

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING  
FORMER JUDGE DAVID A. MASON

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

This disciplinary matter concerns retired Judge David A. Mason of the Modoc County Superior Court. On November 9, 2020, former Judge Mason 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 former Judge Mason by the imposition of a severe public admonishment and the judge's agreement not to serve in a judicial capacity in the future. Judge Mason tendered his retirement from judicial office, effective October 31, 2020. The Stipulation for Discipline by Consent was approved by the commission on December 2, 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 former Judge Mason.
2. The commission shall issue a severe 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.

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

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

6. On October 6, 2020, Judge Mason tendered his retirement effective October 31, 2020 through written correspondence to Governor Gavin Newsom. A copy of that letter is attached to the stipulation.

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

8. Former Judge Mason 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 the effective date of his retirement (October 31, 2020).

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

10. Former Judge Mason agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate 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 severe 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

Former Judge David A. Mason became a judge of the Modoc County Superior Court in 2009, following appointment to that office. His current term began in January 2017. His retirement became effective October 31, 2020.

### I. Lack of Candor in Two Responses to the Commission

#### A. 2019 Public Admonishment

On December 3, 2019, the commission issued a public admonishment to former Judge Mason for failing to disclose a personal relationship with attorney Tom Gifford. According to former Judge Mason, at the time he took the bench, he had a “personal and sustained” relationship with Mr. Gifford, including a “prior professional relationship,” and “ongoing social interactions in the community,” which continued after he took the bench in 2009. In 2013, former Judge Mason went on a two-week trip to Italy with Mr. Gifford and their respective spouses, as part of a celebration of the Giffords’ wedding anniversary, which “marked an escalation of the friendship.” Mr. Gifford made regular appearances as an attorney in cases over which former Judge Mason presided during this period. Mr. Gifford moved to Texas shortly after the trip to Italy, but this did not immediately impact their social relationship. Former Judge Mason traveled to Mr. Gifford’s home in Texas on two occasions, for approximately one week each time, including once over a Thanksgiving holiday. In or about April 2017, Mr. Gifford returned to Modoc County, and was awarded a contract to serve as Modoc County’s conflicts attorney for indigent defense. He resumed making regular appearances as an attorney in cases over which former Judge Mason presided, including appearances in at least 86 criminal cases from 2017 to 2019. According to former Judge Mason, he and Mr. Gifford “maintained some form of friendship” in 2017, but it was “not as strong” as before Mr. Gifford moved to Texas. Former Judge Mason recalled only one dinner with Mr. Gifford in 2017.

The commission found that, even if former Judge Mason was not disqualified from presiding over Mr. Gifford’s cases, he was required to disclose

all facts about their relationship that were reasonably relevant to disqualification, on the record, in every case in which Mr. Gifford appeared. Former Judge Mason presented no evidence that he ever did so, and conceded that he did not make a disclosure in every case where he was required to do so, and that he made “mistakes . . . regarding disclosures.” The commission found that former Judge Mason violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record.<sup>1</sup>

B. June 25, 2019 Response to the Commission

Prior to the December 3, 2019 public admonishment, former Judge Mason responded to the commission’s allegations in a letter dated June 25, 2019. In his response, former Judge Mason stated that he would disseminate the following disclosure:

To All Parties and Counsel of Record:

The purpose of this declaration is to disclose my longstanding relationship with local attorney Tom Gifford.

Prior to my appointment to the bench in 2009 I developed a professional relationship with Mr. Gifford. This relationship developed into a social friendship where I was [*sic*] occasionally dined publically [*sic*] with Mr. Gifford and his wife and was invited to dinner at Mr. Gifford’s home. These interactions lessened after my appointment to the bench but did continue after I became a judge.

Sometime in the early part of 2013 I accompanied Mr. Gifford and his wife on a trip to Italy for two weeks as part of their celebration of their anniversary. Shortly thereafter, Mr. Gifford moved back to

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<sup>1</sup> When former Judge Mason took the bench in 2009, canon 3E(2) of the Code of Judicial Ethics stated that judges “shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.” This requirement was renumbered as canon 3E(2)(a) effective January 1, 2013. Under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), judges are disqualified when “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.”

Texas and was practicing law there. I visited Mr. Gifford in his home in Texas on two occasions for about one week each time.

Mr. Gifford returned to Modoc County in 2017 and resumed his law practice. Since he returned in 2017, my social contact with Mr. Gifford has been minimal. We speak in a friendly manner on occasion and had dinner once in 2017. Mr. Gifford and I no longer have social contact, though we are friendly and exchange pleasantries when we interact in public.

