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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING
JUDGE JOSE A. VELASQUEZ,
NO. 180

RESPONDENT'S ANSWER
TO NOTICE OF FORMAL
PROCEEDINGS

COMES NOW the defendant, the Honorable Jose A. Velasquez, and hereby responds to the counts contained in the Notice of Formal Proceedings instituted by the Commission on Judicial Performance.

COUNT ONE

All of the cases set forth in Count One involve situations where a criminal defendant had been convicted of a crime and was sentenced with specific orders issued by the court. After the compliance date had passed, the defendants filed motions seeking to have their sentences modified. Each defendant had not complied with the specific court orders frequently surrendering to jail at a time and on a date certain, and in their moving papers, were explaining the basis for the non-compliance. Judge Velasquez

based on the practice of the Monterey Courts considered the motions, the reasons for non-compliance and oral argument. The instances where a determination was made of a willful violation of the specific court order was on consideration of the moving papers and the oral presentation. The cases involving the referral and resentencing took into consideration the reasons stated by the defendant for disobedience of the previous specific order, and for the new sentence additional jail time was imposed. The new sentence was within the sentencing guidelines available to Judge Velasquez.

A. People v. Ortega

Following a guilty plea on December 3, 2003, Adolfo Ortega was referred to the First Offender DUI Program, was informed of the availability of a Work Alternative Program if defendant chose to pursue that alternative, and was ordered to report to the Monterey County Sheriff's Office to surrender to the County Jail by January 15, 2004 to serve out the 10 day jail sentence. Adolfo Ortega did not complete a Work Alternative Program by January 15, 2004, nor did he surrender to the Monterey County Jail on January 15, 2004, as per the direct court order. Instead, on March 26, 2004 Ortega appeared at the Clerk's counter requesting his matter be set for modification hearing at 9:45 a.m. in Dept. 6 before Judge Velasquez. Mr. Ortega was requesting a new surrender date and also a re-referral to the First Offender Program. On March 26, 2004, Adolfo Ortega acting as his own attorney appeared on a motion before Judge Velasquez. At the oral argument of Ortega's motion, the following took place:

THE COURT: Adolfo Saras Ortega?

ORTEGA: Hello, sir.

THE COURT: You pled guilty to driving under the influence on December 3 of last year. You were ordered to serve five days. Have you completed the five days?

DEFENDANT: [Through interpreter] I didn't do it because I had to leave on an emergency.

THE COURT: Where did you leave to?

DEFENDANT: To Mexico.

THE COURT: What part of Mexico did you go to?

DEFENDANT: Guadalajara.

THE COURT: And what was the emergency?

DEFENDANT: My mother was ill.

THE COURT: Is she well now?

DEFENDANT: Yes.

Judge Velasquez accepts as accurate the remaining transcript set forth in Count One A.

Judge Velasquez determined that Ortega had intentionally violated the direct court order to surrender to the Monterey County Sheriff's Office on January 15, 2004 to serve his sentence. The determination was made as a result of the defendant's own admission during argument of the motion brought by Ortega acting as his own lawyer. Judge Velasquez believed that it was proper for him to make that determination and order additional jail time for the re-sentencing.

B. People v. Manzo

On April 14, 2004, Jose Manzo was placed on probation after pleading guilty as a first offender to a driving under the influence charge. As part of the sentence Manzo was ordered to surrender to the Monterey County Jail on May 13, 2004 to serve 5 days of jail time. He was also informed of the availability of a Work Alternative Program if chose to pursue that alternative.

On July 23, 2004, Manzo appeared before Judge Velasquez, bringing a motion seeking a modification of his sentence. Manzo was representing himself in the motion. The Manzo matter was continued to July 30, 2004. Again, Manzo appeared before Judge Velasquez on July 30, 2004, in pro per to argue his modification motion. During the course of the July 30, 2004 proceeding, defendant Manzo represented to the court that he had completed the previously-ordered Work Alternative Program hours. However, Judge Velasquez's clerk advised the Court that the defendant had not completed his hours, and still owed approximately twenty hours under the Work Alternative Program. The defendant continued to assert that he had completed his hours, at which time Judge Velasquez telephoned the Work Alternative Program and discovered that Jose Manzo had not been truthful with him. Judge Velasquez determined that based upon the in-court statements of the defendant, Jose Manzo had willfully failed to comply with the direct court orders and increased his sentence to twenty days of jail time for the re-sentencing.

