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THE STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE JOHN T. LAETTNER No. 203	**ANSWER BY JUDGE JOHN T.LAETTNER TO NOTICE OF FORMAL PROCEEDINGS**

Comes now the Respondent, Judge John T. Laettner, and answers the Notice of Formal Proceedings as follows:

INTRODUCTION

Until these proceedings, Judge Laettner enjoyed a thirty-three year career in public service with an unblemished record. Judge Laettner notes this history because the timeline of events that led to these proceedings is of the utmost importance.

In December of 2014, Contra Costa Public Defender Robin Lipetzky took center stage at a televised rally, making statements that many took as accusations that local Contra Costa public officials and members of the judiciary were racist.

Since that time, Ms. Lipetzky has also taken a very public stance against the manner in which the judiciary in Contra Costa County implemented the County's pretrial bail program. In short, the stated purpose of the program is to streamline the decision-making process in questions concerning bail through the creation of bail reports that supposedly take into consideration a given individuals ties to the community and his or her ability to pay or "make" bail. Judge Laettner appreciates such factors and dutifully considers each when setting bail. However, Judge Laettner has noted that the California Penal Code specifically states that the court will also consider "safety to the public" as a statutory factor in setting, reducing or denying bail and how, curiously, this factor not considered in the preparation of the County's bail reports. (Penal Code section 1275(a).)

Aside from the fact that, per statute, the public safety factor "shall be the primary consideration" of the court, it was also noteworthy that the reports themselves were created by the Public Defender.

Unfortunately, in doing nothing more than raising a question of law regarding the factors considered by the bail reports, Judge Laettner found himself squarely in the crosshairs of not only Robin Lipetzky, but of her entire staff – specifically anyone appearing in Judge Laettner's department. In fact, Ms. Lipetzky's campaign against Judge Laettner is substantiated by a thoroughly documented paper trail of memos and letters that go back and forth between Ms. Lipetsky and her staff, in which she asks her attorneys to document and collect allegations against Judge Laettner.

It is under these circumstances, and only as a result of these circumstances, that Judge Laettner now finds himself facing disciplinary action for the first time in his distinguished thirty-three year career as a public servant.

COUNT ONE

Count One arises out of a collection of criminal matters for Defendant Stephanie Imlay dating back to at least 2017. Judge Laettner presided over a hearing involving five of Ms. Imlay's criminal cases on May 18, 2017.

Where the Commission separates other counts in this inquiry into subcounts to identify each allegation being made against the judge, here in Count One, the Commission appears to muddle allegations in varying degrees of specificity. Judge Laettner will thus do his best to respond to what he understands are the accusations of misconduct contained in the count.

First, Judge Laettner admits that he ordered Stephanie Imlay to be remanded into custody on May 18, 2017, and admits that he did so after making observations of Ms. Imlay's objective signs of intoxication, after inquiring about her well-being, and after requesting the court bailiff to examine the defendant to assess whether she was under the influence of a controlled substance as she clearly appeared to be.

The transcript of the proceedings on May 18, 2017 show that Judge Laettner remanded Ms. Imlay into custody for being under the influence of a controlled substance in court. From the very beginning of the court proceedings, Ms. Imlay's appearance and demeanor was such that the court was compelled to address Ms. Imlay's condition with her attorney, stating, "Ms. Della-Piana, your client doesn't look like she feels too well."

In spite of Deputy Public Defender Krista Della-Piana's comments that her client was capable of proceeding, Judge Laettner could not ignore the fact that Ms. Imlay was incapable of staying awake in the courtroom. DPD Della-Piana, unfazed by her client's condition, asserted that Ms. Imlay was prepared to enter a plea. However, given Ms. Imlay's appearance, her demeanor, and her inability to remain fully conscious in the courtroom, Judge Laettner had serious doubts about Ms. Imlay's ability to knowingly and voluntarily waive her rights as part of her plea agreement.

Of note is that that Ms. Imlay's next court appearance, DPD Della-Piana cagerly adopted the argument that her client was not in a state to enter a plea, in an apparent attempt to keep the district attorney from withdrawing a favorable offer.

Instead of relying solely on his own observations, Judge Laettner ordered that Ms. Imlay submit to a drug recognition examination. Sgt. Schiro conducted the DRE test outside of the courtroom in the presence of Ms. Della-Piana, at which time Ms. Imlay admitted to recent use of methamphetamine and opioids. Upon completing his examination, Sgt. Schiro came to the conclusion that Ms. Imlay was indeed under the influence of a controlled substance.

Further, according to court records, at the time of her May 18, 2017 court appearance, Ms. Imlay was on probation for committing the same Health and Safety Code violation, with drug testing included as a term of her probation.

In *People v. Bruner*, the Supreme Court of California held that a new law violation is an independent ground for incarceration based on an existing probation. "Not only has the parolee or probationer broken the law anew, but he has betrayed the conditional trust placed in him and demonstrated even before the prior brush with the law is complete, that he has not been deterred. The new crime also constitutes a basis for such restraint". *People v. Bruner* (1995) 9 Cal. 4th 1178.

To detain a probationer, the court must be satisfied that there is probable cause to support a violation of probation. *People v. Coleman*, 13 Cal. 3d 867, 895, 533 P.2d 1024, 1046 (1975).

> Usually a judicial determination of probable cause precedes the arrest of a probationer for violations of the conditions of his probation, and the formal revocation hearing with its full panoply of Morrissey procedural rights occurs relatively soon after the probationer has been deprived of his conditional liberty. (Id. at 894)

The court expressly found probable cause. Judge Laettner also set her bail at $25,000 in each case, in open court, and exonerated her prior bail.

In re Newbern (1961) 55 Cal.2d 500 is also squarely on point. In *Newbern*, the Supreme Court held there was no abuse of discretion for a judge to raise bail for a defendant who appeared intoxicated in court. In the *Imlay* case, as in *Newbern*, Ms. Imlay's impairment required postponement of the proceedings and constituted a waste of court time. The *Newbern* court held that it is within the court's province to fix bail in an amount which would not only give practical assurance that the defendant would attend in court when his presence was required, but also that he would then be in a state of sobriety to permit the court to promptly dispose of the matter.

Second, regarding the allegation accusing Judge Laettner of engaging in ex parte communications with Sgt. Schiro, the Sargent would testify that he made a statement in open court as to his findings that Ms. Imlay was under the influence of a controlled substance in violation of Health and Safety Code, section 11550 (being under the influence of a controlled substance). Judge Laettner also understands that, in fact, Sgt.

Schiro first informed DPD Della-Piana of his findings, before his statements in open court.

With such a determination placed before the court, in addition to Ms. Imlay's objective signs of intoxication, the court ordered that Ms. Imlay be remanded.

Third, it is alleged that the court remanded the defendant without exonerating, revoking, or increasing bail and, later, that the court took action after the hearing to have the minutes reflect that bail was exonerated and reset at $25,000. Judge Laettner denies these allegations. The minute orders were properly prepared and distributed to the parties in open court, and accurately reflected Judge Laettner's orders, also made in open court.

