STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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| INQUIRY CONCERNING A JUDGE<br><br>No. 39 | SECOND AMENDED<br>NOTICE<br>OF<br>FORMAL PROCEEDINGS |

TO: JUDGE JERROLD L. WENGER:

IT APPEARING THAT since March 18, 1975, and at all times herein, you have been a Judge of the Justice Court, El Dorado Justice Court District, County of El Dorado; and

Preliminary investigation having been made pursuant to the provisions of rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission as a result of said preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to section 18 of article VI of the California Constitution and in accordance with rules 901-902, California Rules of Court,

NOW, THEREFORE, you are hereby charged with wilful misconduct in office, conduct prejudicial to the administration

of justice that brings the judicial office into disrepute, persistent failure or inability to perform your judicial duties, and violating your oath to well and faithfully discharge the duties of your office in the following particulars:

COUNT ONE

You are charged in Count One with wilful misconduct in office:

A. You have improperly injected yourself into judicial proceedings resulting in the denial or the appearance of denial of a fair and impartial trial to parties and attorneys appearing before you, to wit:

1. On or about January 12, 1978, attorney John R. Olson, representing Robert Aldrich in a habeas corpus proceeding in El Dorado County Superior Court No. 30576, which challenged your contempt order of Aldrich, personally served you with copies of the petition and the order to show cause issued by the superior court. In a conversation with Olson, you referred to Aldrich as a "puke" and a "psychopath," questioned Olson's motives in filing the action, and suggested that Olson should reconsider pursuing the matter.

On or about January 18, 1978, you asked Olson why he was still involved in the case and again you referred to his client as "that puke." You again suggested that Olson should withdraw from the case and tell the judge hearing the case that it had no merit. You further stated that if Olson continued to represent Aldrich, his legal career in El Dorado County and elsewhere would be jeopardized. You also threatened the legal

careers of other attorneys in Olson's office.

Subsequently, the petition for a writ of habeas corpus was granted and the contempt order purged by the El Dorado County Superior Court.

Thereafter, you criticized that ruling by comments reported in a local newspaper.

2. In or about April 1977, a suit was filed in your court in the case of Rose v. LePeilbet, Civ. No. 489 involving the defendant's pruning of the plaintiff's oak tree which was overhanging the defendant's property. A hearing was held on May 20, 1977, regarding a temporary restraining order previously issued. Defendant's attorney, Jerrold B. Braunstein, raised jurisdictional questions which you overruled. You announced that you would appoint a master to examine the tree and assess damages. You then attempted to elicit a stipulation from the defendant that he would pay any damages assessed.

On June 3, 1977, you advised all participants except the defendant's attorney that the defendant would have to pay $45 to the plaintiff. Attorney Braunstein subsequently requested a trial on the merits, and in response, you notified the parties on June 20, 1977, that "further proceedings" would be held on July 1, 1977. On June 22, 1977, Braunstein filed a motion pursuant to Code of Civil Procedure section 170.6 to disqualify you and requested a continuance due to his impending absence from the state; this request was denied by you on June 28, 1977.

The July 1, 1977, hearing proceeded in the

absence of both Braunstein and the defendant; you directed the plaintiff and his attorney to prepare and file declarations that defendant LePeilbet and attorney Braunstein were in violation of a stipulation. Thereafter, you issued an order to show cause, dated July 7, 1977, in a case captioned Rose v. Braunstein and LePeilbet, defendants, regarding a contempt of court hearing against Braunstein and LePeilbet.

At the contempt hearing on July 29, 1977, you called and questioned witnesses, including the defendant, LePeilbet, over the objection of his attorney. Braunstein continued to object to such questioning and you threatened him with contempt if he did not remain quiet. You also threatened LePeilbet with incarceration if he did not answer the question. You coerced a written stipulation that summary judgment could be entered but not in excess of $45. You threatened Braunstein with contempt if an appeal was filed.

On October 21, 1977, judgment was entered in plaintiff's favor by you. On December 29, 1977, the defendant's appeal from the judgment was heard in superior court; the judgment was reversed and one entered in favor of defendant, proceeding No. 30323.

