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THE STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE TONY MALLERY No. 208	**RESPONDENT'S VERIFIED ANSWER TO NOTICE OF FORMAL PROCEEDINGS**

Judge Mallery submits this Verified Answer to the Notice of Formal Proceedings.

CONTENTS

Introduction

Judge Mallery's actions were lawful, ethical, and consistent with his duties as judge, both presiding and associate. Nothing Judge Mallery did violated the law, rules, or Judicial Canons; and instead, the facts show that Judge Mallery honorably upheld his duties despite tremendous community pressure and systemic challenges.

Lassen is a beautiful and sprawling county nestled in the Sierra Nevada range, just on the western edge of the high desert. Lassen is large in terms of area but miniscule in terms of population. It is rural. Its geographical area is slightly larger than Los Angeles but has one-third of one percent (0.33%) of Los Angeles' population. (Census.gov, results for 2020 census, accessed on September 27, 2022.) Lassen's county seat, Susanville, has a population of less than 17,000 and an area of 7.92 square miles. (*Id.*)

Perhaps unsurprisingly, with such a small but concentrated population, everyone knows everyone in Susanville, and unfounded rumor and innuendo spread rapidly. The rumor and innuendo leave destruction in its wake, and the effects are real and lives are being ruined. This is exactly what is happening with this case. Certain residents in Lassen harbor grudges against Judge Mallery, and they are using the Commission to advance their personal and improper attacks on him. This has caused Judge Mallery great professional harm, but it has also negatively affected his health and wellbeing.

The ongoing community attacks against Judge Mallery comes as no surprise, but the willingness of the Commission to advance these false rumors

does. It is Judge Mallery's informed opinion, which he documents in this Answer, that the Commission has become embroiled in Lassen community disputes, and it is acting as a proxy for those who unfairly seek to harm him. What other conclusion could he or a reasonable factfinder reach? Since taking the bench, Judge Mallery has been under constant scrutiny by this Commission, and despite having previously found nothing that would support Judge Mallery's removal from office, the Commission continued to investigate.

Judge Mallery is now required to directly respond to every allegation of misconduct, which is no easy task. Despite taking more than two years to complete the investigation, and having the leisure to draft and organize its Notice of Formal Proceedings, the document is generally unclear, the various counts contain allegations that do not relate to each other or a unifying theme, and it summarily accuses Judge Mallery of having violated Judicial Canons without providing any meaningful analysis. Despite the challenge, and like he has done in the past, Judge Mallery fully and honestly responds to each allegation.

The Commission necessarily knows that before this Answer is due, Judge Mallery cannot meaningfully review the voluminous records that the Commissions claims are evidence of the truth of the many allegations in their twenty-one-count complaint. Instead, Judge Mallery must rely on his memory and simply recall and state the truth as he knows it. This Answer is just that—the truth. Nevertheless, in abundance of caution, Judge Mallery has held back some of the facts which would support him because he seeks to protect the privacy of complainants.

The Commission's power is great, and Judge Mallery must defend himself against dozens of allegations, sprawling many years. Judge Mallery knows that he faces an uphill battle, a fight made more challenging because of the Commissions poor investigation. So much of what the complainants told the Commission is obviously false, or a partial truth at best, but the Commission made no attempt to dig deeper if the results would likely have hurt their case. Instead, they simply accepted the complainants' accounts at face value. Surely now memories have faded and evidence is lost, which puts Judge Mallery at a disadvantage. Had the Commission completed a thorough investigation, those memories and evidence would have been preserved, but given the lapse in time, even false witnesses may believe that their lie is truth.

Judge Mallery may not have the resources or the power of the Commission, but he has the truth on his side. Judge Mallery acknowledges that he made mistakes, but none worthy of his removal. He knows witnesses will appear and offer false testimony against him, as they have done to the Commission during the investigation. He expects that regardless of the issues with their case, the Commission will proceed and seek his removal. However, with the truth on his side, Judge Mallery knows that if the factfinder comes to this proceeding with an open mind, with the curiosity for the truth which the Commission lacks, and with the caution required to weigh all the evidence, he will be exonerated and should be permitted to remain on the bench.

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Count 1

Contrary to the Commission's allegation, there was no causal connection between Judge Mallery's awareness of the investigation into him and the court's investigation into misuse of the computer system. Prior to stepping down as the CEO, Mr. Vose presented Judge Mallery with information pertaining to a potential security breach of court records and improper use of court resources. The court management team consisted of Kim Gallagher, Assistant Court Executive Officer; Marian Tweddell-Wirthlin, Operations Manager; Brandy Cook, Administrative Services Manager; and Crystal Jones, Court Supervisor. Mr. Vose explained that he suspected that one or more in management were improperly using the court's email, improperly distributing court information, and possibly deleting the court's electronic records. Mr. Vose shared that his determination was based upon what he described as a large amount of court information being sent by certain managers to their private emails and other unknown emails, including former Lassen County Superior Court Presiding Judge Michele Verderosa, and then deleting the transaction/event from the court's computers/servers without consent or privilege or any documentation to support their actions. Mr. Vose expressed concerns as to the security of court information and equipment, whether confidential information had been compromised, and what duty if any was there to notify individuals if confidential information was distributed not in accordance with the law.

Judge Mallery is informed that during Mr. Vose's review, he determined that several in the management team were violating the rules and law. Judge

Mallery denies having instructed Mr. Vose to provide him with copies of any emails or attachments and he denies ever having seen such documents. Rather, Mr. Vose generated a spreadsheet for Judge Mallery's review. The information on the spreadsheet was limited to the sender's email address, the receiver's email address, and whether attachments were sent. Judge Mallery reviewed the spreadsheet and noticed one of the emails went to an Anne Hunter at the CJP. In no portion of the spreadsheet did it say Commission on Judicial Performance, only CJP. Knowing that CJP on Vose's spreadsheet may be the Commission on Judicial Performance, Judge Mallery informed Mr. Vose that any email potentially linked to the CJP was not to be looked at by anyone. Mr. Vose recommended a further inquiry into the matter to assure the safety and security of court information.

During the investigation, Mr. Horsley informed Judge Mallery that even he could not determine how the data was scrubbed from the server. He stated a person would have to know how to do so because just deleting a file would not erase information from the system. Mr. Horsley explained that he thought this was unlikely to have occurred by mistake. Mr. Horsley thought that certain individuals in management had done so intentionally, which caused concern and heightened the importance of getting to the bottom of it.

Judge Mallery denies that he told Mr. Horsley that court employees who were cooperating with the Commission were getting "payback" or "what's coming to them" or words to that effect. Judge Mallery might have suggested that

the employees were getting payback against him for him requiring everyone to follow the rules, but he did not say he would pay them back for cooperating.

Judge Mallery does not know whether Mr. Horseley shared copies of the emails with Mr. Vose in a "discovery mailbox." As explained above, Judge Mallery did not review any emails associated with this investigation.

In order to conduct a reasonable and timely investigation, the court—through Judge Mallery—requested the assistance from the Judicial Council to assist and advise. Judge Mallery is informed and believes, and thereupon alleges that the Judicial Council was informed early in the process that the Commission had an open investigation pertaining to Judge Mallery and that the court would not be investigating information that could be linked to the Commission. Judge Mallery is informed and believes, and thereupon alleges that the Judicial Council was also informed that Kim Gallagher, who was by then acting CEO, would be the go-to-person for the court and she would be assisting the Judicial Council in fully and fairly gathering the pertinent information requested.

Prior to the conclusion of the investigation, Marian Tweddell-Wirthlin and Brandy Cook provided their resignations to the court and were no longer employed with the court.

After the conclusion of the investigation, based upon what was deemed to have occurred and advisement from the Judicial Council and JRG Attorneys at Law, Ms. Gallagher, as the acting CEO and within her authority pursuant to California Rule of Court 10.610, chose not to pursue any disciplinary action against any employee. Instead, Ms. Gallagher used the information gleaned from

the investigation to improve the policies and procedures pertaining to employees' use of court resources, records, computers and to establish safeguards pertaining to an employee's ability to delete information from the court's computers/server without proper authority and documentation.

Without waiving the attorney client privilege, Judge Mallery acknowledges that he contacted attorney Mark Jacobson at the Judicial Council seeking assistance for the court regarding the information brought forth by the Mr. Vose. Without waiving attorney client privilege, Judge Mallery spoke with attorney Patrick Sutton with the Judicial Council on or about March 15, 2021, by telephone. Judge Mallery informed Mr. Sutton that Mr. Vose discovered a large amount of court information being sent by certain managers to their private emails, former Presiding Judge Michele Verderosa, and other unknown emails, and then the transaction/event being deleted from the court's computers/servers improperly. Mr. Sutton asked Judge Mallery if he had any speculation as to why the emails were being sent in such a fashion. Judge Mallery informed Mr. Sutton that he was subject of an ongoing investigation with the Commission, and it appeared that one of the actions on the spreadsheet was an email sent by Crystal Jones to Anne Hunter with the Commission. Judge Mallery informed Mr. Sutton that he was not seeking information on that correspondence or any correspondence that may have been sent to the Commission. As to the other communications of concern that did not appear to have any relation to the Commission, Judge Mallery requested assistance from the Judicial Council to participate in the investigate.

Without waiving attorney client privilege, Mr. Sutton informed Judge Mallery that Ann Schuyler, a member of the Judicial Council Labor and Employee Relations Unit, would probably contact the court on the following day to begin the process of determining whether to proceed to a fuller investigation and to identify the scope of such an investigation. Judge Mallery requested Ms. Schuyler interview Ms. Tweddell-Wirthlin, as Ms. Tweddell-Wirthlin was set to retire on March 26, 2021.

Judge Mallery denies that he instructed Ms. Gallagher to be copied on emails to and from the Judicial Counsel. Rather, to facilitate transparency and communication between the CEO, management, and staff regarding correspondence with the Judicial Council on court related matters, Ms. Gallagher requested she be courtesy copied on correspondence with the Judicial Council. Pursuant to her authority within Rule 10.610, Ms. Gallagher had that right.

Judge Mallery admits receiving a forwarded email from Ms. Gallagher originating from Mike Etchepare, Supervising Attorney for Legal Services at the Judicial Counsel, on or about April 2, 2021. Mr. Etchepare's email failed to address the Court's reasonable concerns about the potential security breaches and improper dissemination of court records. Because Judge Mallery and Ms. Gallagher remained concerned regarding the conduct of court employees' use of court resources and security of court information regarding matters that did not pertain to the Commission, a letter was drafted seeking additional information from Mr. Etchepare. Judge Mallery and Ms. Gallagher collaborated on it. Knowing time was of the essence and Ms. Gallagher was addressing other

pressing needs of the court, Judge Mallery and Ms. Gallagher met and worked together on a draft of the letter, Judge Mallery prepared the initial draft, and then Ms. Gallagher finalized and signed it. The letter to Mr. Etchepare reminded Mr. Etchepare that there were several issues wherein assistance was requested that do not pertain to the Commission, which were not addressed, i.e. deletion of emails, sending court information to non-secured servers, violation of court's standards, rules and policies as stated in the court's personnel plan, and the Code of Ethics for the Court Employees. These issues remained unaddressed by Mr. Etchepare, and without a further investigation as to matters that did not pertain to the Commission investigation, the court would not be able to determine it there has been a security breach and if so, how it occurred and how to remedy it.

About the staff grievance email, it was precipitated by Ms. Gallagher bringing to Judge Mallery's attention that there were ongoing closed-door meetings held by Judge Nareau with management and court staff. It appeared that staff were using these meetings to share grievances they had with the court. As the Presiding Judge, Judge Mallery reminded Judge Nareau that Judges were not to address employee grievances because that was a management issue. If an employee attempts to air a grievance with a judge, it is a judge's duty and obligation to refer the employee to the court's grievance procedure. Judges are not to get involved. Judge Nareau acknowledged to Judge Mallery that he was aware of such requirement, but continued such activity despite Judge Mallery counselling him on the issue. Although it was incumbent upon Judge Nareau to

bring these issues to Judge Mallery and/or the CEO, Judge Nareau made it clear that he was not willing to work with either of them.

As a result of Judge Nareau's informal grievance meetings, Judge Mallery forwarded an email to Ms. Gallagher which Mr. Vose had previously sent to the court employees and judges regarding the court's grievance procedure. Judge Mallery denies he sent the email to discourage court employees from filing complaints with the Commission or providing information to Judge Nareau that might be forwarded to the Commission. Ms. Gallagher was concerned that employees were refusing to comply with established procedures and acknowledge and follow her directives, so Judge Mallery forwarded her the email for reference of what happened in the past.

Based upon Mr. Etchepare's email and lack of guidance, Judge Mallery and Ms. Gallagher determined it was necessary to obtain an additional opinion and if necessary, assistance regarding matters that did not pertain to the Commission investigation. Without waiving attorney client privilege, Judge Mallery spoke with Ren Nosky of Johnson, Rovella, Retterer, Rosenthal & Gilles, LLP ("JRG Attorneys at Law") for a second opinion pertaining to these issues.

Judge Mallery acknowledges that he discussed with Ms. Stalter information regarding the investigation, Mr. Horsley's conclusions about intentionality, and how it was never determined how one was able to completely delete information off the server. Judge Mallery acknowledges that he expressed concern that a "mole" was inside the court. It is his informed belief that someone or persons who work for the court were improperly entering court files and

databases, copying, and disseminating sensitive information without the proper authorization. It was in this context—where he believed someone was burrowing into the court's records—that he suggested there was a mole.

Count 2

Judge Mallery denies he misrepresented the status of the investigation. As stated above, Judge Mallery informed Mr. Sutton that Judge Mallery was subject to an ongoing investigation with the Commission. Judge Mallery is also informed and believes that Kim Gallagher informed Ms. Schuyler that Judge Mallery was subject to an ongoing investigation with the Commission. Judge Mallery has no recollection of ever communicating, either by written or oral communication, with Ms. Schuyler that Ms. Gallagher was the lead contact person for the court with the Judicial Council.

Count 3

a. *Alleged discouragement*

Judge Mallery admits that he stated he did not trust Ms. Jones, but denies that this was based on cooperation with the Commission. On or about June 1, 2021, Ms. Stalter accepted a management position with the Lassen Superior Court addressing financial and human resource issues of the court. Ms. Stalter quickly proved herself, including by helping in the preparation of the necessary reports prior to the end of the fiscal year. Judge Mallery and Ms. Stalter worked together with Ms. Gallagher to close out fiscal year 2020-2021 prior to July 1, 2021.

Relying on each other to conclude the fiscal year and issues facing the court, Judge Mallery and Ms. Stalter were candid with each other about direction of the court. As the Human Resource Officer, Ms. Stalter was extremely interested in the court employment culture and discussed these issues with Judge Mallery. Judge Mallery and Ms. Stalter took the time to talk about their shared vision, not abstractly but in detail. Judge Mallery and Ms. Stalter collaborated about their hopes for the future of the court and shared visions. They also offered assistance to each other to make work easier.

Regarding Judge Mallery's comments to Ms. Stalter that court staff were cooperating with the Commission, Judge Mallery acknowledges that he told her that he has lost trust in certain court staff because he believes they have shared untruthful information with the Commission. At no time has Judge Mallery, either directly or indirectly, told Ms. Stalter she or staff should not cooperate with the Commission.

b. *Ellen Hamlyn*

In or about June 2021, court reporter Ellen Hamlyn voluntarily terminated her employment with the Lassen Superior Court. Judge Mallery admits that he shared with Ms. Stalter, in confidence, that he was not necessarily displeased with Ms. Hamlyn's departure from the court due to her continuous public denigration and open insubordination toward Judge Mallery since the day he took the bench to the date of her departure. Judge Mallery denies he made this statement because Ms. Hamlyn was cooperating with the Commission.

c. *Brandy Cook*

There were ongoing issues regarding performance of Ms. Cook that warranted review by the CEO and if deemed by the CEO to be necessary and appropriate, for a performance plan and/or termination to occur. The issues did not pertain to the Commission. At no time did Judge Mallery instruct any CEO to fire a person based upon filing a complaint with the Commission.

d. *Clerk IV*

Judge Mallery admits that he wished to see the Clerk IV position implemented prior to the end of his tenure as the Presiding Judge, but he denies he did so in retaliation for cooperating with the Commission. Prior to Mr. Vose' departure from the court, Mr. Vose discussed with Judge Mallery the ability to reduce higher paying management positions with the court by implementing a Clerk IV position that could address many of the functions the lower management positions were performing. In addition, it would give the clerks room for upward movement and additional pay along with keeping them as a protected class of the court and not an at will employee and exercise budgetary and fiscal responsibility. Mr. Vose started the process of implementing a Clerk IV position prior to his departure, but was not able to before he left. Mr. Vose's departure was precipitated by Judge Narau's pronouncement that "there is no place here for Mr. Vose when I become Presiding Judge" and strongly pressured Judge Mallery to release Mr. Vose prior to Judge Naruau becoming Presiding Judge.

It was Judge Mallery's desire to see the Clerk IV position implemented in a timely fashion to allow the Clerk IV position to be fully established and implemented prior to the end of the calendar year. Acting CEO, Kim Gallagher,

implemented the Clerk IV position with the assistance of Ms. Stalter. In no event was the implementation of the Clerk IV position done as retaliation to any person at the court, but rather to protect the employees and exercise budgetary and fiscal responsibility

A common reoccurring theme with the Commission is that Judge Mallery retaliated against employees of the court for cooperating with the Commission. Retaliation is the action of harming someone because they have harmed oneself; revenge. While the Commission makes this claim of retaliation, there are no facts presented to show actual retaliation occurred. If retaliation occurred, the Commission would have information to show that Judge Mallery conducted an adverse action against an employee for engaging in protected activity. But the Commission cannot because none of the individuals who have cooperated with the Commission have been released from employment, demoted, or had any other negative action taken. Instead, they have continued to be gainfully employed and to have the ability for upward advancement and protection with the court. Any alleged feelings an employee may have of retaliation are self-imposed and unsupported. Interestingly, Judge Mallery is informed and believes, and thereupon alleges that since Judge Nareau became the Presiding Judge on January 1, 2022 for the 2022 calendar year, six or more employees have left employment, either voluntarily or involuntarily, due to the adverse working conditions of the court under his leadership and that of CEO Teresa Stalter.

e. *Complaint about improper dissemination.*

Judge Mallery admits that he discussed with Ms. Stalter his concerns that information being released to the Commission by the employees may be confidential and may require a subpoena or some other formal procedural request. Judge Mallery was not concerned that the Commission may be requesting information that may be confidential, he just wanted to make sure that the Commission was going through the proper procedures so that the staff working with the Commission did not unknowingly place themselves in a negative position. Judge Mallery denies telling Ms. Stalter that he had told Mr. Vose to fire Ms. Cook.

f. *Legal definitions*

Judge Mallery has read and understands Government Code § 68725, and he denies misrepresenting legal definitions to Ms. Stalter. As noted above, the concern was that confidential information was being sent to the Commission and other unknown recipients which was protected under the law (juvenile and family court records most sensitive of all), and the Commission might not have gone through the proper procedures to obtain it. Further, Mr. Vose had no knowledge of such dissemination of records and it is his duty pursuant to CRC section 10.610(c)(8) to have a uniform record keeping system. Obviously, the Commission is entitled to investigate, but Judge Mallery was simply reminding employees that they should not bend the rules or ignore the chain of command and instead the Commission should obtain the records through proper process.

g. *Knowing their place*

Judge Mallery denies telling Ms. Stalter that court employees were being disloyal and should "know their place," or words to that effect. The truth is that Ms. Stalter said words to this effect.

h. *Peremptory challenge threat*

Judge Mallery admits that he had a conversation with Ms. Stalter where they discussed the law on peremptory challenges. Judge Mallery shared that if he returned to the bar, he might file challenges to disqualify certain judicial officers because he believes they are biased against him. The facts discussed throughout this Answer are evidence of that bias.

i. *The "mole"*

Judge Mallery incorporates and reasserts herein the relevant portion of his answer from Count 1.

j. *Ratting allegation*

After a reasonable inquiry concerning the alleged statements, Judge Mallery can neither admit nor deny that he made them, however, the Commission needs context to the alleged statements. Stalter told Judge Mallery that she felt he had a harassment claim with the ongoing culture and conduct of the staff. While conducting her alleged investigation into the conduct of the staff and indicating that she was trying to create harmony in the court and indicated that culture of repeated and unwarranted reporting of a judicial officer was not the culture she wished to have continue under her leadership, and further it was unproductive for the court. She kept asking if the reporting was still continuing. Judge Mallery answered truthfully and told her he had just received another supplemental

preliminary investigation letter about a courtroom proceeding and Judge Mallery was trying to figure out why people were reporting about his management of the courtroom over which he presides and as to specific cases. Judge Mallery expressed that he felt he was in essence being stalked. He may have used the term "ratting", but denies ever calling anyone a "rat".

k. *Postal*

Judge Mallery admits that he used the word "postal," but denies he meant it as a threat of violence, and he contends all who heard knew that. Prior to using the word, Ms. Stalter posed a destructive and inappropriate question about how Judge Mallery would feel if the Commission removed him from the bench. He responded with his perceived feelings if he were to be removed after all he has had to endure over the past nine plus years in this ongoing environment of vitriol which is well known and documented with the Commission.

