. That's the second mistake because back on April 30th of 2002, you probably didn't have the daughter at that time, but you did drink and drive and you were told not to do it again. Do you remember that?

Defendant: Yes, that's true.

Judge: So you're going to be ordered to serve out your 60 days. You have credit 5. For your willful failure to comply with the ignition interlock device, I'm going to give you an additional 30, so it's going to be total 90, credit 5.

F. *People v. Hernandez*, No. MS223071A

In March 2004, defendant Barnabee Hernandez was placed on probation for being drunk in public, and ordered to attend AA meetings. In November 2004, he admitted a failure to attend AA meetings and was ordered to attend 30 AA meetings by December 15, 2004. On December 10, 2004, defendant Hernandez appeared before you, unrepresented, to request an extension to complete the remaining AA meetings (he apparently had attended 16 of the 30). You found a willful failure to comply with the terms of probation, remanded the defendant for three days for that violation of probation and ordered that he attend 30 additional AA meetings, as follows.

Judge: Okay, well, look. In this one, there was a bench warrant issued for you because you did not -- you have not attended your 30 AA meetings. ... In this case you came to court November 9th of this year --

Defendant: Yes, Your Honor.

Judge: And you admitted your failure to comply. You were ordered to serve five days. You were given credit for the five days and then you were told to attend 30 AA meetings and to file proof by December 15th. ... So on this case you have a -- well, it's December 10th. You still have five days to complete your 30 AA meetings.

Defendant: Yeah. And I got 16 in so far. I -- the other card that I had, I had --

Judge: Well, look, just say one thing. If from November 20th, the last time you were in -- November 9th to now, you've only done 16, I have little confidence that you're going to make it between now and five days, the other 16. So obviously you don't care. From March to November, you didn't do it. From November to now, I tried to put the squeeze on you to figure it out and you're still having problems. I might as well take you into jail today.

Defendant: No -- my -- I still have five days left, don't I?

Judge: Right. You have only 16 signatures?

Defendant: Yes.

Judge: So if in 30 days you have 16, you tell me how you're going to make 16 in five? I mean you're too busy, you cannot walk, it gets dark on you, you don't have anybody to guide you, you work two days out of seven days a week and you can't find your way to AA meetings. You tell me how you're going to do it?

Defendant: That's why I'm asking for --

Judge: All right. In nine months, 16 meetings. And I don't see how you're going to make 16 meetings in five days.

Defendant: Well, I have --

Judge: I mean, convince me otherwise. You came in here with troubles. I know you haven't become energetic all of a sudden.

Defendant: That's why I'm asking for just -- for just one week more.

Judge: Why would I give you one week more after nine months?

Defendant: This is from -- but that's not counting jail.

Judge: I know. You're going to spend more time in jail.

Defendant: (unintelligible) I just wanted to --

Judge: I know. You're going to spend more time in jail. For your willful failure to comply. You were told specifically do 30 AA meetings in March. You were given until May. Two months to get 30 AA meetings done. You didn't do it. You were brought in in November. You were given five days in county jail and then told now start your 30 AA meetings filing by December 15th. We're in December 10th; you've finished 16. And the reason why you're on calendar today is because you're asking for an extension. So you're going to tell me I'm not going to be able to do it. So I'll tell you what. You're going to be remanded to the custody of the sheriffs effective immediately.

Male voice: Put your hands behind your back.

Defendant: (unintelligible)

Judge: How many days do you think it'll take behind bars for you to figure out that you have to attend -- now you're going to attend 30 new AA meetings. You tell me?

Defendant: (unintelligible)

Judge: How many days in county jail will it take for you to get convinced -- to start over with 30 new AA meetings? Talk to me.

Defendant: Well -- if I can do two a day.

Judge: I don't know, you tell me. You've had nine months to figure it out and you haven't. Now that you have the handcuffs on you, you're going to be taken to jail. How many days will it take for you to convince yourself that I'm going to give you a new order to attend 30 AA meetings. How many -- are you going to be able to do 30 AA meetings or do you just want to do 60 days in county jail?

Defendant: I'll do the 30.

Judge: 30 -- 30 what?

Defendant: 30 days (unintelligible)

Judge: 30 days or 30 AA meetings?

Defendant: 30 AA meetings.

[¶] ... [¶]

Judge: You will be remanded today. You're going to be released from custody. On December 13th at 5 p.m. And then from December 15th, you will start doing -- starting from today forward, 30 new AA meetings and you're going to bring me proof of your 30 AA meetings on January 21st. You're going to come back to court January 21, year 2005, at 8:15 with 30 new AA meetings. Do you understand?

Defendant: Yes.

Judge: If you miss any AA meetings, for each AA meeting that you miss, you're going to be ordered to attend -- not to attend but to serve three days in custody. Do you understand? So we'll see you back on -- you'll be released on the 13th and as soon as they

release you from jail, continue -- start going to your AA meetings. I will see you back in court January 21, year 2005, at 8:15.

G. *People v. Huitron*, No. MS228655A

In October 2004, defendant Priscilliano Huitron was placed on probation for DUI. He was ordered to either enroll in the work alternative program or surrender to serve 20 days in jail by November 5, 2004. On December 10, 2004, defendant Huitron appeared before you, unrepresented, to request a new surrender date. You remanded him to serve the original 20-day sentence. You also found a willful failure to comply with the terms of probation and sentenced the defendant to an additional five days for that violation of probation, as follows:

Judge: Hold on. You were -- excuse me, Mr. Huitron. When I want to hear you, I'll tell you. Okay. You were given a month for you to surrender. I told you go to jail. And also you were given a small orange card and in that card there's a number. And you can take the time to call the number if you want to and if you don't, I can care less. Because I already told you to go to jail on November 5 at 9 in the morning. Today you are coming in here, two months later, telling me that something to the effect that you had an appointment but you got too busy and you didn't go. Right? You didn't go.

Defendant: May I speak?

Judge: Go ahead.

Defendant: Yeah, I made the appointment the day I got out of jail on November 24th, but I thought it was the 28th and I missed it. But, I mean if you give me the chance, I'll go over and sign up right now.

Judge: You may forget to go back. So I'm just going to remand you to the custody of the sheriffs effective immediately for your willful failure to comply. It was originally 20 days. There's going to be a five day

penalty for your willful failure to comply. So it's going to be 25, credit your 10.

H. *People v. Narciso*, No. MS228768A

In October 2004, defendant Donato Narciso was placed on probation for DUI, and ordered to either enroll in the work alternative program or surrender to serve seven days by November 30, 2004. On December 10, 2004, the defendant appeared before you, unrepresented, to request a new surrender date. You remanded him to serve the original seven-day sentence. You also found a willful failure to comply with the terms of probation and sentenced the defendant to an additional three days for that violation of probation, as follows:

Judge: And you were sentenced to jail to serve seven days and you were given a date to surrender of November 30th. Did you surrender?

