

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE ROBERT L. TAMIETTI

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT
PURSUANT TO STIPULATION
(Commission Rule 116.5)

This disciplinary matter concerns Judge Robert L. Tamietti of the Nevada County Superior Court. On August 24, 2020, Judge Tamietti and his counsel, David S. McMonigle, Esq., entered into a stipulation with Director-Chief Counsel Gregory Dresser, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Tamietti by the imposition of a public admonishment and the judge's agreement to retire and not to serve in a judicial capacity in the future. Judge Tamietti has tendered his retirement from judicial office, effective October 31, 2020. The Stipulation for Discipline by Consent was approved by the commission on October 7, 2020, pursuant to the following terms and conditions and stipulated facts and legal conclusions. A copy of the stipulation is attached.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Tamietti.
2. The commission shall issue a public admonishment based on the agreed Stipulated Facts and Legal Conclusions set forth herein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing a public admonishment may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.

5. Judge Tamietti waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. On July 27, 2020, Judge Tamietti tendered his retirement effective October 31, 2020 through written correspondence to Governor Gavin Newsom. A copy of that letter is attached hereto as an exhibit and incorporated by this reference. Judge Tamietti shall use accrued vacation or other leave time, and shall be absent from the bench and not preside over any judicial proceedings after September 11, 2020. Judge Tamietti represents and warrants that he has sufficient vacation/leave time to be absent from the bench between September 12 and October 31, 2020, inclusive, and that his presiding judge will allow him to be absent during that period.

7. Failure to comply with the terms and conditions of this agreement may constitute additional and independent grounds for discipline.

8. Judge Tamietti has agreed not to seek or hold judicial office, or accept a position or assignment as a judicial officer, subordinate judicial officer, or judge pro tem with any court in the State of California, or accept a reference of work from any California state court, at any time after October 31, 2020.

9. If Judge Tamietti attempts to serve in a judicial capacity in violation of the foregoing paragraph, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters.

10. Judge Tamietti agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is acceptable in light of those facts.

11. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted or conceded by the parties.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a public admonishment on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions.

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Robert L. Tamietti became a judge of the Nevada County Superior Court in 2003. His current term began in January 2019.

I. People v. Anthony Coronado-Smith, No. TF19-000233

A. Pre-charge conduct

On June 19, 2019, Judge Tamietti signed a warrant for the arrest of Anthony Coronado-Smith on a violation of Penal Code section 647.6 (annoying or molesting a child), which is a misdemeanor. The judge set bail at \$7,500, but did not impose any bail conditions. Mr. Coronado-Smith was arrested on the warrant later that day. After interviewing Mr. Coronado-Smith, a Truckee Police Department officer executed a request to increase bail to \$150,000. Judge Tamietti telephonically authorized the request, but did not impose any bail conditions based on his expectation that Mr. Coronado-Smith would not post bail and would appear for arraignment within 48 hours of his arrest. On June 20, 2019, Mr. Coronado-Smith posted bond and was released, and was given an appearance date of September 30, 2019. No charges were filed.

On June 21, 2019, Judge Tamietti sent Deputy District Attorney (DDA) Anna Tyner an email that stated, "Who is the DA on this child molest case? He bailed (to 9/30/19) and we need to get him in more quickly for bail conditions." The subject line of the email stated, "Tony Coronado-Smith."

On June 24, 2019, at 9:50 a.m., DDA Edward Grubaugh sent Judge Tamietti an email, stating, "It will be my case, Your Honor." At 9:53 a.m., Judge Tamietti responded to DDA Grubaugh, stating, "Thank you. [¶] He posted bail to

September. I want to see him before then to impose bail conditions. [¶] Judge T.” At 2:34 p.m., DDA Grubaugh sent the following response: “I will do my best to bring him into court as soon as we make a filing decision, Your Honor. As of now, unfortunately, I have no reports to review.”

On September 4, 2019, Judge Tamietti sent DDA Grubaugh an email, with a subject line of “Coronado-Smith [*sic*],” stating, “We still have not seen a complaint on this case. What is up?” On September 6, 2019, at 11:37 a.m., DDA Grubaugh responded, “Further investigation and questions were taking place in the background. I am meeting with Truckee PD next week.”

On Friday, September 6, 2019, at 12:25 p.m., Judge Tamietti emailed DDA Grubaugh, District Attorney (DA) Clifford Newell, Assistant District Attorney (ADA) Christopher Walsh, and Presiding Judge Linda Sloven, stating:

He bonded out on June 20 and has been free without any conditions since then despite facing child molestation charges and having an extensive occupational and avocational history of dealing with minors. This level of “service” is far below what the citizens of this community expect and deserve.