Judge Mallery regrets that he used this comment. At no time was Judge Mallery expressing a threat of violence, implied or otherwise. The statement showed frustration and sense of despair brought on by the events Judge Mallery has experienced in part as a result of this Commission's ongoing investigations and in part because of extraneous matters. As noted above, Ms. Stalter, as both the Human Resource Officer and CEO, sought information from Judge Mallery regarding his wellbeing. Judge Mallery shared that he had been experiencing stress, panic, anxiety, and emotional distress resulting in Judge Mallery finding it hard to trust others, causing suspicions, doubt, inability to focus and finding it becoming more difficult to manage feelings of stress. Since first addressing the

Commission in or about 2013-2014, Judge Mallery has had to respond to hundreds of unfounded inquiries with subparts and has spent more than seven of his nine years on the bench before the Commission.

At the time he made the comment, tremendous demands were placed upon Judge Mallery, including by Judge Nareau. Additionally, over the prior two summers, Judge has received multiple evacuation notices due to wildfires near his residence, and that he was more concerned with what the Commission could do to him than with addressing the needs of his family. It was at that time, Judge Mallery realized the emotional toll he was facing based upon the courthouse environment and the relentless campaign to have him removed from office.

Judge Mallery greatly appreciated what he thought was Ms. Stalter's openly showing concern, kind words, friendliness and hope she seemed to offer to Judge Mallery. It was in this context that he used the word and it was merely an indication of his mental wellbeing, not any action he would take. Ms. Stalter asked Judge Mallery how he would *feel* if he were removed, not what he would *do*. Judge Mallery expressed his feelings not his intended actions. The question from Ms. Stalter was entirely inappropriate. It was in essence rubbing salt in the gaping wound that she had created. Judge Mallery now recognizes that he should not have shared his personal feelings of frustration with Ms. Stalter.

l. *Leesa Webster*

Judge Mallery admits that in his chambers and out earshot of Ms. Webster, he made comments to the effect alleged. However, while Ms. Webster is a difficult person who does not care for Judge Mallery and can make proceedings

more difficult than they need to be, Judge Mallery puts those issues aside and addresses Ms. Webster's matters fairly, in accordance with the law and his duties as a judge. (*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 632, 635 (judge's reference to a troublesome litigant as a " 'psychopath' " and a " 'puke' " in a private conversation with an attorney was not a subject for judicial discipline).)

m. *Further allegations related to Ms. Hamlyn*

Judge Mallery admits that he inquired with Ms. Stalter about the court reporting needs because that was part of his duty as Presiding Judge. Judge Mallery was seeking information from Ms. Stalter regarding the budget and how the court was doing facilitating services as the court was without a full-time court reporter. Ms. Stalter indicated the court was under budget and services were adequate. Judge Mallery was pleased with the information and noted that he had not noticed any negative effect by not having a full-time court reporter on staff. Judge Mallery denies that he remarked that Ms. Hamlyn had cooperated with the commission.

n. *Christmas lunch*

Judge Mallery was asked by Teresa Stalter if he would be providing the employee Christmas lunch as he had done in the past as the Presiding Judge. Judge Mallery has always paid for the lunch from his own funds and he would prepare and serve the lunch himself. At times, court employees would assist in setting up and cleaning up. One of those employees happened to be Amber

Klinetobe, to which Judge Mallery responded to a Commission inquiry regarding her assistance at one of the luncheons.

As this would be Ms. Stalter's first Christmas lunch at the courthouse, she sought information on what would be done and she offered assistance. Judge Mallery informed Ms. Stalter of what he has had to address with the Commission regarding prior lunches. Furthermore, Judge Mallery was aware that when he would bring in donuts, cookies and other delectables for the staff, some staff shared that they were not fond of the sweet treats and would comment unfavorably. Indeed, not all staff were appreciative of Judge Mallery's generosity to provide meals and treats to the staff.

It was in this context that Judge Mallery admits using the expressions regarding backstabbing and "snitches get stitches," but not in the way that the Commission suggests. Regarding Judge Mallery's comment to Ms. Stalter that Ms. Jones might stab her in the back, Judge Mallery was expressing his concern that Ms. Jones might offer untruths about Ms. Statler like she had about Judge Mallery. Regarding snitches, Judge Mallery was suggesting that because he was reporting staff misbehavior to management and demanding that everyone follow the rules, he was perceived as a snitch. Believing that the Commission is attacking him for his adherence to the rules, Judge Mallery was suggesting that he was getting the stitches.

Judge Mallery admits that he told Ms. Stalter about staff cooperation with the Commission and how after Ms. Klinetobe helped with the lunch, he received a letter from the Commission.

Count 4

Judge Mallery denies that he engaged in any impropriety as it relates to this allegation. Mr. Vose was selected to serve as Court Executive Officer (CEO) in accordance with the procedures adopted by the court, and has served in that capacity at all relevant times. (*See* California Rules of Court, Rule 10.610(a).) In his capacity as CEO, Mr. Vose was responsible for overseeing the management and administration of the nonjudicial operations of the court and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. (*See* California Rules of Court, Rule 10.610(b).)

As the June 2020 fiscal year end neared, Mr. Vose, in the proper performance of his duties as CEO under the Rules of Court, conducted a review of the court's financial position and needs, and identified a number of opportunities to either encumber or utilize the court's funds which would maximize the use of judicial and other resources, increase efficiency in court operations, and enhance service to the public. Among other items, those efforts yielded a new security contract with the Lassen County Sheriff's Department and a new five (5) year Memorandum of Understanding with the represented employees of Lassen Superior Court.

Mr. Vose also identified a number of other uses for those court funds which would maximize the use of judicial and other resources, increase efficiency

in court operations, and enhance service to the public. Specifically, Mr. Vose identified the increased need for storage of court property and court files which had grown exponentially over the years and were either being temporarily stored in office space or in unsecured areas outside the courthouse (exposing said property to potential waste or theft).

Compounding the increased need for storage was Mr. Vose's observation of increased criminal activity directed at the courthouse and transients who had increasingly set up encampments in the vicinity of the courthouse. Mr. Vose was particularly concerned with the brazen theft of the California State flag from the flagpole in the front of the courthouse, as well as the potential theft or destruction of the court's files that were being housed in a shed in the rear parking lot. (In July of 2020, the shed had in fact been broken into during non-court hours. Fortunately, no files appeared to have been stolen or damaged.)

Accordingly, Mr. Vose asked Administrative Manager Brandy Cook to request storage container price quotes from "Rental Guys," "Lassen Rents," and any other local businesses that sell storage containers. Ms. Cook asked Mr. Vose about the purpose, and Mr. Vose stated that he had several purposes in mind - one of which was the storage of Lassen County Superior Court records which had previously been housed in the old courthouse.

Thereafter, Ms. Cook stated to Mr. Vose that she had received a price quote from Lassen Rents, Inc. but that Rental Guys failed to even respond to her request for a quote. Ms. Cook also provided Mr. Vose with several articles on the preservation of historic documents and opined that the storage unit may not be

suitable for the old Lassen County Superior Court records. Mr. Vose—having actually reviewed the records and finding them to overwhelmingly be of little or no historic value, and having already identified several alternative needs for which the storage container would be ideal—acknowledged Ms. Cook's opinion and appropriately directed Ms. Cook to process the purchase of the storage container from Lassen Rents, Inc., in accordance with his facilities and records responsibilities as set forth California Rules of Court, Rule 10.610(c).

At no time did Judge Mallery order or direct Mr. Vose, or any other court employee in the conception, solicitation, purchase, or delivery of the subject storage container. Judge Mallery does, however, concur with Mr. Vose's assessment of the court's need for one.

Count 5

Judge Mallery admits that he stated he would not place a defendant on Mental Health Diversion, but not for the reasons the Commission alleges.

Mental Health Diversion in Lassen County

Mental Health Diversion, pursuant to Penal Code §§ 1001.35-1001.36, is the obligations on the county to make implementation possible. Nothing in the legislation requires a court or county to create a mental health program for the purposes of diversion. Within existing resources, the County must have a treatment system presently in place for indigent defendants. The County must establish a system to monitor the defendant as to treatment compliance, meet the requirements for opinions by qualified experts and establish a system to provide

ongoing reports to the Court including treatment providers who contract with the County.

As there was no legislative requirement for a court or county to create a mental health program for the purposes of diversion and Lassen County's resources were insufficient to support a diversion treatment system for indigent defendants, the court was not in a position to grant Mental Health Diversion. Counties that have the infrastructure to support Penal Code §§ 1001.35-1001.36 for indigent defendants leaves a court with balancing compassion and dignity with public safety and accountability. Counties that do not have the infrastructure for indigent defendants leaves the court without a meaningful way to implement (Penal Code §§ 1001.35-1001.36.) Regardless of services available in any of the 58 counties in California, Penal Code sections 1001.35-1001.36 favors the rich defendant who can afford treatment options over a poorer one, who has to rely on historically underfunded public programs.

Until Lassen County can show the Court that the County has the ability to provide services to support Penal Code sections 1001.35-1001.36, the likelihood of an indigent defendant being meaningfully considered for Mental Health Diversion is improbable.

The Vasquez case

On August 14, 2018, Jacob Zamora, conflict attorney appointed to assist Channel Candra Vasquez, requested Mental Health Diversion pursuant to Penal Code section 1001.35. David Evans, Deputy District Attorney, did not oppose the request and visiting judge, Honorable Graham Cribbs, continued the matter to

October 16, 2018 to allow Alfreco M. Amezaga, PhD., the opportunity to examine the Defendant.

There had been no offer of a prima facie basis for diversion at the hearing on August 14, 2018 which would allow the court to determine, in its discretion, whether to consider allowing Ms. Vasquez the opportunity to participate in diversion. On August 22, 2018, the Court received a request for ancillary services of $1,500.00 to be paid by the County of Lassen for future services of Alfreco M. Amezaga, PhD. These services would only be necessary if Mr. Zamora could provide a prima facie basis for diversion pertaining to Ms. Vasquez.

The prima facie hearing is informal and may proceed on offers of proof, reliable hearsay, and argument of counsel. Evaluation by an expert for a prima facie hearing is neither necessary nor required. If a prima facie showing is not made, the court may summarily deny the request for diversion or grant any other relief as may be deemed appropriate. In other words, if the court could not make this determination upon conclusion of Mr. Zamora's presentation of information at a Prima Facie Hearing, then the court could summarily deny the request for diversion because there would be no need for limited government funds to be used on unnecessary proceedings.

A prima facie hearing was therefore set by minute order, for September 11, 2018 at 2:30 p.m. To assist with narrowing the issues at the hearing, the minute order provided the following information to counsel:

> The ability to participate in diversion is not a matter of statutory right, but a matter of discretion with the court, the defendant carries the burdens of proof and

persuasion regarding eligibility and suitability for diversion. When the defendant requests mental health diversion, the court is to conduct a hearing to determine whether the defendant can offer a prima facie basis for diversion. At that time, the court is to receive information about the crime, the defendant's criminal and mental health history, and potential treatment options. If the defendant demonstrates the crime is generally suitable for diversion and the defendant has at least an arguable chance of meeting the other requirements for diversion, the court may proceed with appointment of any necessary experts and exploration of placement options. On the other hand, if the case is unsuitable for diversion, even assuming the defendant would otherwise qualify, the court can deny the request without further incurring unnecessary time and expense in obtaining forensic evaluations.

At a mental health diversion hearing to determine whether the defendant can offer a prima facie basis for diversion, counsel is to make offers of proof as to the details of the offense and the defendant's criminal and mental health history. The court may take into consideration "reliable hearsay," as Sections 1001.36, subd. (b)(1) and (2), contemplate the use of such evidence by permitting the court to consider police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, and records or reports by qualified medical experts.

Should a prima facie basis for diversion be shown, the court may then consider granting diversion if all of the allowing requirements are met:

A. "The court is satisfied that the defendant suffers from a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders. While the statute permits diversion based on nearly every mental disorder, it expressly excludes persons who are diagnosed with antisocial personality disorder, borderline personality disorder, and pedophilia.

B. "The court is satisfied that the defendant's mental disorder played a significant role in the commission of the charged offense." In reaching its conclusion on this requirement, the court is permitted to consider "any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health

> treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense. . . ." (Id.)
>
> C. "In the opinion of a qualified mental health expert, the defendant's symptoms motivating the criminal behavior would respond to mental health treatment." (§ 1001.36, subd. (b)(3).)
>
> D. The defendant consents to diversion and waives the right to a speedy trial. (§ 1001.36, subd. (b)(4).)
>
> E. "The defendant agrees to comply with treatment as a condition of diversion." (§ 1001.36, subd. (b)(5).)
>
> F. "The court is satisfied that the defendant will not pose an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community." (§ 1001.36, subd. (b)(6).) In determining dangerousness, "[t]he court may consider the opinions of the district attorney, the defense, or a qualified mental health expert, and may consider the defendant's violence and criminal history, the current charged offense, and any other factors that the court deems appropriate."
>
> G. "The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant." (§ 1001.36, subd. (c)(1)(A).)

At the prima facie hearing on September 11, 2018, the matter was continued again, to October 16, 2018, to allow Mr. Zamora additional time to prepare for the hearing. At the hearing on October 16, 2018, Mr. Zamora presented documents from behavioral health and no other information. Mr. Zamora did not provide information about the crimes, the defendant's criminal history, or potential treatment options. Mr. Zamora did not demonstrate the alleged crimes were generally suitable for diversion. He similarly failed to

demonstrate that the defendant had at least an arguable chance of meeting the other requirements for diversion.

Considering the failure to provide a prima facie basis for diversion, the Court did not grant the request for ancillary services of $1,500.00 to be paid by the County of Lassen for future services of Alfreco M. Amezaga, PhD.

Count 6

Judge Mallery denies that he denied the challenges in bad faith. Response to Count 5 is incorporated by reference herein as if fully set forth herein and made a part hereof.

Law on Palma notice

A *Palma* notice informs the parties that the appellate court is considering issuance of a peremptory writ, and that the trial court may: (1) submit an opposition to the writ petition as an appearance has not been made by the trial court and there has been no consideration to the trial court's position; or (2) reconsider the matter on its own motion, without the appellate court proceeding further by ruling on the petition. A *Palma* notice is merely a "suggestive" notice to the respondent court, deferring to the trial court the "power and jurisdiction" to change its order.

The accelerated *Palma* procedure dispenses with the issuance of an alternative writ or order to show cause, and with the requirement that the Court of Appeal afford an opportunity for formal briefing and oral argument before ordering that a peremptory writ issue. Additionally, by eliminating the necessity for full-scale response where such a response is unnecessary, such a practice helps

to reduce the cost of litigation to the parties. The triggering mechanism is the *Palma* notice, which is designed to notify the parties that the court is considering the accelerated process.

Thus, the term "*Palma* notice" informally describes the first step in a streamlined procedure for deciding the merits of a writ petition that avoids the more formal procedures triggered by the issuance of an alternative writ. The notice advises the parties that the court is considering issuance of a peremptory writ in the first instance and invites the real party in interest or respondent to submit opposition by a specified date.

The Supreme Court, in a 4-3 decision written by Chief Justice Ronald M. George (retired), upheld the court of appeal, concluding that nothing in California jurisprudence prohibits a suggestive *Palma* notice (*Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal. 4th 1233, 1241-1244.) Such notice, Chief Justice George wrote, "in no sense commands or obligates the trial court" and "is more analogous to a tentative ruling." (*Id.* at 1245.)

According to the court, a suggestive *Palma* notice preserves all the options available to the appellate court. If the trial court refuses to accede to the equivalent of a tentative opinion, the court of appeal can summarily deny the petition; issue a peremptory writ; or issue an alternative writ and schedule briefing and argument. (*Id.* at 1246.)

Nonetheless, the majority opinion concluded that additional procedural safeguards were in order because of the "difficult situation" that the opposing party's appellate counsel might face. On the one hand, counsel do not wish to

waste their client's resources by responding immediately and fully to every writ petition, particularly since the vast majority of such petitions are summarily denied. On the other hand, counsel face a risk, albeit a small one, that a suggestive *Palma* notice will be issued and, in response, the trial court may reconsider its prior ruling, without counsel having vigorously represented the client's interests in the appellate court. (*Id.* at 1248.)

To resolve this problem, the California Supreme Court added an important procedural safeguard: Before vacating, modifying, or otherwise reconsidering an interim ruling in response to a suggestive *Palma* notice, "the trial court must inform the parties that it is considering taking such action and provide them with an opportunity to be heard." (*Id.* at 1250.)

a. *Vasquez*

At the time of the denial of the peremptory challenge, Ms. Vasquez had several felony charges pending in the Superior Court of Lassen County in Case Number CR035826. She also had two (2) other felony cases pending before the court in CR033635 and CR035696.

On January 12, 2018, Judge Nareau recused himself from CR033635 and CR035696. By operation of law and Judicial Council policy, Case No. CR035434 was subsequently and necessarily assigned to the only other judicial officer in the Lassen Superior Court, Judge Mallery in Department 2. Specifically:

> By operation of law, ["i]n the County of Lassen there are two judges of the superior court." (See Government Code § 69585.9.)

> By operation of Judicial Council policy, "before requesting assignment assistance, courts shall evaluate ways of meeting their judicial needs by: • Engaging in efficiency measures to maximize their use of internal resources; • Using their reciprocal orders; and
>
> Temporarily assigning subordinate judicial officers under rule 6.609 of the California Rules of Court." (See "Standards and Guidelines for Judicial Assignments," effective as revised July 1, 2003, p. 2.) Only when the presiding judge has determined that needs cannot be met from within the court, or by an active judge from a reciprocal county, may a request for assistance be made. (*Id.*)

Following Judge Nareau's self-recusals, pursuant to the law and in compliance with the Judicial Council policy mandate requiring the court to first use its internal resources in the course of assigning cases, Judge Mallery concluded that he was necessarily assigned to Case Nos. CR033635 and CR035696 as the only other judicial officer at Lassen Superior Court. This conclusion was reached in good faith and after consultation with others.