C. People v. Gonzalez

On January 22, 2004, Guillermo Pena Gonzalez pleaded guilty to a DUI. It was his second DUI offense. The sentence was sixty days, with credit of 13 days for time actually served.. On September 28, 2004, Gonzalez was arraigned before Judge

Velasquez for a probation violation; having failed to comply with a requirement that an interlock device be installed on his vehicle; and completion of the scheduled Alcoholics Anonymous meetings. After having been read his rights, Gonzalez admitted to the probation violation, and probation was revoked and reinstated on the same terms and conditions provided that the thirty AA meetings be completed by October 29, 2004. During the probation hearing, Judge Velasquez told the defendant that if he did not complete the AA meetings, that he would receive two days of jail for each meeting missed. Defendant understood and accepted these conditions as part of the reinstatement of probation.

Judge Velasquez accepts the transcription of the proceedings on October 29, 2004 as being accurate.

D. People v. Norez

Sigifredo Norez was arrested and charged with driving under the influence with an enhancement charge of elevated blood alcohol. Mr. Norez had a blood alcohol reading of .21. On April 30, 2004, Norez pleaded guilty to the DUI charge after having been informed of his constitutional rights. Norez was sentenced to serve 60 days in jail, but the imposition of sentence was suspended, and he was placed on probation for a period of 5 years, conditioned on compliance with certain events, including the installation of a guardian interlock device on any vehicle he owned or operated, and he was to have attended 30 AA meetings prior to August 30, 2004. On July 14, 2004, a notice of non-compliance regarding the ignition interlock was filed, and thereafter, it was reported to the court that the defendant had failed to attend the court-ordered AA meetings.

On October 21, 2004, Norez appeared at the Clerk's office requesting a modification hearing, "so that I can ask the Judge to give me permission to put the interlock in my vehicle." Norez filed a motion as his own attorney to modify the existing sentence and the matter was set for October 29, 2004. During the course of the hearing, the defendant admitted to not having installed the ignition interlock device as directly ordered by the court as part of the sentence. Judge Velasquez did order Mr. Norez to jail for the admittedly willful violation.

E. People v. Nunez

Manuel Barera Nunez was arrested by the Salinas Police Dept. for driving under the influence. Nunez pleaded guilty to the charge on September 9, 2004, and was sentenced to 60 days in jail, and Nunez was placed on probation, with the conditions that he attend 30 AA meetings, install a guardian interlock device on his automobile by September 30, 2004, along with other matters.

On October 1, 2004, an ignition interlock noncompliance report was executed and filed by the facility monitor, advising the court that Nunez had failed to comply with the direct court order. On October 25, 2004, after the surrender date specified in the plea bargain, by way of motion, Nunez sought a modification of the sentence to surrender to jail. On October 29, 2004, the modification hearing was held before Judge Velasquez. Nunez proceeded in pro per at the hearing. It had already been reported to the court that the ignition interlock device previously ordered by the court had not been installed, and that the defendant had been ordered to serve 60 days in jail, commencing October 12, 2004. Judge Velasquez pointed out to Nunez that he had been released from custody at Nunez's request, but directly ordered to surrender to jail on October 12, 2004. It was

Nunez who admitted, without any prompting by Judge Velasquez, that he had failed to comply with the terms of his probation. Judge Velasquez asked him, "Any other questions that you have?" At which point in time, Nunez replied, "So then if I install the device on my car because I'm at home I really can't...if you want me to, I can install it..." The interlock non-compliance report was on file, and Nunez voluntarily acknowledged that he had willfully violated the terms of his probation because the interlock ignition device had still not been installed at the time of the October 29, 2004 hearing.

F. People v. Hernandez

On March 24, 2004, Barnabee Hernandez was arrested by the Salinas Police Dept. for being drunk in public. He appeared for arraignment before Judge Velasquez on March 26, 2004, and pleaded guilty to the offense. Hernandez was placed on probation with a number of conditions imposed, including the requirement of attending thirty AA meetings by May 20, 2004. On July 26, 2004, Kate Turner of the Monterey County Superior Court notified Judge Velasquez that Hernandez had failed to comply with the terms of probation and requested that probation be revoked, and that a bench warrant be issued for Barnabee Hernandez. In fact, a bench warrant did issue on August 4, 2004. On November 9, 2004, Barnabee Hernandez was arraigned on violation of probation. Prior to the arraignment, Hernandez, along with all other parties appearing before the court, was advised of his constitutional rights, including his right to remain silent, and his right to plead not guilty to the charges. Probation was revoked, but reinstated on the same terms and conditions with the proviso that he attend and complete 30 AA meetings by December 15, 2004. On December 6, 2004, Hernandez filed a motion seeking a

modification hearing for December 10, 2004. Hernandez appeared on December 10, 2004 to argue his motion for modification. Hernandez had previously admitted his failure to attend the court-ordered 30 AA meetings. Hernandez had acknowledged only attending 16 meetings in nine months. Hernandez was ordered into custody to serve three days, pursuant to the previously-issued bench warrant.