The offense committed by Ms. Imlay is a bailable offense. The court directed that the defendant be recommitted to bail in the amount specified ($25,000) in the recommitment order per Penal Code, section 1314 in open court, not after the hearing. The court may, by an order entered on its minutes, direct the defendant's arrest and recommitment to custody despite the defendant's prior posting of bail. *California Judges Bench Guide, Bail and Own Recognizance Release*, Section 55.42, Recommitment of

Defendant. And while it is true that the court initially stated that Ms. Imlay had previously been released on her own recognizance, the court corrected itself in open court and exonerated her prior bail, as the May 18, 2017 minute orders show.

In fact, the record shows that DPD Della-Piana corrected the court's mistake in open court. This correction alerted Judge Laettner that Ms. Imlay was indeed out on bail and not her own recognizance. To that end, Judge Laettner took notice that the bail amounts set in each case were on the very low side of the bail schedule. Judge Laettner also took notice of the fact that, by the time she had appeared under the influence of narcotics in court, Ms. Imlay's bail had been raised in the three misdemeanor cases by other judges for her failures to appear and for new offenses.

Even regular courtroom procedure in Contra Costa County criminal departments cut against the allegation that the minute orders in the *Imlay* matters were altered at the direction of the court. As courtroom clerks Sally Tigue and Chanel Castillo would testify, minute orders are filled out in triplicate, with a carbon copy of the original order immediately distributed to defense counsel at the conclusion of a matter. Courtroom bailiff Deputy Scot Reed would testify to the regular occurrence of this routine procedure

at the conclusion of every criminal matter. Given these procedures, any attempt by Judge Laettner to alter the minute order after a hearing would be futile, as such alterations would be missing from the copies previously distributed to the parties immediately after the case.

The transcript of the subsequent proceeding shows that, in fact, there was no issue concerning bail at all. DPD Della-Piana's sole point of contention in the aftermath of the May 18, 2017 hearing had nothing to do with bail, but rather, whether there was probable cause for the court to remand her client. In this case, the minute orders were properly prepared and distributed, reflecting that bail was exonerated and reset. DPD Della-Piana never raised the issue of bail because there was clearly no issue to raise.

It is no surprise that this allegation arises out of a disagreement about bail, the very issue that landed Judge Laettner in Ms. Lipetzky's crosshairs in the first place. As noted above, in setting bail, the court can look to the probability of the defendant's appearance at the trial or hearing. Penal Code, section 1275(a). Here, the history of failures to appear provided sufficient grounds to doubt that Ms. Imlay would appear at her next court date (court records showed that she already had at least five failures to

appear). Thus, bail was set at $25,000 in each of her cases and the matters were put over to the following Tuesday, May 23, 2017.

Fourth and finally, it is alleged that, at the subsequent court date on May 23, 2017, Judge Laettner engaged in an ex parte conversation with Deputy District Attorney Jun Fernandez regarding the *Imlay* matters. Judge Laettner denies that he had an improper ex parte discussion with DDA Jun Fernandez in connection with the Imlay matter. While Judge Laettner did have a conversation with Mr. Fernandez regarding Ms. Imlay outside the presence of DPD Della-Piana, however, it did not relate to any substantive issue in any of Ms. Imlay's cases and the only reason DPD Della-Piana had not been invited to participate was because of her apparent absence from the courtroom.

One of Ms. Imlay's matters involved her failed diversion in a case where she had been sentenced by another judge, in Department 29. Judge Laettner merely requested DDA Fernandez to schedule a misdemeanor deputy district attorney to attend to the diversion matter in Department 29 since there had been no Arbuckle waiver and as such it was required that sentencing relative to the failed diversion needed to go back to Judge Mills who had given sentence in the first instance.

The "meeting" with DDA Fernandez lasted approximately 30 seconds and Judge Laettner as well as DDA Fernandez confirm that the only "discussion" involved the scheduling of a case that, procedurally, the court could not handle.

Judge Laettner told DDA Fernandez that they would not discuss Ms. Imlay's cases, and merely arranged for the matter to be referred to Department 29 with an available prosecutor.

Judge Laettner recalls that following the meeting with DDA Fernandez, he returned to open court, saw DPD Della-Piana, and told her exactly what had occurred; that the matter of the diversion case was being returned to Department 29 for sentencing because, as DPD Della-Piana previously noted, there had been no Arbuckle waiver. When DPD Della-Piana became confrontational regarding the "meeting," Judge Laettner contacted his supervising criminal judge, Judge Teresa Canepa, who confirmed that it was permissible for Judge Laettner to discuss with Mr. Fernandez outside the presence of Ms. Della-Piana a scheduling matter involving the defendant.

Canon 3.B.7(b) permits a judge to initiate, permit or consider ex parte communications for scheduling matters so long as no tactical advantage results from the communication and the judge notifies the other parties of the contents of the communication. In this instance, there was no tactical advantage in the scheduling of the diversion case and DPD Della-Piana was advised of the nature of the discussion shortly after the discussion occurred. Judge Laettner told DPD Della-Piana that his discussion with DDA Fernandez merely related to scheduling another district attorney to appear in Judge Mills's courtroom because DDA Fernandez, as the courtroom-assigned deputy district attorney, was required to remain in Judge Laettner's courtroom.

As a general comment on Count One, for DPD Della-Piana's part, no writ was taken to have her client released, nor would it have been granted. As mentioned above, DPD Della Piana herself saw no cause to argue bail, but only the issue of probable cause to remand her client. Ms. Imlay simply had her bail increased for appearing in court under the influence of controlled substances. She was thus properly remanded. If she had not been remanded by the court, she would have been arrested by Sgt. Schiro, as he would so attest.

DPD Della-Piana knew what the court had done—she brought it to the court's attention that Ms. Imlay was not released on her own recognizance but on low bail. However, DPD Della-Piana also falsely represented to the court that Ms. Imlay had made all of her court appearances, when Ms. Imlay had in fact failed to appear at least four times in her several cases.

As this is the first allegation of many involving DPD Della-Piana, it is important here to note that DPD Della-Piana's veracity has been repeatedly questioned by other judges in Contra Costa County. In fact, it is common knowledge that several judges in Contra Costa County have taken to documenting the instances where it is suspected that DPD Della-Piana misrepresents facts or law, or omits pertinent facts when addressing the court.

COUNT TWO

Judge Laettner denies that he engaged in a pattern of undignified or discourteous conduct towards DPD Della-Piana, and certainly denies that any of his conduct could reasonably be perceived as sexual harassment or sexual discrimination.

A. After reviewing the discovery that was not made available to him when he was first asked to answer this allegation, Judge Laettner's memory has been refreshed and he now recalls a conversation involving the nature of DPD Della-Piana's style of argument.

Judge Laettner had numerous contentious hearings with DPD Della-Piana and, based on his review of the Commission's materials, now recalls making the alleged statements after one such hearing, which were words to the effect of "Sometimes having you in here is like having a teenage daughter – you constantly argue with me and you just keep talk, talk, talking until you get what you want" followed by "it's a compliment. Take a compliment." As alleged, Judge Laettner recalls that he wanted to make it clear to DPD Della-Piana that his comments regarding her inclination to argue points even after rulings had been made and objections noted was meant as a compliment.

As a long-time prosecutor at both the state and federal level, Judge Laettner has a respect for zealous advocates and wanted to impart that on counsel. Especially in the aftermath of a contentious hearing, Judge Laettner always took care to ensure that any raw feelings or emotions did not carry into the next case, and did so by acknowledging the inherently antagonistic nature of criminal proceedings and paying compliments when necessary and appropriate, as was the case here.