3. On October 28, 1977, in the case of Hill v. Martin, No. 524, an unlawful detainer action, during the course of the pretrial conference, you expressed a determination to find the defendant-tenant in contempt, based solely upon what you considered to be false statements contained in the pleadings; said conclusion was not based upon evidence properly before you.

A hearing was scheduled in the alleged contempt. You then contacted the building inspector directly, requested him to inspect the subject premises and report directly to you. Further, you supplied him with a check list of specific deficiencies to look for in his inspection for the express purpose of answering your question whether perjury had been committed in the allegations of the answer filed in the unlawful detainer action.

4. On or about October 25, 1978, in the case of People v. Stern, Docket No. 83629, involving the alleged violation of Vehicle Code sections 24250 and 4000A, both infractions, defendant Stern appeared in your court. Prior to calling his case, you invited a discussion by those in the courtroom in which Stern participated. Subsequently, Stern's case was called and a dispute developed between you and Stern. During a recess in the court's calendar, Stern left the court. Following the recess it was discovered that the court's docket in the Stern case was missing. You therefore improperly issued a warrant of arrest for Stern for the traffic infractions and for criminal contempt (Pen. Code, § 166) and theft (Pen. Code, § 488). You ordered that Stern be arrested and held without bail. Stern was subsequently arrested upon your warrant and confined.

On or about November 7, 1978, you executed and caused to be filed a document entitled "affidavit in support of hearing on contempt" in Case No. 83621 [sic]. You thereafter caused this court record to be altered by changing the date

thereof to October 27, 1978.

5. In People v. Rogers, Docket No. 7883, the complaint was filed by the District Attorney's office on or about October 17, 1978, charging the defendant in Count I with a violation of section 10851 of the Vehicle Code (a "wobbler"), in Count II with a violation of section 647f of the Penal Code, in Count III with a violation of section 415 of the Penal Code, and in Count IV with a violation of section 23102a of the Vehicle Code, all misdemeanors as charged. On or about October 17, 1978, without notice to the district attorney and without any appearance by him or on his behalf and without his concurrence, you amended the complaint, apparently on your own motion, accepted a plea of "nolo" to Count I which had been amended to charge a violation of section 499(b) of the Penal Code, a "straight" misdemeanor, and to Count IV as originally filed; Counts II and III were dismissed by you. The defendant Robert G. Rogers was on probation following conviction of burglary in Sacramento County and disturbing the peace in El Dorado County at the time you took this action.

6. On March 7, 1979, you observed, from a location inside the building housing the El Dorado Justice Court, what you considered to be a violation of the law prohibiting littering on public property, a misdemeanor. Subsequently, you instructed Sheriff's Deputy Bishop, who had not witnessed the alleged criminal activity, to institute a criminal action against the alleged offender (Anthony May) by issuing a Notice to Appear for a violation of Penal Code section 374d [sic] on which Notice you

were shown as being the arresting officer. Mr. May appeared in your court later that same day and you acted in your judicial capacity by proposing to then dispose of the case by the imposition of a $50 fine. You also verbally abused, degraded and humiliated Mr. May.

B. You have abused your contempt power, to wit:

1. In People v. Kelly, Docket No. 79645, attorney Roger Cline, on or about April 20, 1978, filed a motion disqualifying you under Code of Civil Procedure section 170.6. On or about April 21, 1978, you notified Mr. Cline that the motion for disqualification was denied as to arraignment; arraignment then proceeded as scheduled.

On May 10, 1978, Cline and the defendant appeared for the pretrial conference. In chambers, you indicated to Cline that you had forgotten about the disqualification, and following some discussion, you told Cline he was disrespectful and unprofessional. Cline then briefly left chambers to confer with his client. Cline returned to your chambers and further discussion ensued.

On or about May 11, 1978, Case No. 79645, you notified Cline to appear on May 15, 1978, for summary contempt proceedings.

On May 15, 1978, purporting to act pursuant to Penal Code section 166, and over objection by Cline's attorney, you found Cline in contempt of court, imposed a $300 fine, and, unless Cline apologized, you banned him from all future appearances in your court except trials. When Cline indicated an

unwillingness to pay the fine, you sentenced him to jail until the fine was paid; upon request, execution was stayed. A written order was filed on May 16, 1978, and assigned Case No. 7681.