G. People v. Huitron

Prisciliano Huitron was arrested for driving under the influence and on September 29, 2004, entered a plea of not guilty to all counts. On October 5, 2004, Huitron appeared before Judge Velasquez and was represented by Deputy Public Defender Sarah Miller. Huitron entered a plea of *nolo contendere*. The sentence imposed by Judge Velasquez was twenty days in jail, with ten days' credit. The defendant was to surrender to the Monterey County jail on November 5, 2004 but was told he could attempt to arrange a work alternative program. In addition to jail, Huitron was ordered to attend thirty AA meetings by November 30, 2004. On November 22, 2004, M. Castaneda filed with the court a notification that Huitron had failed to enroll in the Work Alternative Program and he had not surrendered to jail as ordered by the court. On December 3, 2004, Huitron, as his own attorney, applied for a modification of his sentence to obtain a new surrender date, and was assigned a hearing date of December 10, 2004. Huitron appeared as his own attorney at the hearing.. Judge Velasquez ordered Huitron to serve the originally ordered twenty days in jail, and based on Huitron's admissions during the course of the hearing, determined that Huitron had willfully failed to comply with the court's order and assessed an additional five days of jail time on his re-sentencing and reinstatement of probation.

H. People v. Narcisso

On October 21, 2004, Danato Narcisso pleaded guilty to a DUI offense. Prior to pleading guilty, Narcisso was advised of his constitutional rights. As part of the sentence imposed on October 21, 2004, Narcisso was ordered to spend seven days in jail. He was given a credit of one day, and was directly ordered to surrender to the Monterey County Jail on November 30, 2004 at 9 a.m. On December 6, 2004, Narcisso appeared at the County Clerk's Office requesting a modification of his sentence for a new surrender date. This request was made after the date he was to have surrendered to the Monterey County Jail. A modification hearing was set for December 10, 2004 before Judge Velasquez at which time Narcisso was proceeding as his own lawyer. Narcisso was remanded to the Sheriff's Department because he had not surrendered ten days earlier, as previously ordered. Based on statements made by Narcisso, Judge Velasquez concluded that Narcisso's failure to surrender on November 30, 2004 as ordered was willful, and assessed an additional three days of jail time. Subsequently, a bench warrant was issued against Narcisso for failing to comply with the court-ordered 30 AA meetings.

COUNT TWO

Judge Velasquez denies that his conduct in the cited cases violates Code of Judicial Ethics Canons 1, 2a 3b(4), 3b(7) and/or 3b(a).

A. People v. Merwyn

On July 30, 2004, defendant Merwyn, represented by Deputy Public Defender Cathleen Boyle, appeared before Judge Velasquez and pleaded no contest to one count of resisting arrest and obstruction of justice. Ms. Merwyn was placed on three years' probation, and ordered to serve ten days in jail. Defendant was informed of the

alternative to enroll in a Work Alternative Program, a decision only the defendant could make. Judge Velasquez does not dispute the accuracy of the proceedings, although it is unclear whether Ms. Merwyn was asking for a shorter probation period, which appears to be the case, rather than the allegation she was questioning the amount of jail time.

B. People v. Gawf

On October 1, 2004, David Gawf, a 20-year-old resident of Pacific Grove, California was charged with being a minor in possession of alcohol. Gawf had no previous criminal record. Gawf was arraigned on October 27, 2004 before Judge Velasquez. He did not appear with counsel for the arraignment. During the course of the arraignment, Mr. Gawf was advised that if he attended 30 AA meetings, the criminal charges would be dismissed. Judge Velasquez was attempting to impress on someone totally unfamiliar with the criminal justice process the importance of attending the meetings, which in turn would result in a dismissal of the charges. If Judge Velasquez was overly blunt, then he apologizes, but the Commission must understand the circumstances and the individual with whom he was dealing. Judge Velasquez acknowledges the accuracy of the transcribed proceedings, but it does not include the entire proceedings. What should also be considered is the following colloquy:

THE COURT: Okay. You're going to go to the 30 AA meetings?

DEFENDANT: Yes, Your Honor.

THE COURT: Okay. That's 30 days. Okay? So start going today, December 2nd – December 2, year 2004, this is going to be in Department number 7, proof of 30 AA meetings, and this going to be on for a dismissal. No excuses.

DEFENDANT: Thank you, Your Honor.

THE COURT: Okay. Good luck to you. No alcohol, either.

DEFENDANT: Yes, Your Honor.

C. **People v. Norez**

See response to Count One, D.