B. Judge Laettner cannot recall the specifics of the referenced hearing that took place on August 5, 2016. If Judge Laettner "winked" at anyone in his courtroom, it would probably be to acknowledge that person's attendance in the courtroom in order to alert the attorney that should remain in the department as the current proceeding was about to conclude. In other words, it was a signal that the attorney should not leave to start another hearing in Department 5 or 10, as was often the case.

This would be the only context in which Judge Laettner would even consider winking at another individual. Judge denies that he winked at anyone in court for any other purpose, and absolutely denies the allegation that he winked during the questioning of a witness in the middle of an ongoing proceeding.

Further, the transcript of the proceeding in question does not support the allegation that the Court made any such request that DPD Della-Piana approach the bench.

C. Judge Laettner does not recall this interchange. A common problem occurs when an attorney knowledgeable about the case has a stand-in – a substitute who is unfamiliar with the case. It appears that there was some confusion as to who was the actual attorney on the case and, once sorted, the matter was resolved.

Here, again, the transcript of the proceedings does not support the allegation. As alleged, Judge Laettner chose the next court date out of a desire to have DPD Della-Piana present, while the transcript correctly captures that the court chose the next court date given the availability on the court's schedule and based on information from the clerk that September 15, 2016, the date selected by the court, was the so-called "last day" to set the hearing without triggering the need for waivers from the parties.

D. Judge Laettner denies that he would have stopped a hearing to go out into the hallway of the courthouse to have a discussion with Ms. Della-Piana as alleged. Judge Laettner does have some recollection of the referenced case, *In re the Matter Eric B.* (No. J15-00781. Judge Laettner also recalls that he had a post-release discussion with DPD Della-Piana after he had set aside Eric B.'s sentence, but emphasizes the discussion only occurred post-release and post set-aside. Judge Laettner recalls that Eric B.'s release came after a lengthy period of incarceration following two felony convictions of auto theft and a misdemeanor conviction of assault with a deadly weapon.

Eric B. was held in the criminal justice system for a lengthy period of time while he underwent competency training. Judge Laettner believes that proceedings were suspended for approximately ten months and included competency training and hearings

regarding involuntary medication for schizophrenia. DPD Della-Piana made repeated demands during this period that Eric B. be released, even though he was already sentenced to a 12-month term at the Contra Costa County Orin Allen Youth Rehabilitation Facility. After it was determined that in all probability Eric B's competency was not going to be restored, Judge Laettner released him at ten months, 2 months short of the 12-month sentence out of concern for the minor's due process rights and fairness, as Eric B. had been transferred out of the Youth Rehabilitation Facility and into the juvenile detention facility.

While Judge Laettner does not recall the specifics of his conversation with Ms. Della-Piana, it certainly did not involve what is being characterized in Count 2 as conduct that would reasonably be perceived as sexual harassment.

As stated above, Judge Laettner recalls that the issue of Eric B.'s release was vigorously contested, and recalls that the topic came up with DPD Della-Piana after the sentence was deemed satisfied and he was released. Aside from his recollection that the discussion took place post-release, Judge Laettner also recalls that his part in the discussion was motivated purely by an effort to restore what had formerly been a collegial relationship with an attorney appearing before him and nothing else.

It was in this vein that Judge Laettner also recalls that he cited to his experience as presiding judge for Contra Costa County's Mental Health Court to impart that he was in no way unsympathetic to the mentally ill and was all too familiar with the horrors of mental illness. In fact, it is because of this experience that Judge Laettner denies that he would ever comment that mental illness was something that could be "fixed," or, that he knew how to "'fix' them."

Judge Laettner does not recall talk of a "happy" face or "cutting him slack." It is further alleged in Count 2(D) that Judge Laettner specifically invoked a female "family member who was mentally ill." Judge Laettner does not recall making this statement, and notes that, while he has a nephew who suffers from mental illness, he has no such female family members.

Judge Laettner makes every effort to maintain a collegial relationship with both the public defenders and deputy district attorneys appearing in his department. From his years as a prosecutor in both the state and federal criminal justice systems, Judge Laettner developed the belief that maintaining collegial relationships among the criminal justice partners is essential for the orderly administration of justice in criminal courts. All Judge Laettner's dealings with Ms. Della-Piana were for this purpose and this purpose alone.

E. Judge Laettner does not deny a conversation with Ms. Della-Piana regarding the *People v. Imlay* cases, but does dispute the accuracy, the context, and the spin of words attributed to him by the Commission and, presumably, the complainant, DPD Della-Piana.

Again, Judge Laettner believes that the orderly administration of justice mandates that he maintain collegial relationships with the deputy public defenders and the deputy district attorneys who regularly appear in his courtroom. In this regard, it was important for him to impart to DPD Della-Piana he did not want any acrimony to develop as a result of the *Imlay* cases that would interfere with the administration of the court or cause a concern that Judge Laettner was in any fashion prejudiced against the interests of any criminal defendant because of either Ms. Della-Piana's conduct or the conduct of the Public Defender's Office.

Judge Laettner specifically recalls that he told Ms. Della-Piana that there had existed "good rapport" in the past, and that there was no reason for that to end. He also recalls that the conversation included an explanation of the rule regarding ex parte communications, under which courts are permitted to discuss scheduling issues even if all parties are not present. He also told her that she was happier in juvenile court and that she

should consider a return to juvenile court. Juvenile court is held in the Walnut Creek courthouse, not the Martinez courthouse.

Judge recalls that he made a joke about getting spanked by your parents as a funny way to draw a diffusive end to a serious conversation. Judge Laettner also recalls that DPD Della-Piana reciprocated the joke in kind with her wry response that her parents "only spanked me once." After this exchange, Judge Laettner remembers that he inquired, "Are we good?" and that DPD Della-Piana responded that they were.

Finally, Judge Laettner even recalls that the two were able to shake hands at the very end of the conversation. Ms. Michel overheard the conversation and witnessed the handshaking.

F. Judge Laettner acknowledges that he has had several contentious hearings with DPD Della-Piana involving disputes between DPD Della-Piana and the District Attorney's Office as well as disputes with the court. Several of the deputy district attorneys interviewed by counsel for Judge Laettner noted that Ms. Della-Piana can be "difficult" and will "posture" in her cases. Judge Laettner understood that Ms. Della-Piana was "mad" at him and doesn't deny that he probably acknowledged that fact to Ms. Della-Piana.

Again, Judge Laettner has throughout his judicial career attempted to maintain collegial relationships with the deputy public defenders and deputy district attorneys appearing in his department and tries to convey that regardless whether counsel is mad at him he is attempting to discharge his judicial responsibilities appropriately. At worst, Judge Laettner was merely attempting to smooth over hard feelings directed at him by Ms. Della-Piana.

COUNT THREE

Regarding the matter *People v. Harlan Ventura* (No. 1-142819-2), Judge Laettner admits that he released Mr. Ventura on his own recognizance on October 31, 2013, to return to court on November 1, 2013, when a stand-in Deputy District Attorney, Mr. Martinez, was present. Of note is that the Ventura matter came to the court with a long and complicated procedural history due to the collateral issues arising out of defendant's difficulties with a sexual offender treatment program requirement and the fact that the Immigration and Customs Enforcement (ICE) had become involved in the case. Mr. Ventura's sexual offender treatment requirement arose out of Mr. Ventura having unlawful sexual intercourse and impregnating a 14 year old girl when Mr. Ventura was 22.