The case at issue and relating to the instant Petition for Writ of Mandate, CR035826, originated on February 26, 2018. On March 7, 2018, after arraignment on the complaint in CR035826, Ms. Vasquez's three (3) cases were coordinated on the court's calendars and proceeded together in Department 2.

After waiving a preliminary hearing, on October 30, 2018, Channel Vasquez was held to answer on one (1) count of grand theft (Penal Code, § 487, subd. (a)) and eighteen (18) counts of forgery of a check exceeding $950 (Penal Code; § 470, subd. (d)). Ms. Vasquez pleaded not guilty to the charges.

On November 27, 2018, Ms. Vasquez was arraigned on the information in front of Judge Tony Mallery. Ms. Vasquez pleaded not guilty to the charges. At

the hearing on this same date, defense counsel attempted to disqualify Judge Mallery pursuant to Code of Civil § 170.6.

Judge Mallery denied the section 170.6 peremptory challenge in case CR035826 because Judge Mallery concluded that he had previously made a substantive ruling involving a determination of contested fact issues relating to the merits in the case pertaining to Channel Vasquez's mental health and diversion. (See response to Count 5.)

Of paramount concern to the issue of timeliness is whether, before the motion, a substantive ruling was made on the case by the judge sought to be disqualified: "The fact that the judge presided at an earlier hearing in the case does not prevent disqualification unless the earlier hearing involved a contested fact issue relating to the merits of the case." (*Depper v. Superior Court* (1999) 74 Cal. App. 4th 15, 18 [citing § 170.6, subd. (a)(2)]; *Bambula v. Superior Court* (1985) 174 Cal. App. 3d 653, 657.) In other words, once an issue relating to the merits of the case is determined by a certain judge, that judge cannot be disqualified via a section 170.6 motion.

On December 7, 2018, Jacob Zamora, attorney for Ms. Vasquez, filed a Petition for Writ of Mandate with the Third Appellate District Court. On December 26, 2018, the Attorney General of California filed an Opposition to the Petition for Writ of Mandate. Notwithstanding the Attorney General's Opposition, the Third Appellate District Court issued a "Palma Notice" on January 3, 2019. The "suggestive" notice in no sense commands or obligates the trial court, is more

analogous to a tentative ruling and gives the trial court the "power and jurisdiction" to change its order.

There is nothing within the Appellate Court's notice or the record to suggest that Judge Mallery intentionally ignored the law. To the contrary, Judge Mallery's ruling was made pursuant to the faithful discharge of his judicial duty, in good faith and in an effort to the follow the law as he understood it, such that the proper safeguard against error or overreaching properly remained – as here – with appellate review.

Based upon the Appellate Court's indications and upon Judge Mallery's review of the same, it became clear that there was an actual factual dispute as to whether or not the denial of Mental Health Diversion [based upon information provided by counsel for Ms. Vasquez] would constitute sufficient factual grounds to conclusively find the judge had previously made a substantial ruling involving a determination of contested fact.

Understanding that a "Palma Notice" is a triggering mechanism designed to notify the parties that the court is considering accelerating the process with the issuance of an alternative writ or order to show cause, and with the requirement that the Court of Appeal afford an opportunity for formal briefing and oral argument before ordering that a peremptory writ issue, Judge Mallery took into consideration the cost of litigation to the parties, the difficult situation that the parties might face, time and risk.

Judge Mallery appropriately determined that in the interest of justice, the court would follow the suggestive notice and set the matter for a hearing to

address the "Palma Notice" with all parties on January 14, 2019. On said date, Judge Mallery did not contest the appellate court's suggestive notice and instead granted Mr. Zamora's peremptory challenge motion pursuant to Code of Civil Procedure § 170.6.

Judge Mallery denies that he attempted to persuade Mr. Zamora to withdraw the challenge; rather, consistent with Palma, Judge Mallery explained the consequences of the challenge and offered for Mr. Zamora to be heard.

b. *Hernandez*

Response to Count 6(a), is incorporated by reference herein as if fully set forth herein and made a part hereof. Applicable law regarding Palma notice in Response is incorporated by reference herein as if fully set forth herein and made a part hereof.

With respect to *People v. Tommy Hernandez, Jr.*, Lassen County case number CR035434, the defendant made his initial appearance at his arraignment before Judge Mallery on January 9, 2018. Three days later, on January 12, 2018, the Honorable Mark Nareau recused himself from the case. Notice of Judge Nareau's recusal was provided to all parties. By operation of law and Judicial Council policy, the case was subsequently and necessarily assigned to the only other judicial officer in the Lassen Superior Court, Judge Mallery. This conclusion was reached in good faith and after consultation with others. (It was also the conclusion reached by the Attorney General of California in its "Informal Response to Petition for Writ of Mandate," filed February 13, 2019 (discussed, infra).)

Mr. Hernandez appeared in court again on February 6, 2018—twenty-five (25) days after Judge Nareau's self-recusal and Judge Mallery's assignment—for a preliminary hearing setting conference, again with Judge Mallery hearing the matter. Judge Mallery continued to be assigned to and heard Mr. Hernandez's case—absent only for vacation, training, etc.—and had presided over a total of six hearings before Mr. Hernandez's January 9, 2019 hearing date.

Eleven months after Mr. Hernandez's first appearance before the court, and after six appearances before Judge Mallery, on January 9, 2019, Jacob Zamora filed a section 170.6 peremptory challenge. On January 16, 2019, Judge Mallery—pursuant to the law and in compliance with the Judicial Council policy mandate requiring the court to first use its internal resources in the course of assigning cases—concluded that: (1) he had been assigned to the case as the only other judicial officer in the Lassen Superior Court following Judge Nareau's self-recusal more than a year earlier; and (2) it had been more than eleven (11) months from Mr. Hernandez' first appearance before him. Accordingly, the Section 170.6 peremptory challenge was denied as untimely.

On January 25, 2019, Mr. Zamora, filed a Petition for Writ of Mandate with the Third Appellate District Court. On February 13, 2019, the Attorney General of California filed an Informal Response to Petition for Writ of Mandate. Within the informal response, the Attorney General reached the same conclusion as Judge Mallery—that the peremptory challenge was untimely and was properly denied—stating as follows:

As the California Supreme Court has explained, '[a]s a general rule, a challenge of a judge is permitted under section 170.6 any time before the commencement of a trial or hearing. [Citations.]" (Jones v. Superior Court (2016) 246 Cal. App. 4th 390, 398 (Jones), quoting People v. Superior Court (Lavi) (1993) 4 Cal. 4th 1164, 1171 (Lavi).) However, as this Court recognized in Jones, "This general rule is subject to several shorter deadlines that are set forth in subdivision (a)(2) of section 170.6 (Jones, supra, 246 Cal. App. 4th at p. 398.) The two exceptions that are relevant in this matter are the "One-Judge-Court Deadline" and the "All Purpose-Assignment Deadline." As discussed below, while the first exception does not apply in this case, the second exception does apply.

The One-Judge-Court Deadline Does Not Apply

"Subdivision (a)(2) of section 170.6 sets the deadline for a one-judge court by providing /that "[i]f the court in which the action is pending is authorized to have no more than one judge the motion shall be made before the expiration of 30 days from the date of the first appearance in the action of the party who is making the motion or whose attorney is making the motion." (Jones, supra, 246 Cal. App. 4th at p. 399, italics in the original.)

This Court has made clear that "the determination of whether a particular court is a one-judge court turns on the Government Code." (Jones, supra, 246 Cal. App. 4th at p. 399, citing People v. Superior Court (Smith) (1987) 190 Cal.App.3d 427, 428.) Relevant to this matter, Government Code section 69585.9 expressly provides that "[i]n the County of Lassen there are two judges of the superior court." Consequently, because there is more than one superior court judge statutorily authorized for Lassen County, the One-Judge-Court Deadline exception does not apply in this case.

The All-Purpose-Assignment Deadline Does Apply

"Under the all-purpose-assignment deadline for criminal cases, a party must bring a peremptory challenge within 10 days of a first appearance before a judge assigned to a case for all purposes. Under subdivision (a)(2) of section 170.6, the 10-day deadline begins to run when a party receives notice of an all-purpose assignment." (Jones, supra, 246 Cal.App.4th at p. 402.) As this Court held in Jones, actual notice, as opposed to constructive notice, is

required to trigger the 10-day all-purpose-assignment deadline. (Id. at p. 403.) "This statutory construction comports with the Supreme Court's observation that 'when there is an all- purpose assignment, "[t]he litigant does not need any further information to know who will try the case," because the assignment "instantly pinpoints" that judge.' " (Id. at p. 404, quoting Lavi, supra, 4 Cal.4th at p. 1180, quoting Augustyn v. Superior Court (1986) 186 Cal. App. 3d 1221, 1228].)

However, while actual notice is required, a party cannot plead ignorance and rely on a strict interpretation of this rule in a situation where, due to circumstances, the party knows or should have known the identity of the judge who with a reasonable certainty will hear the case. (Lavi, supra, 4 Cal. 4th at p. 1180, fn. 12; Jones, supra, 246 Cal.App.4th at p. 404.) Lavi was concerned with the situation of "whether an assignment to a department by number, rather than to a judge by name, can be an assignment for all purposes." (Ibid.) This Court summarized the Supreme Court's ruling as follows:

For the reasons discussed [earlier in Lavi, and] which concerns the application of the 10-day/5-day rule, we hold that when there is an assignment to a department by number, if a particular judge regularly presides in that department and that judge's identity is either known to the litigant or discoverable on reasonable inquiry, and if there is reasonable certainty that this judge will ultimately hear the case (i.e., evidence is produced indicating that the case will likely remain in the department to which it was initially assigned), then a court may properly invoke the all-purpose assignment rule, assuming such an assignment is involved. (Lavi, supra, 4 Cal. 4th at p. 1180, fn. 12, italics added.) Thus, the Supreme Court held that when litigants know a case has been assigned to a particular department of the superior court, they cannot plead ignorance to the identity of a judge who regularly sits in that department. (Ibid.)

(Jones, supra, 246 Cal. App. 4th at p. 404, first italics in the original, second italics added.)

This case provides an analogous situation to the one discussed in Lavi. As noted above, there are only two superior court judges assigned to Lassen County. (Gov. Code § 69585.9.) On January 12, 2018, just a few days after the arraignment on the complaint, Judge Nareau recused himself from the case. (Pet. Ex. O.) Consequently, the only remaining assigned

> judge for Lassen County was Judge Mallery. Additionally, over the course of the next year, numerous hearings were held, and Judge Mallery presided over a large majority of those proceedings. (Pet. Ex. P.) Given these facts, the logical inference is that petitioner either knew or reasonably should have known that Judge Mallery would be the presiding judge and that there was a "reasonable certainty" Judge Mallery would ultimately hear the case.
>
> Thus, the court properly applied the all-purpose-assignment deadline in denying as untimely petitioner's section 170.6 challenge to disqualify Judge Mallery from presiding over this matter.

On February 21, 2019, Mr. Zamora, filed a "Reply to Informal Response to Petition for Writ of Mandate." On February 26, 2019, the Third Appellate District Court provided a suggestive "*Palma* Notice." Within the Third Appellate District Court's notice, the court indicated the one-judge-court does not apply and that the respondent court appeared not to have properly invoked the all-purpose assignment rule of section 170.6. Based upon this information, it became clear that there was a factual dispute as to whether or not "actual notice" of assignment had been sufficiently provided to Mr. Zamora and/or his client.

Accordingly, it was determined that in the interest of justice, the court would follow the suggestive notice and set a hearing for March 7, 2019 to address the "Palma Notice" with all parties. On said date, Judge Mallery did not contest the appellate court's suggestive notice and granted Mr. Zamora's peremptory challenge motion pursuant to Code of Civil Procedure § 170.6.

On March 15, 2019, the Third Appellate District Court issued a notice stating in part "the petition for writ of mandate is dismissed as moot."

c. *Sandoval*

The Complaint in Lassen County Case No. CH036947, filed on April 25, 2019, charged defendant, Ivan Sandoval with two counts and a strike prior:

> • Count I was for violation of California Penal Code §§ 182(a)(1) and 4573.6 [conspiracy to possess controlled substances].
>
> • It was further alleged, pursuant to Penal Code § 667(b) through (i), that defendant, IVAN SANDOVAL suffered a prior conviction of a serious violent felony or juvenile adjudication in the Monterey Superior Court on August, 12, 2010 for violation of Penal Code §§ 245(b) and 186.22(b)(1), felony, assault with semiautomatic firearm / committing a serious felony, as defined by Penal Code § 1192.7(c), while violating provisions against participating in criminal street gang.
>
> • Count II was for violation of California Penal Code § 4573.6 [felony possession of a controlled substance in jail, methamphetamine and heroin].
>
> · It was further alleged, pursuant to Penal Code § 667(b) through (i), that defendant, IVAN SANDOVAL suffered a prior conviction of a serious violent felony or juvenile adjudication in the Monterey Superior Court on August, 12, 2010 for violation of Penal Code §§ 245(b) and 186.22(b)(1), assault with semiautomatic firearm / committing a serious felony, as defined by Penal Code § 1192.7(c), while violating provisions against participating in criminal street gang.

On May 3, 2019, an initial arraignment on the complaint for Mr. Sandoval, was held. Attorney Ray Simmons made a special appearance because neither Mr. Sandoval nor his attorney, Jacob Zamora, appeared. The matter was continued until May 16, 2019. At the continued arraignment on May 16, 2019 and pursuant to the request of Mr. Zamora, the arraignment was continued once again, to May 17, 2019. At the continued arraignment on May 17, 2019, Mr. Sandoval was arraigned and bail was set at $55,000.00 pursuant to the bail schedule. As Mr. Sandoval was to be

released within the near future, and the matter was continued to May 30, 2019 for preliminary hearing setting.

At the preliminary hearing setting on May 30, 2019, the matter was continued for a "pre-preliminary hearing" on August 1, 2019, with the preliminary hearing set for August 2, 2019 if necessary. At the "pre-preliminary" hearing on August 1, 2019, the matter was again continued for the "pre-preliminary hearing," to August 29, 2019, with preliminary hearing set for August 30, 2019 if necessary. At the continued "pre-preliminary hearing" on August 29, 2019, the matter was again continued for the "pre-preliminary hearing," to October 17, 2019, with the preliminary hearing set for October 18, 2019 if necessary.

At the preliminary hearing on October 17, 2019, the Honorable Rebecca Wiseman (in her capacity as an assigned judge providing calendar coverage) continued the preliminary hearing to November 15, 2019. Judge Wiseman also heard an oral request from Mr. Zamora for a reduction of bail and granted the request to reduce bail to $20,000.00.

On November 1, 2019, Mr. Sandoval posted bail and was released from custody.

On the day of November 15, 2019, and prior to the preliminary hearing set for that date, both prosecution and defense attorneys requested an audience with the court to discuss potential resolution of the matter. The court entertained the request and met with the attorneys off the record and in the break room at the Lassen County High Desert State Prison Courtroom.

During that meeting, Mr. Zamora requested the court consider accepting a plea bargain, whereby Mr. Sandoval would receive formal probation with credit for time served – even though he was statutorily ineligible for probation. In order for the court to consider such a request, prosecution and defense are required to provide the court with sufficient information pursuant to California Rules of Court, Rules 4.413 and 4.414, to find that Mr. Sandoval's constituted an unusual case in which the interests of justice would best be served if Mr. Sandoval were granted probation. If this required information could not be provided, Mr. Sandoval would not be considered for probation, if convicted, and would instead be sentenced to either a low, middle or upper term pursuant to sentencing requirements.

Neither Mr. Zamora nor Mr. Funk were able to provide sufficient information to meet the requirements pursuant to the Rules of Court, so the court declined to entertain a plea bargain granting probation without: (1) a full report from probation; and (2) a statement of factors overcoming the presumption of ineligibility which addressed both the Rules of Court and statutes as they pertain to Mr. Sandoval.

On January 30, 2020, Mr. Sandoval appeared out of custody and waived his right to a preliminary hearing. Both Mr. Zamora and Mr. Funk agreed to have the complaint become the information and proceed with arraignment on the information—to which Mr. Sandoval pleaded not guilty and denied all priors, special enhancements and allegations that may be contained within the

information. Mr. Sandoval waived time for trial and the matter was set for a trial setting conference on February 27, 2020.

On February 5, 2020—eighty-two (82) days following the November 15, 2019 preliminary hearing and the court's stated decision that it would not entertain a plea bargain under the circumstances as stated—Mr. Zamora filed a peremptory challenge. On February 7, 2020, Judge Mallery denied the peremptory challenge as untimely. Specifically, the peremptory challenge was based upon the November 15, 2019 denial of probation, with said denial having been: (1) based upon contested facts at issues relating to the merits of sentencing; and (2) based upon information received off the record from the attorneys regarding Mr. Sandoval.

On February 21, 2020, Mr. Zamora filed a Petition for Writ of Mandate with the Third Appellate District Court. On March 12, 2020, the Attorney General of California filed a Preliminary Response to Petition for Writ of Mandate. On March 23, 2020, the Third Appellate District Court provided a suggestive "Palma Notice." Within the Third Appellate District Court's notice, the court concluded that the matter had not been assigned to Judge Mallery in such a way to place the parties on notice that Judge Mallery was assigned for all purposes. However, the Third Appellate District Court's notice did indicate that an otherwise timely peremptory challenge must be denied if the judge has presided over an earlier hearing which involved a determination of contested factual issues related to the merits.

In reviewing the record, the appellate court did not find at any time that Judge Mallery ruled on a contested issue of fact relating to the merits of the case. Nor could it, as the contested issue of fact relating to the merits of the case was not made on the record. The court took into consideration the lack of record, the cost of litigation to the parties, the difficult situation that the parties might face, time and risk. Accordingly, it was determined that in the interest of justice, the court would follow the suggestive notice. On March 25, 2020, Judge Mallery vacated the February 7, 2020 order and granted the peremptory challenge, filed February 5, 2020.

On April 6, 2020, the Third Appellate District Court issued a notice stating in part "the petition for writ of mandate is dismissed as moot."

Count 7

a. Zamora and King

Judge Mallery denies that he retaliated against Mr. Zamora or Mr. King. Prison matters filed with the Lassen County Superior Court have routinely been assigned to private counsel from various counties, including but not limited to Lassen County, to assist prison defendants. The County of Lassen has not established the public defender nor alternate tier as the provider of legal services to defendants for matters brought before the court occurring within the California Correctional Center, (CCC), and High Desert State Prison (HDSP). Pursuant to Penal Code section 987.2, the court is to appoint private counsel who are to be compensated by the County for the services provided and ancillary expenses pursuant to Lassen County General Order 2017-04 and 2019-02.

There is no contract between the county, counsel and court regarding the appointment of private counsel. Penal Code section 987.2 is controlling. The rights and duties involved in representing indigent criminal defendants do not arise from contract. The attorney's duty to assist the indigent is statutory. (Business & Professions Code § 6068, subd. (h).) The indigent's right to counsel is constitutional. The county's duty to compensate the attorney and the attorney's right to be compensated are statutory. (Penal Code § 987.2, subd. (a); *Arnelle v. City and County of San Francisco* (1983) 141 Cal. App. 3d 693.)