At 3:07 p.m., DA Newell responded as follows, while adding Truckee Police Department Chief of Police Robert Leftwich as a recipient:

Good afternoon Judge Tamietti: [¶] Please do not try to influence my Office’s filing decisions. You have no idea what is going on in the case nor should you. A rush to filing could very well jeopardize a case and result in serious injustice. You can be assured the “level of service” to the citizens of Truckee is extensive and DDA Grubaugh is appropriately handling the matter. [¶] Regards, Cliff Newell

At 4:33 p.m., Judge Tamietti responded, as follows:

Baloney. When the inaction and/or inattention of your office or any other agency puts this community at risk I have a duty to speak up. If that offends you in this circumstance, so be it.

While Judge Tamietti was not aware that Mr. Coronado-Smith had retained counsel on or before July 10, 2019, until after the above referenced e-mails, he did not include Mr. Coronado-Smith on the communications.

Judge Tamietti's conduct conveyed the appearance of bias against the Nevada County District Attorney's Office. The judge intruded into the charging authority of the executive branch of government, and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter. The judge violated his duties to avoid impropriety and the appearance of impropriety (canon 2); to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A); to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)); to refrain from speech or conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)); and to not initiate, permit, or consider ex parte communications (canon 3B(7)).

B. Improper Response to Filing of Peremptory Challenge

1. On September 19, 2019, DDA Grubaugh filed a felony complaint in *People v. Anthony Coronado-Smith*, No. TF19-000233, and an "Invitation to the Honorable Judge Robert L. Tamietti to Recuse Himself." The "Invitation" attached the emails that are quoted above, and requested that the judge recuse himself to protect the rights of the defendant and ensure public confidence in the judiciary. Attorney Grubaugh stated in the "Invitation" that "[t]he People do not believe Judge Tamietti holds actual bias in this case." On the same day, Judge Tamietti filed a "Response Regarding People's Invitation to Recuse." The response stated that the "Invitation" did not set forth grounds that would require the judge to disqualify himself.

On September 24, 2019, DDA Grubaugh timely filed a peremptory challenge against Judge Tamietti pursuant to Code of Civil Procedure section 170.6. The peremptory challenge, which DDA Grubaugh signed under oath, stated that Judge Tamietti was prejudiced against the People of the State of California. Instead of allowing the case to be reassigned as required by Code of

Civil Procedure section 170.6, subdivision (a)(4), Judge Tamietti questioned DDA Grubaugh about the challenge, suggested that he may have committed perjury, advised him of his Fifth Amendment right to remain silent, and alluded to a possible inquiry by the State Bar.

Judge Tamietti's conduct conveyed the appearance of retaliation for filing the peremptory challenge, and the appearance of attempting to improperly influence a deputy district attorney in the exercise of the People's statutory rights. The judge's conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2); to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A); to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)); and to refrain from speech or conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

2. Instead of notifying Presiding Judge Linda Sloven of the peremptory challenge in *Coronado-Smith*, for the purpose of case reassignment, Judge Tamietti improperly chose the successor judge, who had served as a visiting judge in Truckee on occasion, in violation of Code of Civil Procedure section 170.6, subdivision (a)(4). Judge Tamietti thereby violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to respect and comply with the law (canon 2A), and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A).

II. *People v. Anthony Torres*, No. T13/0408

Anthony Torres was charged in a criminal complaint with three felonies: (1) assault with a deadly weapon (Penal Code § 245(a)(1)), (2) battery with serious bodily injury (Penal Code § 243(d)), and (3) street terrorism (involving active participation in a criminal street gang) (Penal Code § 186.22). The alleged assault occurred as a number of people were leaving a late night party, and the victim was seriously injured.

On August 20, 2013, Judge Tamietti presided over the preliminary hearing. At the outset of the hearing, the judge granted the prosecutor's motion to dismiss the counts of assault with a deadly weapon and street terrorism. The hearing proceeded with the prosecutor calling numerous Truckee Police Department (PD) officers, who testified about their interviews of percipient witnesses, and the defense calling a single eyewitness. There was conflicting evidence as to whether the defendant was involved in the alleged assault, including the eyewitness's testimony that she was certain the defendant was not involved because he was wearing a bright white shirt and those involved were wearing dark clothing. Judge Tamietti concluded that there was sufficient evidence to hold the defendant to answer on the one remaining count, battery with serious bodily injury.

On February 11, 2014, DA Newell appeared before Judge Tamietti to request dismissal of case number T13/0408. DA Newell asked that the case be dismissed because it could not be proved beyond a reasonable doubt, due to tainted witness statements. Judge Tamietti asked how much "DA investigator time" had been expended on the case. (R.T. 4:1-2.) DA Newell stated that a DA investigator had not been used, because the Truckee PD had not requested assistance. Judge Tamietti then stated, "And it's been my experience that recantation isn't all that uncommon in cases; we see it in the DV [domestic violence] situations quite frequently." (R.T. 4:18-20.) DA Newell stated that, in addition to two recanting witnesses, there was a third witness who testified that the defendant was at least 10 feet away from the altercation. DA Newell also stated that there was subsequent testimony of "white-dressed figures" running away after the incident. Judge Tamietti then stated:

Well, the testimony at the preliminary, as I recall, was the only person who had white on was Mr. Torres and that was how one of the witnesses testified that Mr. Torres wasn't in the scrum because according to that

witness, everybody in the scrum was wearing dark clothing.