Judge Laettner OR'd the defendant due in large part to DPD Thomas's representations that the defendant could not pay the high fees charged by the sexual offender program and that the program counselors were treating her client unfairly. Judge Laettner would soon find out that, in fact, the program had previously lowered its fees to accommodate the defendant's financial situation and the defendant was, far from being treated unfairly, barely participating in the program himself.

When the matter was called on November 1 2013, there were in-chambers discussions with counsel, the court, and probation regarding Mr. Ventura's lack of effort in connection with his treatment program, as well as his dismissal from a second sexual offender treatment program. Judge Laettner was provided with the termination report from the program in which Mr. Ventura had been enrolled. Based on this information produced to Judge Laettner on November 1, 2013, he remanded the defendant on the probation violation even though he had previously OR'd him. It should be noted that the defendant was also in custody as of November 1, 2013 on an ICE hold. Judge Laettner denies the allegation that he revoked the defendant's OR release in the defendant's absence and without a hearing.

Ms. Thomas attempted to challenge Judge Laettner on November 1, 2013 pursuant to Code of Civil Procedure section 170.6 because Judge Laettner had expressed displeasure with Mr. Ventura's progress in the assigned program. Ms. Thomas' challenge to the court was not accepted by Judge Laettner because it was untimely under CCP 170.4.

When Judge Laettner reviewed the file on November 1, 2013, he noted the October 22, 2013 report by Mr. Ventura's treatment provider, the San Francisco Forensic Institute. The report showed that Mr. Ventura's participation in the sex offender treatment had been intermittent at best, that his motivation for the program had always been in question, that he was frequently late to appointments, and finally that he approached the program material in an indifferent manner. He had already been kicked out and banned from two sexual offender treatment programs. He had even bragged about recent sexual conquests in group therapy sessions. This was revealed when Judge Laettner reviewed Mr. Ventura's file on November 1, 2013, where the ultimate evaluation was that the defendant had done very little in the program. Ms. Miramontes, his probation officer, said he had "a terrible attitude and disruptive behavior."

After reviewing the report and discussing it with all concerned, all of which was new information to the court as of November 1, 2013, Judge Laettner did in fact remand

Mr. Ventura. With these facts, Judge Laettner denies that allegation that "the defendant was remanded, even though there were no grounds to remand the defendant." Judge Laettner even recalls Ms. Humiston asking in open court whether the defendant was remanded, to which the court clearly responded, "yes." Ms. Humiston also confirms that the court remanded the defendant based on the report.

The reporter's transcript of November 8, 2013 reveals that Judge Laettner noted on the record that Mr. Ventura had been irresponsible, had been kicked out of two programs, and that representations had been made to the court by the Deputy Probation Officer, Mr. Miramontes, the defendant's immigration attorney, Mr. Vaca, the Deputy Public Defender, Ms. Thomas, and the Deputy District Attorney, Ms. De Ferrari. Judge Laettner's remand of Mr. Ventura for violating probation was proper given the new evidence reflected in the report by the San Francisco Institute, along with discussion between counsel and probation, both of which took place before Ms. Thomas' filing of the challenge pursuant to CCP 170.6. DPD Thomas filed the 170.6 because of the imminent remand, not the other way around. The order for remand was done in open court.

A. These alleged comments were supposedly made nine to ten years ago. Because they are so inconsistent with the manner by which Judge Laettner conducts his courtroom, they are denied.

Judge Laettner was friendly with DPD MonPere because when Judge Laettner was a young boy, DPD Mon Pere's uncle, a doctor, treated Judge Laettner's hearing disability. That is essentially all Judge Laettner can recall regarding DPD MonPere and he certainly would have never uttered the words that are attributed to him in Count 4 regarding DPD MonPere having him "on a chain."

It should be noted that on two occasions Brookes Osborne, DPD MonPere's husband, brought his parents to meet Judge Laettner while he presided in a department at the Walnut Creek Courthouse of the Contra Costa County Superior Court. Judge Laettner recalls these two interactions but frankly, other than DPD MonPere's doctor uncle, Judge Laettner does not remember DPD MonPere well.

According to information received from the Commission, Brooks Osborne, another deputy public defender and DPD MonPere's husband, has some recollection of Judge Laettner commenting that DPD MonPere was the court's favorite attorney, but that the comment was made in a joking manner.

B. The allegation in paragraph 4(B) regarding a suggestive and inappropriate comment is simply wrong. Judge Laettner is familiar with DPD Kim Mayer's husband, DPD Oscar Bobrow. Judge Laettner recalls having tried a felon in possession of a gun case with DPD Bobrow and may have commented to DPD Mayer on that case. DPD Bobrow was admitted to the Bar in 1986, nine years before DPD Mayer was admitted in 1995. This count is drafted in such a way as to suggest that there was a considerable age difference between DPD Bobrow and DPD Mayer - making the alleged comment, "inappropriate". Nine years is not a significant difference in age. Judge Laettner did gain admission to the Bar about the same time as DPD Bobrow and if he did make a comment regarding DPD Bobrow's legal experience as being the same as his own, Judge Laettner was merely making a factual comment.

There will be testimony that DPD Mayer has a reputation for being dishonest in her dealings in the court as reflected by other Judges and court staff.

C. Judge Laettner admits that he addressed the issue of DPD Mayer repeatedly interrupting the court, not only in the *Pastega* matter, but other cases as well. Still, Judge Laettner denies that he ever addressed the longstanding issue through "unwelcome, undignified, discourteous, and offensive comments" as alleged.

Judge Laettner was selected to run the Behavior Health Court, and it was in this capacity that he came to preside over the *People v. Jacob Pastega* (No. 5-121870-0) matter. Jacob Pastega was an extremely mentally ill young man. Dr. Marty Wilson, who oversaw the behavioral court, and Mr. Pastega's father, Kevin Pastega, urged the court to keep the defendant in custody on his probation violation after having been terminated from a drug treatment program. The father's and Dr. Wilson's concern was that Jacob Pastega would take every drug imaginable when he was out of custody and neither wanted that very likelihood to occur in the event of a release. Dr. Wilson and Mr. Pastega both expressed appreciation of the manner by which Judge Laettner handled *People v. Jacob Pastega.*

Judge Laettner always provided DPD Mayer with an opportunity to speak and never held her in contempt, nor has he ever held anyone in contempt. *People v. Pastega* was only one of many hearings involving DPD Mayer where she would either interrupt the deputy district attorney or Judge Laettner while they were speaking. This was a constant problem and Judge Laettner brought the discourteous habit to DPD Mayer's attention on numerous occasions. The court had likewise advised DPD Mayer many times before to mind her habit of interrupting other parties. Of course, the portion of the reporter's transcript selected for inclusion in Count 4 contains no discourteous or offensive language,

and Judge Laettner recalls that, after bringing DPD Mayer's discourteous interruptions to her attention, the hearing ultimately ended on a positive note.

D. Judge Laettner denies that he discussed with DPD Wills-Pierce any alleged frustration with DPD Thomas and has no recollection of saying anything about DPD Thomas to DPD Wills-Pierce.