Matters brought before the court occurring within CCC and HDSP are primarily held at the courthouse located at HDSP and are referred to as "Department 5" matters. Prior to assigned Judge Andy Holmer stepping down from hearing Department 5 matters in or about 2017, Department 5 matters had traditionally been assigned to a retired judge from the assigned judges' program with the Judicial Council. Shortly after Judge Holmer stepped down from Department 5, Judge Mallery began hearing Department 5 matters on a regular basis.

In that capacity, as it was the court's observation that certain attorneys were both better qualified to handle certain allegations relative to the other attorneys and were more efficient, Judge Mallery began assigning attorneys to cases based upon ability and efficiency. Additionally, as time progressed in hearing the Department 5 calendar, it was the court's observation there were certain attorneys who habitually failed to comply with requirements for requesting ancillary services, routinely failing to demonstrate any need for the requests

whatsoever other than a bare assertion of need. Further, in reviewing billing statements, it was the court's observation and determination that certain attorneys were routinely overbilling for services. As more and more matters were heard by Judge Mallery, it was also the court's observation that certain attorneys received substantially more requests for *Marsden* Hearings from their clients relative to other attorneys, and that these requests were only increasing in frequency.

A *Marsden* Hearing is a hearing requested by a defendant because he wants to fire his appointed attorney as defense counsel for inadequate or ineffective assistance of counsel, legal malpractice, or a conflict between the attorney and defendant. A *Marsden* motion is the only way by which a defendant in a California criminal case can fire his court-appointed lawyer. These hearings are in a closed courtroom and the parties typically present are the judge, the defendant, the public defender, a court reporter, and the courtroom staff members. During the hearing, the judge hears arguments from the defendant and the attorney on why the lawyer should be removed from the case, and why the lawyer should remain on the case. It is up to the defendant to show that the public defender's representation has been ineffective or that a conflict is present.

During this period, it also became clear to the court that certain attorneys who sought a disposition where probation would be granted if the plea bargain was accepted, were misleading the court by failing to disclose to the court the fact that their client was statutorily ineligible for a grant of probation. Furthermore, if it was disclosed to the court during a plea bargain, insufficient information was being provided for the court to make a finding that the defendant was an

exception to the rule. In doing so, these defense attorneys were not improving the administration of criminal justice and correcting inadequacies or injustices in substantive or procedural law before the court to assist with an efficient resolution.

Of the attorneys—Jeff Cunan, Stephen King, Ray Simmons, Jacob Zamora, and Stephen King—who routinely appeared before the court in Department 5 after Judge Mallery started to hear the Department 5 calendar, the issues outlined above were noticeably more prevalent with Mr. King and Mr. Zamora. The issue of billing was a reoccurring issue with Mr. King, but not with Mr. Zamora. In an effort to prevent the issues outlined above from continuing, the court routinely addressed probation requirements, billing requirements, requests for ancillary services and the need to meet with their clients no less than two (2) days prior to any hearing.

Due to continued disregard for the court procedures and requirements pursuant to statute and case law, general orders were implemented starting in 2017 in an effort to address the shortfalls by attorneys and their interaction with the court. Some attorneys adhered to the court's orders, while others did not. By reducing the appointments to Mr. King and Mr. Zamora and appointing cases to different attorneys, the legal standards and civility of the attorneys appearing before the court have increased markedly and there is a revived professionalism shown by court appointed attorneys appearing within Department 5.

Mr. King and Mr. Zamora's appointment to indigent defendants as conflict counsel did not diminish because of pique or retaliation; it diminished based upon

their unwillingness to follow statute, California Rules of Court, Lassen County Rules of Court and General Orders. On March 4, 2020, Jacob Zamora stated he no longer sought appointment of any cases in Lassen County. He wrote:

> This letter is to advise, effective immediately, The Sierra Law Center, APC, and its attorney Jacob Zamora, Esq., will no longer accept ANY appointed cases, including, but not limited to prison cases, in Lassen County.
>
> Further, we will not accept appointment or reappointment in any case which The Sierra Law Center, APC, or Jacob Zamora, Esq., was previously attorney of record.
>
> Thank you for your assistance in this matter.

Stephen King has continued to receive court appointments. However, recently Mr. King has requested he, too, be released from further representation in court appointed cases, including but not limited to:

- Hugo Albert Ramirez – CH037114 –
    - Requested release at pre-preliminary hearing on October 29, 2020
- Damen Rabb – CH037117
    - Requested release at arraignment hearing on October 29, 2020
- Daniel Eugene Benken – CH038190
    - Requested release at arraignment hearing on November 13, 2020

b. Ms. Van Ert

Judge Mallery denies he retaliated against Ms. Van Ert or her organization. The Superior Court of California, County of Lassen (Superior Court) is a small court with only two judges. For the relevant time period of this allegation, the second judicial officer was the Honorable Mark Nareau. In Judge

Mallery's role while as the Presiding Judge, pursuant to California Rules of Court, rule 10.603(a), he was responsible for overseeing the allotment of the Superior Court's limited resources in a manner that increases the efficiency of court operations and promotes access to justice for all members of the public. Also, pursuant to California Rules of Court, rule 10.603(c)(1)(C), he was responsible for setting the court's calendars and apportioning the court's business among the departments of the court.

Although there are two judges, the Superior Court had only one court reporter position. To preserve assets of the court, Judge Nareau and Judge Mallery shared the court reporter and scheduled the regularly set court calendars to facilitate the use of one court reporter for both departments. Each October, the presiding judge set the calendars so that when one judicial officer has a calendar that must be reported, the other judicial officer has a calendar that requires no court reporter. Those calendars were published annually so that the attorneys and litigants would know in advance which types of cases will be set before each judicial officer, and the days and times those cases will be set. For example, every Monday morning Judge Mallery presided over the juvenile dependency calendar. Those cases require a court reporter to record the proceedings. At the same time on Monday mornings, Judge Nareau heard the misdemeanor arraignment calendar in another courtroom because those proceedings do not require a court reporter. After Judge Mallery called all of the juvenile dependency cases on calendar, and after Judge Nareau finishes his misdemeanor calendar, Judge Nareau came into

Judge Mallery's courtroom, where the court reporter and the attorneys are already set up, and called the juvenile dependency conflict calendar.

As a judge presiding over juvenile dependency cases, Judge Mallery was guided by Title 5, standard 5.40, of the California Standards of Judicial Administration. The Advisory Committee Comment to standard 5.40, subdivision (e)(11), notes that a judge assigned to preside over juvenile dependency cases "occupies a unique position within California's judiciary." The California Standards of Judicial Administration provides that a juvenile court judge should "[e]xercise [the] authority by statute or rule to review, order, and enforce the delivery of specific services and treatment for at-risk children and their families;" "[e]valuate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes 'reasonable efforts' to prevent removal or hasten return of the child;" and "[p]rovide oversight of the social service and probation agencies to ensure that a child's educational rights are investigated, reported, and monitored," among other responsibilities. (Cal. Stds. Jud. Admin, § 5.40(e)&(h).)

It is alleged that after CFS filed section 170.6 challenges in three dependency matters, and after the section 170.6 challenges were granted and the cases reassigned, counsel asked Judge Mallery to give those three cases priority on the juvenile dependency calendar because, as to those matters, the parties had brought infants into the courtroom and the infants were at a higher risk of exposure to COVID. It is very common for children to be present in court during

the juvenile calendar. In addition, Judge Mallery had rules in place to maintain a safe environment including social distancing.

Judge Mallery denies the contention that Ms. Van Ert's request for priority on April 12, 2021 in the three juvenile dependency cases was denied as retaliation for filing challenges. After Judge Mallery granted the section 170.6 challenges in those cases, and the cases reassigned to Judge Nareau, Judge Mallery could not give those cases priority over the other juvenile cases before Judge Mallery because those cases were no longer on Judge Mallery's calendar. Judge Mallery admits that he informed counsel that he had no problem with CFS filing the section 170.6 challenges.

The request for priority from P.J. Van Ert came in the middle of conducting the regular calendar. The conflict calendar procedure was not new information to Ms. Van Ert, as the process had previously been explained to her along with other counsel that practice dependency by both judges. Section 170.6 challenges do not constitute priority.

Judge Mallery agreed and explained that all parties had the right to file section 170.6 challenges and he did not have an issue with such a filing. Judge Mallery further explained that the cases where a section 170.6 challenge is granted must be assigned to a different judicial officer to be heard on the newly assigned judicial officer's calendar. Judge Mallery tried to explain to counsel that he could not address those cases to give them priority because those cases were not on his calendar due to the filed section 170.6 challenges.

Furthermore, administrative and scheduling reasons precluded the conflict calendar from being called until after Judge Nareau and Judge Mallery had finished their respective calendars and the court reporter was available to report the proceedings in those three conflict cases. Unfortunately, it appeared that Ms. Van Ert expected both Judge Nareau and Judge Mallery to disrupt their calendars and recess the proceedings in their respective courtrooms so that Judge Nareau could then come to Judge Mallery's courtroom, where the court reporter was located, and call three juvenile dependency cases on the conflict calendar at her demand. Allowing such would cause an unnecessary delay for all the litigants and attorneys in both the juvenile dependency and misdemeanor matters being heard in two different courtrooms. Ms. Van Ert became indignant to the point of impugning the court and persisted that she be given priority at which point, Judge Mallery called all counsel to meet away from the audience. He again explained what had already been explained by both judges as to how the conflict calendar will proceed and the reasons for such and that they have been informed to plan accordingly.

Moreover, disrupting the calendars in both courts would increase the Superior Court's costs. In dependency matters the assigned counsel for the minors and parents are paid out of limited court funds provided by the State. When the attorney's fees exceed the amount allotted by the State, those fees must be paid from the Superior Court's general fund. Thus, a delay in the juvenile dependency cases before Judge Mallery would necessarily mean an increase in assigned attorney's fees which could impact court operations.

c. *DA Rios*

After a reasonable inquiry concerning the alleged statements, Judge Mallery can neither admit nor deny that he made them, however, the Commission needs context to the alleged statements. In order to address the impact to the court calendars based upon District Attorney Melyssah Rios' filing peremptory challenges on Judge Mallery, Judge Mallery approached Judge Nareau to discuss the issue and information received by the Judicial Council regarding calendar assignments. Judge Nareau asked Judge Mallery if he should contact Ms. Rios regarding her reason for filing the peremptory challenges. Judge Mallery adamantly informed Judge Nareau not to contact her, not discuss the peremptory challenges as it could be viewed as an ethical violation. Judge Nareau asked Judge Mallery if he knew why Ms. Rios was filing peremptory challenges. Judge Mallery indicated it may be due to a difference of opinion what a proper sentence should be. Judge Nareau indicated that may be and proceeded to indicate Ms. Rios doesn't much care for his dispositions either. Judge Mallery responded by saying maybe it's a father/dad issue meaning she perceives Judge Nareau as the knowledgeable judge with power, strength and influence who she can identify with, due to Judge Narreau's age and wisdom in the criminal law arena, while Judge Mallery is something less and 13 years younger than Judge Nareau. Prior to taking the bench, Judge Nareau was the Lassen County District Attorney in 1991 and 1992, a special prosecutor for the Lassen County Prison Prosecution Program from 1987 to 1998, a deputy district attorney at the Lassen County District Attorney's Office from 1984 to 1986 and a sole practitioner for many years. As

Judge Nareau is a former district attorney, now judge, it is clear why a district attorney may embody the qualities of Judge Nareau as opposed to Judge Mallery who did not have a robust resume in criminal law prior to taking the bench. Judge Mallery did state to Judge Nareau that it appears clear that Mrs. Rios would rather have Mark rather than Tony hear her matters.

The Commission misunderstands the facts and context, and the true facts show no bias or improper motive or opinion. This was an in-chambers conversation between the two judges of a two-judge court. Judge Nareau improperly asked for Judge Mallery to contact DA Rios regarding her peremptory challenges. Judge Mallery rebuffed that request as unethical. When Judge Nareau asked why Judge Mallery thought he was being challenged, Judge Mallery suggested that it might be the difference between DA Rios' perception of the two judges, with Judge Nareau being the more experienced of the two in criminal law. He was a former prosecutor and defense attorney, whereas judge Mallery comes from a civil practice background.

Judge Mallery admits that he believed DA Rios preferred working with Judge Nareau. Any innuendo that the Commission might think Judge Mallery was making is completely incorrect.

Count 8

Judge Mallery denies that he retaliated against Ms. Webster, and he contends that he properly issued an order to show cause.

a. *730 evaluation and disqualification*

On April 18, 2014, Petitioner, Amie Rachel Gower ("Mother" from herein), filed a Petition to Establish Parental Relationship naming Russell Austin Bates ("Father" from herein) as the Respondent. Mother was requesting sole legal and sole physical custody of their child in common, [Child], born March 5, 2014, and that Father have no visitation with his daughter. Upon Mother filing her petition, the matter was assigned to Judge Mallery and continually remained before Judge Mallery for the relevant time.

On April 21, 2014, Mother filed a Request for Order regarding child custody. Mother requested sole legal and sole physical custody of their daughter and no visitation to Father. Mother claimed in a sworn declaration that her daughter's safety would be at risk if Father was to have visitation with his daughter, claiming Father is mentally unstable and had been diagnosed as bipolar. Mother further claimed Father is a drug addict, a sociopath, a very good talker and actor and can make people believe whatever he wants if it benefits him. Mother also stated Father mentally and physically abused her and that she suffers from battered woman syndrome. Mother claimed Father persuaded her not to testify against him in a criminal proceeding regarding an alleged 2009 domestic violence incident between Mother and Father, causing the case to be dismissed. Mother claims Father continued to abuse her and feared she may lose her baby to a miscarriage if she stayed with Father. Mother claimed that when she left Father that he told her, "if this is my child, I will take her and you will never see her again."

On May 2, 2014, Father filed a Responsive Declaration to Request for Order. Father stated he did not consent to Mothers requests in her Request for Order filed April 21, 2014. Father indicated he would agree to joint legal and joint physical custody with mediation to work out a parenting plan and reasonable visitation. Father stated he wants to be a good father and to be involved in his child's life and would like to share custody and visitation in appropriate times. On the same date, Father filed a Response to the Petition to Establish Parental Relationship seeking joint legal and joint physical custody, reasonable visitation and that the child's last name be changed from Mother's to Father's.

Prior to the hearing on Mother's Request for Order regarding child custody filed April 21, 2014, Mother and Father attended Child Custody Recommending Counseling, CCRC, and were able to reach an agreement regarding custody and visitation. At the hearing on May 29, 2014, Mother and Father appeared before Judge Mallery regarding custody and visitation. The Interim Child Custody Agreement and Order prepared by CCRC was discussed with the parties to determine if they still agreed to the agreement. Both parties did and in open court, Mother, Father, and Judge Mallery signed the Interim Child Custody Agreement and Order. The Interim Child Custody Agreement and Order provided both parents with joint/shared legal and joint/shared physical custody of their daughter and neither parent was required to have supervised visitation.

On October 23, 2014, Mother and Father attended their first Case Management Conference, pursuant to Rule of Court 5.83 (c), regarding Mother's Petition to Establish Parental Relationship as no judgment on the merits of the

Petition had occurred. At the hearing, the court received information that the DNA test confirmed Father is the father of the child, [Child]. The second Case Management Conference was set for April 16, 2015, pursuant to the Rule of Court 5.83 (c).

On or about November 13, 2014, Mother and Father voluntarily returned to CCRC and executed a new Interim Child Custody Agreement that became an order on November 17, 2014. The second Interim Child Custody Agreement provided both parents with joint/shared legal and joint/shared physical custody of their daughter and increased the custody/visitation time with Father. Neither parent was required to have supervised visitation.

Neither Mother nor Father attended the second Case Management Conference on April 16, 2015. Pursuant to the Rule of Court 5.83 (c), a third Case Management Conference was set for October 8, 2015. Neither Mother nor Father attended the third Case Management Conference on October 8, 2015. Pursuant to the Rule of Court 5.83 (c), a fourth Case Management Conference was set for January 28, 2016.

On November 20, 2015, Father filed an At-Issue-Memorandum seeking the court to set a hearing for the purpose of setting a trial date regarding Mother's Petition to Establish Parental Relationship filed April 18, 2014. The court set the hearing for January 6, 2016. At the hearing on January 6, 2016, both Mother and Father appeared. No trial date was set due to Father not having complied with Local Rule of Court 2. Based upon information received by the parties at the hearing and their request to return to CCRC, the court referred the parties to

CCRC with an appointment for January 7, 2016 with a return date to the court on January 27, 2016 for receipt of report from CCRC if the parties were unable to reach an agreement. The Court also rescheduled the Case Management Conference for January 20, 2016, and continued the status to June 29, 2016.

At the hearing on January 27, 2016, for receipt of report from CCRC, the court learned that an agreement was prepared by CCRC and signed by Father. However, Mother no longer agreed with the agreement and requested the parties return to CCRC. The court granted Mother's request and the parties were to return to CCRC on February 8, 2016, and to return to court on February 24, 2016, for receipt of report from CCRC if an agreement could not be agreed upon.

The parties were unable to reach an agreement with CCRC and recommendation was made by CCRC and filed with the court on February 23, 2016. The CCRC Counselor recommended a 730 evaluation.

At the hearing on February 24, 2016, both Mother and Father appeared. After both parties had an opportunity to respond to the CCRC report, recommendation, proposed interim child custody order drafted by CCRC and present evidence, the court adopted the proposed interim child custody order with the exception that the location for the exchange of the child would be changed to the Lassen County Adult Detention Facility. The court did not follow the recommendation to have a 730 Evaluation at that time for the same reason outlined in the CCRC recommendation, financial hardship. Furthermore, not all immediate options available to the court in addressing Mother and Father' child

custody and visitation issues had been exhausted as CCRC appeared to remain effective in their case.

On May 24, 2016, Father filed a Request for Order seeking a temporary emergency court order for child custody. Father requested sole legal and sole physical custody of the child with Mother to have supervised visitation. Father claimed that Mother called in a hysterical panic claiming that someone tried to ram her with a car resulting in Mother's car being wrecked. Father further claims that Mother told him that she "screwed up" by going outside with a baseball bat to just "scare" the women outside. She further informed Father that it was not safe for her to go home and that she would allow Father to make the decision to keep their daughter an extra day or longer to let the "danger" clear. Father further claimed that he was contacted by the victim, [Victim], who stated Mother hit her with a baseball bat and that his daughter was not safe at Mothers residence. Father further claimed that Victim told him that Victim's daughter was doing drugs with Mother at Mother's home.

At the Ex Parte hearing on June 1, 2016 for Father' Request for Order seeking a temporary emergency court order, both Father and Mother appeared. After taking into consideration the information contained within Father Request for Order and statements of the parties, no temporary orders were issued and the parties were ordered to attend CCRC and return to court on June 15, 2016, for receipt of report from CCRC if an agreement could not be agreed upon.

On June 13, 2016, Mother filed a Responsive Declaration to Request for Order. Mother claimed that Father facts and statements are not factual and are

hearsay. Mother states that a male childhood friend came to see her and stayed the night. The childhood friend's estranged girlfriend, Victim, was upset and started problems with him while he was at Mother's house. That Mother's daughter was not a part of the incident and her daughter's safety was her main concern. Mother claimed the reason why she contacted Father was to request his assistance in safeguarding their daughter until Mother was confident the problem was resolved.