2. On or about April 28, 1977, in proceeding No. 70592, attorney Stephen Keller disqualified you pursuant to Code of Civil Procedure section 170.6. Judge Lloyd Hamilton was assigned to hear the case at 10 a.m. on May 5, 1977. Keller obtained the consent of both the prosecuting attorney and Judge Hamilton to begin the trial a half hour later. The matter was tried at that time and concluded.

On or about May 11, 1977, you initiated a contempt action against Keller for appearing 30 minutes late. You denied a motion to disqualify yourself pursuant to Code of Civil Procedure section 170.6. You were thereafter restrained by the superior court from proceeding further, proceeding No. 29361.

3. On or about July 19, 1977, in proceeding No. 70759, defendant Kenneth Lee was sentenced to a weekend in jail by you and contacted attorney Stephen Keller. Keller attempted to assist Lee, but then told Lee he would have to follow the order sentencing him to jail for the weekend. Subsequently Lee informed Keller that he had not complied with the court's order and requested Keller to represent him at a hearing scheduled before you. At the hearing you, without notice to him of any kind, expanded the hearing to resolve what you considered to be possible contemptuous conduct by attorney Keller in attempting to assist his client.

4. In the case of People v. Eugene Wright,

No. 69890, Roger Cline represented the defendant; Cline failed to appear at a hearing scheduled for April 4, 1978, and on April 7, 1978, you notified him that the hearing had been rescheduled on April 17, 1978. A motion pursuant to Code of Civil Procedure section 170.6 was filed by Cline, following which Judge Thomas Smith was assigned to the April 17, 1978, hearing. Cline failed to appear at the April 17 hearing, and on April 21, you informed him, by letter, that because of his failure to appear at the April 17 hearing, "you are therefore found in summary contempt of a lawful order of the court," citing Penal Code section 166.4.

5. In the case of People v. Ellis, Docket No. 7866, attorney Stephen Keller, on or about October 6, 1978, filed a motion to disqualify you under Code of Civil Procedure section 170.6. Subsequently, Judge Smith of the Georgetown Justice Court accepted the assignment to hear the case. On October 16, 1978, the date previously set for the preliminary hearing, the case proceeded with you presiding for the purpose of continuance. You continued the preliminary hearing date to October 19 at 9 a.m. without permitting attorney Keller to present his objection to this date. On October 19 a hearing was held. Attorney Keller was not present. You refused to allow Judge Smith to preside. Judge Smith stated that he had agreed with attorney Keller that the preliminary hearing would be held on October 20. You continued the case to October 23. The case came on for hearing on October 23 with you presiding and attorney Michael Stambaugh representing the defendant in place of attorney

Keller. You dismissed the criminal charges based upon your resolution of a contested issue. On November 6, 1978, you ordered attorney Keller to appear on November 13 for a hearing in your court on an Order to Show Cause why he should not be held in contempt for his failure to appear at the October 19 hearing.

6. On or about November 7, 1978, in the case of People v. Anderson, Docket No. 7844, attorney Roger Cline filed a motion disqualifying you pursuant to Code of Civil Procedure section 170.6. He presented his client at the court on that date for surrender on an outstanding arrest warrant pursuant to an agreement with Judge Smith of the Georgetown Justice Court. You refused to allow Judge Smith, who was present, to handle the case and the defendant was taken into custody and held until ordered released by the superior court. You also told Cline that he had been previously banned from your court and that his continued presence there would subject him to a contempt of court order.

7. On or about November 14, 1978, in the case of People v. Brooks, Docket No. 84566, attorney Stephen Keller filed a motion disqualifying you pursuant to Vehicle Code section 40517. You questioned the defendant as to his reasons for filing the affidavit of prejudice and continued the matter for hearing. You subsequently determined that the defendant's affidavit was based upon information supplied to him by attorney Keller that the defendant could not receive a fair trial in your court. You thereafter, on November 22, 1978, in a case entitled El Dorado Justice Court, Gerald L. Wenger, Judge v. Stephen Keller, defendant, Case No. 7955, issued an order adjudging

attorney Keller in direct contempt of court because of "a false declaration [filed] on behalf of his client" and sentenced him to 5 days in jail.