(R.T. 5:16-20.)

DA Newell responded that an additional person had been seen running. In response, Judge Tamietti stated:

I got a couple of problems here with this file. One is I have got a victim beaten within an inch of his life who thankfully survived.

Two, I have got this insinuation, I'll call it, of gang activity, which is a cancer that seems to be working its way into this community and to which most of the citizens of the community are oblivious. Sitting where I sit doing what I do, I'm a little less oblivious than average to that.

And there was enough of an insinuation of gang involvement in this circumstance that it initially got charged as a gang case. And then the gang aspects of the case got dismissed, for whatever reason, some of which is attributable to your assistant DA's statement that we are not, meaning you, are not prepared to try a gang case.

And I think the citizens of this community are probably ready to have a gang case tried for a couple of reasons: One, to figure out, if in fact, that's true; and two, to educate the community about the risks that are inherent in that insinuation into the society of this community.

So I heard the preliminary. I remember what was said. And I haven't seen the investigative work that the defendant's investigator, for which I have signed a couple of orders, has performed, I don't know what they say. I'm at a little bit of disadvantage there.

But the mere fact that people are not getting their stories straight or recanting their stories, there is a lot of different reasons that might be happening in a case that has gang insinuation.

I'm not suggesting that I have any evidence of [*sic*] Mr. Torres, or any of his cohorts are pressuring witnesses,

but I don't think that's a naive thing to assume that might be happening and might be an explanation for the result of some of the investigative works performed by the defense.

I would point out, which is my question to you, was whether your office had expended any investigative resources on this file? I don't see Womack or Lopez here, so I don't know what their views are on that subject.^[1]

I'm also increasingly concerned, Mr. Newell, about the impact on this community about the absence of an assigned DA. You and I have spoken about that and I know you have tried and Ms. Ferguson has tried to fill the breach here . . . but it's not getting filled, and this community is suffering as a result, and we need to put a stop to that suffering. The citizens on this side of the pass are entitled to the same level of services as the citizens on the other side of the pass, and they're not getting it. And I'm pretty annoyed that – and it puts me in a pretty tough situation because I have to assert myself into cases where I shouldn't be responsible for doing that – but I have had to, and I have, and this is one of those cases in my view, I think no one has really picked up this ball and run with it as if it were their responsibility, and that's my primary problem with this pitch. I think it's a slipshod “let's get rid of this because it's going to be hard to try,” and that's not a good reason to get rid of a case that's this serious, both to Mr. Torres and to the victim of the case.

(R.T. 5:28-8:1.)

DA Newell stated that being on the record was not the appropriate context to discuss personnel issues, to which the judge stated:

Hang on a second. I'm not talking personal [*sic*] issues. I'm talking about staffing of this branch, and that has nothing to do with a personal [*sic*] decision, that has to do with the service of citizen [*sic*] to this community. [¶] I'm not telling you how to run your office. What I'm

¹ Sergeant Robert Womack and Detective Arnulfo Lopez worked for the Truckee PD and testified at the preliminary hearing.

telling you is the way it's being run up here is negatively affecting the operation of this branch and the citizens of this community.

(R.T. 8:9-16.)

DA Newell provided more details regarding the decision to move to dismiss the case, how the case was investigated, and his efforts to fill vacant DDA positions in the county. Judge Tamietti then questioned a victim witness advocate in the following exchange:

THE COURT: Has he [the victim] indicated to you that he's getting any pressure?

VICTIM WITNESS [ADVOCATE]: No, not at all.

THE COURT: Has he indicated to you that he's aware that any of the people, who he has identified as potential witnesses, are getting any pressure?

VICTIM WITNESS [ADVOCATE]: No, he has not indicated that at all.

THE COURT: Okay. Has he provided a -- any additional information about potential witnesses for the case, to you, Shea?

(R.T. 10:19-28.)

The victim witness advocate responded that the victim had given a list of names to the attorneys. Judge Tamietti questioned DA Newell repeatedly about the status of follow-up reports concerning the list of names. After hearing arguments for dismissal, Judge Tamietti stated:

Well, I would observe that having been the felony judge on the other side of the county for five years, before I got this assignment, that had this crime happened in [the] Safeway parking lot of Grass Valley, it is my impression that a whole bunch more of resources would have been thrown at this case than would have been thrown at this one.

If Mr. Torres was improperly charged, he deserves an apology. If he was properly charged, we ought to take the case to trial and let a jury of 12 citizens of this

community decide whether or not witnesses who are recanting, have been pressured into recanting.