At the hearing on June 15, 2016, the hearing was continued to August 24, 2016, due to a pending Family and Children's Protective Services investigation. The interim child custody order filed on February 24, 2016, was ordered to remain in effect pending the next court date.

On June 29, 2016, the fourth Case Management Conference pertaining to Mother's Petition to Establish Parental Relationship filed April 18, 2014, proceeded as scheduled. Neither Mother nor Father appeared, and the matter was taken off calendar. On August 23, 2016, a Substitution of Attorney was filed by attorney Peter Talia on behalf of Father.

At the hearing on August 24, 2016, for Father's Request for Order filed June 1, 2016, Father appeared with his attorney, Mr. Talia, and Mother appeared In Pro Per. Based upon information that the Family and Children's Protective Services investigation was concluded, Mother and Father were ordered to return to CCRC the following day, August 25, 2016. The hearing was continued to September 14, 2016, for receipt of report from CCRC if an agreement could not be agreed upon.

The parties were unable to reach an agreement with CCRC and a report and recommendation was made by CCRC and filed with the court on August 25, 2016. Due to both Mother and Father' own admission to using drugs and both alleging the other of using drugs, the Interim Child Custody Agreement and Order filed May 29, 2014; the Interim Child Custody Agreement and Order filed November 17, 2014; and the Interim Child Custody Order filed February 24, 2016, all contained, in part, the restriction of consuming any mood altering substance twenty-four hours prior to or during periods of time with the child and that neither parent shall be intoxicated while caretaking the minor child. Based upon ongoing concerns, in both Custody Orders filed November 17, 2014, and February 24, 2016, provisions regarding testing were provided. The provision regarding the use and testing of drugs and alcohol, mood altering substances, within the Interim Child Custody Order filed February 24, 2016, are as follows:

> Neither parent shall consume any mood-altering substance twenty- four (24) hours prior to or during periods of time with the child.
>
> Neither parent shall be intoxicated while caretaking the minor child.
>
> When the child is in the care of either parent, that parent shall make certain that the child is not in the presence of any illegal substances and the parents shall not associate with anyone who is abusing alcohol and/or using illicit drugs. It is the responsibility of each parent to provide the child with a drug free and sober environment.
>
> At the exchange or drop off of the child, should a parent suspect that the other is under the influence, they may request that the other parent present for oral fluid drug and alcohol testing at Lassen County Alcohol and Drug (LCAD). The parents must present for drug testing within two (2) hours of the other parent's request.

> All drug screens must be witnessed and follow chain of custody protocols. The testing shall be performed in conformance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees.
>
> Any failure to present for testing within the two (2) hour window, a dilute or adulterated sample will be considered a positive drug screen. Should LCAD be closed, at the time of the request to drug test, the testing parent will present for drug testing within one (1) hour of LCAD next business day.
>
> In the event the testing parent has submitted three (3) consecutive negative tests, they shall no longer be required to test at the other parent' s request, without further court order.
>
> The requesting parent shall pay for the drug screen. The parents shall not request the other to drug test while they are working or during hours that they are required to work. The requesting parent must be respectful and courteous when making the request to drug test. The request to test must be preceded by payment for the test and followed by a phone call to LCAD informing them of the date and time they requested the drug test, as well as a text to the other parent confirming the request to test.
>
> If a parent presents for testing and the drug screen has not been paid for, they will obtain documentation from LCAD and submit it to Family Court Services (FCS). Both parents will sign a Release of Information authorizing LCAD to communicate and exchange information, which shall include drug test results, with FCS. They shall also provide LCAD with a copy of this order, signed by the Judge, when they pay for the drug screen. A positive test result, by itself, will not constitute grounds for an adverse custody decision.

At the hearing on September 14, 2016, pertaining to Father's Request for Order filed June 1, 2016, Father appeared with his attorney, Mr. Talia, and Mother appeared in pro per. After both parties had an opportunity to respond to the CCRC report, proposed interim child custody order drafted by CCRC and

present evidence, the court denied Father' request for Mother to attend an outpatient alcohol and drug treatment program and adopted the proposed interim child custody order. The order provided in part for the parents to have joint/shared legal and joint/shared physical custody with Father receiving additional visitation/custody time. The provision regarding the use and testing of drugs and alcohol, mood altering substances, found within the Interim Child Custody Order filed February 24, 2016, continued in the Interim Child Custody Order filed September 14, 2016.

On August 22, 2018, Father filed a Request for Order seeking a temporary emergency court order for child custody and visitation. Father requested joint legal custody and sole physical custody of the child. At the Ex Parte Hearing on August 22, 2018, requesting emergency orders, emergency orders were denied. The parties were ordered to attend CCRC and return to court on September 5, 2018.

At the hearing on September 5, 2018, the parties had not met with CCRC due to their scheduled appointment not being until October 16, 2018. The hearing was continued to November 7, 2018, for receipt of report from CCRC if an agreement could not be agreed upon. After hearing from both parties, the court further ordered the parties to enroll their minor child in the Rainbow Learning Center operated within McKinley Elementary School and that neither parent is to remove the residence of the child from the County of Lassen.

On October 24, 2018, CCRC provided a report with a recommendation and proposed order for court review regarding the upcoming hearing on

November 7, 2018. At the hearing on November 7, 2018, Father appeared with Mr. Talia, and Mother appeared pro per. After both parties had an opportunity to respond to the CCRC report, CCRC's proposed interim child custody order and present evidence, the court directed a new Interim Child Custody Order be prepared that would incorporate many of the same terms of the most recent order filed September 14, 2016, including the provisions pertaining to the use of drugs/alcohol and testing. New terms to be included in the new order that were not a part of the September 14, 2016 order include the following:

> The child will have no contact with Daniel Meehan
>
> Parents shall complete the entire series of "Nurturing Parents in Substance Abuse Treatment and Recovery" co-parenting classes facilitated by Trinity Leslie through Behavior Health on Thursday from 3:30 PM - 5:00 PM.
>
> No later than 11/26/2018, the child shall be entered into individual psychotherapy with a mutually agreed upon licensed therapist to assess safety issues; the child's adaptation to her blended families; and any other concerns the child may have in both parental homes.
>
> The mother is ordered to participate in and continue with her services at Behavioral Health

The New Interim Child Custody Order which included the above terms was filed on November 15, 2018 and served on the parties by the court on November 16, 2018.

On May 1, 2019, an Order to Show Cause and Affidavit for Contempt was filed by Mr. Talia on behalf of Father alleging Mother was not complying with

the November 15, 2018, order. The Order to Show Cause claimed Mother was not complying with the following orders:

> Page 13 of the order made 11/7/18 and filed 11/15/18 under "Co-parenting" states the "[p]arents shall complete the entire series of the 'Nurturing Parents in Substance Abuse Treatment and Recovery co-parenting classes facilitated by Trinity Leslie through Behavior Health on Thursday from 3:30 PM - 5:00 PM."
>
> Also, on Page 13 of the same order "Therapy for Child" provides that "the child shall be entered into individual therapy with a mutually agreed upon licensed therapist to assess ..." (ending ("therapist, teachers, doctors, etc.)" on page 16, line 4.
>
> Other material facts, including facts indicating that the violation of orders was without justification or excuse (specify):
>
> Citee states that the order regarding co-parenting is illegal and that she does not have to comply.
>
> Citee enrolled the minor child in therapy without any advanced discussion of the therapist with your affiant.

Mother was served the Order to Show Cause and Affidavit for Contempt on May 9, 2019, by a registered process server. The court date provided on the Order to Show Cause and Affidavit for Contempt was June 9, 2019.

At the arraignment on June 9, 2019, regarding the Order to Show Cause re Contempt, Mother was informed she had a 6th Amendment right to have legal counsel and if she was unable to afford an attorney, the court would appoint an attorney for her at no cost, only as to the contempt proceeding, as it is quasi criminal in nature. Mother indicated she wished to have legal counsel. The court appointed in a limited scope representation, Rule of Court 5.420, attorney Leesa

Webster to assist in the contempt proceeding only. Arraignment was continued to June 26, 2019. Excluding the contempt proceeding, Mother remained pro per in all other matters before the court in FL58333.

At the arraignment on June 26, 2019, Ms. Webster on behalf of her client waived reading and advisements of rights, plead her client not guilty to the allegations and waived time until the contempt hearing on July 10, 2019. At the hearing on July 10, 2019, Mr. Talia presented evidence and requested the court to take judicial notice of the Custody Order filed on June 15, 2018, in FL58333, the Family Law matter before the court. Upon conclusion of the parties' testimony, counsel submitted. Ms. Webster's request for dismissal for insufficient evidence was denied. The court found Mother in violation of the court order by failing to enroll in the co-parenting class. Mother was ordered to perform 80 hours of community service, suspended should Mother enroll in the co-parenting class by July 19, 2019, and attend the class weekly. The matter was continued to September 4, 2019, for proof of enrolment and attendance in the co-parenting course.

At the status hearing on September 4, 2019, Ms. Webster informed the court that Mother enrolled in the co-parenting class and provided a letter to the court. The court asked how the classes were going. Ms. Webster informed the court that Mother had not started attending the classes yet and her classes were to start on September 19, 2019. The court put Mother on notice that she needed to participate in the classes and that she had had plenty of time do such. The court ordered Mother to provide a class schedule/calendar and that she will need to

attend seven classes before the next status review set for November 6, 2019. The court continued the stay on the 80 hours of community service Mother was ordered to perform due to her being found guilty of not complying with the court order on July 10, 2019.

At the status hearing on November 6, 2019, Ms. Webster informed the court that Mother attended 4 classes. The court continued the stay on the 80 hours of community service Mother was ordered to perform due to her being found guilty of not complying with the court order on July 10, 2019. A status review was set for January 8, 2020.

At the status hearing on January 8, 2020, Ms. Webster informed the court that Mother had 5 more classes to complete. Father informed the court that he had completed all the courses required in the series as ordered by the court. Due to the course being a co-parenting course that both parents are to attend together, the court requested Father to do the remaining 5 classes with Mother so they may achieve optimum results in the co-parenting course. Father was reluctant stating he has complied with the court orders but agreed to do so as he knew it would be in the best interest of his daughter. The court continued the stay on the 80 hours of community service Mother was ordered to perform due to her being found guilty of not complying with the court order on July 10, 2019. A status review was set for March 4, 2020.

At the status hearing on March 4, 2020, Ms. Webster informed the court that Mother had completed her co-parenting classes and presented a certificate of completion. Based upon Mother finally complying with the court order to

complete the co-parenting classes, the Court terminated the sentence imposed due to Mother's violation of a court order requiring Mother to perform 80 hours of community service. The parties informed the court that their communication with each other is not very good, and that their daughter has completed her counseling. Mother informed the court that she wished to have their daughter continue with counseling. Mother further shared with the court multiple complaints she has with Father. Mr. Talia responded by stating the mother plays on the daughter's emotions. The court informed the parties to follow the court Interim Child Custody Order filed on November 15, 2018. The parties continue to express displeasure with each other.

Seeing the significant challenges presented in this case and the consistent contradictory allegations leveled by Mother and Father against each other, the court sua sponte informed the parties that a full 730 evaluation was necessary, as recommended in the initial CCRC report and recommendations, including a psychological testing performed by clinical psychologists if necessary. While such an evaluation is not always necessary, Judge Mallery concluded that the time had come for one in this matter. His decision was based upon the conduct of the parties, including but not limited to, the parties' repeated hostile conduct towards each other in open court especially after having just completed, the co-parenting courses ordered by the court, having attended CCRC a minimum of four times, their ineffective ability to communicate with each other, the continued and increasing patent distrust towards each other, court orders not being followed, the parties' dissatisfaction with the current court orders, the courts continued

jurisdiction over custody and visitation and ongoing disputes between Mother and Father being brought before the court, Family Code section 3087 allowing modification of custody on the court's own motion, a paramount concern as to substantial dangers their daughter was facing based upon Mother's and Father conduct towards each other and the need to have orders that are in the best interest of their daughter, and the courts' duty to protect the best interest of the child.

Despite Ms. Webster's limited representation of Mother having been concluded upon completion of the contempt proceeding, and at no time did Ms. Webster provide information to the court that she would be continuing to represent Mother in all further proceedings in the Family Law Case FL58333 as required pursuant to Code of Civil Procedure section 284, Ms. Webster adamantly objected claiming the court could not on its own motion seek a 730 evaluation. The court reminded Ms. Webster that her representation of Mother was limited to the contempt proceeding which had concluded and if she wished to proceed further, she would need to complete and file a Substitution of Attorney and file same with the court, pursuant to Code of Civil Procedure section 284 and California Rules of Court, as the attorney of record in the Family Law Case FL58333 filed by Mother on April 18, 2014.

Mr. Talia informed the court that his client wished to proceed with a 730 evaluation as previously recommended by CCR Counselor. The court informed Mr. Talia that if he too was seeking a 730 evaluation, he may file a Request For Order, seeking the court to order a 730 evaluation. The court continued the matter to March 25, 2020, regarding the sua sponte order for a 730 evaluation to allow

time to determine the full scope of the evaluation, the appointment of the provider to perform the evaluation, for the parties to have an opportunity to provide three names of potential 730 evaluators and to allow Ms. Webster time to comply with Code of Civil Procedure section 284 and complete Judicial Council Form MC-050 if she intended to represent Mother in the family law matter currently before the court.

At the hearing on March 25, 2020, Mother appeared without counsel. The court had not received any information pursuant to Section § 284 (filed Substitution of Attorney) from Ms. Webster regarding representation beyond the contempt proceeding. Neither Mr. Talia nor Father were present. Mother continued to object to a 730 evaluation based upon statements made by Ms. Webster at the previous hearing. It was further determined that lack of appearance by Mr. Talia and his client, Father, was likely due to a misunderstanding in changes to certain court calendars brought about by the pandemic. While certain calendars were modified, the pandemic did not cause any changes to the family law calendar. The court continued the hearing one week to April 1, 2020, to allow parties the opportunity to appear and if Mother was going to be represented by Ms. Webster, to allow Ms. Webster the opportunity to comply with Section 284 and file Judicial Council Form MC-050 so that there was a clear record of representation for both the court and opposing counsel who they are dealing with and who has the power to bind a party they purport to represent. (*Carrara v. Carrara* (1953) 121 Cal.App.2d 59.)

On March 27, 2020, Mr. Talia on behalf of Father filed a Request for Order requesting a 730 Evaluation to be heard on April 29, 2020. The stated reason for the request is as follows:

> At a post contempt finding hearing on March 4, 2020, accusations were made between the parties reflecting on the issues of custody of the minor child of the parties who is now age 6. The court saw and noted in effect that the parties have not been able to progress as Co-parents in the cooperative parenting of the child and therefore Respondent moves the court for a complete custody evaluation of each of them as parents to determine what arrangement and changes if any are in the best interest of the parties' minor child.
>
> Potential Experts to Conduct the Evaluation:
>
> 1) Dr. Kevin Dugan, 565 Brunswick Rd, Suite 10, Grass Valley, Ca 95945
>
> 2) Dr. Lisa Metcalf, 1141 Gray Avenue, Suite 8, Yuba City, Ca 95991
>
> 3) Dr Eugene Roeder, 13620 Lincoln Way #360, Auburn, Ca 95603
>
> Points and Authorities In Support of Evidence Code § 730 Custody Evaluation:
>
> THE COURT MAY APPOINT A CHILD CUSTODY EVALUATOR IF THE COURT DETERMINES THAT IS IN THE CHILD'S BEST INTEREST.
>
> That professional appointed as the expert is the expert of the Court and not of either party whether Family Code § 3111 or Evidence Code § 730 is the source of the appointment.
>
> THE COURT CAN APPOINT ON THE MOTION OF EITHER PARTY OR ON ITS OWN MOTION.
>
> Either sua sponte or on the motion of a party this can occur. The appointee can be a psychologist or some other form of mental health expert appointed to examine the minor child report to the Court any relevant issues (Evidence Code § 730 Kim v. Kim (1989) 208 CA 3d 364). The Court will apportion to

> the parties the cost of the Court appointed expert (Evidence Code § 731 (c)). The parties should know that if a court orders a psychological evaluation of a parent under Evidence Code §730 the parents' communications to the expert are not confidential (Evidence Code § 1 017). And the statements to the evaluator are admissible (In re Eduardo A (1989) 209 CA 3d 1038, 1042.

At the hearing on April 1, 2020, there was no appearance by Mother and no reason was provided to the court as to why Mother was not present or that she would not be present. In addition, no information had been provided to the court that Ms. Webster would be representing Mother and there had been no compliance with Section 284 by Ms. Webster. Peter Talia appeared for Father. The court stated that based upon the Co-parenting difficulties displayed by the parties at the March 4, 2020 status hearing, the court had the authority to order a 730 Evaluation on the court's own motion and that is what occurred. The court further determined the need for a full custody evaluation to establish custody and visitation orders that would be in the best interest of the child was necessary. A preliminary order was made that costs of the 730 evaluation to be split equally between the parties and the court reserved jurisdiction to reassess the allocation of costs. The matter was continued to May 6, 2020. for appointment of an evaluator, to allow each of the parties an opportunity to propose three names of a qualified psychologist/psychiatrist and for Ms. Webster to comply with Code of Civil Procedure § 284 if she would be representing Mother. Mr. Talia's Request for Order requesting a 730 Evaluation originally scheduled to be heard on April 29, 2020, was continued to May 6, 2020 to be heard with the above matters.

On May 4, 2020, Ms. Webster, who was still not Mother's attorney for all purposes, but on behalf of Mother, filed and Income and Expense Declaration, Statement of Objections to 730 Evaluation and Judicial Council Form MC-050 Substitution of Attorney. These were the first filings with the court by Ms. Webster that did not pertain to the contempt proceeding.

Ms. Webster's Statement of Objections to 730 Evaluation in part alleged:

> The court does have jurisdiction over the parties but there was no matter before the court to order a 730 evaluation and is intruding into the personal lives of citizens.
>
> The exchange of information that occurred in open court after conclusion of the contempt proceeding violated her clients rights.
>
> The court took into consideration hearsay when ordering a 730 evaluation.
>
> Notice was deficient especially during a pandemic.
>
> The judicial officer was practicing law form the bench when determining if Mr. Talia would be filing a motion for a 730 evaluation.
>
> The hearings set by the court were in violation of Covid-19 shelter in place orders because the hearings were non-essential.

No supporting information was provided in Ms. Webster's Statement of Objections, including but not limited to a memorandum of points and authorities providing case law, statute and rules of court to support Ms. Webster's allegations.

On May 4, 2020, Mr. Talia on behalf of Father filed a Request for Order to Change Child Custody. The hearing on the Request for Order was set for June 10, 2020. Within the Request of Order, Father alleged the following:

> I am acting to protect our daughter. I want our daughter [Child] to have a healthy relationship with both parents. When with her mother Amie Gower she is being exposed to a drug culture. I request temporary sole physical custody and my greatest wish for the sake of our daughter is that her mother Amie Gower will enter a drug rehabilitation program to get herself right. Presently it is obvious that she is using numerous different drugs including by IV injection. Please see the tipoff email by a person, Darla Hunter, that lived with Aimie the past two months and saw the drug abuse, the drug users and experienced the violence caused by this usage. This is an urgent matter due to petitioner's lifestyle…

On May 5, 2020, Ms. Webster on behalf of Mother filed a Responsive Declaration to Mr. Talia's Request for Order pertaining to the hearing the following day, May 6, 2020. Code of Civil Procedure section 1005(b) states all papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days before the hearing. Ms. Webster's late filed Responsive Declaration in part contained the following information:

> I do not consent to the order appointing a child custody evaluator under California Evidence Code 730. I do not agree to an order that I pay for and attend an evaluation. Requiring me to do so is not in [Child's] best interest. Pursuant to California Family Code § 3011 the court must make orders that are consistent with the child's best interest. I do not have the funds or income to pay for a 730 evaluation… I simply cannot afford payment for a 730 evaluation. If the court is inclined to order that I attend an evaluation I request that respondent be ordered to cover the cost of the evaluation in full. Respondent has the ability to pay. Requiring my household to pay the cost of evaluation when money is not available for use beyond the basic necessities that I already do not have funds to fully cover while Respondent pays nothing and is the higher earner with the ability to pay is not equitable and is not in the best interest of [Child].