On the probation calendar over which Judge Laettner presided, the parties would regularly be tasked with reviewing 100 cases before the calendar was called. By that time, arguments had been made and settlement offers had been negotiated. It is therefore true that Ms. Wills-Pierce's presence would not necessitate a second review for the 100 plus cases.

Judge Laettner does not disagree that if he was upset with DPD Wills Pierce or raised his voice during a hearing as alleged, he would have issued an apology to her because she was a very competent attorney and a pleasure to work with on a daily basis.

E. Judge Laettner did tell DPD Nicole Herron that she bore a physical resemblance to character actor Caroline Catz from the public broadcasting television comedy show "Doc Martin." Judge Laettner disputes that he mentioned this to DPD Herron at least a "dozen times," but did make the comment and only made it in open court, off the record.

"Doc Martin" is Judge Laettner's favorite television program and he keeps an autographed copy of a photo of Ian McNeice, one of the actors in the show, in his chambers. Judge Laettner believes he referred DPD Herron to the show and she was curious enough to watch the show and report back to Judge Laettner. Judge Laettner's comment to DPD Herron was merely an aside and after reporting to him that she watched the show, Judge Laettner never made another comment to DPD Herron that she resembled Caroline Catz.

With respect to the complimentary statements attributed to Judge Laettner, while not recalling the specifics, he does not deny making those compliments. During the time he presided over the juvenile court, Judge Laettner believed and still believes that DPD Herron was the best attorney who ever appeared before him in that assignment. DPD Herron was a favorite attorney of Judge Laettner because she was always prepared, was courteous to the court and counsel, and showed a tremendous amount of respect to court staff. If every attorney behaved like DPD Herron, there would be much more civility in the legal profession today.

F. Judge Laettner does not specifically recall referring to Deputy District Attorney Devon Bell as "beautiful" or "lovely." However, Judge Laettner admits that he has

mentioned to a pool of perspective grand jurors that they were in good hands with DDA Bell.

One of Judge Laettner's duties in Contra Costa County has been his service as the presiding judge of the criminal and civil grand juries from 2010 to 2018. During that time, DDA Bell was one of the district attorney liaisons for the criminal grand jury. It was in this role that DDA Bell would often be the representative of the District Attorney's office tasked with escorting the jurors from Judge Laettner's courtroom to the District Attorney's Community Room where the grand jury would sit.

Judge Laettner recalls making the statement about DDA Bell being nice or "lovely" in the context of assuring the jurors that DDA Bell was a lovely person and that they were in good hands with her. It was in this assuring and familiar context that Judge Laettner disclosed that he had conducted DDA Bells wedding ceremony – a service he was honored to perform not only for DDA Bell, but for other local attorneys as well.

The statement Judge Laettner recalls making was after the grand jury was picked and while the jurors waited for a representative from the District Attorney's office to escort them to the District Attorney's Community Room. To the best of his recollection, Judge Laettner may have introduced DDA Bell as the nice or lovely person who would be

available to answer any questions about where to park and when to appear for the pending proceeding.

This statement was just prior to the jurors leaving the courtroom and going with DDA Bell to the Community Room. He doesn't believe it would have been recorded. He is positive that DDA Bell was not offended by the statement, given their good working relationship, and also, that the grand jury was not offended, as the court was merely assuring the jurors that they were in good hands. DDA Bell does not remember any comments regarding her being lovely or beautiful, and would testify that Judge Laettner was always professional and appropriate with her.

As previously stated, Judge Laettner is responsible for choosing the members of the criminal grand jury. No other attorneys or parties participate in this process. Judge Laettner goes through the qualifying/disqualifying questions, looking for bias, and also asks them to talk about themselves. Included in this are statements about their hobbies and interests, so that the judge has a better understanding of who they are and so the jurors can interact more comfortably with each other throughout their service as grand jurors. It was in this context that the topic of volleyball came up.

Judge Laettner has a limited knowledge and interest in that sport but was told by one of the jurors that her daughter was on a travelling volleyball team and that the sport took a lot of her time. Judge Laettner is friends with retired Judge David Flynn and knows that he played volleyball at U.C. Berkeley, and that his son, Doug, was a college and high school volleyball coach. Judge Laettner relayed this information to the juror and also mentioned that he had a cousin who played volleyball for Valpraiso University, Le Ann Laettner. Judge Laettner took up the subject of volleyball as part of his practice of speaking with each juror for a limited time about easy subjects so that they will feel comfortable about their experience and so that they would be more forthcoming with their answers to the more serious and personal questions that are a necessary, albeit uncomfortable, part of the voir dire process.

It was in this context that he made the off-the-cuff comment about DDA Bell being on the District Attorney volleyball team when she entered the room to transfer the jurors. Judge Laettner does not know whether she plays or played volleyball. Judge Laettner thought it would have been equally obvious to the jurors that the idea of a District Attorney volleyball team was absurd, and that his suggestion of the existence of such a team was a

joke. It was a light comment in reference to the discussion about volleyball that played out in front of the jurors as a group.

Judge Laettner recalls that he brought DDA Bell in on the reference with a quick description to her of what had just been discussed among the court and the jury pool.

In short, Judge Laettner's comment about volleyball was a topical reference to a discussion between the court and the jury pool, and nothing more.

Judge Laettner submits that the context in this and in all other allegations provided show that no reasonable person would have been offended by the words or manner of the court.

Judge Laettner trusts that he has provided sufficient context to assist the Commission in understanding that his description of DDA Bell was a comment meant to reassure the jurors that they were in friendly hands. DDA Bell would certainly so attest. The only reasonable interpretation the jurors would have had from the comment regarding DDA Bell is that the court was polite, that DDA Bell is competent, and, again, that they were in good hands.

Context is similarly important regarding the comment about volleyball. It was not a comment about DDA Bell—it was a topical joke based on a conversation about volleyball

in front of the entire jury that occurred soon before DDA Bell's arrival in the courtroom. It could have and would have been made no matter which Deputy District Attorney was responsible for the grand jury that day.

G. Judge Laettner does recall this exchange. He remembers asking DPD Emi Young if it was all right to ask about her heritage. DPD Young said it was acceptable and told Judge Laettner, in the presence of DDA Alex Barnett, that she was half-Japanese. When DDA Barnett commented that he "was European," DPD Young made a derisive joke about ethnic European heritage being "boring," but Judge Laettner chuckled at the barb but thought nothing about it. During the course of the conversation, Judge Laettner told DPD Young and DDA Barnett that his son was going to marry a Vietnamese woman and that they had asked him to perform the ceremony. Judge Laettner showed them both a family picture which included his future daughter-in-law.

Judge Laettner has never had a private conversation with DPD Young. He does recall in a pretrial conference, in the presence of a deputy district attorney, DPD Young telling them that her father had let her pet rabbit die. While Judge Laettner cannot recall the context in which the statement was made, he did ask her, out of curiosity relating to the rabbit's death, what DPD Young's father did for a living. DPD Young told Judge Laettner

that her father was a psychiatrist. The only personal information that Judge Laettner was provided by DPD Young was (1) she is half-Japanese, (2) she is from Omaha, Nebraska, and (3) her father, a psychiatrist, allowed her pet rabbit to die. Judge Laettner recalls that DPD Young seems to have invited questions regarding her personal life during dead times in pretrial conferences. A perfect example is a comment she once made about attending a Jewish religious event. Judge Laettner did not ask her any follow-up comments, merely noting that she had attended a religious event apparently outside of her own religion.