Defendant: No.

Judge: Why not?

Defendant: I misunderstood.

Judge: You were in court. You had an interpreter. You knew that you pled guilty to driving with a blood alcohol level of .08 or higher, didn't you?

Defendant: Yes. But I understood that -- I understood that I was going to go to a class.

Judge: Let's talk about the jail time. That's the only issue before the court today. You did know you were ordered to serve seven days in county jail. Do you remember me telling you that?

Defendant: But I didn't understand real well.

Judge: Did you ask for any questions?

Defendant: No, no.

Judge: So you didn't know about the seven days in county jail? Is that what you're telling me?

Defendant: No. I didn't -- I thought it was work.

Judge: No. That -- now I like it because you're starting to lie to me. Did you understand, yes or no, that you were going to jail? Mr. Narciso.

Defendant: I understood --

Judge: Want me to play the tape recording for you?

Defendant: No, that's fine.

Judge: No, I mean, because if you're telling me that I'm lying and if I didn't tell you that, I'll take these days away. But if I did tell you that, and you're the one that's lying, I'm going to give you additional days. Do you understand?

Defendant: That's fine.

Judge: What's fine?

Defendant: That's fine. Whatever you say, Your Honor.

Judge: I'm not understanding what that means.

Defendant: In other words, I thought that it was a work alternative program.

Judge: Why did you think that?

Defendant: Well, I didn't understand all that much.

Judge: Why didn't you not understand?

Defendant: I understood that the program was to be work.

Judge: I'm going to go into Spanish. [Judge speaks Spanish; interpreter translates into English] Mr. Narciso, you know why you were arrested last time. Yes. Because you were drunk driving. Yes. When you were here, you were told you were going to go to jail. Don't say no. You know when you don't understand. You know or you don't know? You were told that you were going to go to jail for seven days. Do you remember that, yes or no? Do you remember that, yes or no?

Defendant: Yes, I do remember now.

Judge: [Spanish] Okay. Do you think that when people come here, to criminal court and they're sentenced, they're given vacations?

Defendant: No.

Judge: Okay. [Spanish] When they're found guilty (unintelligible), they're penalized, they're punished. They're given jail. Do you understand the concept?

Defendant: Yes.

[¶] ... [¶]

Defendant: I thought it was a work alternative program.

Judge: [Spanish] I told you to go to jail.

Defendant: Well, fine.

Judge: [Spanish] You didn't want to take the time to (unintelligible) the program (unintelligible) but you're the one that indicated (unintelligible). You didn't make your appointment. Instead of (unintelligible) but that you understood that there was jail you had (unintelligible). So there was no confusion. What happened was that (unintelligible) and still you're here to ask me for an extension. Now, am I saying (unintelligible).

[In English] So your request is going to be denied. You'll be remanded to the custody of the sheriffs effective immediately. You'll be getting your seven original days, plus three days penalty for your willful failure to comply, that makes it ten. You'll get one day credit. And there will be no programs for you.

COUNT TWO

In the following misdemeanor cases, you improperly increased or threatened to increase sentences or otherwise penalize the defendants in response to the defendants' questions or comments. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4), 3B(7) and 3B(8).

A. *People v. Merwin*, No. MS223353A

On July 30, 2004, defendant Toni Merwin appeared before you, represented by the public defender, and entered a no contest plea to a violation of Penal Code section 148. Defendant Merwin was ordered to serve ten days in jail and pay a fine of \$750. When the defendant questioned the amount of jail time, you threatened to increase it, as follows:

Judge: Okay. Your fine in this case will be \$750. You'll need to make contact with the Office of Revenue and Recovery across the hallway on or before August 8th to make arrangements for your payments. Do you accept probation on those terms and conditions?

Defendant: Yes, but is there a way you can make the time less?

Judge: I can make it more.

Defendant: Oh, no. Don't make it more.

B. *People v. Gawf*, No. MS228909A

On October 27, 2004, defendant David Gawf appeared before you for arraignment, unrepresented, on a charge of possession of alcohol as a minor. You offered defendant Gawf a choice of jail or 30 AA meetings, and did not advise him that he could enter a not guilty plea. Defendant Gawf chose AA meetings. When the defendant asked if the number of AA meetings could be reduced, you threatened to take his license and give him jail time instead:

Judge: Okay. You're charged with being a minor in possession of alcohol.

Defendant: Yes, Your Honor.

Judge: Would you like to go to jail or go to 30 AA meetings?

Defendant: 30 AA meetings, Your Honor.

Judge: Okay.

Defendant: I was -- sorry to interrupt you. I was wondering if I can get that reduced even more because I work full time.

Judge: I'll take your license if you keep talking that way.

Defendant: Yes, Your Honor.

Judge: Zero tolerance.

(Female voice: He's going to dismiss the case if you go to 30 AA meetings.)

Defendant: Oh, okay. Yes, Your Honor.

Judge: What -- how many days in jail do you want?

Defendant: None, Your Honor.

C. *People v. Narez*, No. MS224105A

Count one D is incorporated.

D. *People v. Maya*, No. MS228527A

On Friday, November 5, 2004, defendant Erik Maya appeared before you for a pretrial conference on a trespass charge, represented by the public defender, and entered a no contest plea. Defendant Maya was placed on probation, and his probation on a number of prior cases was revoked and reinstated. You then questioned the defendant as to whether he had paid a \$25 registration fee for the public defender in each of his prior cases, and ordered him to pay \$250 in registration fees by the following Monday. When he began to speak, you ordered him remanded until Monday. When he expressed concern about his child in the courtroom, you threatened to give him 30 days in custody. After the public defender asked for an extension of time to pay, you ordered that the defendant pay the public defender \$250 by noon that day instead, and stated that he would receive 45 days in custody if he did not, as follows:

Judge: That may be so, but you're going to be ordered to do the following. You're going to have to pay the \$250, which is going to be – that's a separate thing -- the attorney fee, okay. It's ten cases, it's \$250. You need to pay that in full.

DPD: Your Honor, he only has one open case.

Judge: You helped him on ten cases and he was ordered to pay \$25 per case. You need to pay the \$250 to the public defender's office by November 9, year 2004 –

Defendant: On November the 9th?

Judge: By Monday at noon.

Defendant: Excuse me – I, I, I -

Judge: If not – hold on. If you can't do it, I'll take you into – Gary, remand him. You're telling me you can't do it.

DPD: Can you do it? By Monday?

Defendant: Yeah.

DPD: Your Honor, he can do it by Monday.

Judge: Well, you just told me no.

Defendant: Yeah, yeah. I can do it by Monday.

Judge: How am I supposed to believe in you?

Defendant: Yeah –

Judge: You can't have it – you don't have the money you told me.