I have some live testimony at the preliminary and most of it was 115^[2] from Detective Lopez, so I can't make any real independent assessment about those people's statements given to Detective Lopez and Detective Lopez isn't here to amplify on that. So I'm put in the very uncomfortable situation of not doing what I think is my best to protect the citizens of this community, which is the principal reason they gave me this job in the first place.

So I don't like the spot I'm being put in here, Mr. Newell. And I credit my disgust, in large part, to your office and its handling of this file. But I'll grant the motion without prejudice, dismiss the case, in return for his plea to the dead bang we found you with drugs indicia for sale.

(R.T. 14:28-15:25.)

Judge Tamietti then asked the defendant if he had a tattoo of Marilyn Monroe on his arm. When the defendant admitted to having the tattoo, Judge Tamietti asked DA Newell if he had any idea what it meant. DA Newell stated that the tattoo was potentially gang-affiliated, but that it could not be proved. Judge Tamietti then responded, "That might go along with the 13 that's on his chest." (R.T. 16:5-6.)

Judge Tamietti's conduct, as described, was discourteous, conveyed the appearance of embroilment, bias against the DA's office, and prejudgment, and suggested that the judge had assumed a prosecutorial role. Judge Tamietti's conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2); to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A); to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)); and to refrain from

² Proposition 115 amended the constitution to allow hearsay evidence to be presented by qualified officers at a preliminary hearing.

speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

III. Email disparaging District Attorney Newell

On Monday, February 24, 2020, at 9:56 a.m., DA Newell sent an email to Nevada County Superior Court Judge Robert Tice-Raskin with the subject heading, "KNCO article." The subject of the email was a radio interview of an attorney in the DA's office who had made comments about Senate Bill 10 (pretrial release and detention), and Penal Code section 1320.10 (pre-arraignment review), that DA Newell indicated had been taken out of context. The email stated:

Good morning Judge,

Hope you had a good weekend. Have you had a chance to listen to the whole interview in question? Chris had no idea how or what was excerpted from that interview. From my view he spoke negatively about another state's (there's a couple) well documented reform failure but [*sic*], followed with how it has given us opportunity to better craft ours. Not mentioned by the article is how judges need all the info, how it's incumbent on us to provide some of it and, Probation's role in completing the assessments thoroughly. Given the radio show in its entirety, I can't hold him to task for a reporter's inarticulate description or headline taken out of context.

That said, I believe he could be more articulate on my Office's policy as it relates to SB10/ 1320.10, which is support. I will make that clear publically [*sic*] and, I will make sure, if he has any more public speaking, he uses the correct talking points. I am going to be on the radio myself later this week talking about it as well. I'll let you know when that is when I find out. I'm available all week if we need to discuss further.

Thank you, Cliff

On February 24, 2020, at 10:50 a.m., Judge Tice-Raskin responded with an email addressed to DA Newell, and copied to all other Nevada County Superior Court judges, including Judge Tamietti. The email stated:

Mr. Newell,

I have forwarded your thoughts to the whole bench. We will be in touch. Thanks.

SRT

On February 24, 2020, at 1:15 p.m., Judge Tamietti responded to Judge Tice-Raskin's email with an email addressed to DA Newell and to all other Nevada County Superior Court judges. The email stated: "So if he was so horribly misquoted, why hasn't he tried to get it corrected? More fecklessness from Newell."

February 24, 2020, is also the date on which Judge Tamietti submitted his response to the commission's preliminary investigation letter dated December 6, 2019.

Judge Tamietti's conduct, as described, was discourteous, and conveyed the appearance that the judge was biased against DA Newell. Judge Tamietti's conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2); to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A); to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)); and to refrain from speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

Judge Tamietti's conduct, as set forth in parts I-III, above, constituted, at a minimum, improper action.

Judge Tamietti has volunteered significant amounts of time to understaffed surrounding courts, and has taught at New Judges Orientation and judicial continuing education programs.

Judge Tamietti's misconduct was aggravated by the judge's prior discipline. In 2019, Judge Tamietti received an advisory letter for discourteous remarks about an attorney who was appearing before the judge in a civil case. The advisory letter noted that the judge's conduct, which occurred in 2018, was aggravated by the fact that, in 2017, he had participated in the commission's mentoring program to address demeanor issues.

DISCIPLINE

Judge Tamietti's misconduct reflected a loss of the neutrality required of judicial officers. His actions created the appearance of bias against the local district attorney's office, which undermines public respect for, and confidence in, the integrity and impartiality of the judiciary.

Judge Tamietti's intrusion upon the charging authority of the district attorney's office and his usurpation of the prosecutorial role was inconsistent with a judge's role of neutral arbiter. The court must not undertake the role of prosecutor or defense counsel if public confidence in the integrity of the criminal justice system is to be maintained. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 845.)

