

COMMISSION ON JUDICIAL PERFORMANCE  
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FOR RELEASE  
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### JUDICIAL PERFORMANCE COMMISSION ISSUES DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT ON JUDGE LISA A. NOVAK

The Commission on Judicial Performance has publicly admonished Judge Lisa A. Novak of the San Mateo County Superior Court. The commission determined that it should issue a public admonishment to Judge Novak for failing to be patient, dignified, and courteous to a criminal defense attorney and making remarks that could reasonably be expected to impair the attorney-client relationship; failing to disclose improper ex parte communications received from her bailiff; and making improper remarks at a judges' meeting.

While presiding over a preliminary hearing in August 2015, Judge Novak made statements that the defense counsel was "extremely unprofessional," "unprofessional to this court," and "disrespectful to the court," and that defense counsel had had a "temper tantrum"—which appear to have been based, in part, on exchanges resulting from the judge's mistaken belief that the defense counsel had not moved to exclude witnesses, and later claimed that she had. Judge Novak also interrupted defense counsel's cross-examination of a witness with remarks that claimed the defense counsel was "disparaging of the witness" and "unprofessional to the witness." The judge made the remarks in open court and in the presence of the defense counsel's client. The commission concluded that the judge's remarks were discourteous and demeaning to the attorney in violation of canon 3B(4), and that several of the remarks could reasonably be expected to impair the attorney-client relationship.

In January 2017, Judge Novak heard a motion to dismiss in a case in which the central issue was whether a sergeant, who was her bailiff's colleague at the sheriff's office, had video-recorded the defendant's arrest on a cell phone. The sergeant denied such a recording existed. The defense presented a second cell phone video taken by a family member at the scene of the arrest depicting the sergeant holding a cell phone horizontally and appeared to record the arrest. Judge Novak's bailiff approached her outside of the presence of the prosecutor and defense counsel and said, "I think I may have seen that video," or words to that effect. Judge Novak told her bailiff she could not discuss the matter. Judge Novak did not disclose the communication from her bailiff to the parties. The judge's failure to disclose the ex parte communication constitutes misconduct as she had a duty to promptly notify the parties of the substance of the communication.

After the above-referenced hearing, Judge Novak attended a judges' meeting where she informed the courts' judges that she had made a finding that the sergeant perjured himself. Judge Novak described the motion hearing, stating that the sergeant had testified that he never made a

recording of the defendant's detention, despite the second video recording depicting him doing so. Judge Novak informed the court's judges that she had granted the motion because she found the sergeant's testimony to be not credible, and that she was providing this information to them as an "FYI," that they could do with it what they wished. Judges who were in attendance at the meeting could later hear proceedings in the case, including a writ petition or an appeal in the case. The commission found that Judge Novak's remarks to the judges at the meeting, made while the case was pending and when the sergeant was a potential witness in that case and in other pending and impending cases, constituted unauthorized ex parte communications not permitted by the exception allowing judges to consult with other judges, and also constituted comments that might substantially interfere with a fair trial or hearing.

In determining that a public admonishment is the appropriate sanction, the commission took into consideration that Judge Novak has been previously disciplined, and that Judge Novak engaged in three different incidents of misconduct, reflecting a lack of proper judicial demeanor and a failure to understand and appreciate the requirements and restrictions imposed upon judges by the Code of Judicial Ethics.

The public admonishment is available on the commission's website at <http://cjp.ca.gov> (under "Pending Cases - Press Releases & Documents" and "Public Discipline & Decisions") and at the commission's office. Judge Novak is represented by Attorneys James A. Murphy and Janet L. Everson of San Francisco.

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The commission is composed of six public members, three judges and two lawyers. The chairperson is Nanci E. Nishimura, Esq.

For further information about the Commission on Judicial Performance, see the commission's website at <http://cjp.ca.gov>.