Notwithstanding our history, I believe that I have and that I can in the future remain fair and impartial in matters where Mr. Gifford appears. You may inquire when your case is called if you wish to receive more information concerning my history with Mr. Gifford.

I declare under penalty of perjury that the foregoing is true and correct.

Hon. David A. Mason  
Asst Presiding Judge

Former Judge Mason described the above disclosure as a “comprehensive disclosure that will disseminate all relevant detail. . . .” Former Judge Mason stated that the above-written disclosure “will be published in Judge Mason’s department with copies available for attorneys appearing in a new matter involving Mr. Gifford.”

C. Misleading Disclosure Following the 2019 Public Admonishment

Following the December 3, 2019 public admonishment, instead of the disclosure described, above, in his response to the commission, former Judge Mason gave the following disclosure [hereinafter referred to as the “alternate” disclosure], which he delivered orally and in writing:

To All Parties and Counsel of Record:

The purpose of this declaration is to disclose that prior to my appointment to the bench in 2009 I had a professional relationship with attorney Tom Gifford that developed into a social friendship. I was occasionally invited to dinner at Mr. Gifford’s home, and on a few occasions I dined in public with Mr. Gifford and his wife.

Sometime after I took the bench, Mr. Gifford moved back to Texas and began practicing law there. During that time I visited Mr. Gifford and his family at his home in Texas on a couple of occasions. In the summer of 2013, I accompanied Mr. Gifford and his wife on a trip to Italy. My social contact with Mr. Gifford has been minimal from then to the present. Notwithstanding our history, I believe that I have, and that I can in the future, remain fair and impartial in matters where Mr. Gifford appears.

The alternate disclosure acknowledges that former Judge Mason has dined at Mr. Gifford's home, and has also dined in public with Mr. Gifford and his wife, but creates the misimpression that all of those dinners occurred prior to 2009. Former Judge Mason also failed to disclose that he and Mr. Gifford met for social dinners within the last three years.

The alternate disclosure states that former Judge Mason visited Mr. Gifford in Texas on two occasions, on undisclosed dates, and for undisclosed durations. By failing to disclose the dates and durations of the visits, former Judge Mason improperly minimized the disclosure of his contacts with Mr. Gifford. By referencing the Texas trips prior to a 2013 trip to Italy, former Judge Mason created the false impression that the Texas visits occurred prior to 2013. Former Judge Mason also improperly minimized his contacts with Mr. Gifford by failing to disclose the duration and purpose of the trip to Italy.

Former Judge Mason's June 25, 2019 response to the commission lacked candor by providing to the commission a disclosure that was materially different from the actual disclosure that he gave to parties who appeared before him in court, as described above.

#### D. June 26, 2020 Response to the Commission

In the most recent preliminary investigation, the commission contacted former Judge Mason on April 23, 2020, concerning the disparate disclosures and an apparent lack of candor to the commission. In a letter dated June 26, 2020, former Judge Mason stated that the alternate disclosure, "was circulated to litigants prior to his June 2019 submission, but believes that occurred as early as

late May 2019.” He stated, “These protocols, detailed in Judge Mason’s prior submission, were followed from that time until the present, including cases in which Mr. Gifford appeared after the December 2019 Public Admonishment.” Former Judge Mason stated he used the alternate disclosure throughout 2019, and that it “was also published in the courtroom and at the clerk’s office continuously over the last year . . . .” Despite former Judge Mason’s assertion that he continuously disclosed his relationship with Mr. Gifford throughout 2019, he made no disclosure in many cases in which Mr. Gifford appeared during the time period from May to December 2019. Former Judge Mason’s June 26, 2020 response to the commission lacked candor by making misrepresentations about the disclosures the judge made from May to December 2019.

The judge’s conduct constitutes a failure to uphold the integrity and independence of the judiciary (canon 1), a failure to avoid impropriety and the appearance of impropriety in all of the judge’s activities (canon 2), a failure to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), a failure to cooperate with the commission (canon 3D(4)), a failure to disclose on the record information that is reasonably relevant to the question of disqualification (canon 3E(2)), and a failure to conduct all of the judge’s extrajudicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially (canon 4A).

## II. Continuing Failure to Disclose Personal Relationship with Attorney Tom Gifford

### A. Failure to Disclose Gift to Mr. Gifford

On or about October 29, 2019 to December 16, 2019, former Judge Mason orally disclosed in chambers, to two attorneys and two probation department employees, that he brought Mr. Gifford a gift and placed it in his attorney mail slot. The gift was a pennant from Mr. Gifford’s alma mater. Judge Mason failed to ever disclose the gift on the record in any case.