On May 5, 2020, Ms. Webster on behalf of Mother filed a Motion to Recuse Bench Officer. In Mother's statement of disqualification, she contended that 1) the court is biased against her; 2) a person aware of the facts might reasonably entertain a doubt that the court would be fair and impartial in this case; and 3) recusal would serve the interests of justice. Mother contends that "[a]t each and every court appearance, Bench Officer has yelled at and demeaned Mother in open court." Mother further contended that at each hearing, the court has questioned Mother about events and "chastised" her, and then made her "sit through repeated be-ration [sic] in open court, with an audience watching her humiliation." Mother's challenge did not identify any specific hearing, or any specific statement or circumstance, to support her contentions. Mother also contended that the court improperly considered the hearsay statements/accusations of the parties at the March 5, 2020 hearing and impermissibly ordered the section 730 evaluation. Mother alleged that the court's orders have intruded on her personal life and have been "harassing." Mother contended that the court has not been fair and impartial at the hearings. Mother did not provide any reporter's transcripts of the proceedings to support her contentions. Instead, Mother attached to the challenge what purported to be a copy of an anonymous posting on a website regarding the judicial officer.

At the hearing on May 6, 2020, for Mr. Talia's Request for Order requesting a 730 Evaluation, and the Court's continued hearing from April 1, 2020, regarding appointment of an evaluator and preliminary order that costs of the 730 evaluation to be split equally between the parties with the court reserving

jurisdiction to reassess the allocation of costs, the court acknowledged Ms. Webster filed a Motion to Recuse under Code of Civil Procedure section 170.1. Mother was not present, Ms. Webster appeared by court call and both Mr. Talia and Father were present in the courtroom.

At the time of the hearing, the court acknowledged it had limited ability to act pursuant to Section 170.4. Ms. Webster stated to the court that Mother objects to the Court digging into Mother's personal life and having a psychiatric evaluation and that the Court does not have the authority to order a 730 evaluation since nothing was before the Court. The Court reminded Ms. Webster that the child custody orders are interim orders that allow the Court to change or modify orders. Ms. Webster stated she was of the understanding that the contempt charges stemmed from a final judgment. The Court reminded Ms. Webster that the contempt charges were brought about based upon court orders within an interim child custody order and that the case has been a high conflict case for years.

Ms. Webster stated that the reason the case is such a high conflict case is due to the parent's lack of communication. Ms. Webster suggested that the parents use the Talking Parent Application and create a very structured schedule and adhere to the schedule. The Court acknowledged the lack of communication as pointed out by Ms. Webster and that it appeared Mother was astounded that co-parenting classes needed to be completed with the other parent. The Court encouraged Ms. Webster to review all of the CCRC reports before the next hearing. Ms. Webster requested a settlement conference be set and the parties

meet and confer before the before the court gets involved. To help facilitate a productive discussion between the parties and to narrow the issues of the likes and dislikes each parent may have towards the other, it was suggested that the Parties provide five concerns they have with the other parent. The issue pertaining to the matters before the court on May 6, 2020, were continued to May 27, 2020, to allow the court to respond to the pending Motion to Recuse Bench Officer and for the parties to meet and confer in an effort to find a workable alternative to a 730 evaluation.

With the assistance of attorney Sarah L. Overton, assigned to Judge Mallery by the Judicial Council of California, on May 13, 2020, Judge Mallery filed an Order Striking Motion to Recuse Bench Officer; In The Alternative, Verified Answer of Presiding Judge Tony R. Mallery.

Because Mother's statement of disqualification on its face disclosed no legal grounds for disqualification and was untimely, Mother's Motion to Recuse Bench Officer was ordered stricken pursuant to Code of Civil Procedure § 170.4, subdivision (b). The parties were reminded that the determination of the question of disqualification is not an appealable order and may be reviewed only by a writ of mandate from the Court of Appeal sought within 10 days of notice to the parties of the decision. No timely Writ was filed in response to the Order Striking Motion to Recuse Bench Officer.

On May 26, 2020, Mr. Talia filed a document titled Respondent Russell Bates' Four Areas of Concern Regarding [Child's] Mother Amie. The four areas of concern to Father regarding Mother are:

1. Drug use;

2. Smoking in the presence of [Child] an in violation of court order;

3. Inability to provide a stable living environment; and

4. Amie's mental health.

On May 27, 2020 the court proceeded to address the matters continued from May 6, 2020, due to the filing of Motion to Recuse Bench Officer by Ms. Webster. The matters to be addressed included Mr. Talia's Request for Order requesting a 730 Evaluation and the court's continued hearing from April 1, 2020, regarding appointment of an evaluator and preliminary order that costs of the 730 evaluation to be split equally between the parties with the court reserving jurisdiction to reassess the allocation of costs. At the hearing, Mother was not present, Ms. Webster appeared by CourtCall and both Mr. Talia and Father were present in the courtroom.

Ms. Webster failed to inform the court that she would not be appearing in person pursuant to California Rule of Court, Rule 3.1304. Ms. Webster did not comply with Lassen County Rule of Court, Rule 6 A (3) pertaining to CourtCall. Rule 6 A (3) states, CourtCall appearances are scheduled, in writing, in advance, by serving on all parties to the action and delivering (via fax, mail, or personal delivery) to CourtCall, not less than 5 court days prior to the hearing date, LSC Form 6A, Request for CourtCall Telephonic Appearance form, and by paying the stated fee or fee waiver for each CourtCall appearance. Furthermore, Ms. Webster did not comply with California Rule of Court, Rule 5.9, appearance by telephone.

As a courtesy to Ms. Webster for not complying with established procedures to appear by CourtCall, the Court allowed her to appear and reminded her of the established procedures to appear by CourtCall.

Ms. Webster requested a long cause hearing be set due to counsel not having a meeting of the minds. She further requested that the Court call her client in open court and make contact with Mother to determine why she is not in court. Ms. Webster further requested the Court to rule on her Statement of Objections to 730 Evaluation filed on May 4, 2020 to which the Court obliged and denied her objections as they did not comply with California Rules of Court, Rule 3.1113. Ms. Webster further objected to Mr. Talia's filing on May 26, 2020 Respondent Russell Bates' Four Areas of Concern Regarding [Child's] Mother Amie. The Court informed Ms. Webster that the filing of the four areas of concern by Father would be taken into consideration much like a position statement that may be found within a trial brief. All matters were continued to June 4, 2020.

Present on June 4, 2020 at the hearing for Mr. Talia's Request for Order requesting a 730 Evaluation and the court's previous order regarding appointment/naming an evaluator and retained jurisdiction to allocate costs, were Mother, Ms. Webster, Mr. Talia and Father. A brief summary of the proceeding that lasted approximately two hours is as follows:

> The matter was called at 9:00 a.m. The court inquires if the parties did a meet and confer, California Rule of Court, Rule 5.98 requiring all parties and all attorneys to meet and confer in person, by telephone, or as ordered by the court, before the date of the hearing relating to a Request for Order. Counsel states that they have not. Mr. Talia states that Ms. Webster brought up a concerning matter and that it

would not be of any use at this point. Ms. Webster agrees with Mr. Talia and requests to proceed. Ms. Webster states that she has procedural issues that she would like to discuss.

Ms. Webster wants to know where in our local rules it states that a Court Reporter would not be provided. Ms. Webster would just like for the record to reflect that she found it nowhere in our local rules nor an alternative way of having the proceeding recorded. Lassen County Rules of Court, Rule No. 1 I., Civil Reporting, Effective July 1, 2019, addresses Court Reporters and is available to the public on the courts web page and by contacting the court during business hours.

Ms. Webster also objects to Mr. Talia's request of a 730 evaluation because her claim that opposing counsel states a need for a 730 Evaluation. Ms. Webster also states that it is her client's position that nowhere in the recent filings does it give the court authority to order a 730 Evaluation. Ms. Webster proceeded to make several claims that the Court had ex-parte communication with the Respondent and his attorney in the courtroom during a scheduled court hearing in which the Petitioner and Ms. Webster failed to appear. Ms. Webster failed to show the alleged communications in the courtroom during a scheduled hearing, at which she and her client failed to appear, were ex parte and the court would not be able to proceed respective of California Rules of Court, Rule 3.1304.

The court asks Mr. Talia if he wishes to respond to Ms. Webster's objection on not having the authority to request a 730 Evaluation. Mr. Talia states that he does wish to briefly respond. Mr. Talia states that his client Father is fully prepared to pay for the entire 730 Evaluation. Ms. Webster objects to the offer without first seeking an acceptance or rejection of the offer from her client regarding the offer presented by Mr. Talia. Ms. Webster proceeded to repeatedly speak (outburst) over the judicial officer, so much so that the Bailiff had to remind her that she is not to speak over the judicial officer and to comply with Local Rule or Court Rule No. 1 C., Courtroom Decorum.

Ms. Webster continued by requesting a continuance so that she may file a 170.1. The court denied the request as the current proceeding had been called, was in progress, no meritorious reason was provided by Ms. Webster and a 170.1 must comply with Code

of Civil Procedure § 170.3 (c)(1) and be in writing with a verified statement setting forth facts constituting the grounds for disqualification of the judge.

The court continued the hearing and asked Ms. Webster if she has any legal reasons why a 730 Evaluation should not occur. Ms. Webster sites California Rule of Court 3.1113 and requests that the Respondent's filing should be stricken. Ms. Webster did not file a written demur to support her claim regarding Rule 3.1113. Ms. Webster then made an oral request for a demur. The court proceeds to ask Ms. Webster if she reviewed Mr. Talia's Request for Order for 730 Psychological Evaluation filed March 27, 2020 submitted on Judicial Council Form FL-300 and if it failed to identify specific evidence or arguments that would place a person on notice regarding today's hearing. Ms. Webster was unable to show the court that neither she nor Mother failed to understand the proceeding before the court. Furthermore, Mr. Talia's Request for Order did contain Points and Authorities In Support of Evidence Code § 730 Custody Evaluation and Ms. Webster had appeared in previous court hearings to address Mr. Talia's request for order, including but not limited to the hearing on May 27, 2020 where Ms. Webster requested the current long cause hearing.

Mr. Talia utilized the Judicial Council Form FL-300 when filing the Request for Order for a 730 Evaluation. Pursuant to California Rule of Court 5.92 (b) (6), no memorandum of points and authorities need be filed with a Request for Order (form FL-300) unless required by the court on a case-by-case basis. Ms. Webster then states that she cannot determine if it is Father request or the Judge's motion and states the court is in cahoots with Father. The court denied the request for demur as Mr. Talia did comply with Rule 3.113 and the request for order clearly stated the purpose of the issues to be addressed.

Ms. Webster proceeded by stating she made a request for copies of the court files back on May 5, 2020 and has not received the requested copies. Ms. Webster requests a continuance since she has not had a chance to review the file. Ms. Webster's claims, contentions, delays, candor towards the court and fairness shown to opposing party and counsel caused the court to have concern of Ms. Websters ongoing conduct based upon an attorney's obligations

pursuant to Rules of Professional Conduct, Rules 3.1, 3.2. 3.3 and 3.4.

The court denied the requests as the requests did not comply with California Rules of Court, Rule 3.1112, and the requests were irrelevant to the proceeding. Mr. Talia's motion has been before the court since March 27, 2020, Ms. Webster had appeared before the court to address the current motion on several occasions, Ms. Webster was aware of the reasons requested by Mr. Talia for a 730 evaluation, Ms. Webster did not mention at any of the previous court dates that she needed additional time to review the file and no good-cause was shown by Ms. Webster for a continuance.

The Court provided ample opportunity for Ms. Webster to address any other pre-hearing issues despite the fact that none of the issues appeared to have any merit, and despite the fact that the issues as presented appeared to be irrational and sensational attempts by Ms. Webster to antagonize, incite and intimidate the Court and the Respondent's attorney.

Upon both Mr. Talia and Ms. Webster stating they had no other matters to discuss with the court, Mother and Father were placed under oath. Mother, Father, Ms. Webster and Mr. Talia were asked questions to determine necessary orders, if any, the court would need to make. Below are a few of the questions and responses:

- Is this a contentious case?

Mother states yes

Father states yes

- Has this case been before the court since 2014?

Mother states yes

Father states yes

- Have the parents been able to co-parent?

Mother states no

Father states no

- Have the parents been able to effectively communicate with each other?

Mother states no

Father states no

- Have the Court's Orders been followed by the other parent?

Mother states no

Father states no

- Have the parties attended CCRC a minimum of (4) times?

Mother does not know for sure but she believes it has been twice.

Father states at least 4 times.

The Court takes judicial notice of the file, Evidence Code 452, and informs Mother there have been four custody orders issued since 2014.

Mother continues to state that it has only been two times attending mediation.

- DO you agree that pursuant to Family Code 3011 factors to determine the best interest of the child include:

1. The health, safety, and welfare of the child.

2. History of abuse

3. The nature and amount of contact with both parents.

4. Habitual or continue illegal use of controlled substances, alcohol, prescribed controlled substances by either parent.

Mother objects to the relevance

Father states yes.

- Do you have concerns of the parenting practices of the other parent?

Upon the advice of Petitioner's counsel Mother "Declines to State"

Respondent states yes.

- Do you have concerns pertaining to the health, safety and welfare of the child when the child is with the other parent?

Mother declines to state

Father states yes.

- Do you have concerns of the lifestyle choices of the other parent when the child is present?

Mother declines to state

Father states yes.

- Are you satisfied with the current orders?

Mother declines to state

Father states no.

- Would revision of the current custody orders be in the best interest of the child?

Mother declines to state

Father states yes.

- Evidence Code 730 allows the court to appoint an expert?

Ms. Webster disagrees

Mr. Talia agrees.

- A 730 evaluator appointed by the court is charged with being independent and neutral?

Ms. Webster states that she hopes so

Mr. Talia agrees.

Following the propounded questions and responses received, the Court gave the parties an opportunity to discuss potential resolution of the matter while the Court was in recess. Upon returning from recess, the parties informed the Court that they remained unable to reach an agreement.

The Court then advised the parties that it had sufficient information to rule on the Motion and would take evidence on any matter that had not already been addressed. The Court further advised

> that, pursuant to Evidence Code § 352, it would be limiting further evidence unless the probative value was useful in proving, or disproving, a particular fact. The parties provided no additional evidence, concluded their case and submitted.
>
> The Court informed the parties that the matter would be taken under submission and that a determination could likely be expected by Wednesday, June 10, 2020, before the hearing on Mr. Talia's Request for Order to Change Custody and Visitation. June 10, 2020 was the noticed hearing date for Respondent's Request for Order on Custody and Visitation as Petitioner's Attorney would not agree to advance the matter to be heard in conjunction with the hearing requesting a 730 evaluation held on June 6, 2020.
>
> In closing, Ms. Webster requests that the minor child be interviewed by CCRC. Mr. Talia requested minor's counsel be appointed for the minor. The court indicated that the issue of minor's counsel and interview with CCRC would be addressed at the next hearing.

On June 8, 2020, Ms. Webster filed a Request for Statement of Decision. Ms. Webster stated in part the following:

> Petitioner contends the issues before the court are as follows:
>
> Whether or not the court has the authority to sua sponte order a 730 psychological evaluation, and the specific request filed, that the court order an evaluation in this case.
>
> Counsel respectfully requests the court issue a written Statement of Decision, containing evidence considered, objections raised and basis for conclusion.

Ms. Webster Request for Statement of Decision was late pursuant to both California Rules of Court, Rule 3.1590 and Code of Civil Procedure § 632 as the hearing on June 4, 2020 was completed in one day, was approximately 2 hours long, the parties submitted the matter to the court on June 4, 2020 and Ms.

Webster's request for statement of decision was not made before the matter was submitted for decision.

On June 10, 2020, the Court filed a ten-page Order Granting the 730 Evaluation. An evaluation was deemed necessary based upon the contentious claims made by the parties against each other include, but are not limited to: drug use; manipulation; mental health disorders; sexual abuse; corporal punishment; inability to provide for the child; child custody exchange safety; criticism, belittling and disparaging words made towards each other; destructive patterns of communication; altercations with third parties while the child is present; restraining order issued due to altercation with a third party; inappropriate statements about the other parent made to the child; improper sleeping arrangements of the child; manipulation; unwillingness to drug test; engaging in self-defeating behavior; exposing the child to people who have criminal propensities/records; co-parenting difficulties displayed during a March 4, 2020 hearing in this same action; the previous 2016 recommendation by the Child Custody Recommending Counselor in part due to Petitioner's request and the contentious nature of the case; fleeting success with the parties attending Child Custody Recommending Counselor; and the best interest of the child warranted such a proceeding.

As shown above, Judge Mallery strictly adhered to the law and always acted in the best interests of the minor. Judge Mallery admits he ordered the parties to write down five concerns, ordered they meet and confer, and stayed the 730 evaluation pending resolution.

b. *Courtcall*

Judge Mallery denies he retaliated against Ms. Webster or that he acted improperly. On July 8, 2020, a hearing was held on Petitioner's Request for Order to Change Child Custody and Attorney's Fees and Costs Pursuant to Family Code Section 271 filed on June 10, 2020 by Ms. Webster. Mother was not present, Ms. Webster appeared by CourtCall, Father and Mr. Talia were personally present and Abramson, minor's counsel, appeared by ZOOM. As with Ms. Webster's previous CourtCall appearances, Ms. Webster did not comply with established procedures to appear by CourtCall, was admonished and allowed to appear by CourtCall as a courtesy.

Ms. Webster informed the Court that she was not able to appear in person at the start of the calendar as she was held up in a hearing until 12:30 p.m. in Shasta County and asked for a continuance. The Court informed Ms. Webster that the Court would trail the matter until 4:00 p.m. to allow her time to appear in Lassen County. Ms. Webster responded she cannot personally appear today. The Court asked for her reason why she could not appear that day as the court was allowing her ample time to travel to the courthouse. Ms. Webster provided the same general response that she cannot personally appear today. In an effort to determine whether there was good cause for Ms. Webster's request to continue, Ms. Webster was asked the same question again to which she provided the same response.[1]

[1] Family Code § 7668 (c) states, continuances shall be granted only upon a showing of good cause. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. An application for a continuance is addressed to the sound discretion of the trial court, and

Ms. Webster's representation that she could not personally appear without any additional supporting information did not provide any compelling grounds as to why the request should be granted. Based upon Ms. Webster's clear representation to the Court that she would not be in court at 4:00 p.m. if the matter was continued to allow her time to drive to the court and appear in person, the Court proceeded with the hearing with Ms. Webster appearing by CourtCall. The parties were informed that Petitioner's third motion for disqualification was being stricken and a formal order would be forthcoming. Based upon the filed documents and information received at the hearing, the Court made the following determinations at the hearing:

> 271 Sanctions.
>
> A party's discontent with court proceedings is not a valid basis for the issuance of Family Code § 271 sanctions. In this instant case, Petitioner's Disposition Statement is replete with descriptions of her annoyance at and disapproval of the manner in which this matter has proceeded. At the same time, Petitioner's Disposition Statement ignores the fact that this matter has proceeded – in large measure – based on the mistaken assertion of Petitioner's own Attorney that this Court lacked the authority to order an Evidence Code § 730 evaluation. Unnecessary litigation and drawn out proceedings have been the net result of that mistaken position, frustrating the policy of the law to reduce litigation and impeding the court's ability to expeditiously determine the best interest of the child.
>
> Of particular note, Lassen Superior Court's Rules at Rule of Court No.2 G requires that: "After a ruling by the court upon any objection, motion or summary

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its ruling will not be reviewed except for the most cogent reasons. The trial court is apprised of all the circumstances of the case and the previous proceedings, and is, therefore, better able to decide upon the propriety of granting the application than an appellate court; and when it exercises a reasonable and not an arbitrary discretion, its action will not be disturbed. (People v. Gaines (1934) 1 Cal.2d 110.)

request, counsel and self-represented litigants are to make no further argument on the matter. The remedy for an incorrect ruling is appeal, not oratory. It is disruptive to the orderly conduct of a trial to continue arguing after a ruling is made."