Judge Laettner never commented to DPD Young on her own appearance. He does not dispute that he had two friends in college who were one-half Japanese and one-half Italian, so he presumes the comment was made.

H. Judge Laettner cannot deny that he has ever assisted someone in trying to locate DPD Young since he was appointed to the bench in 2006. Given the fact that defense attorneys often have multiple matters on calendar in different departments on the same date and time, defendants often inquire about the whereabouts of their attorney with court staff, including the judge. Judge Laettner cannot recall the specific instance as alleged by the Commission, though Judge Laettner denies that he would have described anyone in a way that could be construed as inappropriate.

COUNT FIVE

A. It is alleged that Judge Laettner made unwelcome, undignified, and discourteous comments to court reporter Jennifer Michel. Allegedly, Judge Laettner made the statement "Well, you are hot" at some point in the year 2010.

Judge Laettner does recall making a diffusing comment along the lines of "well, you are hot," but not in the context alleged by the Commission. The context of the comment was an in-chambers discussion regarding a Pitchess Motion. Ms. Michele arrived in chambers ahead of the other parties involved. Despite Ms. Michel's extensive experience with such in-chambers discussions (the court had easily heard over a hundred such motions during Ms. Michel's assignment to the department), Ms. Michel awkwardly asked the judge if he wanted the other parties present or if he wanted her only to be present.

Thus presented with such an obviously awkward offer - to remain alone despite the obvious need for the presence of the other parties to the proceeding - Judge Laettner recalls trying to make a joke of the awkward situation created by the offer to remain alone by making the joke that, well she was hot, but let's do it the way we always do and bring in the attorney and the custodian of records.

Judge Laettner recalls that he has made comments like "you look nice today" or "you look pretty today" to court staff, including Ms. Michel, since taking the bench in Contra Costa County. Judge Laettner believes such comments to be nothing more than what they are, a courteous, if not generic, compliment.

Fortunately, Deputy Reed, the courtroom bailiff in Judge Laettner's department, can provide further context to the exchanges that did occur between Judge Laettner and Ms. Michel.

Regarding the alleged "I don't know how you do it" comment, Deputy Reed will testify that the judge has made the statement while addressing a group of school children visiting his courtroom (Judge Laettner believes such field trips are an invaluable educational experience and often invites classes to come and observe court proceedings). Deputy Reed will testify that, after describing the difficult nature of Ms. Michel's job, Judge Laettner often compliments her by saying, "I don't know how she does it." Judge Laettner also makes the same statement to jurors in explaining everyone's role in a jury trial. He has done this more than 450 times. Deputy Reed will testify that these comments were in no way related to Ms. Michel's appearance physically, sartorially, or otherwise.

Without proper context any comment, even an innocuous one, could be presented as inappropriate. Judge Laettner asserts, and his court staff, including bailiffs, would support, that he was always respectful and polite to Ms. Michel. The two enjoyed a polite, professional, and social relationship which likely included compliments to one another over the years. Ms. Michel along with other court staff attended Judge Laettner's annual Christmas dinners and lunches along with the frequent birthday parties arranged for staff.

B. Judge Laettner made the comment attributed to him, and as the record shows, it was a joke and was not to be considered as sexist in any fashion. He has also made comments to the effect that "children can drive you crazy," and sometimes to exasperated women "men can drive you crazy."

A review of the discovery in this matter refreshed Judge Laettner's recollection of the alleged incident. Judge Laettner has some recollection of being confronted by DPD Wills Pierce, and recalls that he apologized to her. However, Judge Laettner does not recall making a comment about being fired.

C. It was previously alleged that on December 7, 2015, in *In re Avery S.* (No. J13-01289), Judge Laettner made the following comment regarding Avery S.'s mother's (Ms.

Spandow) tattoos: "you're really pretty, you might want to get rid of those tattoos." A review of the transcript revealed that no such comment was recorded.

Regarding this *new* alleged statement, Judge Laettner admits that he discussed tattoos and did so in a perfectly acceptable manner, including addressing Ms. Spandow's interest in having them removed.

Recognizing how employers and others view tattoos as possibly reminiscent of gang-related or supporting activities, Judge Laettner, in the context of this juvenile dependency hearing, determined it was appropriate to discuss the issue of her tattoos with Ms. Spandow. Judge Laettner's comments were not disparaging, and not perceived as such by Ms. Spandow. The transcript bears out this fact. Judge Laettner has utilized a tattoo removal program through Probation for those defendants who want their tattoo's removed.

D. *In re the Matter of Vanessa W.* (No. J14-00233) involved, among other things, impaired driving by minors. Vanessa W. had appeared before Judge Laettner in truancy and juvenile courts. Her life had become chaotic following her father's death a few years before her first appearance in court. Judge Laettner believed that Vanessa W. was essentially a good young woman who had mistakenly followed down the wrong path of life. He tried to impress upon her that some of her actions could result in life-changing

events such as becoming critically disfigured if she were involved in another drunk-driving accident. Judge Laettner's statement was designed to get Vanessa W. to appreciate the potential serious consequences of her careless and reckless behavior.

Pertinent to an understanding of Judge Laettner's actions was Vanessa W.'s background. Her father had previously died and it is Judge Laettner's experience and that of other juvenile court judges that the death of a parent is a common thread in the juvenile delinquency and dependency courts. Judge Laettner placed Vanessa W. on probation.

Judge Laettner's decision to not remand Vanessa W. related to his knowledge of the minor and his knowledge of her and her family, including the fact that she had been on fugitive status and living with her sister in Stockton and was now back with her mother. Her mother agreed with Judge Laettner's decision and described to probation that Vanessa was a beautiful and nice girl. The mother was frustrated because of Vanessa's self-destructive behavior. Judge Laettner's comments to the new attorneys in the case were factual and designed to explain the situation so that both counsel would have a better understanding of who Vanessa W. was and the circumstances surrounding her troubled life. Juvenile court is much more about counseling and these new attorneys needed to know more about her.

Judge Laettner also thought and expressed that Vanessa W. would benefit from a mentor, but does not know whether she ever went through a mentoring process.

E. Again, this was a situation where Judge Laettner was attempting to explain to a young woman the serious consequences associated with foolish and dangerous activities, specifically drunk driving. Judge Laettner had presided over a case involving a young woman who was being sentenced for driving under the influence. This case was a defining moment for Judge Laettner. That defendant appeared before him in the Walnut Creek Courthouse and was crying uncontrollably during the hearing. In her DUI accident she had seriously injured herself as well as her friends and it was apparent that she was now disfigured because of that accident. It was a terrible situation and the defendant reacted accordingly. Judge Laettner related the case to DPD Thompson and Ms. Vanessa W. in the hope that she would take it to heart and never drink and drive again because of the horrible consequences that could occur. Judge Laettner considered this a teaching moment.

Life experiences or stories often enhance the message someone is trying to impact. The story of the disfigured minor was meant to drive home to Ms. Thompson what could, in reality, go wrong when driving while impaired.

F. The allegation regarding Thalia Hernandez has noticeably changed over the course of the Commission's investigation. In the beginning, the Commission stated that the alleged comments were made on a date where Ms. Hernadez's case was not on the court calendar. There was also an allegation that Judge Laettner made comments that the reporter's transcript proved were never made.