8. The allegations contained in paragraph A, subparagraph 2, concerning the contempt proceedings against attorney Jerrold Braunstein, and LePeilbet are hereby incorporated by this reference as if fully set forth herein.

9. The allegations contained in paragraph A, subparagraph 3, concerning the unlawful detainer action Hill v. Martin, Case No. 524, are hereby incorporated by this reference as if fully set forth herein.

10. The allegations contained in paragraph A, subparagraph 4, concerning the case of People v. Stern, Docket No. 83629, are hereby incorporated by this reference as if fully set forth herein.

C. You have engaged in rude and profane conduct in court, to wit:

1. In or about January 1978, in the case of People v. Cornblum, No. 7438, you dismissed the complaint and then chastised Mrs. Cornblum, the complaining witness, in a rude and unjudicial manner. You swore at her, threatened her with jail and other sanctions, and used improper and abusive language.

2. While an assigned judge in Harbor Municipal Court, Orange County, in 1976, and during court proceedings, you handed the court clerk, Linda Carr, a note which read, "Smile if you like sex." This caused embarrassment to the clerk.

3. The allegations contained in paragraph A,

subparagraph 1, concerning the contempt case involving Robert Aldrich are hereby incorporated by this reference as if fully set forth herein.

4. The allegations contained in paragraph A, subparagraph 6, concerning Anthony May are incorporated by this reference as if fully set forth herein.

D. You have improperly failed to disqualify yourself in court proceedings, to wit:

1. The allegations contained in paragraph A, subparagraph 2, concerning the case of Rose v. LePeilbet, Civ. No. 489, and Rose v. Braunstein and LePeilbet are hereby incorporated by this reference as if fully set forth herein.

2. The allegations contained in paragraph B, subparagraph 1, concerning the case of People v. Kelly, Case No. 79645, are hereby incorporated by this reference as if fully set forth herein.

3. The allegations contained in paragraph B, subparagraph 2, concerning the case of People v. James Renfro, Case No. 70592, are hereby incorporated by this reference as if fully set forth herein.

4. The allegations contained in paragraph B, subparagraph 4, concerning the case of People v. Eugene Wright, No. 69890, are hereby incorporated by this reference as if fully set forth herein.

5. The allegations contained in paragraph B, subparagraph 5, concerning the case of People v. Ellis, Docket No. 7866, are hereby incorporated by this reference as if

fully set forth herein.

6. The allegations contained in paragraph B, subparagraph 6, concerning the case of People v. Anderson, Docket No. 7844, are hereby incorporated by this reference as if fully set forth herein.

7. The allegations contained in paragraph B, subparagraph 7, concerning the case of People v. Brooks, Docket No. 84566, are hereby incorporated by this reference as if fully set forth herein.

COUNT TWO

For a further and separate cause of action, you are also charged in Count Two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In support of this cause of action, paragraphs A through D of Count One are hereby incorporated by this reference as if fully set out herein.

COUNT THREE

For a further and separate cause of action, you are also charged in Count Three with persistent failure or inability to perform your judicial duties. In support of this cause of action, paragraphs A through D of Count One are hereby incorporated by this reference as if fully set out herein.

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You have the right to file a written answer to the charges against you within 15 days after service of this notice upon you with the Special Master who has been appointed by the Commission on Judicial Performance. Such answer must be verified, must conform in style to subdivision (c) of rule 15 of the Rules on Appeal.

By Order of the Special Master appointed by the Commission on Judicial Performance.

DATED:_____ _____
Special Master

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| INQUIRY CONCERNING A JUDGE | ) | NO. 39 |
| | ) | DECLARATION OF PERSONAL SERVICE |

I, John Thompson, declare as follows:

I am and was at the time of service of the

Second Amended Notice of Formal Proceedings

herein, over the age of 18 years, and was not a party to the above proceeding; that I served the said document(s) by delivering a true copy thereof to each of the following named persons, personally:

| NAME | ADDRESS | DATE |
|---|---|---|
| Judge Jerrold L. Wenger | El Dorado Judicial Dist.<br>3551 Missouri Flat Road<br>Placerville, CA 95667 | |

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 1979, at California.