Defendant: Okay. I do – I'll come up with it, I'll find a way to come up with it.

Judge: Then what were you – then why were you lying to me? Why didn't you come up with the money when you were supposed to?

Defendant: Because I didn't want to go back to my mom and ask her for, to borrow money, she's been helping me out a lot.

Judge: Well, then you're going to be remanded –

Defendant: But I'll do that again -

DPD: Your Honor.

Defendant: But I'll do that – I'll (unintelligible) do it -

Judge: Excuse me. Mr. Maya, you're going to be quiet, okay. You were told to pay your fine – your \$25 registration fee for a lawyer by a certain date. You

chose not to do that. Okay. That was your choice. I just asked you if you could do it by Monday, and you're there crying like a kid that you can't do it by Monday. Okay. Until your lawyer butts in and tries to help you and encourages you, all of a sudden you're creative. I'm talking to you as a man, okay, not as a kid. So you're going to be remanded. You'll be released Monday.

DPD: Your Honor, Your Honor--

Defendant: My baby's in the back --

DPD: Your Honor, --

Judge: I'm going -- okay, you want 30 days? I'll give you 30 days.

Defendant: No, I don't want 30 days.

Judge: Okay. So then you're going to be remanded to the custody of the sheriffs effective immediately.

Defendant: But my baby's in the back - what about my baby?

Judge: We'll get CPS to come and get somebody for you.

Defendant: Oh, God.

Judge: Okay.

Defendant: I have to go to the school today, too, you know, you'll make me lose all my --

Judge: Right. Okay. You gotta learn to pay attention.

DPD: Your Honor, may we please have an extension of time till this afternoon? Is there any way that you can --

Defendant: Yeah, I could – I could pay by today if you want me to.

DPD: -- infant child, and he can go ahead and pay this afternoon.

Judge: What time are you going to be able to pay?

Defendant: Till 5 – can you give me till 5, I'll come up with the money.

Judge: You don't have till 5.

DPD: Can you do it by noon?

Defendant: Yeah, by noon.

DPD: By noon.

Judge: Are you sure?

Defendant: Yeah, noon.

Judge: I'm going to have you be here in court at 1:30 and if you don't have it, you're going to be remanded. Do you understand that?

Defendant: Yes, I will.

Judge: So how much are you going to pay today?

Defendant: 250.

Judge: What does that mean, 250? 250 dollars?

Defendant: Yeah, 250 dollars.

Judge: At the public defender's office by noon.

Defendant: Yes, I will.

Judge: You got it? At the public defender's office. This is uh, attorney fees. Okay. Do that. If not, show

up on Monday at 8:15, 8:30. Here's what. You're going to come to court Monday, that's going to be --

Defendant: Am I going to come up Monday or today?

Judge: Let me decide. You're going to pay today.

Defendant: Yeah.

Judge: Okay. But you are going to come back to court on November 8, year 2004, at 8:30 to show me proof that you paid. Okay.

Defendant: All right.

Judge: And it better not be past 12 o'clock today. Or it's going to be 45 days.

E. *People v. Herrero*, Nos. MS229214A, MS223501A

On December 8, 2004, defendant Modesto Herrero, represented by the public defender, appeared before you on a DUI case and on a separate case of driving on a suspended license. Defendant Herrero entered a no contest plea in both cases. You stated that you were imposing a \$750 fine on the license suspension case. When the defendant questioned the amount of the fine, you increased it to \$2,000 and threatened to impose additional jail time, as follows:

Judge: So your fine is \$750-- you can withdraw it. I --

Defendant: No, it's not that, sir. I was saying -- I didn't know there was going to be a different fine besides the \$1,550 because --

Judge: Now you know; do you want to continue with your plea or do you want to withdraw your plea?

Defendant: Yes, Your Honor. Yes, continue but you didn't state that, that's what I'm saying.

Judge: There were some changes that were -- some incorrect information. We clarified that in there. So

then I assume that your attorney, she says that she did tell you that, so it's not new. What I have in -- last -- the notes from last time, you were going to plead guilty in the other case to two charges. The count -- for count three was going to be \$750. I have that notation. This case was going to be dismissed totally, but that changed because the DA's miscommunication or misunderstanding, whichever it was. But the \$750 was -- had been noted since last time.

Defendant: So why does it have to be so high, sir?

Judge: It can be \$2,000, and I'm starting to think \$2,000. You know why it has to be so high? Because people that drink and drive are a danger to society. It happened to you 11 years ago and I'm sure that if you have any kids they can tell you not to drink and drive. But back on October 7, 2004, 11 years older, more mature, you still did the same thing. That's why things are expensive. Do you understand?

Defendant: Well, I wasn't driving at the time. I was - the car was parked.

Judge: Okay. Your fine is going to be \$2,000. Do you want to withdraw your plea?

Defendant: Okay, \$750 is fine.

Judge: No, I mean, I tell you what the fine is going to be.

Defendant: \$750 is fine, sir.

Judge: Your fine is going to be \$2,000. Make contact with the Office of Revenue and Recovery on or before --

Defendant: --Can I ask you please --

Judge: Do you want some days in county jail on this case? I'll give you a full year.

Defendant: No.

Judge: Would you like them? 365 days, consecutive to the other. Are you sure?

DPD: Your Honor, --

Judge: I just want to make sure. Are you sure? I'm asking you a question, Mr. Herrero.

Defendant: Yes, sir.

Judge: Okay. I'm being courteous to you. Don't be disrespectful. Do you understand?

Defendant: Yes.

Judge: Are you sure you don't want a full year in this case?

Defendant: Yes.

Judge: I got -- I got 180 days on the other matter. Would you like them? Would you like --

Defendant: No.

Judge: There's two waivers of rights, do you want to withdraw? I'll throw them in the trash can if you like.

Defendant: No, sir.

Judge: Do you want to start over? I'm asking you a question.

Defendant: No.

Judge: I want to make sure that you fully understand what I'm telling you. I'm not lying to you. I told you last time \$750; I'm telling you today it was \$750. You argue. It's \$2,000.

Defendant: No, I asked you a question.

Judge: Do you want to withdraw your plea? Do you want to withdraw your plea?

Defendant: No, sir.

Judge: Okay. So then your fine in this case is \$2,000 separate and apart from the other. You make contact with the Office of Revenue and Recovery on or before December 17th of this year. That's right across the hallway. Make sure you stay timely.

F. *People v. Martinez*, No. MS231208A

On December 15, 2004, defendant Juan Martinez appeared before you, represented by the public defender, and entered a plea of no contest to battery. Defendant Martinez was ordered to serve ten days in jail and pay a \$250 fine. When the defendant made bizarre statements indicating that he might have mental problems, you responded by ordering him to serve 180 days in jail, but then allowed him to withdraw his plea, as follows:

Judge: Plea of no contest will be accepted. ... You will be ordered to serve ten days in Monterey County Jail. You will receive credit four actual days.

