

FILED

APR 16 1997

Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

NO. 139

DECISION AND ORDER IMPOSING
PUBLIC CENSURE

This is a disciplinary matter concerning Jose Angel Velasquez, Judge of the Monterey County Municipal Court, Salinas Division. Formal Proceedings having been instituted, this matter is now before the Commission on Judicial Performance pursuant to Rule 127 of the Commission's Rules of Practice (discipline by consent).

The Commission has determined that public censure is appropriate.

APPEARANCES

Trial counsel for the Commission on Judicial Performance are Jack Coyle, Dennis Coupe, and Valerie Marchant (San Francisco). Counsel for Judge Velasquez are James Friedhofer, Douglas R. Reynolds, Lisa K. Roberts and Lewis, D'Amato, Brisbois & Bisgaard (San Diego).

PROCEDURAL HISTORY

Formal proceedings were instituted in this matter by the Commission's Notice of Formal Proceedings dated August 30, 1996, which was later amended on October 29, 1996.¹ The Notice sets forth four counts of misconduct and concludes by alleging that Judge Velasquez committed willful misconduct in office, conduct prejudicial to the administration of justice, or improper action -- three categories of misconduct specified as being grounds for judicial discipline in article VI, section 18 of the California Constitution.

¹ All references to the Notice of Formal Proceedings herein are to the First Amended Notice of Formal Proceedings.

Served: 4-16-97
SW CJP (CCP §1019.5(b))

Judge Velasquez filed a verified Answer to the Notice on November 20, 1996. The Answer admitted many of the factual allegations of the Notice but disputed the inferences and conclusions alleged, and specifically denied willful misconduct in office or conduct prejudicial to the administration of justice. The Answer did not deny that Judge Velasquez' actions constituted improper action.

Judge Velasquez' Answer also asserted thirteen affirmative defenses to the Notice, including lack of subject matter jurisdiction and constitutional privileges for freedom of speech, freedom of religion, and freedom of expression.

Upon receipt of Judge Velasquez' Answer, the Commission requested that the California Supreme Court appoint special masters, pursuant to Rule 121. The Honorable Joanne C. Parrilli of the First District Court of Appeal, the Honorable Stanley Weisberg of the Los Angeles County Superior Court and the Honorable Cerena Wong of the Sonoma County Municipal Court were appointed and are presently serving as special masters in this proceeding.

Pretrial hearings and motions were heard by the masters, and a formal hearing to hear argument and take evidence was commenced before the special masters in San Jose, California on April 7, 1997. Shortly after the hearing commenced, and stimulated by an inquiry from the masters about possible resolution of this matter, counsel for the parties requested a brief adjournment to discuss disposition by consent. A stipulation was tentatively proposed to the Commission, through Commission Counsel, and it appearing that a disposition could be obtained, further hearings were suspended so that a stipulated resolution of this matter could be presented to the Commission.

The matter is now before the Commission, pursuant to Rule 127, upon stipulated facts and an agreement that -- if discipline by consent is accepted by the Commission in lieu of a full hearing -- discipline no more severe than a public censure would be imposed.

FINDINGS OF FACT

In a verified statement, submitted in conjunction with the stipulation proposing resolution of this matter, Judge Velasquez admits the truth of the charges set forth in the Notice, waives review by the Supreme Court, states that he is not acting under duress, and consents to a sanction of public censure.

In the accompanying stipulation, signed by Judge Velasquez and all counsel, the parties stipulate as follows:

COUNT ONE

Judge Velasquez displayed a crucifix (approximately 9" by 6" in size) on the wall behind the bench during an arraignment calendar in December 1995. The crucifix was visible to the public. A deputy district attorney and deputy public

defender expressed concern about the display to Judge Velasquez. Judge Velasquez acknowledged their concerns and removed the crucifix later that day. He displayed the crucifix as an expression of his personal religious belief. He did not intend to offend anyone.

Judge Velasquez' actions in Count One constituted conduct prejudicial to the administration of justice.

COUNT TWO

In December 1995, Judge Velasquez received a form letter from a group called the Reproductive Rights Coalition, soliciting names to be listed in an upcoming newspaper advertisement in the *Monterey Herald* celebrating the 23rd anniversary of *Roe v. Wade*. Judge Velasquez returned a form attached to the solicitation authorizing the use of his name as "Judge Jose Angel Velasquez." The advertisement appeared in the *Monterey Herald* on January 22, 1996, with the judge's name and title. The form that Judge Velasquez filled out and the information he received did not state that a solicitation of funds would be part of the advertisement.

Judge Velasquez' actions in Count Two constituted conduct prejudicial to the administration of justice.

COUNT THREE

Upon his initial assignment to a municipal court misdemeanor trial calendar, in January 1996, Judge Velasquez made it known publicly that, effective February 8, he would impose 31 to 45 days in jail plus 30 AA meetings for first time DUI offenders, 75 to 90 days in jail plus 45 to 60 AA meetings for second DUI offenders, and 180 days in jail plus 90 AA meetings for third time DUI offenders. Those sentences would have been lawful under the California Vehicle Code. However, the DUI policy, as announced, appeared to not allow for exceptions, and therefore created the appearance of prejudgment of DUI cases.

