

## PUBLIC ADMONISHMENT OF JUDGE ERNEST M. HIROSHIGE

The Commission on Judicial Performance ordered Judge Ernest M. Hiroshige 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

Judge Ernest M. Hiroshige has been a judge of the Los Angeles County Superior Court since 1982, and previously served on the municipal court beginning in 1980. His current term began in January 2013.

Judge Hiroshige has engaged in a practice of delegating his responsibility to conduct case management conferences to his court clerk. The judge has continued to engage in this practice despite the private admonishment he received in 2010 addressing, in part, such conduct.

Judge Hiroshige explained in his response to the commission in this matter that, after receiving his 2010 private admonishment, he posted a notice in his courtroom advising counsel and parties that he had reviewed all case management conference statements submitted and indicated to the clerk the range of dates that should be scheduled in each case. The judge's notice further advised that "[t]he clerk will meet & confer with counsel/parties and attempt to schedule dates in court that are agreeable to all parties," and that if there is any disagreement with the proposed dates and other entries on the proposed case management order, "please request to discuss the issue with the court." As noted in Judge Hiroshige's 2010 private admonishment, Judge Hiroshige's practice violates canon 3B(1), which requires a judge to "*hear and decide all matters assigned to the judge except those in which he or she is disqualified.*" (Italics added.) Improper delegation of judicial responsibilities to the court clerk constitutes misconduct. (See *Inquiry Concerning Judge Christopher J. Sheldon* (1998) 48 Cal.4th CJP Supp. 46 (*Sheldon*).)

Judge Hiroshige asserts that his case should not be compared to *Sheldon* because his conduct in delegating judicial duties is less serious than that of Judge Sheldon, who delegated his judicial authority to his clerk by, among other things, allowing his clerk to accept pleas and waivers of constitutional rights in misdemeanor matters. The *Sheldon* decision is not cited as a comparison of the facts of the two matters, but only as authority for the proposition that improper delegation of judicial responsibilities to the clerk constitutes misconduct.

In this matter, Judge Hiroshige allowed his clerk to conduct case management conferences. Case management conferences are scheduled proceedings at which attorneys and unrepresented parties are required to appear, with the expectation that issues in cases may be addressed in court by a judge. (See Cal. Rules of Court, rules 3.721, 3.722, 3.724.) The subjects to be considered at case management conferences are not limited to ministerial issues such as the setting of a jury trial date, but include a host of issues enumerated in California Rules of Court, rule 3.727, including what discovery issues are anticipated, whether discovery is complete, the nature of injuries, the amount of damages, and any additional relief sought. "At the conference, counsel for each party, and each self-represented party, must appear by telephone or personally

and must be prepared to discuss and commit to the party's position on the issues enumerated in C.R.C., Rules 3.724 and 3.727." (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment § 45, p. 69.) A case management order may, however, be issued on the court's review of the parties' written submissions when *the court determines that appearances at the conference are not necessary*, and when *the parties are notified that no appearance is required*. (Cal. Rules of Court, rule 3.722(d).)

Judge Hiroshige does not contend that it is his practice to notify parties that no appearance is required. Rather, Judge Hiroshige reviews the parties' written submissions, prepares written notes of his review for the case management order that address all the case management issues, and provides his notes to the court clerk for the clerk's use during the conference.

Judge Hiroshige's practice of having his clerk meet with parties and counsel and convey his decisions in court gives the appearance that the clerk, rather than the judge, is running the court. Further, the purpose of case management is "to secure the fair, timely, and efficient disposition of every civil case." (Cal. Rules of Court, rule 3.700.) Discussion between the court and parties or counsel at a case management conference can be effective in resolving issues that may not have been apparent from the written submissions, and, in that sense, an appearance before a judge at a case management conference can be more efficient and effective in terms of the disposition and management of a case than issuing an order without an appearance before a judge. Moreover, as noted in the private admonishment Judge Hiroshige received in 2010, a judge may not delegate judicial responsibilities to the court clerk.

Judge Hiroshige's conduct was, at a minimum, improper action and dereliction of duty.

Judge Hiroshige's 2010 private admonishment addressed the improper delegation of his judicial duties to the court clerk, as well as his abuse of the prestige of judicial office through his use of stationery and checks bearing his judicial title and address. The judge's prior discipline was a significant factor in the commission's decision to issue this public admonishment.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Anthony P. Capozzi, Esq.; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Sarah Krueger Jager; Ms. Pattyl A. Kasparian; Dr. Michael A. Moodian; Mr. Adam N. Torres; and Hon. Erica R. Yew voted to impose a public admonishment.

Date: October 24, 2018