At no time has Petitioner's attorney complied with this rule. Instead, Petitioner's attorney continues to argue the matter in additional filings with the Court while simultaneously seeking sanctions on motions on which Respondent has been the prevailing party. Petitioner's request for sanctions is without merit. The conduct of Petitioner's Attorney's has only promoted litigation, increased costs and shown little cooperation to aid in the determination of the child's best interest. The Petitioner's request for sanctions is therefore denied.

Family Code § 2030 Attorney Fees.

Based upon the review of financial documents there is not a disparity in access to funds to retain counsel between the parties. The financial showings of each party (as stated in their documents signed under penalty of perjury) reveals that neither has the ability to afford an attorney after taking into consideration each household's income and expenses. Compounding the Court's determination, it is noted that the Court has already ordered Father to pay 85% of the Evidence Code § 3111 evaluation and to be responsible for placing the initial deposit with the Evidence Code § 3111 evaluator (subject to reimbursement of 15%). The Court finds no significant disparity in the parties' cash assets and its effect on the parties' respective abilities to fund litigation, such that Petitioner's request for Family Code § 2030 attorney fees is therefore denied.

Child Support.

The request for child support is denied without prejudice. DCSS is a party to the proceeding, and any such requests for child support are to be addressed in Department 7.

Status of 3111 Evaluation.

Mr. Talia and Father had made contact with the 3111 evaluator, Ms. Metcalf, and were ready to proceed. Ms. Webster informed the court that neither she nor Mother had contacted Ms. Metcalf. Mr. Abramson stated he had an upcoming appointment to meet with the child when she is with her father and that he

> attempted to contact Mother but was unable to due to an incorrect phone number. Mr. Abramson was later provided a correct number from Ms. Webster.
>
> Status of the 3111 evaluation was continued to August 5, 2020.
>
> When faced with a ruling by the court, upon any objection, motion, or summary request with which an attorney/party, here Ms. Webster, does not agree, Ms. Webster's duty as an officer of the court is to comply with Local Rule of Court, Rule No. 2 G and refrain from making any further argument on the matter. Ms. Webster's remedy is to file an appeal for a ruling with which she does not agree, not to continue demanding to argue after a ruling has been made and most especially to refrain from further protest after being informed by the court that the ruling has been made and to cease further argument. Unfortunately, Ms. Webster routinely ignores the court as demonstrated by her poor behavior which repeatedly bypasses zealous advocacy and becomes belligerent. She continues to circumvent the law and the required civil procedure by threatening and berating the court. Ms. Webster's unethical behavior is, at a minimum, disruptive to the orderly conduct of a trial to continue arguing after a ruling is made.

Ms. Webster was provided full, fair, and reasonable opportunity to argue her motion. Ms. Webster demanded to continue to "make a record" (argue) after the Court had made its decision. Ms. Webster's conduct was improper and violated Local Rule of Court, Rule No. 2 G. Furthermore, the trial court has the authority to provide for the orderly conduct of proceedings before it, or its officers.

c. *Order to show cause*

Judge Mallery denies that he retaliated against Ms. Webster by ordering her to show cause. On May 18, 2020, Mr. Chittock on behalf of his client, Ms. David, filed a Request for Order for Child Support, Visitation, Spousal Support and Attorney Fees, Judicial Council Form FL-300. On June 10, 2020, Ms.

Webster filed a Substitution of Attorney, Judicial Council Form MC-050, wherein Mr. Chittock was relieved as attorney of record by Ms. David and consented to Ms. Webster as her new attorney of record in Case No. FL63064.

At the hearing on June 10, Ms. Webster, Ms. David, Mr. Kinney and Mr. David all appeared in person. The parties informed the court that they had not yet appeared at CCRC and their appointment was scheduled for June 17, 2020. The parties further informed the court they had an informal agreement for visitation with the father picking up the children in the Walmart parking lot on Thursdays at 10:00 a.m. and returning the children on Saturdays at 10:00 a.m. Parents were ordered to continue their visitation agreement pending an agreement in CCRC or the next court date if an agreement could not be reached with CCRC.

In order to determine spousal support and due to both child support and temporary support being subject to the use of computer software to determine guideline support based upon the formula CS = K (HN - (H%) (TN)), it was necessary to determine what child support would be before spousal support could be determined. Based upon the parties' respective income and the time share under the parties' informal agreement, it was determined child support $616.00 per month and spousal support would be $258.00 per month. The court made temporary orders to that effect retroactive to the date of filing and reserved jurisdiction to modify once the Department of Child Support Services in Department 7 determined what child support would be and what the time share would be after child custody/visitation was determined. The matter of attorney fees at the request of Ms. Webster was reserved to future date to be determined

and the parties were ordered to return to court on July 8, 2020 for continued custody/visitation proceedings and receipt of the CCRC report if an agreement could not be reached with CCRC. If the parties did reach an agreement and executed an Interim Child Custody Agreement & Order before July 8, 2020, the matter would be taken off calendar.

At the hearing on July 8, 2020 on the competing request for orders for custody/visitation proceedings and receipt of the CCRC report, Mr. David and Mr. Kinney were present. Ms. David was not present, Ms. Webster was allowed as a courtesy to appear by CourtCall as Ms. Webster did not comply with Lassen County Rule of Court, Rule 6 A (3) pertaining to CourtCall. Rule 6 A (3) states, CourtCall appearances are scheduled, in writing, in advance, by serving on all parties to the action and delivering (via fax, mail, or personal delivery) to CourtCall, not less than 5 court days prior to the hearing date, LSC Form 6A, Request for CourtCall Telephonic Appearance form, and by paying the stated fee or fee waiver for each CourtCall appearance. Furthermore, Ms. Webster did not comply with California Rule of Court, Rule 5.9, appearance by telephone. As a courtesy to Ms. Webster though she failed to comply with established procedures to appear by CourtCall, the court allowed her to appear and reminded her of the established procedures to appear by CourtCall.

At the hearing, the Court acknowledged that Mr. David signed the Interim Child Custody Agreement & Order prepared by CCRC on June 20, 2020. The court inquired as to why Ms. David had not signed Interim Child Custody Agreement & Order. Ms. Webster advised the court her client does not agree with

the Interim Child Custody Agreement & Order prepared by CCRC after the David's meeting with CCRC. Ms. Webster was asked if she contacted Mr. Kinney prior to the hearing on July 8, 2020 to inform Mr. Kinney that Ms. David would not be signing the Interim Child Custody Agreement & Order prepared by CCRC based upon the parties' representations to CCRC when they met on June 17, 2020. Ms. Webster stated that she did not contact Mr. Kinney, in violation of California Rule of Court, Rule 5.98 (a).

As the hearing on the matter continued on the request for order requesting custody and visitation, the court requested Ms. Webster to provide the issues of contention with the Interim Child Custody Agreement & Order prepared by CCRC so that the hearing could proceed. Ms. Webster indicated that she could not provide any of Ms. David's issues of contention and stated, "she is in court, ask her." Ms. Webster was informed Ms. David was not present in the courtroom.

After learning Ms. David was not in the courtroom, Ms. Webster became insistent on a long cause evidentiary hearing and demanded CCRC be present. In an effort to have a purposeful Custody and Visitation Order, the court yielded to Ms. Webster's request to continue and set a hearing for August 12, 2020. Ms. Webster was informed that if she wished to have CCRC appear at the next hearing, she may subpoena CCRC as they are not a party to the proceeding. Ms. Webster and Mr. Kinney were instructed to meet and confer by July 10, 2020 to determine if the matter was going to require a full hearing. If the parties were not able to come to an agreement, Ms. Webster and Mr. Kinney would need to provide a statement of disputed item or statement of on-going settlement

discussions if the parties had an ability to resolve the issue of custody and visitation without the need of a hearing. The parties were to report their findings to the court by July 17, 2020.

Based on Ms. Webster's failure to contact Mr. Kinney regarding Ms. David disputing the Interim Child Custody Agreement before the hearing on July 8, 2020 pursuant to Rule 5.98(a), Ms. Webster being unprepared to proceed with the hearing and having an inability to provide the Court with any information pertaining to Ms. Webster's allegation that Ms. David's did not agree with the Interim Child Custody Agreement & Order prepared by CCRC, and Ms. Webster not able to provide information as to why Ms. David did not appear, an order to show cause hearing was set for August 26, 2020. A formal notice to Ms. Webster was issued on August 6, 2020 to personally appear to show cause, if any, why she should not be sanctioned pursuant to Code of Civil Procedure section 177.5 for the above conduct on August 26, 2020.

At the continued hearing on the request for order requesting custody and visitation on August 12, 2020, Ms. Webster, Ms. David, Mr. Kinney and Mr. David all appeared in person. Neither Ms. Webster nor Mr. Kinney provided the court for the hearing with a statement of disputed item or statement of on-going settlement discussions to be filed with the court by July 17, 2020 as instructed at the hearing on July 8, 2020. Ms. Webster and Mr. Kinney informed the court Ms. David and Mr. David had reached an agreement and needed additional time to prepare a formal agreement for signature by the parties. Both Ms. David and Mr. David acknowledged they had reached an out-of-court agreement and needed

additional time to finalize their agreement. Based upon the representations presented to the court, the issue of custody and visitation was taken off calendar so that the parties could finalize their agreement as to custody and visitation. On September 24, 2020, Mr. Kinney filed with the court the David's Stipulated Agreement for Custody and Visitation attached to a Findings and Order After Hearing.

On August 25, 2020, the clerk of the court sent notice that the hearing set for August 26, 2020 was being reset for September 16, 2020. On September 3, 2020, at the request of Ms. Webster to continue the hearing set for September 16, 2020, the clerk sent another notice resetting the hearing to October 7, 2020. At the Order to Show Cause Hearing on October 7, 2020, Ms. Webster appeared, waived any defect to service, requested to proceed and addressed the court's questions regarding the matters of July 8, 2020. Ms. Webster's responses, while indignant and disgruntled towards the court, were adequate to show justification in why she did not comply with the rules of court warranting her request to not have sanctions issued. After dismissing the Order to Show Cause without sanctions, Ms. Webster provided an apology to the Court for her mishaps and behavior.

d. *Further appointment of Leesa Webster*

Judge Mallery denies that he retaliated against Ms. Webster. Ms. Webster has repeatedly demonstrated to the court an unwillingness to work in a civil fashion with Judge Mallery, follow procedure and comply with her obligations to the court as a licensed attorney in the State of California pursuant to statute, rule of court and rules of professional conduct.

Judge Mallery, having heard a number of different types of calendars and interacting with the attorneys in the courtroom, has been able to observe the attorneys and to make a determination as to who is better qualified to handle certain types of cases relative to other attorneys, who are the more efficient attorneys and the attorneys who uphold their obligations as an attorney, including but not limited to, civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution. Judge Mallery assigns attorneys to cases based upon ability, efficiency and ability to uphold the obligations of an attorney.

As time progressed in hearing matters in which Ms. Webster was the attorney of record, it was the court's observation that Ms. Webster habitually failed to comply with established procedures, possessed a misunderstanding of legal matters in proceedings she had not appeared before this court in the past, and showed an increasing disregard in demonstrating civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation as required by a licensed attorney in the State of California.

Based upon said observations regarding Ms. Webster's ability to represent indigents in certain matters the court might appoint her as the attorney of record, Judge Mallery did contact Marian Tweddell regarding Ms. Webster. Judge Mallery informed Ms. Tweddell that appointments of Ms. Webster as attorney of record would be reviewed on a case-by-case basis going forward. This was relayed to Ms. Tweddell to ensure that the cases to which Ms. Webster would be

appointed matched her skill set and provide the indigent person effective and competent counsel based upon the attorney's skill set in relation to the issues in each case.

Ms. Tweddell took it upon herself and without first addressing the matter with Judge Mallery, to author send an email to court staff on July 9, 2020, at 8:38 a.m. stating, "Good morning everyone, Effective immediately per Judge Mallery, the court will no longer be appointing Leesa Webster to any new cases." Upon Judge Mallery reading the email, he immediately contacted Ms. Tweddell and informed her that her email was an improper reflection of the conversation he had with her, and it was necessary to correct the email most urgently.

On July 9, 2020 at 8:55 a.m. Ms. Tweddell sent the following email to court staff regarding her previous email, "Good morning everyone, Please disregard the below email, this is the incorrect information for staff." On July 9, 2020 at 9:49 a.m. Ms. Tweddell sent the following email to Judge Mallery, "Judge, sorry about the first email." On July 9, 2020 at 9:50 a.m. Ms. Tweddell sent the following email to court staff, "Hello everyone, Any new cases that may be appointed to Attorney Leesa Webster will need the prior approval of the Presiding Judge."

At no time was it Judge Mallery's intention to stop appointing Ms. Webster to indigent cases. Ms. Webster continued to receive appointments. On December 3, 2020 Mr. Vose emailed to see if Ms. Webster was interested in taking appointments from the court to represent minor children in dependency proceedings. Ms. Webster responded to Mr. Vose by email stating "I would

absolutely take minors cases in lassen but unfortunately I cannot practice in front of mallery anymore. I'm not meaning to be argumentative or rude but there has been too much happening over there and I don't like drama and turmoil....In summary, yes I'd love to accept a minors counsel position but can't if mallery is still in that assignment..." On December 3, 2020, Mr. Vose responded to Ms. Webster stating, "Thanks again for the reply...I'll have staff let you know if/when any assignments that might be of interest to you pop up."

Count 9

a. Improper conversations with Judge Nareau

Judge Mallery denies he told Judge Nareau not to grant the venue change because of financial costs. On or about February 15, 2018, Judge Nareau had contacted Judge Mallery about his contribution to a GoFundMe fundraising campaign, set up in support of the family of the teenaged victim in this case and his obligation to disclose or disqualify. Neither Judge Nareau nor Judge Mallery discussed the merits of the case nor any impending motion. Judge Nareau consulted with a fellow judge, not on any issues as to the merits, history, or substance of the case; rather, he sought to discuss the issues raised by his contribution in relation to the requirements pursuant to Code of Civil Procedure sections 170.1 and 170.3.

At no time did Judge Mallery tell Judge Nareau how to rule on the venue change.

b. Judge Beason

Judge Mallery denies he instructed Judge Beason how to rule. After Judge Nareau disqualified himself, as Lassen was a two-judge court, Judge Nareau and Judge Mallery discussed the procedural requirements that the court would need to prepare for, personnel issues and the costs associated with a change in venue.

As to Judge Beason – as the presiding judge, it was not uncommon for Judge Mallery to speak with assigned judges when they arrive at the court to determine if they need anything before addressing their assigned calendars. Any discussion with Judge Beason pertaining to a change of venue was not about the merits of any specific case. Instead, it was solely for administrative purposes—to gather information from a seasoned and experienced judge on the impacts on and requirements of a court in the event of any change of venue. Issues pertaining to obligations of the home court, the assigned court and the judicial council were discussed, so that the court could be better prepared in addressing any change of venue.

Count 10

Relevant history of Owings v. Owings

In order to appreciate the allegations, the Commission must consider the factual background. The Owings v. Owings case was more than a decade old at the time of the alleged conduct. The relevant history follows:

> 11/12/2004 JUDGMENT FOR DISSOLUTION ENTERED
>
> 01/07/2013 Judge Mallery takes office, assigned to Department 2 and has continuously been assigned to Department 2 to present.

11/01/2013 Effective November 1, 2013 New Court Calendar goes into effect for Lassen County Superior Court placing all family law matters assigned to Judge Tony Mallery, Department 2. The Published Rules of Court have continued to post this advisement each year since 2014 to present.

09/28/2017 Lassen County Superior Court Operations Manager, Marian Tweddell-Wirthlin places 2018 Court Calendar and Judicial Assignments in all attorneys mail boxes at the Hall of Justice, including Eugene Chittock. The Judicial Assignments continue to have Family Law matters assigned to Department 2.

10/28/2018 Lassen County Superior Court Operations Manager, Marian Tweddell-Wirthlin places 2019 Court Calendar and Judicial Assignments in all attorneys mail boxes at the Hall of Justice, including Eugene Chittock. The Judicial Assignments continue to have Family Law matters assigned to Department 2.

11/20/2018 Ms. Owings files REQUEST FOR PRODUCTION OF AN INCOME & EXPENSE DECLARATION AFTER JUDGMENT

12/26/2018 Eugene Chittock representing Mr. Owings files REQUEST FOR PRODUCTION OF AN INCOME AND EXPENSE DECLARATION AFTER JUDGMENT

12/26/2018 Eugene Chittock representing Mr. Owings files INCOME & EXPENSE DECLARATION

01/02/2019 Ms. Owings files REQUEST MTN RECD:(M) SPOUSAL SUPPORT & DIVIDE OMITTED ASSET - FEDERAL RETIREMENT

01/11/2019 Eugene Chittock representing Mr. Owings files RESPONSIVE DECLARATION TO REQUEST FOR ORDER

01/18/2019 Ms. Owings files DECLARATION FILED

01/18/2019 Eugene Chittock representing Mr. Owings files (R) PEREMPTORY CHALLENGE - 170.6 ON JUDGE TONY MALLERY RECEIVED

01/22/2019 ORDER DENYING (R) 170.6 ON JUDGE TONY MALLERY AS UNTIMELY FILED

02/01/2019 Eugene Chittock representing Mr. Owings files PETITION FOR WRIT OF MANDATE. No motion for stay requested pursuant to Rule 3.515 / Code of Civil Procedure § 404.5

02/06/2019 Hearing on Ms. Owings REQUEST MTN RECD:(M) SPOUSAL SUPPORT & DIVIDE OMITTED ASSET - FEDERAL RETIREMENT

02/06/2019 Ms. Owings REQUEST MTN RECD:(M) SPOUSAL SUPPORT & DIVIDE OMITTED ASSET – DENIED.

02/14/2019 Palma Notice from Court of Appeals for the Third Appellate District sent to parties.

02/18/2019 Eugene Chittock representing Mr. Owings files Dismissal of PETITION FOR WRIT OF MANDATE.

02/19/2019 Correspondence from Court sent Court of Appeals for the Third Appellate District regarding Palma Notice.

02/19/2019 Correspondence from Court sent Court of Appeals for the Third Appellate District regarding Palma Notice.