Defendant: I'll even do a month or two for being an idiot.

Judge: Okay. You know yourself better. And your fine is \$250. On the fine, do you want to serve it out or do you want to make payments?

Defendant: I will give you \$500 --

Judge: Okay. You will serve out the fine.

Defendant: I will give you \$500 for being an asshole.

Judge: On reconsideration, I am willing to take your advice. You are going to be ordered to serve 180 days in Monterey County Jail. Probation will be denied.

Defendant: Your Honor, even a month or two --

Judge: I'm listening to his comments. I don't think he's out of his mind.

DPD: Your Honor, is there any way that we could put this over. There may need for further evaluation.

Judge: I think he understands.

Defendant: But I want to know is who is this person because it was a child. That's why I'm deceiving myself because a 13-year-old (unintelligible)

Judge: Do you want him to withdraw the plea? I'll allow him to withdraw the plea.

DPD: If he continues with his plea, will it be the ten days, \$250 fine at this point?

Judge: Yeah. Actually in this case I think it's best he withdraw his plea. I'll put it over for further arraignment and you can start over with somebody else if you want.

COUNT THREE

In each of the following misdemeanor exhibition of speed cases, you improperly conditioned the sentence on the defendant's answers to your questions. You wanted the defendant to say that it did "feel good" to "peel out," or that he did it to "show off." You accused the defendants of lying when they did not give you the answer you wanted. You apparently based the "truth" of the answers on your personal experience engaging in similar conduct. Your conduct violated the Code of Judicial Ethics, canons 1, 2A, 3B(4) and 3B(8).

A. On January 5, 2005, in *People v. Herrera*, No. MS229233A, the following occurred:

Judge: Good morning. You're charged with an exhibition of speed. Do you understand the charge against you? And to the charge, do you wish to plead guilty, not guilty or do you want to talk to a lawyer, sir?

Defendant: Guilty.

Judge: What are the facts in this case?

[¶] ... [¶]

DDA: Oh, here it is. The officer was parked on Toro Avenue and he observed the defendant make a left turn from Miami onto Toro Avenue. The wheels were spinning and he was able to hear the tires make a screech and then the second time, he heard shifting of the gears, he contacted the driver and he did not know why it had -- he had it in first gear. And then he said he had it in first gear on purpose. I mean I'm just looking at the officer's handwritten notes, Your Honor. I have not spoken to this officer.

Judge: Maximum penalties and consequences could be up to six months county jail. There's a minimum -- actually, 90 days county jail, \$1,000 fine. I'll hear your side. I'm not sure what your version of the story is.

Defendant: (unintelligible) an automatic truck. The wheels did spin on the water, but I'm guilty for the spinning on the -- on the --

Judge: Let me tell you. It would be -- there would be no jail time, your fine would be between \$200 and \$800 depending on your answer.

Defendant: Yes.

[¶] ... [¶]

Judge: How do you plead to exhibition of speed?

Defendant: Guilty.

Judge: Plea of guilty will be accepted.

[¶] ... [¶]

Listen to the question and I want you to be honest. That's whether you pay \$200 or \$800 depends on your honesty. When you peel out tires, because that's what you did, right, you spun your wheels? Did it feel good?

Defendant: Did it feel good?

Judge: Yeah. Yes or no?

Defendant: Yes.

Judge: Are you sure?

Defendant: I mean it didn't feel good because I was in the water.

Judge: Well, no. The reason for peeling out is because there's a thrill to it. Right?

Defendant: Yes.

Judge: So are you sure it feels good or it doesn't?

Defendant: No, it doesn't feel good.

Judge: Okay. Now you're starting to lie.

Defendant: No, I don't like it.

Judge: I do. And if I ever peel out, I do it for that reason. But anyways. You answered straight. This will be your sentence. You'll be placed -- and I just questioned you a little more, and then you weakened and went the other way.

Defendant: No, can I talk to you?

Judge: Go ahead. Your fine is going to be \$200 bucks. It ain't going to get any better. You're going to be placed on probation for three years on the following terms and conditions. You are not to drive without a valid California driver's license. Your fine is \$200. I mean you were honest and then you thought I wanted some different answer and you wouldn't -- stick with your gut feeling. Make contact with the Office of Revenue and Recovery across the hallway by January 12th of this year to make arrangements for your payments.

B. On April 8, 2005, in *People v. Lopez*, No. MS233320A, the following occurred:

Judge: Leonard Lopez? Leonard Lopez was to be in court last week. Things were put over till today. It is now 9:06 --

Defendant: Leonardo or Leonard?

Judge: What's that?

Defendant: Leonardo or Leonard? It says Leonardo.

Judge: Oh, the minutes says Leonard. Leonardo is the one that's going to jail. Leonard is staying home.

Defendant: Excuse me?

Judge: Leonardo is going to jail; Leonard is staying home. Which do you prefer? Okay. (unintelligible) I'm just kidding. Let me see, you're charged with exhibition of speed?

Defendant: Yes.

[¶] ... [¶]

Judge: And to the charge, do you wish to plead guilty, not guilty or do you want to talk to a lawyer?

Defendant: Guilty.

Judge: Here's what will happen. Maximum penalties and consequences could be up to six months county jail and a \$1,000 fine. Your fine will depend on what - how honest you're going to be. Is this about peeling out?

Defendant: Well, I wasn't actually -- yeah, I was peeling out -- I wasn't --

Judge: The fine will be between \$200 and \$1,000 depending on your answer. Sign the waiver of rights for me if you like and then I'll take your plea.

[¶] ... [¶]

Judge: Plea of guilty will be accepted. ... Okay. Look. Listen to the question and be honest about what you have to say.

Uh, you know, when people peel out, either throwing the clutch or you just accelerate, when you do that, does it feel good?

Defendant: No.

Judge: You're lying.

Defendant: It was a -- it was an --

Judge: I didn't ask you whether it was an accident, I just asked you a straightforward question. When we do that stuff, and I've done it, you peel out, you're just -- you're showing off. You do it for a reason. Some girls are passing by, you wanted to get their attention.

Defendant: There was water right there.

Judge: Yeah, well, all that stuff. But when you peel out, does it feel good?

Defendant: Well, not when you get pulled over.

Judge: Okay. Now that's true. But it does feel good. So this is your sentence. You're going to be placed on probation three years, ordered to obey all laws, not to commit any same or similar offenses. Your fine will be \$800. You could have got a \$200 fine, but you were dishonest. ... That could have bought you four new tires.