Judge Tamietti's questioning of a deputy district attorney regarding the filing of a peremptory challenge, filed pursuant to Code of Civil Procedure section 170.6, further reflected a loss of neutrality. The judge's reaction to the peremptory challenge appeared to be an attempt to improperly influence the deputy district attorney and to be retaliatory. A judge must accept a proper peremptory challenge without further inquiry. (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 532.) "Any conduct by a judge that amounts to retaliation for the exercise of a lawful right amounts to judicial misconduct." (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7:12, p. 405.) The judge also failed to comply with Code of Civil Procedure section 170.6 by choosing a successor judge to handle the case, rather than

advising his presiding judge about the peremptory challenge so that the case could be reassigned.

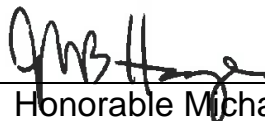
Judge Tamietti also engaged in improper ex parte communication and in behavior that was discourteous and conveyed the appearance of bias, embroilment, and prejudgment.

The commission's determination to resolve this matter with a public admonishment and to forgo formal proceedings and the possible imposition of higher discipline was conditioned upon Judge Tamietti's agreement to retire and not to serve in a judicial capacity in the future. The commission concluded that this resolution adequately fulfills its mandate to protect the public from further possible misconduct.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Kay Cooperman Jue; Hon. Lisa B. Lench; Nanci E. Nishimura, Esq.; Victor E. Salazar, Esq.; Mr. Richard Simpson; and Mr. Adam N. Torres voted to accept the stipulation. Ms. Sarah Kruer Jager did not participate.

Date: 10/14/2020

On behalf of the
Commission on Judicial Performance,



Honorable Michael B. Harper
Chairperson

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE ROBERT L. TAMIETTI

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Robert L. Tamietti of the Nevada County Superior Court, represented by counsel, and commission counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letters dated December 6, 2019, March 26, 2020, and July 6, 2020. The parties request that the commission resolve this matter by imposition of a public admonishment. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Tamietti because, among other reasons, in light of the stipulated facts and legal conclusions, a public admonishment and the judge’s agreement to retire and not serve in a judicial capacity in the future adequately protect the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving Judge Tamietti.
2. The commission shall issue a public admonishment based on the agreed Stipulated Facts and Legal Conclusions set forth therein.

3. If the commission accepts this proposed disposition, the commission's decision and order imposing public admonishment may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

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7. Failure to comply with the terms and conditions of this agreement may constitute additional and independent grounds for discipline.

8. Judge Tamietti has agreed not to seek or hold judicial office, or accept a position or assignment as a judicial officer, subordinate judicial officer, or judge pro tem with any court in the State of California, or accept a reference of work from any California state court, at any time after October 31, 2020.

9. If Judge Tamietti attempts to serve in a judicial capacity in violation of the foregoing paragraph, the commission may withdraw the public admonishment and resume the preliminary investigation as to all of the matters in the preliminary investigation letters.

10. Judge Tamietti agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is acceptable in light of those facts.

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Accordingly, it is hereby stipulated and agreed that the commission shall issue a public admonishment on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions.

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Good afternoon Judge Tamietti; [¶] Please do not try to influence my Office’s filing decisions. You have no idea what is going on in the case nor should you. A rush to filing could very well jeopardize a case and result in serious injustice. You can be assured the “level of service” to the citizens of Truckee is extensive and DDA Grubaugh is appropriately handling the matter. [¶] Regards, Cliff Newell

At 4:33 p.m., Judge Tamietti responded, as follows:

Baloney. When the inaction and/or inattention of your office or any other agency puts this community at risk I have a duty to speak up. If that offends you in this circumstance, so be it.

While Judge Tamietti was not aware that Mr. Coronado-Smith had retained counsel on or before July 10, 2019, until after the above referenced e-mails, he did not include Mr. Coronado-Smith on the communications.

Judge Tamietti's conduct conveyed the appearance of bias against the Nevada County District Attorney's Office. The judge intruded into the charging authority of the executive branch of government, and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter. The judge violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)), to refrain from speech or conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)), and to not initiate, permit, or consider ex parte communications (canon 3B(7)).

B. Improper Response to Filing of Peremptory Challenge

1. On September 19, 2019, DDA Grubaugh filed a felony complaint in *People v. Anthony Coronado-Smith*, No. TF19-000233, and an "Invitation to the Honorable Judge Robert L. Tamietti to Recuse Himself." The "Invitation" attached the emails that are quoted above, and requested that the judge recuse himself to protect the rights of the defendant and ensure public confidence in the judiciary. Attorney Grubaugh stated in the "Invitation" that "[t]he People do not believe Judge Tamietti holds actual bias in this case." On the same day, Judge Tamietti filed a "Response Regarding People's Invitation to Recuse." The response stated that the "Invitation" did not set forth grounds that would require the judge to disqualify himself.

