

## PUBLIC ADMONISHMENT OF COMMISSIONER MARK KLISZEWSKI

The Commission on Judicial Performance ordered Commissioner Mark Kliszewski publicly admonished, pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

### STATEMENT OF FACTS AND REASONS

Commissioner Kliszewski has been a commissioner of the Alameda County Superior Court since 1989.

For many years, during his assignment to the juvenile division, Commissioner Kliszewski permitted court staff members to routinely make offensive and inappropriate comments, some of which related to race, gender, and sexual conduct, in the courtroom when court was not in session. These remarks by staff members included a pattern of derogatory comments about parties and their family members who came before the court. Although the subjects of the remarks were not present, the remarks were made in the courtroom, often in the presence of Commissioner Kliszewski and other court staff. Staff members also made racial jokes and engaged in sexual banter in Commissioner Kliszewski's courtroom.

Commissioner Kliszewski reports that he spoke to the responsible staff members several times over the years to ask them to "tone down" their remarks. His actions, however, were insufficient to prevent the remarks from recurring.

Commissioner Kliszewski's tolerance of these remarks, by sometimes laughing at them and failing to take sufficient corrective action to stop them, violated his duty to be patient, dignified, and courteous to litigants and others with whom he deals in an official capacity, and to require similar conduct of his staff (canon 3B(4)), and his duty to require staff and courtroom personnel under his direction to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation in the performance of their official duties (canon 3C(3)).

Between 2010 and 2015, Commissioner Kliszewski made numerous insulting and derogatory remarks about a court interpreter to other court staff; some of these remarks were made in the interpreter's presence. In 2010, after questioning another court staff member and learning that the interpreter had reported to her supervisor that Commissioner Kliszewski had spoken harshly to her in the courtroom, the commissioner said angrily, "That c...! That f..... bitch!" On several occasions, Commissioner Kliszewski expressed sympathy for court staff who worked with the interpreter and spoke about the interpreter as though she was not present, when she was.

Commissioner Kliszewski's conduct in making profane and derogatory comments about a court interpreter to other court staff violated his duty to maintain and enforce high standards of conduct (canon 1), to avoid impropriety and the appearance of impropriety (canon 2), to be

patient, dignified and courteous to individuals with whom he deals in an official capacity (canon 3B(4)), to perform judicial and administrative duties without bias or prejudice or the appearance thereof (canons 3B(5), 3C(1)), and to conduct all activities so that they do not demean the judicial office (canon 4A).

Commissioner Kliszewski's conduct as described above was, at a minimum, improper action.

In determining to impose public discipline in this matter, the commission took into account Commissioner Kliszewski's prior discipline, imposed by the Alameda County Superior Court. In 2000, the court suspended Commissioner Kliszewski without pay for 120 days for misconduct during his judicial campaign, which included making misrepresentations in his campaign literature. In 1996, the court suspended Commissioner Kliszewski without pay for two weeks for discourteous and improper treatment of a female social worker who appeared in his courtroom. In both instances the court required Commissioner Kliszewski to participate in additional training.

Commission members Hon. Ignazio J. Ruvolo; Mr. Richard Simpson; Anthony P. Capozzi, Esq.; Hon. Michael Harper; Ms. Sarah Kruer Jager; Ms. Pattyl A. Kasparian; Dr. Michael A. Moodian; Nanci E. Nishimura, Esq.; Mr. Adam N. Torres; and Hon. Erica R. Yew voted for the Notice of Intended Public Admonishment. Commission member Ms. Mary Lou Aranguren was recused from this matter, pursuant to commission policy declaration 6.1.

Date: October 4, 2017