C. On May 4, 2005, in *People v. Lynch*, No. MS233864A, the following occurred:

Judge: Maximum penalties and consequences to the charge of no contest that is by entry of plea of no contest to the charge of exhibition could be up to 90 days county jail or [\$1,000] fine and a plea of no contest is the same as a guilty plea. Here's what it will be. Is this a speeding -- a peeling out?

Defendant: Yes.

DDA: Yes.

Judge: Any new or more facts that I should know?

DDA: I'm sorry? It was raining at the time that he did it and his -- what attracted the officer's attention and I would say it should say that in the reports indicates that it was light to moderate rainfall and the streets and the sidewalks were wet and there was moderate traffic and a lot of pedestrians in the area because it was during the AT&T time down on Alvarado. The defendant admitted -- he knew that the officer pulled him over because he had spun out and he apologized and said some guy had flipped him off and he was going out to get that guy.

Judge: So look. If you want to plead guilty, it will depend on what your answers are going to be. It'll be between \$200 and \$1,000. No jail time. Do you want to continue with a plea of guilty?

[¶] ... [¶]

Judge: How do you plead to exhibition of speed, guilty or not guilty?

Defendant: Guilty, sir.

[¶] ... [¶]

Judge: Listen to the -- listen to the question and I'm asking you to be honest about it. When you're in your car whether it's wet, by accident, I don't know. Is this an automatic or is this --

Defendant: It's an automatic. It's a little pickup truck. I got new tires since then. I had bald tires. I have a receipt for that. It was like a total of maybe a full second or two. It was real quick. I never broke over 15 miles an hour -- it was --

Judge: Okay. I'm just -- let me -- just listen to the question. Sometimes it happens because you've got bald tires, because it's raining, because, I don't know, several things. There may be oil there and just or sometimes you do it because you want to show off. Whatever the reason, but when you do it, you're in your car either with friends or there's girls passing by and you're showing off, whatever it is. Listen to the question. Does it feel good when you do it? When you spin out, when you peel out, does it feel good or no?

Defendant: I guess so, yeah.

Judge: Well, does it or doesn't it?

Defendant: Uh, yes.

Judge: Okay. That's the answer that I wanted. So then this will be your sentence. You'll be placed on probation for three years. That's why we do it. You'll be placed on probation three years, ordered to obey all laws, not to commit any same or similar offenses, your fine will be \$200.

[¶] ... [¶]

You've just saved your mother \$800 bucks. Good luck to you.

D. On May 10, 2005, in *People v. Lopez*, No. MS234174A, the following occurred:

Judge: Joe Lopez, Jr.? Hello, sir. You're charged with exhibition of speed, count one and count two is driving on a suspended license. Do you understand the charges against you?

Defendant: Yes, sir.

Judge: And to the charges, do you wish to plead guilty, not guilty or do you want to talk to a lawyer?

Defendant: Plead guilty.

Judge: What are the alleged facts of this case?

DDA: It looks like he did a burn out on the corner of westbound Blanco onto northbound Iverson.

[¶] ... [¶]

Judge: Maximum penalties and consequences for count one could be up to 90 days county jail and \$1,000 fine. As to count two, six months county jail, \$1,000 fine. There's a minimum \$500 fine and a minimum of ten day jail sentence, ignition interlock device must be installed.

[¶] ... [¶]

Judge: How do you plead to count one, exhibition of speed?

Defendant: Guilty, sir.

Judge: And how do you plead to count two, driving on a suspended license?

Defendant: Guilty.

Judge: Plea of guilty will be accepted ... Let me ask you. Did you peel out?

Defendant: Actually I was taking the turn at the green light, and the tires just --

Judge: Did they peel?

Defendant: Yeah.

Judge: Well, when you peel out, I don't know if you ever do, but have you ever peeled out?

Defendant: Yeah.

Judge: Okay. Sometimes by mistake because there's water, it's wet, and sometimes because you want to show off. For whatever reason. But whenever you do and you intend to do it, does it feel good when you do it?

Defendant: No. Actually I took the turn at a pretty good speed --

Judge: Does it feel good? Listen to the question.

Defendant: Yes, sir.

Judge: When you do peel out, you're showing off. Whatever it is. But you actually want to do it (unintelligible) and you peel out, does it feel good?

Defendant: Yes, sir.

Judge: That's why we do it. Okay. Then this will be your sentence. You'll be placed on probation for three years on the following terms and conditions, that's as to count two. You are ordered to obey all laws, not to

commit any same or similar offenses, you are not to drive without a valid California driver's license and insurance. You'll have to do the ten day minimum that they have. The surrender date will be June 10th, year 2005, at 9 in the morning or call the number in the small orange card immediately to make arrangements for the work alternative program. Your fine is going to be \$1,000.

[¶] ... [¶]

Female voice: Anything on count one?

Judge: No.

E. On June 8, 2005, in *People v. Martinez*, No. MS234980A, the following occurred:

Judge: How do you plead, sir, to count one driving without a license? Guilty or not guilty?

Defendant: Guilty.

Judge: And how do you plead to count two, exhibition of speed, guilty or not guilty?

Defendant: Guilty.

Judge: Plea of guilty will be accepted to both counts. ... Sir, let me ask you a question. The pickup truck that you had in 1998, this was on a Sunday at 7:38, was that day time or night time? Morning or p.m., they didn't cross it?

Defendant: a.m. It was in the morning. It was -- I had borrowed the vehicle.

Judge: Okay. That's -- oh had borrowed it, okay. Listen to the question. Have you ever driven a car before?

Defendant: Yes.

Judge: And have you ever peeled out? Have you ever spun the tires?

Defendant: No.

Judge: Do you know what I'm talking about?

Defendant: Yes. Yes.

Judge: Would you know if that's what happened here? If he peeled out?

DDA: Your Honor, what happened here, there's two vehicles behind a light that turned green and well, there were two cars behind this gentleman. It turned green and he revved his motor and accelerated, the sound of tires squealing from the light approximately 30 feet. The officer set a pace of 60 miles per hour and then activated the red lights and siren and stopped him on (unintelligible) streets.

Judge: Okay. Thanks. Mr. Martinez, the accusation that you pled guilty to was to peeling out. To pressing on -- accelerating and making the tires turn in place and making, leaving a black mark. Do you know what I'm talking about?

Defendant: Yes.

Judge: Have you ever experienced that?

Defendant: No. No, Your Honor. Never. Never. I had never done that.

Judge: Okay. Well, look. I'm going to be looking for your honesty. Listen to the question. Did it occur this time?

Defendant: Yes.

Judge: Now, you've been through the experience. You remember the feeling?

Defendant: Yes.

Judge: Have you ever been on a roller coaster? In (unintelligible) Mexico?

Defendant: Yes.

Judge: (unintelligible)

Defendant: I'm sorry?

Judge: Okay. There isn't any (unintelligible) or what. Okay, listen. Listen to the question, Mr. Martinez. When you peel out, this is your first experience. When you do it, whether by accident or by mistake or because you don't know -- you're unfamiliar with the truck -- the vehicle. But when it happens, does it feel good?