On September 24, 2019, DDA Grubaugh timely filed a peremptory challenge against Judge Tamietti pursuant to Code of Civil Procedure section 170.6. The peremptory challenge, which DDA Grubaugh signed under oath, stated that Judge Tamietti was prejudiced against the People of the State of California. Instead of allowing the case to be reassigned as required by Code of Civil Procedure section 170.6, subdivision (a)(4), Judge Tamietti questioned DDA Grubaugh about the challenge, suggested that he may have committed perjury, advised him of his Fifth Amendment right to remain silent, and alluded to a possible inquiry by the State Bar.

Judge Tamietti's conduct conveyed the appearance of retaliation for filing the peremptory challenge, and the appearance of attempting to improperly influence a deputy district attorney in the exercise of the People's statutory rights. The judge's conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)), and to refrain from speech or conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

2. Instead of notifying Presiding Judge Linda Sloven of the peremptory challenge in *Coronado-Smith*, for the purpose of case reassignment, Judge Tamietti improperly chose the successor judge, who had served as a visiting judge in Truckee on occasion, in violation of Code of Civil Procedure section 170.6, subdivision (a)(4). Judge Tamietti thereby violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to respect and comply with the law (canon 2A), and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A).

II. *People v. Anthony Torres*, No. T13/0408

Anthony Torres was charged in a criminal complaint with three felonies: (1) assault with a deadly weapon (Penal Code § 245(a)(1)), (2) battery with serious bodily injury (Penal Code § 243(d)), and (3) street terrorism (involving active participation in a criminal street gang) (Penal Code § 186.22). The alleged assault occurred as a number of people were leaving a late night party, and the victim was seriously injured.

On August 20, 2013, Judge Tamietti presided over the preliminary hearing. At the outset of the hearing, the judge granted the prosecutor's motion to dismiss the counts of assault with a deadly weapon and street terrorism. The hearing proceeded with the prosecutor calling numerous Truckee Police Department (PD) officers, who testified about their interviews of percipient witnesses, and the defense calling a single eyewitness. There was conflicting evidence as to whether the defendant was involved in the alleged assault, including the eyewitness's testimony that she was certain the

defendant was not involved because he was wearing a bright white shirt and those involved were wearing dark clothing. Judge Tamietti concluded that there was sufficient evidence to hold the defendant to answer on the one remaining count, battery with serious bodily injury.

On February 11, 2014, DA Newell appeared before Judge Tamietti to request dismissal of case number T13/0408. DA Newell asked that the case be dismissed because it could not be proved beyond a reasonable doubt, due to tainted witness statements. Judge Tamietti asked how much “DA investigator time” had been expended on the case. (R.T. 4:1-2.) DA Newell stated that a DA investigator had not been used, because the Truckee PD had not requested assistance. Judge Tamietti then stated, “And it’s been my experience that recantation isn’t all that uncommon in cases; we see it in the DV [domestic violence] situations quite frequently.” (R.T. 4:18-20.) DA Newell stated that, in addition to two recanting witnesses, there was a third witness who testified that the defendant was at least 10 feet away from the altercation. DA Newell also stated that there was subsequent testimony of “white-dressed figures” running away after the incident. Judge Tamietti then stated:

Well, the testimony at the preliminary, as I recall, was the only person who had white on was Mr. Torres and that was how one of the witnesses testified that Mr. Torres wasn’t in the scum because according to that witness, everybody in the scum was wearing dark clothing.

(R.T. 5:16-20.)

DA Newell responded that an additional person had been seen running. In response, Judge Tamietti stated:

I got a couple of problems here with this file. One is I have got a victim beaten within an inch of his life who thankfully survived.

Two, I have got this insinuation, I’ll call it, of gang activity, which is a cancer that seems to be working its way into this community and to which most of the citizens of the community are oblivious. Sitting where I sit doing what I do, I’m a little less oblivious than average to that.

And there was enough of an insinuation of gang involvement in this circumstance that it initially got charged as a gang case. And then the gang aspects of the case got dismissed, for whatever reason, some of which is attributable to your assistant DA's statement that we are not, meaning you, are not prepared to try a gang case.

And I think the citizens of this community are probably ready to have a gang case tried for a couple of reasons: One, to figure out, if in fact, that's true; and two, to educate the community about the risks that are inherent in that insinuation into the society of this community.

So I heard the preliminary. I remember what was said. And I haven't seen the investigative work that the defendant's investigator, for which I have signed a couple of orders, has performed, I don't know what they say. I'm at a little bit of disadvantage there.

But the mere fact that people are not getting their stories straight or recanting their stories, there is a lot of different reasons that might be happening in a case that has gang insinuation.

I'm not suggesting that I have any evidence of [*sic*] Mr. Torres, or any of his cohorts are pressuring witnesses, but I don't think that's a naive thing to assume that might be happening and might be an explanation for the result of some of the investigative works performed by the defense.