## B. Failure to Disclose After the Public Admonishment

Following the December 3, 2019 public admonishment, Mr. Gifford continued to appear regularly before former Judge Mason in both criminal and civil cases. After December 3, 2019, former Judge Mason failed to properly disclose on the record information concerning his relationship with Mr. Gifford that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, as exemplified by the following.

On December 10, 2019, in *People v. Sarah Hewitt* (No. F-19-099), former Judge Mason stated, “I don’t know if you heard my disclosure. Mr. Gifford and I have been friends for years, we practiced law against one another and developed a friendship. It’s kind of spelled out there.” On December 18, 2019, in *People v. Danny Ray Dial* (No. F-19-124), former Judge Mason stated, “I have a long standing friendship with Mr. Gifford. We haven’t had any social connection in person for probably a year and a half or two years. But in the past I’ve visited the home that he owns in Corpus Christi, Texas. I’ve also had dinner with him and his wife and other friends on two occasions since I’ve been a Judge. And early on in my career as a judge I went to – took a trip to Italy with Mr. Gifford and his wife. [¶] All of those things being said, I do not believe that I am unable to be fair and unbiased, and I do not recuse myself.” The above disclosures in *Hewitt* and *Dial* were misleading and improperly minimized the judge’s contacts with Mr. Gifford, and failed to comport with the June 25, 2019 disclosure referenced in the judge’s letter to the commission. Also, in *Dial* [*sic*], by referring to a written disclosure, former Judge Mason failed to make a disclosure on the record.

On various dates after December 3, 2019 (the date of his public admonishment), former Judge Mason read the alternate disclosure verbatim at some point during his calendar, but did not ensure that the defendants were present to hear the disclosure in the following cases in which Mr. Gifford represented a party: *People v. Ruben Ayala* (No. F-19-331), *People v. Amber*



*Sharrett* (No. M-18-479), *People v. Kiajaney Dejesus-Roman* (No. F-19-476), *People v. Valerie Hubbard* (Nos. F-19-420/M-19-475), *People v. James Fristoe* (No. F-20-050), *People v. Leroy Michael Donnor* (Nos. F-19-212/F-20-065), *People v. Donald Vick* (No. M-20-079), *People v. Charles James Preston, Sr.* (Nos. F-18-429/F-20-104), *People v. Robin Klabbatz* (No. F-20-052), *People v. Ronald Cannon* (No. F-20-059), *People v. Fanchon Lafaver* (Nos. F-18-471/F-19-011/F-19-038/M-18-367), *People v. Lyle Castillo* (No. F-19-485), *People v. Corey Adam* (Nos. F-19-483/F-19-261), and *People v. Megan Blue* (Nos. F-16-248/M-19-481).

At times, former Judge Mason failed to disclose his relationship with Mr. Gifford at the first appearance in a case in which Mr. Gifford represented a party, in *People v. Samuel Alan Kiser* (No. F-20-005) (three appearances before disclosure made), *People v. James Fristoe* (No. F-20-050) (one appearance before disclosure made), *Eveann Smith v. Allen Lee Moore* (No. FL-20-007) (two appearances before disclosure made), *Walter Sphar v. Eriquiago, Bunyard, Bostic* (No. CU-19-100) (three appearances before disclosure made), and *Candice Mastagni v. Dale L. O'Neil* (No. FL-20-011) (two appearances before disclosure made).

In many cases, minute orders indicated that the judge disclosed his relationship with Mr. Gifford, but the transcripts and recordings of the appearances did not reflect that former Judge Mason made a disclosure on the record. Former Judge Mason failed to disclose, or failed to properly disclose, in the following cases: *People v. Sarah Hewitt* (No. F-19-099), *People v. Stephen Anastacio* (No. F-19-383), *People v. Arlen Javier Gonzalez* (Nos. F-19-128/ F-17-094/F-17-045), *People v. Ryan Randall West* (Nos. M-19-293/ M-19-429), *People v. Rogers Amerson* (No. M-19-238), *People v. Phillip Skaggs* (No. F-17-075), *People v. William Roy Biggerstaff* (No. F-19-139), *People v. Richard Chapman* (No. F-19-368), *People v. John Gregory Hughes* (No. F-17-096), *People v. Tamyara Cawthorn* (No. F-18-462), *People v. Rhyhan James Urena* (Nos. F-19-

197/ F-19-200), *People v. Danny Ray Dial* (No. F-19-124), *People v. Valerie Hubbard* (No. F-19-420), *People v. William Eugene Sainsbury* (Nos. F-19-471/ F-19-365), *People v. Fanchon Lafaver* (Nos. F-18-471/F-19-011/F-19-038/M-18-367), *People v. Lyle Castillo* (No. F-19-485), *People v. Corey Adam* (Nos. F-19-483/F-19-261), *People v. Megan Blue* (Nos. F-16-248/M-19-481), *People v. Donald Vick* (No. M-20-079), *People v. Charles James Preston, Sr.* (Nos. F-18-429/F-20-104), *People v. Robin Klabbatz* (No. F-20-052), and *People v. Ronald Cannon* (No. F-20-059).