Defendant: Yes. Yes.

Judge: That's why we do it, right?

Defendant: Excuse me?

Judge: That's why we do it sometimes -- to show off?

Defendant: No.

Judge: You've never been around guys showing off to the ladies and they peel out just to show that they have a fast car?

Defendant: Yes. I have seen it, I have seen it.

Judge: Okay. So then fine. Did I make my findings? Okay. This will be your sentence, sir. You were honest about what you said. That doesn't mean you did right, just be careful next time. I've done it too. You'll be placed on probation for three years on the following terms and conditions. You are ordered to obey all laws, not to commit any same or similar

offenses. There will be no jail time. Your fine will be that of \$200.

COUNT FOUR

In the following cases, the defendants appeared for arraignment on misdemeanor alcohol or marijuana charges on which the defendants were eligible for “diversion,” meaning that the charges would be dismissed if certain conditions (e.g., attending AA meetings) were completed within a prescribed time . You gave a mass advisement of constitutional rights before the defendants were arraigned, including the advisement that defendants could enter a plea of guilty, not guilty or no contest. However, when these defendants appeared before you individually, you presented only the choice of pleading guilty or completing either AA meetings or jail time, not of pleading not guilty. After ascertaining that they understood the charges, you stated as follows:

A. On October 27, 2004, in *People v. Gawf*, No. MS228909A (see count two B above):

“Would you like to go to jail or go to 30 AA meetings?”

B. On November 2, 2004, in *People v. Guerrero*, No. MS229495A:

Do you want to plead guilty or do you want to go to 20 AA meetings?

C. On November 2, 2004, in *People v. Lopez*, No. MS229242A:

Do you want to do the same as the other person? 30 AA meetings within 30 days?

D. On November 2, 2004, in *People v. McEwen*, No. MS229486A:

Would you care to attend 30 AA meetings and get this matter dismissed?

E. On December 8, 2004, in *People v. Martinez*, No. MS230873A:

Do you want to plead guilty or would you like to attend 20 meetings within 30 days and get the charge dismissed?

F. On December 14, 2004, in *People v. Hernandez*, No. MS230444A:

Judge: If you plead guilty your license is going to be suspended for one year. Do you understand?

Defendant: Yes.

Judge: You have an option. You can attend 30 AA meetings within 30 days and your charge would be dismissed. Do you want to do that or do you want to lose your license?

G. On December 15, 2004, in *People v. Morgan*, No. MS230826A:

Do you want to plead guilty or would you like to attend 20 AA meetings and get the dismissal? The fine's a hundred dollars. It's up to you.

In *Guerrero* and *McEwen* (B, D), you erroneously told the defendants that if they failed to attend the AA meetings by the required date they would go to jail; in *Lopez* (C), you erroneously told the defendant that he would lose his license if he failed to attend the AA meetings. The consequence of failing to timely complete the conditions of diversion is the resumption of criminal proceedings. Your conduct violated the Code of Judicial Ethics, canons 1 and 2A.

COUNT FIVE

In the cases set forth below, the defendants were appearing through counsel pursuant to Penal Code section 977, which provides that a misdemeanor defendant may appear through counsel at all stages of the proceedings. In these cases, the defense attorney was not present when you called the case, and you ordered that a bench warrant be issued for the defendant. The warrants required that the

defendants either post bail or surrender to custody. In certain cases, you unreasonably refused to recall the matter and rescind your order issuing the warrant when the attorney either appeared in court later on that day's calendar and asked you to do so, or later requested that you do so.

Your conduct improperly penalized the defendants for the conduct of their attorneys, and violated the Code of Judicial Ethics, canons 1, 2A and 3B(4). In the *Huerta* and *Kammer* cases described below as five G, you took action and made statements to an attorney after you were disqualified that violated the Code of Judicial Ethics, canons 1, 2A and 3B(4).

A. *People v. Kitchen*, No. MS226814A

On September 22, 2004, the case was set on the morning calendar for disposition. Shawn Mills, the attorney of record, was not present when the case was called. You ordered that a \$15,000 bench warrant be issued, and the defendant's own recognizance release was revoked. When Mr. Mills appeared in court later that morning, you would not rescind your order issuing the bench warrant. (After receiving a letter from Mr. Mills, you rescinded your order issuing the bench warrant.)

B. In approximately October or November 2004, a case was set on the morning calendar for a jury trial calendar call for the following Monday's trial calendar. Miguel Hernandez, the defense attorney of record, left your courtroom to handle a felony matter in another department, and so informed court staff and Deputy District Attorney Cynthia Jewett. When you called the case, DDA Jewett informed you that Attorney Hernandez would be returning shortly. You ordered that a bench warrant be issued. You thereafter rescinded that order.

C. *People v. Hoffman*, No. MS228739A

In October 2004, the defendant failed to appear for arraignment (before another judge) and a warrant was issued. On November 10, 2004, attorney Peter Leeming filed a letter with the court calendar clerk asking that the matter be set for arraignment on November 17, 2004, and stating that he would be making a general appearance on behalf of the defendant. The matter was set before you for November 17, 2004. Mr. Leeming was not present when the case was called. You referred to his letter, and the fact that he had requested that the matter be set for that date but was not present. You ordered that a \$15,000 bench warrant be issued.

On November 18, 2004, a colleague of Mr. Leeming, attorney George Gigarjian, wrote to you and asked that you rescind the November order issuing the warrant and recalendar the matter, which you declined to do. On December 7, 2004, Attorney Gigarjian met with you regarding the warrant, and you asked him to write another letter, which he did on December 10, 2004. After determining around December 16, 2004, that you had gone on vacation without responding to the December 10 letter, Attorney Gigarjian had the order issuing the warrant rescinded by another judge.

D. *People v. Holt*, No. MS228679A

On November 23, 2004, the case was set on the morning calendar for pretrial. Shawn Mills, the attorney of record, was not present when the case was called. You ordered that a \$15,000 bench warrant be issued, and the defendant's own recognizance release was revoked. On November 30, 2004, Mr. Mills wrote to you and asked that you recalendar the matter, which you declined to do.

E. *People v. Holder*, No. MS229863A

On December 2, 2004, the case was set on the morning calendar for pretrial. Shawn Mills, the attorney of record, was not present when the case was

called. You ordered that a \$15,000 bench warrant be issued, and the defendant's own recognizance release was revoked. On December 3, 2004, Mr. Mills wrote to the court clerk and asked to have the matter recalendared, which you declined to do.