Judge Velasquez' actions in Count Three constituted conduct prejudicial to the administration of justice.

COUNT FOUR

Between February 23, 1996, and April 5, 1996, Judge Velasquez made public statements disparaging fellow Monterey County judges and certain Monterey County attorneys. The statements were made both on and off the bench, in open court, in documents Judge Velasquez filed in court, in newspapers and on television broadcasts. The facts set forth in Count Four (a - m) of the Amended Notice of Formal Proceedings are incorporated herein by reference.

Judge Velasquez' actions in Count Four constituted willful misconduct.

MITIGATION

In mitigation, the actions described above took place within 10 months of Judge Velasquez assuming the bench and within 4 months of his initial assignment to a misdemeanor trial division; the public disparagement ceased in April 1996 and has not been repeated.

Judge Velasquez has requested that the Commission note his cooperation during its investigation.

DISCIPLINE

The parties agree that based upon the foregoing, Judge Velasquez shall be publicly censured.

The allegations of Count Four, which are incorporated by reference in the stipulation above, are that:

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

You made the following disparaging statements:

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

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

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

“In this case Judge, Presiding Judge Stephen Sillman called me to his chambers and we had a rather heated discussion in terms of filing the 170.6s, and a discussion about special treatment or not treatment. For the

record ... the Presiding Judge had changed the orders on several occasions... The procedure for the filing of 170.6s he says it's a special, it's not special arrangements, I say that as against me, it's being racially discriminatory, that's a factual finding, and that he's been meaning to maneuver my calendar for whatever purposes he may have ... and I told him to his face that he is racially discriminatory as against me ... and that it has been his doing to give me every individual clerk to work with my calendar not allowing me to have a continuity ... and there's been changes of policy on a daily basis and on a case per case basis and there have been special arrangements made in this particular court today, on a special case which is unique at his doing. He claims not to, but that is what I am stating on the record and he can challenge me on it."

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

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

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

“So, having committed legal mal-practice, as publicly advised by a locally well-known certified criminal law attorney ... one of the only legal ways to circumvent this problem is to represent a trumped-up client against me ... I have publicly called upon a thorough investigation into a clandestine conspiracy formed by several judicial members of the Municipal and Superior Courts of Monterey County to publicly make me look bad. It is public knowledge that both presiding judges for the Municipal and Superior Court are publicly working against me because of their personal discontent with my election. ... I feel that for me to acquiesce to this disqualification which in effect is a pretext and cover-up to the commission of legal mal-practice by the Cominos and Biegel Law Office ... would be tantamount to my own perpetration of an unethical and illegal furtherance of a crime and conspiracy ... the entire Monterey County judiciary is presently involved in a major internal dispute ... it is my position that several judicial branch members, elected officials and court administrators have ‘huddled’ and decided to engage [defense attorney Biegel’s] services, so as to give him the legal way out of having failed to timely file his 170.6s.”

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

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

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

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

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

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

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

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

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

"... your attorneys have failed to look into the files and see what is in them and their fault and their demeanor in here and failure to (unintelligible) of the court.... I think, in this case you may have a case against them for their abandoning you in court ... you may want to hire a lawyer to sue the public defender's office for their reckless disregard of your due process rights.... I'll say that to Mr. Lawrence [the Public Defender] himself. ... I think individual people within the public defender's office are having their personal problems brought in here and they're attacking various members, including the deputy public - district attorney in cases, simply because they are not getting their way. And today I am telling you that I feel sorry for you as ... a judge, because your rights are being trampled upon by your own lawyers. They are failing to represent you.... I'll tell you one thing,

this tape recording you can pay \$10 and ... go get yourself a lawyer and copy it. Okay? And if they want to talk to me they have a pager they can call my family and I will come back from wherever I am. You may hire yourself a real lawyer that's going to represent your rights. The public defenders are real lawyers but in this county several of them are just disrespecting you as a human being. And I think that's offensive and that's a crime and that's a legal malpractice.... Three of the lawyers have come in here and abandoned you without even bothering to tell you what they have done or explained to you what the procedure is ... But I am just trying to explain to people here that your lawyers are not doing their jobs for you. And I say that about Mr. Kleinkopf who was in here, I say that about Ms. McVeigh ... All three of you can have a copy of this tape for free at the court's expense and ... and you should actually file a Morrissey [sic] hearing because you can say these lawyers are not representing your rights, they are just abandoning. I am making all these legal - factual findings because I am here talking to you. You may want to talk to the next judge and then ask for help because right now you have been abandoned, you've been left naked.... Because your lawyers chose to disrespect and disregard your files and they want to make me to be the bad guy and I'm not the bad guy.... They chose to leave you in a courtroom with a judge and with a deputy DA without even telling you what was going on. That's the worst of representation that any lawyer can give in the State of California."

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

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

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

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

“My colleagues have resisted to accept the results of a valid district election that was as a result of the democratic process. ... Now I am the beneficiary of much of the hatred and distaste of many of my colleagues on the bench. ... My colleagues on the municipal court bench have chosen to make my life miserable and at the present time are wanting to coerce me by yanking me out of the department that I have been handling effectively, efficiently and competently because of my ... strong stance on DUI.”