On December 18, 2019, in *People v. Michael Lamug* (Nos. M-19-404/M-19-454), after reading the alternate disclosure verbatim, former Judge Mason stated, “So you’re going to hear that all the time, and you’re going to be sick of hearing it, just like I get sick of reading it, but it’s – it’s what I have to do.” (R.T. 3:8-10.) Former Judge Mason’s comments were gratuitous and trivialized the importance of complying with his duty to disclose on the record information, concerning his relationship with Mr. Gifford that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1.

Canon 3E(2) and 3E(2)(a) of the Code of Judicial Ethics requires judges to disclose on the record “information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.” Under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), judges are disqualified when “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” This is an objective standard. The question is whether the “average person on the street” would harbor doubts as to the judge’s impartiality, not whether the judge is actually biased. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170.) Pursuant to this standard, even if former Judge Mason were not disqualified from presiding over Mr. Gifford’s cases, he was required to disclose all facts about their relationship that were reasonably

relevant to disqualification, on the record, in every case in which Mr. Gifford appeared. Former Judge Mason concedes that, despite his prior discipline for the same misconduct, he did not make a disclosure in every case where he was required to do so. Former Judge Mason violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record. His conduct also constituted a violation of canons 1, 2, 2A, and 4A.

### III. Discourtesy to District Attorney in *People v. Abernathy*

On June 23, 2020, former Judge Mason conducted a chambers conference in *People v. Ryan Abernathy* (No. M20-158), with District Attorney (DA) Sophia Meyer, Deputy District Attorney Stacey Todd, three probation department employees, the defense attorney, a bailiff, and the court clerk. DA Meyer had filed a violation of a slow plea in an underlying case, as well as a new case (No. F19-093), and the defendant requested a jury trial. Former Judge Mason stated that he thought DA Meyer's office was "unprofessional and stupid for exercising prosecutorial discretion and filing a case." Former Judge Mason also stated that the District Attorney's office was "unprofessional and superfluous." DA Meyer responded that she did not appreciate being called unprofessional. Former Judge Mason then said, "Well, maybe unprofessional is not the word. In my opinion, the DA's office is stupid for filing this." On July 7, 2020, former Judge Mason told DA Meyer that he was "not accusing anyone in particular, but the DA's office as a whole was unprofessional." (The Modoc County DA's office is comprised of two attorneys and support staff members.)

Calling the DA's office "stupid" and "unprofessional," especially in the presence of others, constituted a failure to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity (canon 3B(4)); a failure to refrain from speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)); and violations of canons 2 and 2A.

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

Former Judge Mason’s misconduct was aggravated by the judge’s prior discipline. As discussed in part I, above, former Judge Mason was publicly admonished in 2019 for not only similar conduct, but the same conduct. In 2019, former Judge Mason conceded that he made “mistakes . . . regarding disclosures,” and violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record.

This stipulation imposes a higher level of discipline than former Judge Mason’s 2019 public admonishment, based on the judge’s prior retirement and agreement to not at any time seek or hold judicial office or seek or accept assignment. The parties request that the commission accept this stipulation because it fulfills the commission’s mandate to protect the public and maintain the integrity of the judiciary in order to avoid the prolonged impact of further proceedings on the justice’s [*sic*] court and the administration of justice.

#### DISCIPLINE

Former Judge Mason has acknowledged his failure to properly disclose his personal relationship with attorney Tom Gifford on the record in a multitude of cases in which Mr. Gifford appeared, his lack of candor in his communication with the commission about his compliance with his disclosure obligations, and his discourteous and biased conduct toward the district attorney’s office—all of which violated his duty to conduct himself with integrity and in a manner that promotes public confidence in the judiciary.

The purpose of California’s statutory disclosure requirements is to ensure public confidence in the judiciary. (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1070.) Former Judge Mason’s persistent failure to comply with these requirements reflects an unacceptable lack of concern on his part about the public’s perception of the integrity and fairness of the judiciary.