A review of the transcript made available to Judge Laettner proved that the allegation regarding "fat people" is provably false. It now appears that the allegation is that the alleged comments were not directed to Ms. Hernandez, per Count 5(F).

Judge Laettner has no recollection of drawing attention to someone as "fat" or carrying on a conversation about fat people and tattoos. No such comments are reflected in the record. Further, after a review of the discovery in this matter, Judge Laettner understands that neither Ms. Hernandez nor her attorney have any recollection of such comments from the bench.

COUNT SIX

A. Judge Laettner denies that he made any prejudgments in the matter of *In re Victor E.* (No. J15-00011), and asserts that the rulings he made were based solely on the facts made available to him by the parties.

On March 6, 2015, the court adjudicated Victor E.'s misdemeanor Vehicle Code, Section 10851 case and noted that the minor had been habitually truant, had run away, had gang affiliations, had cut off his ankle monitor and had gotten his girlfriend, also a minor, pregnant. The foregoing had been conceded by the defense at the time of the minor's disposition.

The court followed the recommendation of the parties and sentenced Victor E. to 120 days on home supervision, but warned the minor that the court had strongly considered a term at the Contra Costa County Orin Allen Youth Rehabilitation Facility ("the Ranch") given his conduct. The court ordered as well, that the minor's girlfriend, Erica N., a Welfare and Institutions Code Section 601 ward, was not to reside with the minor. (She was 15, pregnant by Victor E., and was not an emancipated minor, nor did her mother want her to reside at Victor E.'s home).

On May 31, 2015, Erica N. stayed the night at Victor E.'s residence. On June 2, 2015, Erica N.'s mother reported this to the court during truancy court. She was upset that

Erica N. had stayed there. This appeared to the court to be a violation of the court's order that Erica N. not reside at Victor E.'s residence. On June 2nd, 2015, the court set on its short cause calendar a "Violation of Court Order", and had his clerk, Lisa Humiston, notify counsel and probation and advise them of the basis of the violation. No written affidavit by Judge Laettner was included, but the parties were told by the clerk what had happened.

On June 4th the parties appeared, as ordered. At the outset of the court appearance, the court reiterated the purpose of the noticed court appearance. The court again identified the source of the facts giving rise to the alleged violation, and stated for the record the date on which he received the information and the manner and context in which it was received. Rather than prejudge the matter based on these facts, the court invited Deputy Public Defender Garth McCardle's input. It should be noted that the court had a good working relationship with Mr. McCardle and was interested in hearing the public defender's explanation or clarification of the situation. The court framed this by the question is "there any reason why Victor E. should not be remanded?"

Mr. McCardle responded that he understood that the court believed that its order had been flagrantly violated given the facts before the court, but that he didn't think this was the case.

He then had Victor E.'s father speak. Victor E.'s father stated that he understood that Erica N. was not supposed to spend the night at his home. But that he had talked with the minor's mother and the minor's mother allowed her to spend the night there because she didn't feel well. He added that Erica N. had slept on the couch.

As stated in prior responses to CJP on the Victor E. issues, the father was not fluent in English. The father did say that he understood that she can't spend the night there and that he can't violate the court's orders, and that he understood that violations of a court order could cause his son to be remanded into custody. The father promised that it wouldn't happen again.

Before the end of this hearing, which was short and informal with no witnesses being sworn, both Mr. McCardle and Victor E.'s father had ample opportunity to be heard. The court did not prejudge the matter, rather, as the transcript of the proceedings establishes, the court kept an open mind in receiving the arguments and explanation and ultimately decided that

Mr. McCardle and Victor E.'s father had adequately explained what happened. The court stated that no action would be taken. The court did not order any further, formal proceedings in the matter.

B. Judge Laettner's alleged reference to a "cultural thing" had nothing to do with the fact that the defendant was Hispanic. Victor E., the defendant minor, had indeed fathered a child with a 15 year old girl, Erica N., who was also a ward of the court. Erica N. was a subject of truancy and dependency proceedings in front of Judge Laettner. Victor E.'s parents had violated Judge Laettner's order that Erica N. could not live with the family and that she must live with her own mother. Both families spoke limited English. Judge Laettner denies telling Deputy Public Defender Kira Clement that Victor E. and Erica N.'s teenage pregnancy was a cultural thing. Teenage pregnancy is not cultural. Given the initial noncompliance by Victor E.'s parents of Judge Laettner's order that Erica N. could not live with the family, she being 15 and Victor E. being 17, absent legal authority, and that Erica N. and the baby would have to return to Erica N.'s home, Judge Laettner was of the belief that there were possibly "cultural influences" at play in Victor E.'s family, and asked the question, "Is this a cultural thing?" or words to that effect, in an effort to gain some better understanding of the various influences at work, including social influences, familial influences, peer influences, socioeconomic influences, to name a few. The deputy district attorney present said that the judge absolutely did not say that "it was a cultural thing." Judge Laettner wanted to understand why his order was not being followed. Ms.

Clement, Victor E.'s attorney, had no information to provide to the court. The court does not know what the culture of Victor E.'s family is. He was only trying to understand the family and what could possibly be going on.

In the end, Judge Laettner imposed no sanctions and the parties followed his second order, with Erica N. returning to her mother's house along with the baby.

COUNT SEVEN

Judge Laettner never attempted to coerce defendants to waive the constitutional right to a trial by jury. The court's plea offer, made after a conference with counsel for the prosecution and the defense, was intended for an early resolution of a case where appropriate and where all parties were in agreement. As in any plea offer, there was a benefit of some type to the defendant, but no defendant was encouraged by the court to accept the offer.

The fallacy in the Commission's allegation rests in the fact that his involvement in a pre-trial conference statutorily disqualifies him from hearing the trial in the same matter, as the judge reviewed the police reports. In effect, the judge could make no threat of a stiffer penalty where a pre-trial offer was rejected because his involvement in the pre-trial

disqualifies him from being the trier of fact at trial, thus divesting him of any sentencing power after a trial – a trial he could not conduct.

Judge Laettner conferenced with both the prosecutor and defense attorneys appearing in his department and jointly identified cases for early resolution. This was done on a case by case basis. This process was only implemented after Judge Laettner conferred with District Attorney Supervisor Ryan Wagner and Public Defender Supervisor Christopher Cannon. Also, both supervisors held their own special sessions with Judge Laettner to negotiate old case resolution pleas. Further, Judge Laettner conferred with both the criminal presiding judge, Judge Canepa, and presiding Judge Fannin before implementing these fire sale programs.

Again, the early resolution offers were largely limited to driving under the influence cases and driving on a suspended license cases where both the prosecution and defense agreed that there were no facts or legal issues in dispute.

Judge Laettner liberally granted pre-trial continuance requests. Judge Laettner does admit that he has made statements reminding both the prosecutors and defense attorneys appearing in is department that officers of the court should refrain from filing frivolous

motions. These reminders were meant to address the practice of attempting to obtain discovery information under the guise of motions to suppress.

Judge Laettner stands by his original statement that "no pleas were denied because of meritorious or even non-meritorious motions..." To further clarify his response, Judge Laettner certainly denies that he ever punished a defendant for invoking his or her constitutional rights.

