

PUBLIC ADMONISHMENT OF JUDGE DEREK W. HUNT

The Commission on Judicial Performance ordered Derek W. Hunt publicly admonished, pursuant to article VI, section 18(d) of the California Constitution and commission rule 115, as set forth in the following statement of facts and reasons found by the commission:

STATEMENT OF FACTS AND REASONS

Judge Hunt has been a judge of the Orange County Superior Court since 1997. His current term began in January 2017.

The commission found that Judge Hunt engaged in misconduct in four civil cases, as set forth below. In three of those cases, Judge Hunt denied the parties a full right to be heard before making orders in their cases. The judge also made remarks reflecting poor demeanor and engaged in conduct that gave an appearance of bias.

1. *Eugene Steciw et al. v. Petra Geosciences, Inc.* (No. 30-2014-00732306)

Judge Hunt began hearing this construction dispute, which involved numerous parties and complaints, in 2018, when it had been pending for four years. On June 19, 2018, a recently added defendant filed a motion to dismiss for untimely service. The motion to dismiss was set for hearing on July 24, 2018.

Two weeks before the scheduled hearing date, on July 10, 2018, the parties appeared before Judge Hunt on other unrelated motions. Although the plaintiffs had not yet filed an opposition, which was due the following day, Judge Hunt announced his intention to address the motion to dismiss that day.

When plaintiffs' counsel said that the hearing on the motion (and another motion) was not scheduled for that day, Judge Hunt said, "I was told they were advanced to today, and whether you like it or not, I'm going to deal with them, and you can figure out what you're going to do with it." (R.T. 6:11 – 6:14.)

Judge Hunt then stated his intention to grant the motion to dismiss without prejudice. When plaintiffs' counsel later asked if he could file his opposition that day, Judge Hunt responded, "The way it works is, file when you can. I'm not going to turn it down. I start reading. And when I get bored, I stop reading [¶] ... [¶] [p]ut the good stuff up front." (R.T. 29:2 – 29:6.)

Judge Hunt subsequently took the motion under submission, stating, "I have to go back and review this. And don't be surprised if you see there's not much changed between what the minute order will say and what I already said, but if you

get open—that’s why you’re here. You’re here to get me to think about it.” (R.T. 29:12 – 29:17.)

Although the plaintiffs filed an opposition that evening, and the minute order for the hearing issued after the opposition was filed, the minute order did not reflect that Judge Hunt took the matter under submission to await the filing of the opposition. The minute order stated that Judge Hunt granted the motion to dismiss at the hearing.

The plaintiffs filed a motion for reconsideration on the grounds that Judge Hunt had ruled without considering their opposition. The judge denied the motion, without explanation or a hearing. On July 29, 2020, the Fourth District Court of Appeal reversed the dismissal on the merits, and remanded the matter for a new hearing on the motion to dismiss. (*Steciw v. Geosciences, Inc.* (Jul. 29, 2020, G057375) [nonpub. opn.])

Judge Hunt’s conduct in advancing the hearing on the motion to dismiss by two weeks, without notice to the parties, and although the plaintiffs had not yet filed an opposition, denied the parties a full opportunity to be heard. Further, the judge’s apparent disregard of plaintiffs’ statements that they did not know the hearing would proceed that day and were unprepared, and his remarks to plaintiffs—that he was proceeding whether they “like[d] it or not,” would stop reading their opposition when he got “bored,” and that they should not be “surprised” if not much changed between what he said at the hearing and what the minute order said—were discourteous and gave an appearance of bias and prejudgment.

The commission found that Judge Hunt’s conduct constituted a failure to accord to every person who has a legal interest in a proceeding the full right to be heard according to law, in violation of canon 3B(7); to perform judicial duties without bias or prejudice or the appearance thereof, in violation of canon 3B(5); to be patient, dignified, and courteous, in violation of canon 3B(4); and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of 2A.

2. *Clelia Almendarez et al. v. Kia Motors America, Inc.* (No. 30-2020-01155966)

On December 18, 2020, Judge Hunt presided over the defendant’s demurrer and motion to strike in *Clelia Almendarez et al. v. Kia Motors America, Inc.*, which raised product defect claims. (No. 30-2020-01155966.) At the hearing, Judge Hunt stated his belief that the plaintiffs were members of a class of plaintiffs in an action pending in federal court against the defendant and its parent company. Judge Hunt stated, “So if that’s the case, I don’t see any reason why I should concern myself with today’s demurrer, or for that matter, with anything else about the case until the

class action's resolved. . . . I am ordering the case stayed." (R.T. 3:18 – 3:21, 4:1.) Judge Hunt then set a status conference in six months.

When the plaintiffs' attorney attempted to explain to Judge Hunt that the plaintiffs had opted out of the class in the federal action, the judge cut him off mid-sentence, saying, "You know what? I don't care. This is going to be stayed. This is ridiculous. This is just an attenuating litigation where it needn't happen." (R.T. 4:19 – 4:22.)

On May 11, 2021, the Fourth District Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its order staying the underlying action. (*Almendarez et al. v. Superior Court of Orange County* (May 11, 2021, G059881) [nonpub. opn.].) The appellate court observed that, if Judge Hunt had simply allowed the plaintiffs an opportunity to be heard, he would have learned that the plaintiffs had opted out of the class, and the demurrer hearing could have proceeded. The appellate court found that the judge abused his discretion by declining to listen to the plaintiffs' explanation and refusing to hear the demurrer.