John Thompson
Declarant

COPY

Filed 7/26/79

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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| INQUIRY CONCERNING A JUDGE<br><br>No. 39 | THIRD AMENDED NOTICE OF FORMAL PROCEEDINGS |

TO: JUDGE JERROLD L. WENGER:

Pursuant to Rule 911, California Rules of Court, the notice of formal proceedings is amended to include the following additional facts:

COUNT ONE

E. You have willfully and unlawfully resisted, delayed and obstructed a public officer in the discharge or attempt to discharge the duties of his office in that on or about July 11, 1979, you refused, for improper personal reasons, to allow Susan Disney, a duly appointed Deputy District Attorney of El Dorado County, to appear in the Justice Court, El Dorado Judicial District, on matters duly and lawfully assigned to her.

F. You have improperly interfered, and attempted to interfere, with a duly authorized proceeding of the Commission on Judicial Performance in that during or about March 1979, you communicated to Ron Tepper, District Attorney of El Dorado County that you believed Susan Disney, a Deputy District Attorney, was

providing information to investigators for the Commission on Judicial Performance, that you disapproved of this conduct by Ms. Disney and so would not permit her to appear in your court. On or about July 11, 1979, Ms. Disney was duly assigned cases (Gillespie, No. 85305; Pina, No. 7801) scheduled for hearing on that date in the El Dorado Justice Court and you refused to allow her to appear on those cases based upon your belief that she had provided information to the Commission on Judicial Performance in the Commission's proceeding against you.

COUNT TWO

For a further and separate cause of action, you are also charged in Count Two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In support of this cause of action, paragraphs A through F of Count One are hereby incorporated by this reference as if fully set out herein.

COUNT THREE

For a further and separate cause of action, you are also charged in Count Three with persistent failure or inability to perform your judicial duties. In support of this cause of action, paragraphs A through F of Count One are hereby incorporated by this reference as if fully set out herein.

In all other respects the contents and allegations of the Second Amended Notice of Formal Proceedings are incorporated herein by this reference as if set forth in full.

You have the right to file a written answer to the charges against you within 15 days after service of this notice upon you with the Special Master who has been appointed by the Commission on Judicial Performance. Such answer must be verified, must conform in style to subdivision (c) of rule 15 of the Rules on Appeal.

By Order of the Special Master appointed by the Commission on Judicial Performance.

DATED:_____ _____
Special Master

FILED

NOV 7 - 1979

J.A. SIMPSON, CLERK
BY
DEPUTY

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

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| INQUIRY CONCERNING A JUDGE<br><br>No. 39 | FOURTH AMENDED<br>NOTICE<br>OF<br>FORMAL PROCEEDINGS |

TO: JUDGE JERROLD L. WENGER:

Pursuant to Rule 911, California Rules of Court, the notice of formal proceedings is amended to include the following additional facts:

COUNT ONE

Subparagraph 6 of paragraph B. of Count One (People v. Anderson is amended by adding thereto the following additional allegations:

On November 15, 1978, your court issued a notice to appear to Cline, indicating that the matter has been calendared for arraignment on November 28, 1978, at 9 a.m. Cline responded by letter dated November 21, 1978, indicating that since he had been banned from your court that he would not appear until another judge was assigned to the case pursuant to his previously filed motion under Code of Civil Procedure section 170.6.

On the morning of November 28, 1978, a clerk of your court phoned Attorney James Brunello and informed him that Anderson must appear that morning for arraignment but that Cline

could not appear. Brunello was told that Cline should arrange for another attorney to appear in his place.

Later that day in a phone conversation with Cline, you refused to acknowledge Cline's attempts to have another judge assigned to the case. Cline informed you that he would thus have to request the Judicial Council to assign a judge to the case.

Neither Cline nor Anderson appeared in your court on November 28, 1978.

The matter was reset by you for arraignment on November 30, 1978. Neither Cline nor Anderson appeared on that date.

On December 1, 1978, you issued an order purporting to adjudge Cline in direct contempt of court for proceedings occurring on November 7, 28 and 30, 1978, in your court.

You have the right to file a written answer to the charges against you within 15 days after service of this notice upon you with the Special Master who has been appointed by the Commission on Judicial Performance. Such answer must be verified, must conform in style to subdivision (c) of rule 15 of the Rules on Appeal.

By Order of the Special Master appointed by the Commission on Judicial Performance.

DATED:_____ _____
Special Master