F. *People v. Huggins*, No. MS229124B

On January 5, 2005, the case was set on the morning calendar for pretrial. Frank Dice, the attorney of record, was not present when the case was called. You ordered that a \$15,000 bench warrant be issued, and the defendant's own recognizance release was revoked. At Attorney Dice's request, you agreed that the matter could be recalendared for February 10, 2005, on which date the January 5 warrant order was rescinded and the matter was continued to February 17 for pretrial. On the morning of February 17, 2005, Attorney Dice was not present when the case was called. You ordered that a \$15,000 bench warrant be issued, and the defendant's own recognizance release was revoked. At Attorney Dice's request, the matter was recalendared for February 22, 2005, on which date the February 17 warrant order was rescinded.

G. *People v. Huerta*, No. MS235178A, and *People v. Kammer*, No. MS235181A

On May 3, 2005, these cases were set on the morning calendar for arraignment. Attorney Steve Liner, who intended to appear on both cases on behalf of attorney Terrance McCleerey, appeared shortly after 9:00 a.m. and asked to have a "couple" of cases called, without identifying them by name. You called another case first, and Mr. Liner left to make other appearances in other departments. Shortly thereafter, you called *Huerta* and *Kammer*, but neither the defendants nor an attorney was present, and you ordered that a \$15,000 bench warrant be issued in both cases.

At approximately 9:35 a.m. on May 3, 2005, Mr. Liner appeared and asked to have the cases called again, which you would not do. On May 3, 2005, Mr. Liner wrote a letter to the Presiding Judge complaining about your conduct, and Attorney McCleerey filed an affidavit of disqualification pursuant to Code of Civil Procedure section 170.6. You were disqualified on these cases by the Presiding Judge, who also ordered that the orders issuing the warrants be rescinded. On May 27, 2005, Mr. Liner appeared before you on other matters. Even though you were disqualified, you brought up *Huerta* and *Kammer* and instructed Mr. Liner to provide you with a copy of his letter of complaint by 5:00 p.m. that day. You stated that if his letter were incorrect, he would be “dealing with the Bar,” and said that you would be asking how procedures were “circumvented” so that the disqualification was ordered by another judge.

H. *People v. Gonzalez*, No. MS226642A

In September 2004, the defendant entered a guilty plea to a DUI. He was placed on probation and ordered to attend the first offender program. In December 2004, the court was informed that he had failed to enroll in the program, and a \$3,000 bench warrant was issued. The defendant thereafter was charged with driving on a suspended license and the public defender was appointed on that case. In May 2005, Deputy Public Defender Ann Chhokar asked the court in writing to calendar the DUI case for re-referral to the first offender program, and the matter was set before you on May 27 for arraignment on the bench warrant for failure to comply with conditions of probation. DPD Chhokar was not present when the case was called, but you were told that she would return shortly. You noted that she had asked to have the matter calendared and was not present, and ordered that a \$15,000 warrant be issued. Later that morning, DPD Chhokar asked to have the order issuing the warrant rescinded, but you declined to do so.

COUNT SIX

You made comments in the courtroom to defendants and attorneys, including joking remarks about jail time, that violated the Code of Judicial Ethics, canons 1, 2A and 3B(4), as set forth below:

A. On July 28, 2004, in *People v. Martinez*, No. MS225871A:

Judge: How do you plead to the charge, guilty or not guilty?

Defendant: Guilty.

Judge: Plea of guilty will be accepted. ... Anything else you want to tell me?

Defendant: No, I'd just like to see if I can work this off (unintelligible).

Judge: I wasn't going to give you any jail time, but if you want some, I'll give you some. How many days would you like? You have 180 to pick from.

Defendant: (unintelligible)

Judge: Okay. This is your sentence. I'm going to place you on probation for six months. You're ordered to obey all laws, not to commit any same or similar offenses, there will be no jail time. Next time just look for a bathroom. And your fine is \$100. Make contact with the Office of Revenue and Recovery on or before August 6th -- that's across the hallway -- to make your arrangements for your payments. Do you accept probation on those terms and conditions, Mr. Martinez?

Defendant: Okay.

Judge: Okay. Good luck to you. [In Spanish; interpreter English]: You sure you don't want any jail time?

B. On July 30, 2004, in *People v. Oksen*, No. MS225876A:

Defendant: Well, is there any way on that -- on that -- the ten days, is there any way I could get a -- a home --

Judge: For ten days you would have to do the work alternative program where you go out and do some community service. That's the only option they have. And in order to do the home confinement, you would need to get -- receive 31 days or more as a sentence.

Defendant: Well, can I get the 31 days --

Judge: Is that what you want?

Defendant: -- and then with home confinement?

Judge: I'll give you a full year if you want it. No, fill out the form for the -- fill out the waiver of rights form and I'll give you the --

Defendant: Well, I'll take the 31 days and the fine.

C. On October 27, 2004, in *People v. Lutz*, No. MS226309A:

Judge: Okay. Good luck to you. The warrant of arrest is recalled. Good luck.

Defendant: Okay. So I don't have to worry about the warrant?

Judge: No.

Defendant: Okay. Thank you.

Judge: Unless you want us to execute it?

Defendant: No, no.

Judge: Okay.

D. On October 27, 2004, in *People v. McGill*, No. MS228911A:

DDA: He can plead guilty, Your Honor, to the minor in possession of alcohol.

Judge: If you plead guilty to count two, maximum penalties and consequences could be up to six months county jail, \$1,000 fine, your license will be suspended. You would have to attend the Corrective Behavior Institute program, you would have to attend 30 AA meetings, your fine would be that of \$300, one year license suspension. I'll tell you what, once, and you'll be given the option, if you go to 30 AA and to the CBI program, as soon as you get those two things done, you can come back to court and ask for a restricted license. But in the meantime, your license is going to be gone.

Defendant: Okay.

Judge: Now -- now that you know that, do you still want to continue with your plea of guilty or do you want to talk to a lawyer?

Defendant: That -- and that sentence, is there jail time or?

Judge: If you want some, I'll give you some.

Defendant: No thank you.

E. On October 27, 2004, in *People v. Florez*, No. MS228921A:

Judge: How do you plead to the charge of driving in a construction zone?

Defendant: Guilty.

Judge: Plea of guilty will be accepted. ... You're going to be placed on probation for one year, ordered to obey all laws, not to commit any same or similar offenses. You are not to drive without a valid

California driver's license and insurance. Your fine is going to be \$150, one hundred fifty dollars.

[¶] ... [¶]

Defendant: Okay.

Judge: Okay. So the fine is \$150. Good luck to you.

Defendant: And it's just the fine for the construction zone?

Judge: Right. Would you like some jail?

Defendant: Excuse me?

Judge: Would you like some jail?

Defendant: No, sir.

Judge: Okay. Well, that's it, \$150.

F. On October 29, 2004, in *People v. Bowen*, No. MS229078A, after the defense attorney spoke for about two and one-half minutes in his client's presence as to why the court should disregard the defendant's wish to not be placed on probation for a DUI, you responded, "Let me wake up."