Similarly, the judicial canons' insistence on appropriate judicial demeanor rests on the idea that such demeanor is central to the appearance and reality of fairness and impartiality in judicial proceedings. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 2:46, p. 116.) Former Judge Mason's inappropriate remarks about the district attorney's office undermined the appearance of fairness and impartiality in the court's proceedings.

Finally, honesty is a minimum qualification expected of every judge. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 865.) Lack of candor toward the commission is uniquely and exceptionally egregious. (*Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 90.) Former Judge Mason's lack of candor toward the commission is particularly grievous.

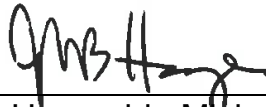
The commission considered former Judge Mason's prior public admonishment for related misconduct to be a significantly aggravating factor.

The commission's determination to resolve this matter with a severe public admonishment was conditioned upon former Judge Mason's agreement 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 and avoids the need for further proceedings.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Sarah Kruer Jager; 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. Kay Cooperman Jue did not participate.

Date: 12/8/2020

On behalf of the  
Commission on Judicial Performance,



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Honorable Michael B. Harper  
Chairperson

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING  
JUDGE DAVID A. MASON

STIPULATION FOR DISCIPLINE  
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, former Judge David A. Mason of the Modoc 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 April 23, 2020, and September 2, 2020. The parties request that the commission resolve this matter by imposition of a severe public admonishment. The parties believe that the settlement provided by this agreement is in the best interests of the commission and former Judge Mason because, among other reasons, the severe public admonishment, and the judge’s prior retirement from office, and agreement not to serve as a judicial officer after his retirement is a more severe level of discipline than former Judge Mason’s 2019 discipline, adequately protects the public, and will avoid the delay, expense, and uncertain outcome of further proceedings. Former Judge Mason irrevocably retired from judicial office, effective October 31, 2020.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving former Judge Mason.
2. The commission shall issue a severe 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.

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

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

6. On October 6, 2020, former Judge Mason 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.

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

8. Former Judge Mason 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 the effective date of his retirement (October 31, 2020).

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

10. Former Judge Mason agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate 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 severe 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

Former Judge David A. Mason became a judge of the Modoc County Superior Court in 2009, following appointment to that office. His current term began in January 2017. His retirement became effective October 31, 2020.

#### I. Lack of Candor in Two Responses to the Commission

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The commission found that, even if former Judge Mason was not disqualified from presiding over Mr. Gifford's cases, he was required to disclose all facts about their relationship that were reasonably relevant to disqualification, on the record, in every case in which Mr. Gifford appeared. Former Judge Mason presented no evidence that he ever did so, and conceded that he did not make a disclosure in every case where he was required to do so, and that he made "mistakes . . . regarding disclosures." The commission found that former Judge Mason violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record.<sup>1</sup>

B. June 25, 2019 Response to the Commission

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To All Parties and Counsel of Record:

The purpose of this declaration is to disclose my longstanding relationship with local attorney Tom Gifford.

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Sometime in the early part of 2013 I accompanied Mr. Gifford and his wife on a trip to Italy for two weeks as part of their celebration of their anniversary. Shortly thereafter, Mr. Gifford moved back to Texas and was practicing law there. I visited Mr. Gifford in his home in Texas on two occasions for about one week each time.

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<sup>1</sup> When former Judge Mason took the bench in 2009, canon 3E(2) of the Code of Judicial Ethics stated that judges "shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." This requirement was renumbered as canon 3E(2)(a) effective January 1, 2013. Under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), judges are disqualified when "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

Mr. Gifford returned to Modoc County in 2017 and resumed his law practice. Since he returned in 2017, my social contact with Mr. Gifford has been minimal. We speak in a friendly manner on occasion and had dinner once in 2017. Mr. Gifford and I no longer have social contact, though we are friendly and exchange pleasantries when we interact in public.

Notwithstanding our history, I believe that I have and that I can in the future remain fair and impartial in matters where Mr. Gifford appears. You may inquire when your case is called if you wish to receive more information concerning my history with Mr. Gifford.

I declare under penalty of perjury that the foregoing is true and correct.

Hon. David A. Mason  
Asst Presiding Judge

Former Judge Mason described the above disclosure as a “comprehensive disclosure that will disseminate all relevant detail. . . .” Former Judge Mason stated that the above-written disclosure “will be published in Judge Mason’s department with copies available for attorneys appearing in a new matter involving Mr. Gifford.”