D. **People v. Maya**

Erik Maya had a number of criminal charges pending against him, including possession of marijuana, driving with a license suspended because he had been convicted of drunk driving, failing to appear for court-ordered dates and others. Maya had been represented in ten cases by the public defender's office and had been ordered to pay \$25 per case for costs associated with the public defender. On November 5, 2004, Maya was arraigned on a charge of aggravated trespass and disturbing the peace. Maya pleaded *nolo contendere* to the aggravated trespass. Maya also appeared on November 5, 2004 with Deputy Public Defender Sarah Miller regarding probation revocation hearings in connection with a number of the cases. He pleaded guilty to violating the terms of the probation, and judge Velasquez reinstated the probationary terms. It was in connection with the reinstatement of probation after the defendant had admitted violating the agreement that he was ordered to pay the \$250 to the public defender's office by 12:00 noon on November 5, 2004. This payment had been previously ordered. Essentially, this payment was mandated because of Maya's admission of probation violation, and as part of the reinstatement.

E. **People v. Herrero**

Modesto Pete Herrero was charged with driving under the influence, and appeared before Judge Velasquez on December 8, 2004. At the same hearing, Herrero appeared on

another matter involving driving infractions. Herrero entered a *nolo contendere* plea to driving under the influence of alcohol, and a *nolo contendere* plea to driving with a suspended license. The entire transcription of the proceedings is as follows:

JUDGE: Modesto Pete Herrero? Is he here?

DPD: Yes, he is.

JUDGE: Okay. Is there a dispo in this file?

DPD: Yes, there is.

JUDGE: Mr. Herrero. My understanding is that in case number 229214 you're going to plead guilty or no contest to count two, driving with a blood alcohol level .08 or higher for which maximum penalties and consequences could be up to six months county jail and \$1,000 fine and it is a priorable offense. In case number 223501, my understanding is you are going to plead guilty to count one, driving on a suspended license and admitting one prior conviction for which maximum penalties and consequences could be up to one year in county jail and \$2,000 fine. You would have to install an ignition interlock device on any motor vehicle that you own or operate. And let me ask you, sir. Did you read and understand your constitutional rights on each of these two forms?

DEFENDANT: Yes.

JUDGE: And do you waive your constitutional rights so that I may accept your plea of guilty or no contest?

DEFENDANT: Yes.

JUDGE: Does counsel join in the waiver of rights?

DPD: Yes.

JUDGE: Mr. Herrero, in case number 223501, how do you plead to count one driving on a suspended license?

DEFENDANT: No contest.

JUDGE: And do you admit to having one prior conviction? Sorry?

DEFENDANT: Yes.

JUDGE: Okay. A plea of no contest is the same as a guilty plea. However, it cannot be used against you in a similar matter in the future. So as to that case, plea will be accepted. In case number 229214, sir, how do you plead to count two, driving with a blood alcohol level .08 or higher, guilty or not guilty or no contest?

DEFENDANT: No contest.

JUDGE: Plea of no contest will be accepted. Court finds the defendant has waived his constitutional rights knowingly, intelligently and voluntarily. Also that

there is a factual basis for the enter of the plea and the defendant understands all the possible penalties and consequences of his plea and that those findings are for -- as to each case. Now we are going to go with the DUI case, 229214, sentencing in that case. Any credits?

DPD: Yes, Your Honor. Two days. Two days on this and then also one day on the (unintelligible).

JUDGE: Okay. Then, sir, this will be your sentence as to case number 229214, that's the DUI you plead to. You are going to 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 30 days in Monterey County Jail. You will receive credit two actual days. Your surrender date will be January 10th, year 2005, at 9 in the morning or you can apply for the work alternative program by calling the number in that small orange card. You must do that immediately. Your fine in this is \$1,550. You will need to make contact with the Office of Revenue and Recovery across the hallway on or before December 17th of this year to

make arrangements for your payments. You will be ordered to submit to a complete chemical and field sobriety tests upon the request of a police officer. You are not to drive with any alcohol or drugs in your system. You are not to operate a motor vehicle without a valid California driver's license and insurance. Are you interested in the first offender alcohol program, sir?

DEFENDANT: Yes, I was already enrolled in it, but I –

JUDGE: Is it the first offender or multiple offender?

DEFENDANT: Multiple already in, so --

JUDGE: Oh, we referred you to the -- in this case, to the multiple offender program? If you're already in it, you just have to complete it, I guess. Find out what you need to do.

DEFENDANT: Okay. I'll be happy -- I talked to them -- I talked to them already (unintelligible)

JUDGE: You will also have to attend 30 AA meetings. You must file proof of completion of your 30 AA meetings with the clerk's office by March 25, year 2005. If not, a bench warrant will be issued against you. Do you -- yes?