I would point out, which is my question to you, was whether your office had expended any investigative resources on this file? I don't see Womack or Lopez here, so I don't know what their views are on that subject.^[1]

I'm also increasingly concerned, Mr. Newell, about the impact on this community about the absence of an assigned DA. You and I have spoken about that and I know you have tried and Ms. Ferguson has tried to fill the breach here . . . but it's not getting filled, and this community is suffering as a result, and we need to put a stop to that suffering. The citizens on this side of the pass are entitled to the same level

¹ Sergeant Robert Womack and Detective Arnulfo Lopez worked for the Truckee PD and testified at the preliminary hearing.

of services as the citizens on the other side of the pass, and they're not getting it. And I'm pretty annoyed that – and it puts me in a pretty tough situation because I have to assert myself into cases where I shouldn't be responsible for doing that – but I have had to, and I have, and this is one of those cases in my view, I think no one has really picked up this ball and run with it as if it were their responsibility, and that's my primary problem with this pitch. I think it's a slipshod “let's get rid of this because it's going to be hard to try,” and that's not a good reason to get rid of a case that's this serious, both to Mr. Torres and to the victim of the case.

(R.T. 5:28-8:1.)

DA Newell stated that being on the record was not the appropriate context to discuss personnel issues, to which the judge stated:

Hang on a second. I'm not talking personal [*sic*] issues. I'm talking about staffing of this branch, and that has nothing to do with a personal [*sic*] decision, that has to do with the service of citizen [*sic*] to this community. [¶] I'm not telling you how to run your office. What I'm telling you is the way it's being run up here is negatively affecting the operation of this branch and the citizens of this community.

(R.T. 8:9-16.)

DA Newell provided more details regarding the decision to move to dismiss the case, how the case was investigated, and his efforts to fill vacant DDA positions in the county. Judge Tamietti then questioned a victim witness advocate in the following exchange:

THE COURT: Has he [the victim] indicated to you that he's getting any pressure?

VICTIM WITNESS: No, not at all.

THE COURT: Has he indicated to you that he's aware that any of the people, who he has identified as potential witnesses, are getting any pressure?

VICTIM WITNESS: No, he has not indicated that at all.

THE COURT: Okay. Has he provided a -- any additional information about potential witnesses for the case, to you, Shea?

(R.T. 10:19-28.)

The victim witness advocate responded that the victim had given a list of names to the attorneys. Judge Tamietti questioned DA Newell repeatedly about the status of follow-up reports concerning the list of names. After hearing arguments for dismissal, Judge Tamietti stated:

Well, I would observe that having been the felony judge on the other side of the county for five years, before I got this assignment, that had this crime happened in [the] Safeway parking lot of Grass Valley, it is my impression that a whole bunch more of resources would have been thrown at this case than would have been thrown at this one.

If Mr. Torres was improperly charged, he deserves an apology. If he was properly charged, we ought to take the case to trial and let a jury of 12 citizens of this community decide whether or not witnesses who are recanting, have been pressured into recanting.

I have some live testimony at the preliminary and most of it was 115^[2] from Detective Lopez, so I can't make any real independent assessment about those people's statements given to Detective Lopez and Detective Lopez isn't here to amplify on that. So I'm put in the very uncomfortable situation of not doing what I think is my best to protect the citizens of this community, which is the principal reason they gave me this job in the first place.

So I don't like the spot I'm being put in here, Mr. Newell. And I credit my disgust, in large part, to your office and its handling of this file. But I'll grant the motion without prejudice, dismiss the case, in return for his plea to the dead bang we found you with drugs indicia for sale.

(R.T. 14:28-15:25.)

² Proposition 115 amended the constitution to allow hearsay evidence to be presented by qualified officers at a preliminary hearing.

Judge Tamietti then asked the defendant if he had a tattoo of Marilyn Monroe on his arm. When the defendant admitted to having the tattoo, Judge Tamietti asked DA Newell if he had any idea what it meant. DA Newell stated that the tattoo was potentially gang-affiliated, but that it could not be proved. Judge Tamietti then responded, “That might go along with the 13 that’s on his chest.” (R.T. 16:5-6.)

Judge Tamietti’s conduct, as described, was discourteous, conveyed the appearance of embroilment, bias against the DA’s office, and prejudgment, and suggested that the judge had assumed a prosecutorial role. Judge Tamietti’s conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)), and to refrain from speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

III. Email disparaging District Attorney Newell

On Monday, February 24, 2020, at 9:56 a.m., DA Newell sent an email to Nevada County Superior Court Judge Robert Tice-Raskin with the subject heading, “KNCO article.” The subject of the email was a radio interview of an attorney in the DA’s office who had made comments about Senate Bill 10 (pretrial release and detention), and Penal Code section 1320.10 (pre-arraignment review), that DA Newell indicated had been taken out of context. The email stated:

Good morning Judge,

Hope you had a good weekend. Have you had a chance to listen to the whole interview in question? Chris had no idea how or what was excerpted from that interview. From my view he spoke negatively about another state’s (there’s a couple) well documented reform failure but [*sic*], followed with how it has given us opportunity to better craft ours. Not mentioned by the article is how judges need all the info, how it’s incumbent on us to provide some of it and, Probation’s role in completing the assessments thoroughly. Given the radio show in its entirety, I can’t hold him to task for a

reporter's inarticulate description or headline taken out of context.