The prosecution and the defense were equally free to reject such early resolution offers without penalty. Not a single defendant was penalized for pursuing a motion of any kind in their matter. Further, there were no early resolution offers in cases where the prosecution felt that such a disposition was inappropriate. Of note, there were several instances were either the prosecution or the defense rejected the early resolution offer. This was not on uncommon occurrence because all parties were free to accept or reject such offers without penalty.

Given the nature of the allegations, it bears repeating that Judge Laettner implemented a strict policy of requiring misdemeanor advisement of rights, waiver, and plea forms in every plea agreement executed in his courtroom to safeguard the constitutional rights of every defendant. Judge Laettner went even further by going through

each form with each defendant orally, on the record. Further still, Judge Laettner refused to accept any plea unless the defense attorney joined in the plea and verified that the client understood his or her rights and admitted a factual basis, was advised of the defenses, and was accepting the early resolution offer knowingly and voluntarily. Judge Laettner's safeguards appear to have been quite effective in protecting the rights of the defendants appearing before him given that no defendant has ever moved to withdraw any of these pleas.

COUNT EIGHT

Judge Laettner denies that he ever failed to disclose that his son was a deputy district attorney for Contra Costa County. His practice has been to announce the admonition to this effect at the beginning of each court calendar.

Regarding recusal, however, after a review of the discovery, Judge Laettner learned that, on one occasion, he presided over a matter where his son had previously appeared on an uncontested motion to continue pursuant to Penal Code, section 1050, in the *In re Lauryn G.* matter. This is not to say that Judge Laettner also failed to make his routine disclosure, he did, however, in reviewing the file, Judge Laettner missed that his son had indeed made an appearance in the matter. Had he noticed the pertinent minute order

identifying his son, Judge Laettner would certainly have recused himself. Though it is no excuse under the strict letter of the law, the same minute order passed through the judge previously handling the case, who nevertheless saw fit to assign the matter to Judge Laettner, and passed through DPD Karen Moghtader, the defense attorney assigned to the matter, who raised no objection.

Worth noting are the procedures and habits that Judge Laettner created to address this issue, which show that he was anything but sloppy or careless with his handling of the conflict created by his son's employment. The fact that it is just the one instance of an uncontested motion to continue that slipped through the cracks shows how dedicated Judge Laettner was to identifying and avoiding such conflicts.

For example, Judge Laettner implemented a procedural safeguard to ensure the parties before him were made aware of the disclosure regarding his son's employment. That safeguard involved Judge Laettner instructing his clerk to stamp the minute orders with the judge's disclosure.

When Judge Laettner was the felony law and motion judge, he instructed his son to notify his court of every motion he touched in the district attorney's office, even if he

did not sign it. Further, Judge Laettner dutifully recused himself wherever he saw that his son so much as filed the petition or complaint in a case.

COUNT NINE

A. Judge Laettner denies that he ever attempted to influence Deputy Public Defender Nicole Eiland to not exercise Code of Civil Procedure Section 170.6 challenges against him and further denies that he made any unwelcome, undignified, discourteous or offensive comments to DPD Eiland.

Judge Laettner is unaware if, as alleged, Ms. Eiland "began filing 170.6 challenges against 'you.'" Judge Laettner does recall that Ms. Eiland did, peremptorily, challenge Judge Laettner after he gave an indicated sentence of 60 days to a young man who had assaulted his mother. Because of the challenge, the case was referred to Judge Canepa, who gave the young man a 270 day sentence.

The allegations in this count apparently occurred nine years ago. Suffice it to say that Judge Laettner can state with great assurance that he never discussed any sentencings with any public defender that could have constituted or have been viewed as an ex parte

communication. Judge Laettner has never attempted to influence Ms. Eiland, nor any other public defender, to refrain from exercising challenges against him.

Judge Laettner did tell DPD Eiland to consider victims. The judge had received two awards from the Justice Department for his work with victims, he even walked a murder victim's widow down the aisle when she remarried years later. In asking DPD Eiland to consider the victim in a given case, he did not use graphic language as to her friend's anatomy, only that she might consider what it would have been like for a friend or relative to be a victim.

B. Judge Laettner does not deny that public defenders Matthew Cuthbertson and Brooks Osborne attempted to discuss challenges pursuant to Code of Civil Procedure section 170.6 with him. However, Judge Laettner denies that he initiated the conversation and that he ever asked a district attorney to leave the judge's chambers.

Although the alleged conversation took place ten years ago, Judge Laettner remembers the alleged conversation clearly, in part because he felt uncomfortable when the public defenders brought up the topic of their challenges. Judge Laettner immediately cut off the conversation and cautioned both attorneys that he was not allowed to comment on such motions. Judge Laettner had a long and accomplished career as a trial attorney

before his appointment to the bench, and was well aware that it is inappropriate for a judge to comment in any way on a challenge, even if the subject is raised by the party filing the challenge, as was the case here. It is noteworthy, however, that there were no challenges pending.

Judge Laettner does admit the allegation that he informed both attorneys that they should represent their clients to the best of their abilities, including filing challenges against a judge if they thought that it was in the best interest of the client. This was the extent of Judge Laettner's comment regarding the challenges.

Judge Laettner also denies that he referred to DPD MonPere's breasts during the alleged conversation with DPD Cuthbertson and DPD Osborne. Judge Laettner recalls the public defenders raising the issue of the sentencing in *People v. Hector Ignacio*, No. 1-134486-1. Judge Laettner clearly remembers asking the public defenders to consider the victim in the *Ignacio* matter. Judge Laettner inquired if the public defenders would have a different view on the sentencing if the victim had instead been a loved one or someone they knew personally, and used their colleague, DPD MonPere, as an example. This is the extent of Judge Laettner's comments about DPD MonPere. DPD Osborne, her husband does not even remember this conversation, as it was ten years ago.

The evidence in this matter establishes that Judge Laettner did not violate Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), 3B(7), or 3C(1).

PRIOR DISCIPLINE

None.

CONCLUSION

It is respectfully submitted that in the interest of justice this formal proceeding against Judge John T. Laettner be dismissed.

DATED: October 4, 2018 MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy
Janet L. Everson
Joseph S. Leveroni
Attorneys for Judge John T. Laettner

VERIFICATION

I, John T. Laettner, declare that I am the Responding Judge in Inquiry No. 203, that I have read the foregoing Answer, and know the contents thereof, that I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 10/4/18

John T. Laettner
John T. Laettner

CERTIFICATE OF SERVICE

I, Alice M. Kay, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On October 4, 2018, I served the following document(s) on the parties in the within action:

RESPONDENT JUDGE JOHN T. LAETTNER ANSWER TO NOTICE OF FORMAL PROCEEDINGS – INQUIRY NO. 203

X	**VIA MAIL:** I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as shown below.
X	**VIA E-MAIL:** I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is AKay@mpbf.com/IHernandez@mpbf.com.
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the addresses listed below.

Janice M. Brickley, Legal Advisor
Commission on Judicial Performance
455 golden Gate Avenue, Suite 14400
San Francisco, CA 94102
filings@cjp.ca.gov

Via Electronic Filing Followed by Mail

Mark A.Lizarraga, Esq. Trial Counsel
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Via Email Followed by Mail

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on October 4, 2018.

By _____
Alice M. Kay