Female: Is this a first offense or second offense
(unintelligible)

JUDGE: I have it as a first offense. The other is -- he must
have had a DUI at some point, but it's not charged.
So --

DEFENDANT: It's 11 years ago (unintelligible)

JUDGE: Okay. So I'll refer you to the multiple offender
program. If it's the first offender program, they can
change it. Just cross both of them, let them figure it
out. All right. So if you need to -- either one or the
two -- either enter one of the two, if they tell you
you don't need them, don't go. Do you accept
probation on those terms and conditions?

DEFENDANT: Yes, sir. There's one (unintelligible) I had one more
day of credit from the other case so --

JUDGE: Yeah. Don't worry about it. I haven't got to that
case.

DEFENDANT: Oh.

JUDGE: Do you accept probation on those terms and
conditions as to this case?

DEFENDANT: Yes.

JUDGE: Okay. In the other matter, case number 223501,
you're going to be placed on probation for three

years, ordered to obey all laws. Not to commit any same or similar offenses. You will be ordered to serve ten days concurrent with the other. You'll be credit one. Your fine in this case is \$750. The 30 days is going to take care of both matters. Understood?

DEFENDANT: Urn, wait a minute. I don't quite get -- you didn't say I was going to get a fine. You said the other ones were going to be dropped, Your Honor.

JUDGE: No.

DEFENDANT: (unintelligible) there wouldn't be a fine. The only fine would be (unintelligible)

JUDGE: That's not what I said. It's been corrected. You will - - we discussed this in chambers. Did you tell that to your client?

DPD: I explained to him (unintelligible)

JUDGE: So your fine is -- 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 --

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 say that, that's what I'm saying.

JUDGE: There were some changes that were -- some incorrect information. We clarified that. So then I assume that your attorney, she says that she did tell you that, so it's not me. 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 -- per count today 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. The car was parked.

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

DEFENDANT: \$750 is fine.

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

DEFENDANT: \$1,550 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: (Unintelligible)

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. You will have to install an ignition interlock device on any motor vehicle that you own or operate for a period of two years. How many cars do you own?

DEFENDANT: None.

JUDGE: Okay. By way of advisement during this three year period of probation, you must install an ignition interlock device on any motor vehicle that you own or operate for a period of two years. Do you understand?

DEFENDANT: Yes.

JUDGE: You are not to drive without a valid California driver's license and insurance. Do you accept probation on those terms and conditions?

DEFENDANT: Yes.

JUDGE: You don't have to. You can always say no.

DEFENDANT: Yes.

JUDGE: Okay. Good luck to you. You can step outside.
Okay.

The fine imposed by Judge Velasquez was within the sentencing guidelines he was allowed to follow.

F. People v. Martinez

Juan Martinez was arrested and charged with battery and disturbing the peace. On December 15, 2004, Martinez appeared without counsel for an arraignment and following the reading of his constitutional rights, requested the appointment of the public defender's office. Deputy Public Defender Sarah Miller was appointed as Martinez's counsel. At no time prior to December 15, 2004 did defendant Martinez ever exhibit any type of mental deficiencies. With the assistance of the public defender, Martinez pleaded no contest to the battery charge. The sentence was going to be a \$250 fine and a 10-day jail sentence. Martinez made several comments to the court suggestive of a contempt for the court. Judge Velasquez did in fact consider changing the sentence to 180 days of jail time with a denial of probation. After further discussions, Judge Velasquez concluded it was best to have the defendant withdraw his plea.

On January 10, 2005, Martinez again pleaded guilty to the offense charged, and his fine was converted to a jail sentence.

COUNT THREE

In answering the allegations of Count III, Subparagraph A, B, C, D and E, respectively, People v. Herrera, People v. Lopez, People v. Lynch, People v. Lopez and People v. Martinez, Judge Velasquez does not dispute the accuracy of the transcription of the Court proceedings.

Judge Velasquez denies the allegation, "You accused the defendants of lying when they did not give you the answer you wanted." When a traffic violation is presented to Judge Velasquez for adjudication and/or sentencing, he will review the citation to ascertain the time, place and date of the infraction. Judge Velasquez makes

observations of the year, make and model of the vehicle involved. This is important information to consider when passing upon a sentence for exhibition of speed. For example, "peeling out" in front of a church on Sunday morning at 9:50 a.m. just after mass where there are many parishioners present should be treated differently than a similar infraction that may have occurred in the early morning hours on a deserted street. An exhibition of speed in front of a senior high school when classes are dismissed is different than a similar action at a different time or place. In passing on a sentence, Judge Velasquez is interested in considering the demeanor of the defendant, whether it appears to the court that the defendant is being truthful, and whether the defendant is exhibiting any type of remorse for his or her conduct. The sentencing imposed by Judge Velasquez was within his discretion and in each case was based with his knowledge of the circumstances surrounding the citation, the demeanor of the defendant appearing before him, whether the defendant appeared to be remorseful or not, and whether the defendant appeared to be truthful or not. Judge Velasquez has lived in Monterey County for about 40 years and he is rather familiar with the various localities where these incidents occurred.