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

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

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

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

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

The Commission acknowledges Judge Velasquez’ admission that the forgoing facts are true, and it therefore adopts the forgoing as setting forth its findings of fact.

CONCLUSIONS OF LAW

Judge Velasquez’ actions with respect to the crucifix, his endorsement of one side in the ongoing debate about abortion, and his DUI policy manifest prejudice with respect to certain religious or moral principles, and by inference, a bias against those having different religious or moral principles. The bench is not a pulpit nor soapbox for self-expression. A litigant is entitled to assume that a judge’s attention will be focused entirely upon the relevant facts of his or her

case, and that his or her cause will be judged dispassionately -- without consideration of anyone's religion, or history of abortion, or the judge's political considerations (such as the "get tough policy" for DUI violations adopted and announced in a dispute with other judges).

Such conduct by a judge is prejudicial to the administration of justice and brings the judicial office into disrepute.

Most troubling is the fourth count. Judge Velasquez affirmatively used the judicial office, and his position as judge, to accuse others who were neither parties nor witnesses before his court -- and in fact who were not even present in his court -- of bias and misconduct. Especially troubling are those instances where Judge Velasquez, speaking from the bench and to the news media, publicly accused fellow judges of racial bias, thereby calling into question the integrity and impartiality of Monterey County judges and the judicial system itself. The appropriate forum for allegations of misconduct by judges is the Commission on Judicial Performance, and for lawyers, the appropriate forum is the State Bar. Neither the Monterey Municipal Court nor the news media were an appropriate forum for Judge Velasquez' comments.

The Commission therefore concludes that Judge Velasquez committed conduct prejudicial to the administration of justice in Counts One, Two, and Three, and that he committed willful misconduct in office as alleged in Count Four.

DISCIPLINE

As stated, this matter is before the Commission for disposition under Rule 127. The stipulated findings include one count of willful misconduct, based upon thirteen instances of improper action, and three counts of conduct prejudicial to the administration of justice. As in any case in which willful misconduct has been proved, the initial focus of the Commission's consideration must be whether the public interest can be protected by any form of discipline short of removal from office. Removal is ordinarily reserved for the most serious cases, and this is a serious case.

In submitting this matter pursuant to Rule 127, the parties have agreed that, if approved, the Commission will impose discipline no more serious than public censure.² If the Commission is not satisfied that public censure would be sufficient, it may return this matter to the special masters for further hearings and findings of fact. Once the special masters have made their report, the matter would return to the Commission for further deliberations. At that time, the Commission would be free to impose any sanction that it concluded was appropriate, including removal from office.

² Other than removal, the levels of discipline available to the Commission include dismissal with an advisory letter, issuance of a private admonishment, issuance of a public admonishment, or issuance of a public censure. Of those options, public censure is the strongest sanction available.

Two facts -- particularly when coupled with the Commission's enhanced authority under Proposition 190 -- persuade the Commission that removal from office is not warranted on the facts of this case. One, Judge Velasquez acted with integrity and good faith in admitting forthrightly the facts that constitute the misconduct alleged; and two, prior to the time that formal proceedings were instituted by the Commission, and throughout the past year, Judge Velasquez has refrained from further misconduct. Further evidence and hearings would not change these facts.

While there may be a risk to the public interest that Judge Velasquez will resume his conduct at some later date, the Commission now has the authority, granted by Proposition 190, to suspend Judge Velasquez from office if he should do so. (See Rule 120.) In these circumstances, the majority of the Commission concludes that removal is not required, but that no lesser discipline than public censure would be adequate.

The Commission therefore concludes that public censure is the appropriate disposition for this case. The Commission's vote was 8 to 2, with one Commissioner abstaining.

This decision and order shall constitute the order of public censure.

Dated: April 16, 1997

A handwritten signature in cursive script, reading "Steve Gomer". The signature is written in black ink and is positioned above a horizontal line.

Chairperson

Commission members Robert C. Bonner, Esq., Hon. Lois Haight, Hon. Daniel M. Hanlon, Ms. Eleanor Johns, Patrick M. Kelly, Esq., Hon. Vincent J. McGraw, and Ms. Pearl West voted for the public censure. Commission members Mr. David L. Malcolm and Ms. Harriet Salarno voted against public censure. Commission member Ms. Ophelia Basgal was recused and Commission member Donald E. Vinson, Ph.D., did not participate in the decision.

FILED

MAY 29 1997

Commission on
Judicial Performance

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE
NO. 139

MODIFICATION OF DECISION
AND ORDER IMPOSING
PUBLIC CENSURE

On April 16, 1997, the Commission entered its Decision and Order Imposing Public Censure in this matter. That order is modified in this respect:

The second sentence of the third paragraph on page 11 is modified to say: "The Commission's vote was 7 to 2, with one Commissioner recused."

This modification is to correct typographical errors and has no other affect upon the Commission's decision and order.

Dated: May 28, 1997



Robert C. Bonner
Chairperson

Served: 5/29/97

BW CJP (CCP §1019.5(b))