C. Misleading Disclosure Following the 2019 Public Admonishment

Following the December 3, 2019 public admonishment, instead of the disclosure described, above, in his response to the commission, former Judge Mason gave the following disclosure [hereinafter referred to as the “alternate” disclosure], which he delivered orally and in writing:

To All Parties and Counsel of Record:

The purpose of this declaration is to disclose that prior to my appointment to the bench in 2009 I had a professional relationship with attorney Tom Gifford that developed into a social friendship. I was occasionally invited to dinner at Mr. Gifford’s home, and on a few occasions I dined in public with Mr. Gifford and his wife. Sometime after I took the bench, Mr. Gifford moved back to Texas and began practicing law there. During that time I visited Mr. Gifford and his family at his home in Texas on a couple of

occasions. In the summer of 2013, I accompanied Mr. Gifford and his wife on a trip to Italy. My social contact with Mr. Gifford has been minimal from then to the present. Notwithstanding our history, I believe that I have, and that I can in the future, remain fair and impartial in matters where Mr. Gifford appears.

The alternate disclosure acknowledges that former Judge Mason has dined at Mr. Gifford's home, and has also dined in public with Mr. Gifford and his wife, but creates the misimpression that all of those dinners occurred prior to 2009. Former Judge Mason also failed to disclose that he and Mr. Gifford met for social dinners within the last three years.

The alternate disclosure states that former Judge Mason visited Mr. Gifford in Texas on two occasions, on undisclosed dates, and for undisclosed durations. By failing to disclose the dates and durations of the visits, former Judge Mason improperly minimized the disclosure of his contacts with Mr. Gifford. By referencing the Texas trips prior to a 2013 trip to Italy, former Judge Mason created the false impression that the Texas visits occurred prior to 2013. Former Judge Mason also improperly minimized his contacts with Mr. Gifford by failing to disclose the duration and purpose of the trip to Italy.

Former Judge Mason's June 25, 2019 response to the commission lacked candor by providing to the commission a disclosure that was materially different from the actual disclosure that he gave to parties who appeared before him in court, as described above.

#### D. June 26, 2020 Response to the Commission

In the most recent preliminary investigation, the commission contacted former Judge Mason on April 23, 2020, concerning the disparate disclosures and an apparent lack of candor to the commission. In a letter dated June 26, 2020, former Judge Mason stated that the alternate disclosure, "was circulated to litigants prior to his June 2019 submission, but believes that occurred as early as late May 2019." He stated, "These protocols, detailed in Judge Mason's prior submission, were followed from that time until the present, including cases in which Mr. Gifford appeared after the December 2019 Public Admonishment." Former Judge Mason stated he used the alternate disclosure

throughout 2019, and that it “was also published in the courtroom and at the clerk’s office continuously over the last year . . . .” Despite former Judge Mason’s assertion that he continuously disclosed his relationship with Mr. Gifford throughout 2019, he made no disclosure in many cases in which Mr. Gifford appeared during the time period from May to December 2019. Former Judge Mason’s June 26, 2020 response to the commission lacked candor by making misrepresentations about the disclosures the judge made from May to December 2019.

The judge’s conduct constitutes a failure to uphold the integrity and independence of the judiciary (canon 1), a failure to avoid impropriety and the appearance of impropriety in all of the judge’s activities (canon 2), a failure to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A), a failure to cooperate with the commission (canon 3D(4)), a failure to disclose on the record information that is reasonably relevant to the question of disqualification (canon 3E(2)), and a failure to conduct all of the judge’s extrajudicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially (canon 4A).

## II. Continuing Failure to Disclose Personal Relationship with Attorney Tom Gifford

### A. Failure to Disclose Gift to Mr. Gifford

On or about October 29, 2019 to December 16, 2019, former Judge Mason orally disclosed in chambers, to two attorneys and two probation department employees, that he brought Mr. Gifford a gift and placed it in his attorney mail slot. The gift was a pennant from Mr. Gifford’s alma mater. Judge Mason failed to ever disclose the gift on the record in any case.

### B. Failure to Disclose After the Public Admonishment

Following the December 3, 2019 public admonishment, Mr. Gifford continued to appear regularly before former Judge Mason in both criminal and civil cases. After December 3, 2019, former Judge Mason failed to properly disclose on the record information concerning his relationship with Mr. Gifford that is reasonably relevant to

the question of disqualification under Code of Civil Procedure section 170.1, as exemplified by the following.