COUNT FOUR

At the start of every arraignment calendar, Judge Velasquez advises the criminal defendants as follows: "Your case has been assigned to me personally in this courtroom today for all purposes. This is the arraignment calendar. At this calendar, I will call your name and ask you to come forward and step to the counsel table. I will tell you what charges have been filed against you by the District Attorney. I will ask you if you wish to enter a plea or to talk to a lawyer. If you wish to talk to your own lawyer, I will give

you approximately one week to do so. Please remember, you have the following constitutional rights: you have the right to a jury trial or a court trial within thirty days of today's date if you are in custody. If you are not in custody, you have a right to a jury trial or a court trial within forty-five days of today's date. You have the right to a lawyer. If you cannot afford one, one will be appointed by the court. Please remember, you may be required to pay the public defender for your services based upon your ability to pay in a financial hearing. You have the right to remain silent. You have the right to see, hear and question the witnesses against you. You have the right to bring in any witnesses on your own behalf, and the court will help you do that if necessary. If you are not a citizen of the United States and enter a plea of guilty or no contest, a conviction will have the consequence of deportation, exclusions from admission to the United States, denial from naturalization or amnesty. You could be required to pay the City and/or the County for the cost of you being booked at the County Jail facility. When your case is called, if you have any questions, please ask them, and I will take as much time as is necessary to answer them for you."

In the strict legal sense, the seven cases cited by the commission in Count Four are not "true diversion". The procedure employed is actually an alternative to taking a plea and issuing a sentence. In a true diversion case, the criminal defendant will enter a plea of guilty and then be offered diversion. In the cases cited, a plea is not taken, but an alternative is offered to the criminally accused, which if completed, would avoid further arraignment and the necessity of taking a plea. Completion of the program results in dismissal of the charges and no criminal reward to the accused.

Obviously, to anyone in the criminal justice system, the opportunity to avoid a plea and to have criminal charges dismissed is attractive. Unfortunately, the defendants who appear before Judge Velasquez are frequently unsophisticated, have no experience in the criminal justice system, and are confused. Judge Velasquez attempts to impress upon these individuals the need to complete the alternative sentencing conditions. There are dozens of these types of cases coming before Judge Velasquez every week, and he attempts to explain to the defendants what happens in the event they fail to comply with the alternative sentencing conditions. If he mistakenly failed to advise these particular defendants that failure to complete the conditions would result in their return to the criminal justice system then he was in error. What he was attempting to convey them to was the importance of following the condition, not that they had been found guilty or would be found guilty. There are numerous instances of defendants who went through the alternative sentencing program who were advised that failure to comply with conditions would result in their returning to the arraignment calendar. Judge Velasquez does not work from a printed script in those matters and if he was not articulate enough he apologizes.

What is important is for the defendants to appreciate is the opportunity they have received in avoiding an arraignment, avoiding a possible guilty plea, and the sentence that may accompany such a plea. The alternative sentencing program allows the compliant defendant to altogether avoid becoming ensnarled in the criminal justice system. That is what Judge Velasquez was attempting to communicate to the defendants.

COUNT FIVE

As a preliminary consideration, Judge Velasquez's calendar consists of more than 100 matters per day. The orderly administration of justice requires that court personnel, attorneys and defendants all insure compliance with their respective job duties. In this regard, criminal defendants who engage counsel and empower counsel in misdemeanor cases to appear on behalf of those defendants under Penal Code §977 are entrusting their responsibility to a lawyer. Nevertheless, the responsibility of an appearance still exists. In a §977 case it is the lawyer who is responsible for appearing on behalf of the client. Judge Velasquez recognizes that on occasion, lawyers may be double or even triple-booked in different departments representing different clients. However, it is the lawyer's responsibility to make the appearance for the client where the §977 waiver has been executed, make arrangements to have someone appear specially for the client, or have the matter moved to the end of the calendar so that an appearance can be made in another department without jeopardizing the rights of the client or impeding the orderly administration of the court. Prior to his election to the bench Judge Velasquez was a practicing lawyer with a solo practice in Monterey County and he is conscious of a lawyer's responsibilities to clients and the court. If a lawyer makes arrangements with the court through court personnel to move a matter to the end of the calendar, that request has always been honored.

While Judge Velasquez acknowledges that a Penal Code §977 waiver will generally be identified within the file, there are occasions when a defendant discharges counsel and the court is unaware of the discharge and in some cases the files do not reflect a §977 waiver. It is the defendant's responsibility to appear in court, although the

defendant can assign that obligation to a lawyer. The court cannot make the determination that the defendant is or is not represented by counsel. If a matter is called and no one appears, then the orderly administration of justice requires that a bench warrant issue to the defendant who failed to appear.

