

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE CLARENCE WESTRA, JR.**

**DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT**

This disciplinary matter concerns Judge Clarence Westra, Jr., a judge of the Kern County Superior Court since 1983. His current term began in 2003. Judge Westra and his attorney, Reginald A. Vitek appeared before the commission on August 30, 2007 to contest the imposition of a public admonishment, pursuant to Rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Judge Westra and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

Based on the facts set forth below, the commission determined that on two occasions Judge Westra failed to be dignified, patient and courteous with deputies from the Kern County Sheriff's Department, as required by canon 3B(4) of the Code of Judicial Ethics.

1. On April 11, 2006, Judge Westra was presiding over a criminal trial; the jury began deliberating that afternoon. The bailiff assigned to Judge Westra's courtroom had been sworn in as the bailiff responsible for taking charge of the jury. The bailiff was scheduled to attend mandatory firearms training the following afternoon. Firearms training is required on a quarterly basis if a bailiff or deputy is to carry a gun. The bailiff had previously informed the judge of this scheduled training. During the afternoon of

April 12, 2006, the bailiff left to attend the mandatory firearms training. A replacement bailiff was available for the jury. Judge Westra was displeased that the bailiff who had already been sworn in had left his courtroom and insisted that the sworn bailiff return to his courtroom that afternoon, which the bailiff did without completing his mandatory firearms training. The same afternoon, Judge Westra left a voicemail message for the commander of court services, Kern County Sheriff's Department Division Commander Shelly Castaneda, stating that he wished to discuss the matter with her.

The following morning, April 13, 2006, Commander Castaneda and Senior Deputy Larry Lopez of the Kern County Sheriff's Department went to Judge Westra's chambers to discuss the matter with him in person. Commander Castaneda had recently been assigned as commander of court services and had not met Judge Westra before. Although Judge Westra had left her a voicemail the previous afternoon asking her to contact him, Judge Westra's first statement to Commander Castaneda was, "I don't know how you fit into this." Commander Castaneda began explaining that all deputies are required to take mandatory firearms training. Judge Westra responded that his bailiff's departure the previous afternoon was "unacceptable" under the circumstances and that he "would not tolerate it." It was the judge's belief that the sheriff's department did not have the authority to remove a deputy from his courtroom when a bailiff had been sworn to take charge of a jury. To clarify whether there was a court procedure requiring the same bailiff to remain in place and to ensure that the deputies under her supervision were not violating court procedures, Commander Castaneda asked Judge Westra if he had a written protocol in place regarding his courtroom procedures. Judge Westra's response was, "You are not going to tell me how to run my courtroom." Commander Castaneda again inquired about a written protocol regarding the judge's courtroom procedures. Raising his voice, he told her that she was not going to run his courtroom and that she should leave his chambers. When Commander Castaneda did not immediately leave,

Judge Westra pointed at the door to his chambers and yelled “Get out!” at her more than one time.

2. In July of 2001, while an in-custody criminal defendant was testifying during his own jury trial, over which Judge Westra was presiding, a guard in Judge Westra’s courtroom was relieved by another guard who was not familiar with Judge Westra’s courtroom procedures to be followed when an in-custody defendant testifies during his own jury trial. The replacement guard had entered the courtroom, conferred with the bailiff, Deputy Jackie Mitchell, and then exited the courtroom during the defendant’s testimony, contrary to the judge’s required procedures. Judge Westra later spoke with Deputy Mitchell about the incident and said to her, “The Keystone Cops could have handled it better.”

The commission found that Judge Westra’s conduct in both instances was contrary to canon 3B(4), which requires judges to be patient, dignified and courteous toward those with whom they deal in an official capacity.

The conduct set forth above was improper action at a minimum.

In determining that a public admonishment was appropriate, the commission noted that Judge Westra has been the subject of extensive prior discipline, much of which is related to improper treatment of those with whom the judge deals in an official capacity.

In 2003, Judge Westra received an advisory letter for abusing his judicial authority in his treatment of workers involved in a courthouse renovation project that was generating noise at the courthouse. Although the court staff person responsible for coordinating the courthouse renovation work was brought before Judge Westra and was available to address his concerns about the impact of the noise on court proceedings, the judge instead directed a bailiff to bring the construction workers who were using power equipment before him. The judge ordered the workers to cease using power equipment at certain times and required each worker to state his name on the record, in open court, in

the presence of litigants and others present for court proceedings. In its advisory letter, the commission noted with concern that it was Judge Westra's fifth advisory letter.

In 1992, Judge Westra received an advisory letter for making disparaging remarks about an absent attorney who was unable to be in court due to another trial and had sent another attorney to appear for him. Judge Westra's remarks about the absent attorney included, among other things, the following: "As far as I'm concerned, his license to practice law is laying on pretty cheap paper You might tell him you're being disadvantaged by his second rate tactics," These comments were made in open court, on the record, in front of another attorney and the absent attorney's client.

In 1990, Judge Westra received an advisory letter for making denigrating remarks about a deputy district attorney who was not present in court because he was in a work-related training session out of town and had sent another deputy district attorney to court in his place. Among other demeaning remarks, Judge Westra said that the absent deputy district attorney practiced law "like a manure spreader" and that it was "downright amazing" that the district attorney's office kept him on the payroll. Judge Westra made the remarks in open court, on the record, in front of other deputy district attorneys, defense counsel, at least one defendant, and others present in the courtroom.

Judge Westra also was the subject of disciplinary action in the following matters:

In 2001, Judge Westra received an advisory letter for abusing his authority as presiding judge. During that time, the Kern County Municipal and Superior Courts were operating under a coordination plan pursuant to which municipal court judges were entitled to receive the salary of superior court judges for handling superior court assignments. Then-Presiding Judge Westra excluded two municipal court judges from certification for pay parity because he disagreed with their handling of certain cases, without giving the judges notice or an opportunity to explain. The judge's actions were

contrary to the advisements from the Administrative Office of the Courts that all municipal judges participating in coordination plans were entitled to pay parity.

In 1988, while Judge Westra was a presiding judge, he received an advisory letter for failing to appropriately supervise a court commissioner who had delayed ruling on a dissolution matter and failing to respond to letters from the complainant inquiring about the delay.

Commission members Hon. Frederick P. Horn, Hon. Judith D. McConnell, Hon. Katherine Feinstein, Mr. Peter E. Flores, Jr., Mr. Marshall B. Grossman, Ms. Patricia Miller, Ms. Barbara Schraeger, Mr. Lawrence Simi and Ms. Maya Dillard Smith voted for a public admonishment. Commission member Samuel A. Hardage did not participate. There is currently one public member vacancy on the Commission.

Dated: September 5, 2007

/s/

Honorable Frederick P. Horn
Chairperson