On December 10, 2019, in *People v. Sarah Hewitt* (No. F-19-099), former Judge Mason stated, “I don’t know if you heard my disclosure. Mr. Gifford and I have been friends for years, we practiced law against one another and developed a friendship. It’s kind of spelled out there.” On December 18, 2019, in *People v. Danny Ray Dial* (No. F-19-124), former Judge Mason stated, “I have a long standing friendship with Mr. Gifford. We haven’t had any social connection in person for probably a year and a half or two years. But in the past I’ve visited the home that he owns in Corpus Christi, Texas. I’ve also had dinner with him and his wife and other friends on two occasions since I’ve been a Judge. And early on in my career as a judge I went to – took a trip to Italy with Mr. Gifford and his wife. [¶] All of those things being said, I do not believe that I am unable to be fair and unbiased, and I do not recuse myself.” The above disclosures in *Hewitt* and *Dial* were misleading and improperly minimized the judge’s contacts with Mr. Gifford, and failed to comport with the June 25, 2019 disclosure referenced in the judge’s letter to the commission. Also, in *Dial*, by referring to a written disclosure, former Judge Mason failed to make a disclosure on the record.

On various dates after December 3, 2019 (the date of his public admonishment), former Judge Mason read the alternate disclosure verbatim at some point during his calendar, but did not ensure that the defendants were present to hear the disclosure in the following cases in which Mr. Gifford represented a party: *People v. Ruben Ayala* (No. F-19-331), *People v. Amber Sharrett* (No. M-18-479), *People v. Kiajaney Dejesus-Roman* (No. F-19-476), *People v. Valerie Hubbard* (Nos. F-19-420/M-19-475), *People v. James Fristoe* (No. F-20-050), *People v. Leroy Michael Donnor* (Nos. F-19-212/F-20-065), *People v. Donald Vick* (No. M-20-079), *People v. Charles James Preston, Sr.* (No. F-18-429/F-20-104), *People v. Robin Klabbatz* (No. F-20-052), *People v. Ronald Cannon* (No. F-20-059), *People v. Fanchon Lafaver* (Nos. F-18-471/F-19-011/F-19-038/M-18-367), *People v. Lyle Castillo* (No. F-19-485), *People v. Corey Adam* (No. F-19-483/F-19-261), and *People v. Megan Blue* (Nos. F-16-248/M-19-481).

At times, former Judge Mason failed to disclose his relationship with Mr. Gifford at the first appearance in a case in which Mr. Gifford represented a party, in *People v. Samuel Alan Kiser* (No. F-20-005) (three appearances before disclosure made), *People v. James Fristoe* (No. F-20-050) (one appearance before disclosure made), *Eveann Smith v. Allen Lee Moore* (No. FL-20-007) (two appearances before disclosure made), *Walter Sphar v. Eriquiago, Bunyard, Bostic* (No. CU-19-100) (three appearances before disclosure made), and *Candice Mastagni v. Dale L. O'Neil* (No. FL-20-011) (two appearances before disclosure made).

In many cases, minute orders indicated that the judge disclosed his relationship with Mr. Gifford, but the transcripts and recordings of the appearances did not reflect that former Judge Mason made a disclosure on the record. Former Judge Mason failed to disclose, or failed to properly disclose, in the following cases: *People v. Sarah Hewitt* (No. F-19-099), *People v. Stephen Anastacio* (No. F-19-383), *People v. Arlen Javier Gonzalez* (Nos. F-19-128/ F-17-094/F-17-045), *People v. Ryan Randall West* (Nos. M-19-293/ M-19-429), *People v. Rogers Amerson* (No. M-19-238), *People v. Phillip Skaggs* (No. F-17-075), *People v. William Roy Biggerstaff* (No. F-19-139), *People v. Richard Chapman* (No. F-19-368), *People v. John Gregory Hughes* (No. F-17-096), *People v. Tamyara Cawthorn* (No. F-18-462), *People v. Rhyan James Urena* (Nos. F-19-197/ F-19-200), *People v. Danny Ray Dial* (No. F-19-124), *People v. Valerie Hubbard* (No. F-19-420), *People v. William Eugene Sainsbury* (Nos. F-19-471/ F-19-365), *People v. Fanchon Lafaver* (Nos. F-18-471/F-19-011/F-19-038/M-18-367), *People v. Lyle Castillo* (No. F-19-485), *People v. Corey Adam* (No. F-19-483/F-19-261), *People v. Megan Blue* (Nos. F-16-248/M-19-481), *People v. Donald Vick* (No. M-20-079), *People v. Charles James Preston, Sr.* (No. F-18-429/F-20-104), *People v. Robin Klabbatz* (No. F-20-052), and *People v. Ronald Cannon* (No. F-20-059).

On December 18, 2019, in *People v. Michael Lamug* (Nos. M-19-404/M-19-454), after reading the alternate disclosure verbatim, former Judge Mason stated, “So you’re going to hear that all the time, and you’re going to be sick of hearing it, just like I get sick of reading it, but it’s – it’s what I have to do.” (R.T. 3:8-10.) Former Judge Mason’s

comments were gratuitous and trivialized the importance of complying with his duty to disclose on the record information, concerning his relationship with Mr. Gifford that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1.