A. People v. Kitchen

In People v. Douglas Kitchen, the defendant was represented by private defender Shawn Mills. On September 22, 2004, A Mills waiver was scheduled for hearing in Judge Velasquez's courtroom. No arrangements were made by Mr. Mills to have the Kitchen matter placed at the end of the calendar. When the case was called and there was no appearance by either the defendant or counsel, Douglas Kitchen's OR release was revoked and a bench warrant issued for Mr. Kitchen to post bond or surrender. Admittedly, Mr. Mills made an oral request of Judge Velasquez to rescind the order revoking OR and recall the warrant, but Judge Velasquez refused to do so until Mr. Mills wrote a letter to the court.

B. Miguel Hernandez

Without identifying the case, it is difficult to respond to the allegations advanced by the Commission. Needless to say, if counsel is attempting to juggle appearances in different courtrooms, counsel is required to notify the court, not the Deputy District Attorney. While another attorney can specially appear for defense counsel holding a §977 waiver, the District Attorney's office cannot. If a matter was called, and counsel had not notified the court of another obligation and requested the matter be trailed, then it was within Judge Velasquez's discretionary power to revoke OR and issue a bench warrant for non-appearance by a defendant or his counsel if there is a §977 waiver.

C. People v. Hoffman

Scott Hoffman was charged on September 28, 2004 with resisting arrest and obstruction of justice. A misdemeanor arraignment took place on October 15, 2004, but the defendant failed to appear, and a warrant was issued for his arrest. On November 17, 2004, an arraignment on the arrest warrant was held in Department 6. The defendant hired Peter Leeming, who requested that the matters be placed on the November 17, 2004 calendar in Judge Velasquez's department. The Hoffman case was placed on the November 17, 2004 calendar, but when the case was called, neither Mr. Hoffman nor Peter Leeming was present. Another bench warrant issued. Judge Velasquez acknowledges that on November 18, 2004, George Gigarjian wrote a letter attempting to explain why an appearance had not been made on November 17, 2004, even though Mr. Leeming had requested that the Hoffman case be calendared for that date. Judge Velasquez refused to recall his bench warrant and the OR revocation. Mr. Gigarjian had the bench warrant recalled by Judge Stephen Sillman while Judge Velasquez was on vacation.

D. People v. Holt

Dustin Stephen Holt was arrested on a DUI charge. Holt was arraigned on October 22, 2004, and attorney Shawn Mills appeared for the defendant on that date and pleaded not guilty to the charges. On November 4, 2004, a pre-trial conference was conducted relative to the case, and Matthew Williamson specially appeared for Shawn Mills. As reflected in the Court's minutes the pre-trial conference was continued to November 23, 2004. When called on November 23, 2004 there was no appearance by or on behalf of the defendant. A bench warrant was issued against Mr. Holt. On November

30, 2004, Shawn Mills wrote a letter to Judge Velasquez, requesting that the bench warrant be recalled because he had written in his calendar that the matter was on for hearing on December 9, 2004. The court denied the request, because a sufficient justification had not been provided for the failure to appear.

E. People v. Holder

People v. Holder was the third case within ten weeks where attorney Shawn Mills had failed to appear when the matter was called in Judge Velasquez's Department. As a result of the failure to appear, a bench warrant was issued. On December 3, 2004, Shawn Mills wrote to the Clerk of the Superior Court, stating, "I have spoke to the Honorable Jose Velasquez, who has directed that I may contact you to have the hearing reset." The letter was given to Judge Velasquez, and the quoted portion was incorrect. Judge Velasquez denied the request to recall the bench warrant.

F. People v. Huggins

Demetrius Andre Huggins was arrested for petty theft. Attorney Frank Dice was the lawyer for Huggins. At arraignment on October 29, 2004, Huggins entered a plea of not guilty and was released on his own recognizance. At a pre-trial conference on December 14, 2004, attorney Dice appeared for Huggins, and the pre-trial conference was continued to January 5, 2005. On January 5, 2005, no appearance was made by or on behalf of defendant Huggins. Judge Velasquez issued a bench warrant with instructions to the defendant to post bail or surrender to the County Jail because of the non-appearance.

On February 10, 2005, Judge Velasquez recalled the bench warrant and continued the case to February 17, 2005 for a pre-trial conference. When the case was called for

pre-trial conference on February 17, 2005, no appearance was made by or on behalf of Mr. Huggins, and OR was revoked and a bench warrant issued.