G. On November 2, 2004, in *People v. Lainez*, No. MS229795A:

Judge: This will be your sentence, sir. You'll be placed on probation for five years on the following terms and conditions. You're ordered to obey all laws, you're not to commit any same or similar offenses, you will be ordered to serve 300 days in Monterey County Jail, there will be no program. ... Your fine is \$1,550. On your fine, sir, do you want to make monthly payments or do you want to serve out an additional 31 days, consecutively?

Defendant: No, pay.

Judge: You will be ordered to pay the full amount \$1,550 by November 5 of 2006. Do you understand?

Defendant: One payment?

Judge: Pay it in as many payments as you like. You can have a full year. There's going to be no reminders.

Defendant: So if I'm locked up, I can't pay it.

[¶] ... [¶]

Judge: By November 5 of 2006. You're only going to be locked up for one year unless you want two years, I'll give them to you. Do you want one year or two?

Defendant: One year, I don't think so.

H. On November 5, 2004, in *People v. Kadjevich*, No. MS228727A, during discussion of information the defendant was seeking in a closed DUI file and a file for a later DUI for which he was on probation, both of which the defendant had requested be brought to court, you pretended to find information that the defendant owed 35 days of jail time:

Defendant: Okay. That's what I -- that's -- I just put that there because DMV has just given me so many run-arounds -- a lot of problems and saying that because I didn't have this and I didn't have that. I've been -- Your Honor, if you can do exactly that. Take a look if there's anything that I don't -- I'm not familiar with that I can do to alleviate that--

Judge: Oh, in this case I just noticed, you owe 35 days.

Defendant: I thought I served all that time.

Judge: What's that?

Defendant: I'm sorry. I --

Judge: No, but new -- new -- new days, 35 new days.

Defendant: For?

Judge: For I don't know. You told me to look at the reports and I --

Defendant: Sure.

Judge: Just kidding.

I. On December 8, 2004, in *People v. Hidalgo*, No. MS223385A, when a friend of the defendant appeared in court for the defendant:

Judge: Let me see the file. Who's the representative?
[Judge speaks Spanish]

DPD: A gentleman named Cesar --

Judge: Okay. We'll take you to jail. Come on in.
No, I'm kidding. Where's your friend or your -- the person?

J. On December 14, 2004, in *People v. Narez*, No. MS230448A:

Judge: Okay. If you plead guilty to count two, driving on a suspended license, maximum penalties and consequences could be up to six months county jail and \$1,000 fine. You would be looking at three years probation, a fine of \$600. No jail time.

[¶] ... [¶]

How do you plead to count two, driving on a suspended license, guilty or not guilty?

Defendant: Guilty.

Judge: Plea of guilty will be accepted. ... Were you taken to jail at all?

Defendant: No.

Judge: This will be your -- would you like to be taken to jail?

Defendant: No.

K. On December 15, 2004, in *People v. McDonald*, No. MS217840A:

Judge: So how were you able to come up with bail and -- hold on, hold on. And -- you were able to come up with \$700 bucks to get out of jail?

Defendant: I didn't come up with it.

Judge: Well, somebody did.

Defendant: Yeah, someone. That's what I'm trying to explain. My girlfriend that I'm living with, one of my two --

Judge: Okay. Maybe your girlfriend is going to have to help you pay your child support.

Defendant: Oh, I don't have a -- I don't have a problem with that I just wasn't working at the time. I (unintelligible) pay my child support.

Judge: Well, to me it's dollars and cents.

Defendant: I understand that --

Judge: You're able to spend them for one thing because it's -- I understand, you don't want to eat that kind of food they give you there. But you are unwilling to pay dollars and cents so that the little ones can eat.

Defendant: No. Can I -- can I -- can I show you something please?

Judge: No, I don't need to hear much from you. I'm just letting you know that when you come back, I'm going to be expecting at least \$5,000 bucks. If not, I'm going to put you away for a full year.

Defendant: Can I say something please?

Judge: Before you go to jail for the full year or after?

Defendant: Before – I just want to explain --

Judge: Excuse me. I don't need you to be squirming around or going in circles, I don't need to hear stories.

I need dollars and cents for your children.

Defendant: There's no --Sir.

Judge: Okay. So fill out your form for the public defender. Be back in court on the 22nd. Shortly after that, Mr. McDonald, don't give me any attitude because I don't have the time to put with it, okay?

Defendant: I'm not giving you attitude, sir.

Judge: Okay. Well, --

Defendant: I just want -- I just want – to just

Judge: Okay. Well, I'm reading your body language and I can see the way you're turning and acting, okay?

L. On December 15, 2004, in *People v. James*, No. MS226209A, which was on calendar for a doctor's report regarding a defendant with apparent mental problems:

DPD: -- and he was unaware of his appointments, but if we're able to -- Mr. James has told me that if today he has another opportunity to go see Dr. Fithian, that he will go see Dr. Fithian for an evaluation.

Judge: Want to do that?

Defendant: All right.

Judge: Okay. So then let's have you come back to court --

Defendant: Oh, uh, did you catch the presidential debate?

Judge: Which one?

Defendant: The first one.

Judge: Yeah.

Defendant: Where the president overturned the weapon charge and suggested that I pack a sidearm?

Judge: I missed that part.

Defendant: Okay.

Judge: Was that on cable or on local?

M. April 8, 2005, in *People v. Lopez*:

Count 3B is incorporated.

N. On April 22, 2005, in *People v. LeBow*, No. MS210534A:

Judge: Lea Carol LeBow? In your case, Ms. LeBow, it's the failure of your lawyer to file proof of acknowledgement of the terms of probation. Who is your lawyer?

Defendant: James Newhouse.

Judge: Okay. I believe this is the second case he blows it for his client. So do you acknowledge the terms and conditions that you were given by the court?

Defendant: Yes, Your Honor.

Judge: Okay. The bench warrant will be recalled. But that's what happened.

Defendant: Yeah.

Judge: When you file a –they do it for you, on the Mills waiver, then your lawyer has to give them to you -- I mean the terms and conditions and then he files it, you know about them. And if they don't, we issue these bench warrants. So let him know.

Defendant: Yeah, I already have.

Judge: You can bill him at \$300 bucks an hour, charge him two hours.

Defendant: Thank you. I will.

Judge: Have a nice day.

Defendant: I'll tell him you said so.

Judge: Yeah.

COUNT SEVEN

On several dates in 2004-2005, you allowed your young children to be present in the bench area while you conducted court proceedings and in chambers during case discussions.

Your conduct violates canons 1 and 2A.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to subdivision (b) of rule 14 of the California Rules of Court.

The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: April 13, 2006

/s/
MARSHALL B. GROSSMAN
CHAIRPERSON