Canon 3E(2) and 3E(2)(a) of the Code of Judicial Ethics requires judges to disclose on the record “information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.” Under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(iii), judges are disqualified when “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” This is an objective standard. The question is whether the “average person on the street” would harbor doubts as to the judge’s impartiality, not whether the judge is actually biased. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170.) Pursuant to this standard, even if former Judge Mason were not disqualified from presiding over Mr. Gifford’s cases, he was required to disclose all facts about their relationship that were reasonably relevant to disqualification, on the record, in every case in which Mr. Gifford appeared. Former Judge Mason concedes that, despite his prior discipline for the same misconduct, he did not make a disclosure in every case where he was required to do so. Former Judge Mason violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record. His conduct also constituted a violation of canons 1, 2, 2A, and 4A.

### III. Discourtesy to District Attorney in *People v. Abernathy*

On June 23, 2020, former Judge Mason conducted a chambers conference in *People v. Ryan Abernathy* (No. M20-158), with District Attorney (DA) Sophia Meyer, Deputy District Attorney Stacey Todd, three probation department employees, the defense attorney, a bailiff, and the court clerk. DA Meyer had filed a violation of a slow plea in an underlying case, as well as a new case (No. F19-093), and the defendant requested a jury trial. Former Judge Mason stated that he thought DA Meyer’s office was

“unprofessional and stupid for exercising prosecutorial discretion and filing a case.” Former Judge Mason also stated that the District Attorney’s office was “unprofessional and superfluous.” DA Meyer responded that she did not appreciate being called unprofessional. Former Judge Mason then said, “Well, maybe unprofessional is not the word. In my opinion, the DA’s office is stupid for filing this.” On July 7, 2020, former Judge Mason told DA Meyer that he was “not accusing anyone in particular, but the DA’s office as a whole was unprofessional.” (The Modoc County DA’s office is comprised of two attorneys and support staff members.)

Calling the DA’s office “stupid” and “unprofessional,” especially in the presence of others, constituted a failure to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity (canon 3B(4)); a failure to refrain from speech and conduct that would reasonably be perceived as bias or prejudice (canon 3B(5)); and violations of canons 2 and 2A.

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

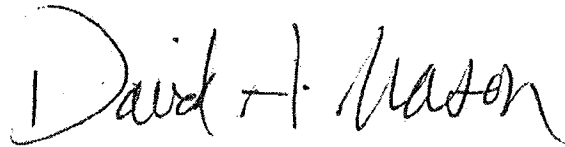
Former Judge Mason’s misconduct was aggravated by the judge’s prior discipline. As discussed in part I, above, former Judge Mason was publicly admonished in 2019 for not only similar conduct, but the same conduct. In 2019, former Judge Mason conceded that he made “mistakes . . . regarding disclosures,” and violated canons 3E(2) and 3E(2)(a) over an extended period by failing to make the required disclosures on the record.

This stipulation imposes a higher level of discipline than former Judge Mason’s 2019 public admonishment, based on the judge’s prior retirement and agreement to not at any time seek or hold judicial office or seek or accept assignment. The parties request that the commission accept this stipulation because it fulfills the commission’s mandate to protect the public and maintain the integrity of the judiciary in order to avoid the prolonged impact of further proceedings on the justice’s court and the administration of justice.




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

Dated: November 6, 2020.

  
Former Judge David A. Mason

Dated: November 9, 2020.

  
David S. McMonigle, Esq.  
Attorney for former Judge David A. Mason

Dated: November \_\_, 2020.

Gregory Dresser  
Director-Chief Counsel

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


Dated: November \_\_, 2020.

\_\_\_\_\_  
Former Judge David A. Mason

Dated: November \_\_, 2020.

\_\_\_\_\_  
David S. McMonigle, Esq.  
Attorney for former Judge David A. Mason

Dated: November 9, 2020.

  
\_\_\_\_\_  
Gregory Dresser  
Director-Chief Counsel

DAVID A. MASON

October 6, 2020

The Honorable Gavin Newsom  
Governor of the State of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Re: Judicial Retirement

Dear Governor Newsom:

Effective October 31, 2020, I am retiring from my position as a judge of the Modoc County Superior Court, where I have served since my appointment on March 26, 2009. It has been my honor and privilege to serve the citizens of this state and of the County of Modoc.

I urge you to appoint a replacement at your earliest opportunity.

Sincerely,



DAVID MASON  
Judge of the Modoc County Superior Court.

cc: file