G. People v. Huerte and People v. Kammer

In the matters of People v. Huerte and People v. Kammer, both cases were on calendar for hearing before Judge Velasquez on May 3, 2005. Both matters were on the arraignment calendar, and when the cases were called, neither defendants nor anyone on their behalf entered an appearance. In both cases, Judge Velasquez issued bench warrants, and in neither case had a Penal Code §977 waiver been filed.

It is the practice and procedure in the Monterey Superior Court that a party files a Code of Civil Procedure §170.6 challenge directly with the judge the party is challenging. After the bench warrants were issued in the Huerte and Kammer cases, Steve Liner wrote a letter to Judge Stephen Sillman that somehow was not placed into the file. While Judge Velasquez was made aware of the letter, he had not seen it. The letter made certain representations regarding his non-appearance in Huerte and Kammer and in the Gonzalez matter. Judge Velasquez merely requested a copy of the letter to ensure the accuracy of whatever representations had been made by Mr. Liner to Judge Sillman.

H. People v. Gonzalez

Miguel Gonzalez was charged with a DUI offense. At his misdemeanor arraignment on August 18, 2004, Gonzalez failed to appear before Judge Kingsley and a bench warrant was issued. The warrant was served, and Gonzalez was taken into custody. On September 21, 2004, Gonzalez was arraigned and pleaded guilty to the charges, and was ordered to serve twenty days in jail, in addition to other conditions. Gonzalez failed to comply with the terms of probation, and a bench warrant was issued

for his arrest on December 9, 2004. The bench warrant was served and returned, and on May 27, 2005, Gonzalez was scheduled for an arraignment. When the matter was called, no one appeared by or on behalf of the defendant, and another bench warrant was issued. At the request of the public defender's office, on August 30, 2005, Judge Velasquez recalled the bench warrant.

COUNT SIX

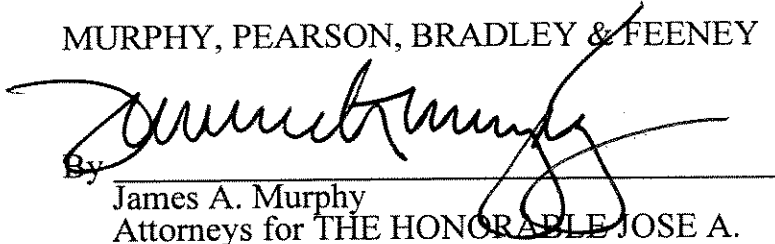
Judge Velasquez does not deny the accuracy of the transcriptions of the fourteen matters set forth in Count Six. Judge Velasquez denies that the references violate the Code of Judicial Ethics in any manner whatsoever.

COUNT SEVEN

Judge Velasquez admits that his children have been present in the bench area during court session, and in chambers during case discussions. The Velasquez children have never interfered with nor interrupted any of the proceedings. It is a daily occurrence that children are present in Judge Velasquez's Department.

Dated: May 24, 2006

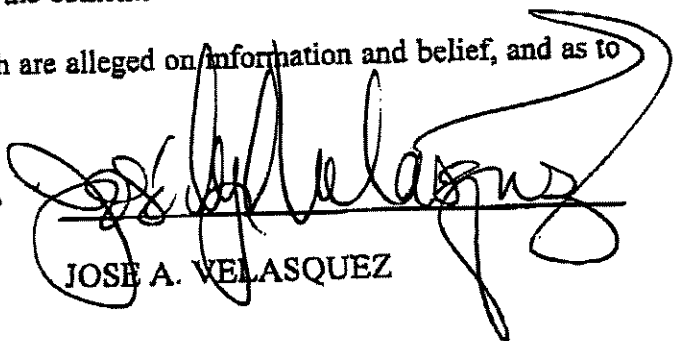
MURPHY, PEARSON, BRADLEY & FEENEY

By 
James A. Murphy
Attorneys for THE HONORABLE JOSE A. VELASQUEZ

VERIFICATION

I, JOSE A. VELASQUEZ, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing RESPONDENT'S ANSWER TO NOTICE OF FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 5-24-06



A large, stylized handwritten signature in black ink, appearing to read 'Jose A. Velasquez', is written over a horizontal line. The signature is highly cursive and loops around the line.

JOSE A. VELASQUEZ

JAM.10319704.doc

CERTIFICATE OF SERVICE

I, Jolene F. Devlin, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is.

On May 25, 2006, I served the following document(s) on the parties in the within action:

RESPONDENT'S ANSWER TO NOTICE OF FORMAL PROCEEDINGS

Jack Coyle
Office of Trial Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Ste. 14400
San Francisco, CA 94102-3660

Jay Linderman
Legal Advisor to Commissioners
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14415
San Francisco, CA 94102-3660

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on May 25, 2006.

By Jolene F. Devlin
Jolene F. Devlin