The commission found that Judge Hunt's conduct in staying the case, based on a misunderstanding that counsel could have clarified, if Judge Hunt had permitted him to explain, violated his duty to accord a full and fair hearing. (Canons 3B(7), 3B(8) [requiring judges to dispose of all judicial matters fairly, promptly, and efficiently, and to manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law].) His precipitous action in the case and his remarks to counsel also violated his duty to be patient, dignified, and courteous to those appearing before him. (Canon 3B(4).)

3. *Paymeneh Jahangiri vs. Madison Yates, et al.* (No. 30-2019-01105787)

The attorneys in this personal injury case appeared before Judge Hunt telephonically on May 10, 2021, and informed him that they had settled the case but had not completed written settlement agreements. Plaintiff's counsel had earlier filed a notice of settlement, which contained mandatory language stating that an order to show cause ("OSC") hearing regarding dismissal must be set within 45 days. Judge Hunt informed plaintiff's counsel he would not wait that long to set an OSC hearing, as it would "clog up" the docket. The judge set an OSC regarding dismissal to be heard the following Monday, May 17, 2021. Judge Hunt informed the parties that the OSC hearing would be taken off calendar, if the parties submitted signed settlement agreements before the hearing.

Plaintiff's counsel filed the requisite settlement statements electronically, on May 13, 2021. Plaintiff's counsel attempted multiple times to contact Judge Hunt's department to confirm that the May 17 OSC hearing was no longer on calendar but was not able to speak with anyone directly or leave a message, as the courtroom

voicemail was full. Plaintiff's counsel attempted, with defense counsel, to appear telephonically for the OSC hearing on May 17, only to be informed by CourtCall that the OSC hearing was not reflected on the judge's calendar.

Judge Hunt proceeded with the OSC hearing on May 17, 2021, in the parties' absence, despite their having filed settlement agreements before the hearing and dismissed the case without prejudice. As a result of the dismissal, the plaintiff was unable to recover the amounts to which multiple defendants in the case had agreed and was forced to settle with only one of the defendants for a nominal sum.

Judge Hunt's handling of this matter denied the parties a full and fair right to be heard and was impatient and discourteous, in violation of the judge's ethical duties under canons 3B(7), 3B(8), and 3B(4).

The commission notes that, in this matter and the foregoing matters, Judge Hunt appeared to give great priority to acting promptly in the matters before him. In his response to the commission's preliminary investigation letter, Judge Hunt acknowledged the need to reach a balance between being effective and fair and listening to the parties, and resolving matters quickly and efficiently. As set forth in the advisory committee commentary to canon 3B(8), "The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience."

4. *Alejandro Ramirez v. CL Education, Inc., et al.* (No. 30-2017-00912173)

On May 17, 2019, Judge Hunt presided over a hearing on the plaintiff's motion for attorney fees, pursuant to the terms of the parties' settlement agreement. The plaintiff sought nearly \$165,000 in attorney fees and costs, which the defendants opposed, arguing, in part, that the judge had the discretion to greatly reduce the fees. After hearing the motion and taking the matter under submission, Judge Hunt issued a ruling by minute order, awarding the plaintiff \$1,000 in attorney fees. The minute order was silent as to any award for costs and did not contain any findings, calculations, or explanation for the final decision.

On September 30, 2020, the Fourth District Court of Appeal reversed and remanded the matter for reconsideration by the trial court. (*Ramirez v. CL Education Inc.* (Sep. 30, 2020, G057779) [nonpub. opn.].) The appellate court found that Judge Hunt abused his discretion by "arbitrarily reducing the fees and costs to a total of \$1,000 without explanation." The court stated that, while a trial court is not required to issue a statement of decision regarding attorney fee awards, there must still be some explanation for large cuts to either the amount requested or the lodestar (i.e., the counsel's reasonable hourly rate multiplied by the hours reasonably expended). The appellate court found that the judge's award of \$1,000 bore no relationship to the attorney's hourly rate, the number of hours claimed by

plaintiff's counsel, "or even the reductions suggested by defendants in their opposition."

In his response to the commission's preliminary investigation letter, Judge Hunt stated that, although he failed to state the reasons for his order, it was based on the conduct of the litigation before him. Regardless of whether the award was substantively warranted, Judge Hunt's conduct in awarding less than one percent of the requested attorney fees and costs, without explanation, gave the appearance that the judge acted arbitrarily and was not impartial.

The commission concluded that Judge Hunt's conduct in this matter constituted a failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of canon 2A.

Judge Hunt's conduct in these matters was, at a minimum, improper action.

In determining to issue this notice of Tentative Public Admonishment, the commission considered Judge Hunt's prior discipline: a 2009 advisory letter in which the commission found that Judge Hunt publicly commented on a pending case when he discussed, with a reporter for a legal newspaper, a case in which the judge had presided over trial and post-trial proceedings, which was then pending, and about to be argued, in the Court of Appeal.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Mr. Eduardo De La Riva; Rickey Ivie, Esq.; Ms. Kay Cooperman Jue; Hon. Lisa B. Lench; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted for the Notice of Tentative Public Admonishment. Commission member Hon. William S. Dato voted for a Notice of Tentative Private Admonishment. Commission members Ms. Sarah Kruer Jager and Victor E. Salazar, Esq. did not participate.

Date: July 5, 2022