That said, I believe he could be more articulate on my Office's policy as it relates to SB10/ 1320.10, which is support. I will make that clear publically and, I will make sure, if he has any more public speaking, he uses the correct talking points. I am going to be on the radio myself later this week talking about it as well. I'll let you know when that is when I find out. I'm available all week if we need to discuss further.

Thank you, Cliff

On February 24, 2020, at 10:50 a.m., Judge Tice-Raskin responded with an email addressed to DA Newell, and copied to all other Nevada County Superior Court judges, including Judge Tamietti. The email stated:

Mr. Newell,

I have forwarded your thoughts to the whole bench. We will be in touch. Thanks.

SRT

On February 24, 2020, at 1:15 p.m., Judge Tamietti responded to Judge Tice-Raskin's email with an email addressed to DA Newell and to all other Nevada County Superior Court judges. The email stated: "So if he was so horribly misquoted, why hasn't he tried to get it corrected? More fecklessness from Newell."

February 24, 2020, is also the date on which Judge Tamietti submitted his response to the commission's preliminary investigation letter dated December 6, 2019.

Judge Tamietti's conduct, as described, was discourteous, and conveyed the appearance that the judge was biased against DA Newell. Judge Tamietti's conduct violated his duties to avoid impropriety and the appearance of impropriety (canon 2), to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), to be patient, dignified, and courteous while acting in a judicial capacity (canon 3B(4)), and to refrain from speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)).

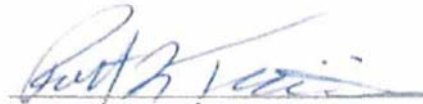
Judge Tamietti's conduct, as set forth in parts I-III, above, constituted, at a minimum, improper action.

Judge Tamietti has volunteered significant amounts of time to understaffed surrounding courts, and has taught at New Judges Orientation and judicial continuing education programs.

Judge Tamietti's misconduct was aggravated by the judge's prior discipline. In 2019, Judge Tamietti received an advisory letter for discourteous remarks about an attorney who was appearing before the judge in a civil case. The advisory letter noted that the judge's conduct, which occurred in 2018, was aggravated by the fact that, in 2017, he had participated in the commission's mentoring program to address demeanor issues.

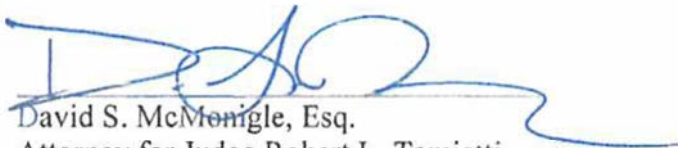
By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Tamietti expressly admits that the foregoing facts are true and accepts the stated legal conclusions.

Dated: August 21, 2020.



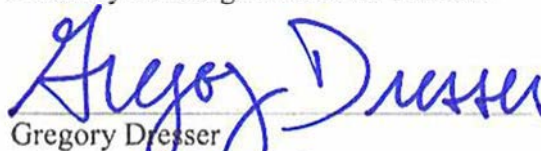
Judge Robert L. Tamietti

Dated: August 24, 2020.



David S. McMonigle, Esq.
Attorney for Judge Robert L. Tamietti

Dated: August 24, 2020.



Gregory Dresser
Director-Chief Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
County of Nevada, Truckee Branch

Linda J. Sloven
Presiding Judge

Jason LaChance
Commissioner

ROBERT L. TAMIETTI
Judge

Jason Galkin
Court Executive Officer

10075 Levon Avenue, Suite 301
Truckee, CA 96161
(530) 582-7835

July 27, 2020

The Honorable Gavin Newsom
Governor
1303 10th Street, Suite 1173
Sacramento, CA 95814

Re: Judicial Retirement

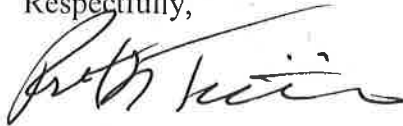
Dear Governor Newsom:

Since November of 2003, it has been my honor to serve the people of Nevada County and the Truckee community as their Superior Court Judge. It has been a challenging and many times rewarding second career. In light of my health and my desire to explore other interests while I am vigorous enough to do so, I have decided to retire, effective October 31, 2020.

I urge you to appoint a resident of the Truckee community to replace me in this assignment. The citizens of this community deserve a judge who lives in this community, who has had experience in the legal system in our community, and who is familiar with the services available within this community, as well as the unique challenges that face this community.

On a personal note, and as a private citizen, please accept my humble and sincere compliments and thanks to you for your thoughtful and courageous leadership of our state through early stages of the Covid 19 pandemic and the related economic fallout. My best to you and your family in your continued service to our state.

Respectfully,



Judge Robert L. Tamietti
Superior Court Judge