02/22/2019 Court of Appeals for the Third Appellate District regarding Palma Notice grants the Request for Dismissal of Petition for Writ of Mandate and Vacates the Palma Notice issue February 14, 2019. Case Complete.

03/01/2019 Court executes Findings and Order after Hearing prepared by Eugene Chittock.

Response to Specific Allegations

Beginning on November 1, 2013 and continuing to present, Judge Mallery has been assigned to Department 2 and all Family Law matters have been assigned to Department 2. Notice of this assignment was provided in 2013 to all attorneys who regularly practice before the court, including but not limited to,

Eugene Chittock. Each year thereafter, notice has been provided annually to all attorneys who regularly practice before the court of the upcoming calendar year and types of cases are assigned to each department.

Prior to attorney Eugene Chittock's filing [a Request for Production of an Income and Expense Declaration After Judgment] on December 26, 2018 on behalf of his client, Randolph Lee Owings, Operations Manager, Marian Tweddell-Wirthlin provided Mr. Chittock with actual written notice of family law assignments to on at least two separate occasions: (1) on September 28, 2017, advising that the 2018 family law calendars continued to be assigned to Judge Mallery; and (2) October 12, 2018, advising that the 2019 family law calendars continued to be assigned to Judge Mallery.

Of note, Mr. Chittock has a regularly practicing attorney before the family law court and has continually received annual notices from the Court advising family law calendars continued to be assigned to Judge Mallery. Additionally, the Lassen County Superior Court, a two-judge court, annually posts on the Court Website the Local Rules of Court that includes the assigned judge for each calendar and department for the pending year.

On December 26, 2018, Eugene Chittock and Mr. Owings made their first appearance in the case since Judgment was entered on November 12, 2004. Twenty-four days after Eugene Chittock made his appearance with Mr. Owings, Mr. Chittock filed a Peremptory Challenge against Judge Mallery. Judge Mallery—having been assigned to the family law cases since 2013 with annual noticing being provided to the public, agencies, and local attorneys pertaining to

all calendars within the Lassen Superior Court—denied the peremptory challenge as untimely.

On February 1, 2019, Mr. Chittock filed a Petition for Writ of Mandate with the Court of Appeals for the Third Appellate District. Mr. Chittock did not seek a stay of proceedings from either the trial court or the appellate court. On February 14, 2019, based solely on the information provided by Mr. Chittock, the Court of Appeals for the Third Appellate District issued a Palma notice. On February 18, 2019 Eugene Chittock filed a "Dismissal of Petition for Writ of Mandate," ten (10) days before the February 28, 2019 deadline set by the Court of Appeals for Judge Mallery to address the Palma Notice. On February 22, 2019, the Court of Appeals for the Third Appellate District granted the Request for Dismissal of Petition for Writ of Mandate and Vacated the February 14, 2019 Palma Notice, thereby concluding the case filed with the appellate court. The order issued on January 22, 2019 denying the challenge therefore remained in full force and effect upon restoration of the trial court's jurisdiction over the issue.

At the hearing on February 6, 2019, Judge Mallery acknowledged in open court that Mr. Chittock filed a peremptory challenge that was denied by the court, and based upon the denial, Mr. Chittock filed a writ. No stay of proceedings was in place prohibiting the court from proceeding to address Ms. Owings' motion. The parties were given an opportunity to weigh this information and respond to the court's intention to proceed.

No party to the proceeding objected to the court's exercise of jurisdiction, so Judge Mallery properly proceeded to hear Ms. Owings' Request for Order, and

receive testimony and evidence from the parties as to the same. Upon the parties resting, the court—on the merits of the case—properly denied Ms. Owings' Request for Order because no legal basis was shown pursuant to Family Code section 4320. Twelve days later, Chittock filed the Dismissal of Petition for Writ of Mandate, effectively affirming the January 22, 2019 denial of the peremptory challenge.

Judge Mallery has no recollection of an ex parte meeting or communication with Mr. Chittock. Had there been one prior to proceeding with the case, it is the practice of the court clerk to document such a meeting or communication in the court minutes. Regardless, pursuant to Canon 3B (12) a judge may initiate, permit, or consider ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

> (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
>
> (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

In review of the court minutes for the hearing of February 6, 2019, it appears from the allegations that even if an ex parte communication did occur, that Judge Mallery promptly notified all parties of the substance of the ex parte communication and allowed an opportunity to respond pursuant to Canon 3B(12).

Count 11

In or about October 2017, an appellate decision in the matter of the *People vs. Duenas* held in part that the Restitution fine was meant to be punitive and was therefore a part of probation. The *Duenas* court held that imposing unpayable fines on indigent defendants is not only unfair, it serves no rational purpose, fails to further the legislative intent, and may be counterproductive. While the statute instructs that inability to pay is an illegitimate consideration when imposing the minimum restitution fine, it goes on to require the court to stay the execution of the fine unless and until the People show the defendant is able to pay the fine.

After the *Duenas* case was published, other appellate cases from different districts were published contrary to the decision in *Duenas*.

As it pertains to the instant matter, the conduct alleged cannot be any further from the truth and Judge Mallery denies it. Judge Wiseman is an exceptional jurist who retired from the court of appeals. Judge Mallery can think of no one more equipped to address the *Duenas* issue which, at the time, was still new and being tested in a number of district courts than a judge who served in an appellate court. The purpose in having Judge Wiseman hear these cases was in hopes that she would set a sound precedent for Lassen County to follow in future cases. At no time was Judge Wiseman's free-will to act as an independent judicial officer being impeded. Judge Wiseman and Judge Mallery did discuss the various issues brought about because of the decision in *Duenas* and other cases, but only as an academic exercise and certainly not as any directive.

Count 12

Relevant law

A plea bargain agreed to by the defendant and the prosecutor must be approved by the court in order to become effective. (Penal Code § 1192.5.) The court does not have the power to accept a negotiated plea bargain that provides for a sentence unauthorized by law. (People v. Superior Court (2014) 223 Cal.App.4th 567.)

In Lassen County, an increasing number of proposed plea bargains had no longer complied with the objectives of sentencing pursuant to California Rules of Court, Rule 4.410, and attorneys were increasingly failing to provide sufficient information to the court to support their proposed dispositions. For the court to properly consider a plea bargain, the district attorney is tasked with presenting information pursuant to the rules of court, including but not limited to, Rules 4.414 and 4.415. This information is the burden of the prosecution as the defendant has a right against self-incrimination and defense counsel is to provide competent counsel to the defendant while not allowing the court to be mislead by both the presentation and omission of information being provided by the prosecutor.

It is common a plea bargain will include a grant of probation. The Legislature has outlined within Penal Code section 1203 et. seq. that there are certain crimes if a person is convicted of, probation may be granted only in an unusual case where the interests of justice would best be served; when probation is granted in such a case and the court shall specify on the record and shall enter

in the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

In Lassen, plea bargains commonly and increasingly including requests for the court to not issue certain required terms if the defendant took a plea (i.e., 52 week domestic violence course (Penal Code § 1203.094); Criminal Protective Restraining Order in domestic violence cases (Penal Code § 1203.094); defendant may not possess firearm for 10 years (Penal Code § 29805(a)); disposal of firearm (Penal Code §§ 417.6(c), 18000, 18005); participation for minimum 1 year in child abuser's treatment counseling program (Penal Code §§ 273a(c)(1)–(3)); participation in a licensed alcohol or other drug education and counseling program for minimum of 3 months in driving under the influence cases (Vehicle Code § 23538 and Health & Safety Code § 11837(c)(1))). If the court had agreed to any of these requests, an illegal sentence would have been issued.

There was also a lack in uniformity of plea offers for defendants who were before the court with similar allegations and facts. Oftentimes, plea offers were so miniscule that it would be difficult to truly say that the sentence was encouraging the defendant to lead a law-abiding life in the future, deterring him or her from future offenses, or deterring others from criminal conduct by demonstrating its consequences. By making such miniscule offers, society was neither being protected nor the defendant being punished.

In addition to proposed plea bargains not including mandatory requirements as part of the disposition and not being uniform, in most proposed plea bargains where there was a victim the prosecutor had failed to notify the

victim pursuant to the Marsy's Law. Due to the prosecutor's customary failure to adhere to Marsy's Law, both before discussion with the attorneys and after discussion, General Order 2017-08 was executed to further put attorneys on notice of the Marsy's Law requirements. The general order requires that in any pretrial disposition of a case involving a victim who has been provided rights pursuant to Marsy's Law, the prosecuting attorney shall indicate on the record whether or not the prosecuting agency has complied with the requirements of Marsy's Law, including but not limited to: (1) what specific efforts were undertaken by the prosecuting agency to comply with Marsy's Law; (2) whether or not the victim requested to take part in the disposition of the case; and (3) whether or not the prosecuting agency notified and informed the victim of any pretrial disposition of the case if the victim requested to be notified of such information.

To evaluate a proposed plea bargain, the judge must know all of the terms of the deal, including any future conditions or unusual aspects. A judge has discretion to decide whether to accept or reject a plea agreement. To make that decision, the judge evaluates whether the punishment is appropriate in light of the seriousness of the charges, the defendant's character, and the defendant's prior criminal record, the underlying facts of the case (or factual basis for the plea) the interests of the victim (although a court can accept or reject a plea agreement without the victim's approval), and the interests of the general public. The judge also evaluates factors provided for by statute and the Rules of Court.

a. *It stops now*

Judge Mallery admits these allegations, but the Commission needs context. Pursuant to California Code of Civil Procedure section 128, supporting case law, and with the agreement of Judge Nareau, Judge Nareau and Judge Mallery met with the attorneys so that they could discuss these issues. It was therefore necessary to discuss these issues with the attorneys as a whole to provide for the orderly conduct of proceedings before the court and in furtherance of the following: to protect the administration of justice, to bring out facts so that important functions of the judicial office may be thoroughly and justly performed, to compel attorneys to perform their express statutory duties, to control the conduct of attorneys in pending actions in order to protect the administration of justice, to protect the reputation of the court from groundless attacks upon judicial integrity; to safeguard and promote orderly and expeditious conduct of court business, to guard against inept procedures and unnecessary indulgences that would tend to hinder, hamper or delay conduct and dispatch of court proceedings; to protect a person on trial for a crime and the constitutional rights guaranteed to the defendant, and to fashion remedial procedures in order to deal with plea bargaining issues to protect the rights of the parties and society,

If attorneys cannot (or will not) comply with their duty to provide a judge with sufficient information for the judge to make an informed decision in the best interest of society, then plea bargaining is rendered meaningless and a system of receiving open pleas becomes necessary. For successful plea bargaining, it starts with attorneys, not the judge.

b. *Not going to tie Court's hands.*

Judge Mallery denies that he made the alleged statement regarding Mr. Zamora's appointments, and he incorporates his answer to Count 12(a) into this response. If any statement was made in relation to Mr. Zamora's acceptance of more court appointments, it would have been based upon correspondence that the court would often receive from Mr. Zamora (and Mr. King) that he would be unable to take any future court appointments because his case load was full. It would not have been based upon anything else, and it would not have been made for any other purpose.

c. *People v. Lima*

Judge Mallery admits the allegations but the Commission apparently misunderstands the context. Mr. Lima was brought before the court on four felony counts and one misdemeanor count for alleged crimes in case CR035123: (1) count 1 involved the crime of Arson of a Structure in violation of Penal Code section 451(c) with aggravating factors pursuant to Penal Code section 451.1(a), a felony; (2) count 2 involved the crime of Possession of Flammable Material in violation of Penal Code section 453(a), a felony; (3) count 3 involved the crime of Second Degree Commercial Burglary in violation of Penal Code section 459, a felony; (4) count 4 involved the crime of Attempted Second Degree Commercial Burglary in violation of Penal Code section 664/459, a felony; and Count 5 involved the crime of Property Damages under $400.00 in violation of Penal Code section 594(a), a misdemeanor.

The factual basis of the complaint was that on July 2, 2017, Mr. Lima set fire to a multi-business complex containing four separate businesses: Courthouse

Café, The Law Office of Stephen King, The Law Office of Mark Nareau, The Law Office of Robert Hill, and Sierra Central Credit Union. Damages sustained totaled $985,833.22 and included: Property Owner/Landlord, Jack Pastor $776,794.00, Sierra Central Credit Union $126,441.20, Stephen King $77,706.93; and Mark and Tracy Nareau $4,891.09. This damages amount does not take into account any damages caused to the Court House Café and the Law office of Robert Hill, as none were provided.

Approximately one hour after setting the fire, Mr. Lima committed a burglary at J&H Heating and an attempted burglary at J&K Guns.

At the time of these incidents, Mr. Lima was on felony probation in case CR034345 for a violation of Penal Code section 27500(a) (Unlawfully Sell/Supply Firearm) and Penal Code section 449 (Burglary) relating to another local business, Honey Lake Firearms. Also at the time of these incidents, a warrant was outstanding in CR034345 following Mr. Lima's failure to appear in Drug Court on March 16, 2017 and April 13, 2017. Moreover, Mr. Lima had been previously convicted in 2014 for misdemeanor failure to appear and misdemeanor driving on a suspended/revoked license.

Mr. Lima was therefore statutorily ineligible for a grant of probation pursuant to: (1) Penal Code section 1203(e)(4) (two prior felony conviction); and (2) Penal Code section 1203(k) (serious felony as defined by Penal Code section 1192.7(c) or violent felony as defined by Penal Code section 667.5(c)).

Based upon Mr. Lima's prior conduct, his current conduct, and the statutory prohibitions for a grant of probation, leniency on any plea bargain would

be completely contrary to the best interests of society and public safety. Any latitude would be completely contrary to the Rules of Court, and any plea bargain would need to be appropriate under the circumstances.

In this case, the court placed the attorneys on notice that this matter would not be easy to resolve on a plea bargain, as both the Rules of Court and the interests of society overwhelmingly weighed against a lenient plea bargain. A plea bargain with anything less than a terminal disposition with a full term would have been inappropriate absent an overwhelming amount of information in support. No such information was presented to the court.

Any in-chambers remarks made toward then-DA Evans would have been directed toward him and his position relative to the plea agreement. Specifically, given the above, Mr. Evans might wish to reconsider his position on the plea agreement – which the court had already objectively evaluated and determined to be excessively lenient, free from even the specter of improper influence – and how it might affect his chances in the contested DA election.

As to the February 15, 2018 Preliminary Hearing, the DA informed the court that they were not making an offer to Lima at that time. Lima waived his right to a Preliminary Hearing and the matter was continued to March 27, 2018 for Arraignment on the Information.

In fact, Mr. Lima eventually entered an open plea allowing the court to determine the disposition without the court needing to take into account a plea bargain. Lima was appropriately sentenced for the crimes he committed.

d. *Mr. Judlin and Judge Persky comments*

After a reasonable inquiry concerning the alleged statements, Judge Mallery can neither admit nor deny that he made them, however, the Commission needs context to the alleged statements. On April 2, 2019, the DA filed a three-count complaint against Mr. Judlin for alleged violations of Penal Code section 273a(b) (child abuse or endangerment not likely to produce great bodily harm or death) in case CR036853. The maximum sentencing for each of the three allegation is 6 months and/or $1,000 maximum (Penal Code § 19); the discretionary maximum restitution fine is $1,000 (Penal Code § 294(a)).

If probation is granted, Penal Code section 273a(c)(1)–(3) requires the court to order: (1) a minimum 4-year probation period; (2) a criminal court protective order; and (3) participation for a minimum of 1 year in a child abuser's treatment counseling program. If the defendant was under the influence of drugs or alcohol during commission of the offense, as a condition of probation, Penal Code section 273a(c)(4) requires the court to order the defendant to abstain from use of drugs or alcohol and to be subject to random drug testing. Penal Code section 273a(c)(5) permits the court to waive minimum conditions of probation in interest of justice if it states the reasons on record.

Mr. Judlin was also before the court for a Second Petition for Revocation of Post Release Community Supervision (PRCS) in case PR036712. Mr. Judlin was on PRCS as a result of his May 25, 2016 conviction in case CR033016, wherein he was convicted of one count of Penal Code section 273.5(a) (abuse of spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating

relationship, or parent of defendant's child by willfully inflicting corporal injury resulting in a traumatic condition) and two enhancements under Penal Code section 667.5(b) (enhancement of prison terms for new offenses because of prior prison terms).

On August 2, 2018, Mr. Judlin was sentenced to serve 5 years in state prison with credits of 879 actual days and 878 conduct credit days, for a total of 1757 days to be applied to the 5-year sentence.

The then 31-year-old Mr. Judlin has suffered convictions for many different criminal offenses and one of his probation matters was terminated as unsuccessful, which resulted in him finishing his four year prison term. In CR033016, Mr. Judlin was statutorily ineligible for probation pursuant to Penal Code section 1203(e)(4) based on the fact that he has had more than two prior felony convictions. Furthermore, since he was an adult, the only time that Mr. Judlin had gone for more than one year without a new conviction is during the periods in which he was incarcerated.

At the PRCS revocation, it was alleged that the terms and conditions of Mr. Judlin's supervision were violated, including but not limited to Terms 14, 18, 19 and 20 (do not threaten or harass victim, no contacting victim (Amy Foreman), do not threaten victim). The supervising agency established probable cause for the alleged violation based upon the Susanville Police Department making contact with defendant during a domestic violence incident where Mr. Judlin was present with the victim in violation of his terms and conditions of PRCS. On May 7,

2019, Mr. Judlin admitted the violations and was issued 180 days custody time for the violations.

In case PR036712, Mr. Judlin was first before the court on February 8, 2019 for a First Petition for Revocation of PRCS. Mr. Judlin admitted to the violation on February 27, 2019 and was issued 60 days custody time for the violation. It was only 25 days after his release from custody that Mr. Judlin was back before the court for his Second Petition for Revocation of PRCS on April 2, 2019. On May 7, 2019, Mr. Judlin admitted the violations and was issued 180 days custody time for the violations. Mr. Judlin was back before the court for his Third Petition for Revocation of PRCS on July 22, 2019. On September 11, 2019, Mr. Judlin admitted the violations and was issued 109 days custody time for the violations.

Mr. Judlin had been in custody since March 29, 2019 in case PR036712 and CR036853, and was arraigned on both cases on April 2, 2019. On May 7, 2019, Mr. Judlin admitted the violation of PRCS and was given a 180 jail term with credits of 40 actual and 40 conduct credit dates. This would give Mr. Judlin a release date of July 27, 2019 if no additional good-time credits were applied to Mr. Judlin. (It appears he did receive additional credits as he was out of custody when the Third Petition for Revocation of PRCS was filed on July 22, 2019.) At the Trial Setting Conference on May 7, 2019 in case CR036853, held at the same time as the Hearing Setting on Petition for Revocation of PRCS in case PR036712, no global resolution was provided to resolve both cases. It was only

case PR036712 that was resolved and case CR036853 was continued to May 13, 2019 for a Trial Setting Conference.

At the Trial Setting Conference for case CR036853 on May 13, 2019, the matter was continued for a further Trial Setting Conference for June 3, 2019. On June 3, 2019, Mr. Judlin recalled his time waiver and requested trial within the statutory 30 days. However, after discussion with his attorney, he agreed to give a limited time waiver to July 19, 2019, with a trial date set for July 15, 2019. A Trial Readiness Conference was scheduled for June 24, 2019.

On June 11, 2019 a minute order was issued to place the matter back on calendar regarding the date set for jury trial. The minute order set the matter for June 17, 2019. At the Resetting of Trial Date held on June 17, 2019, a new trial date of July 11, 2019 was issued and the date of July 15, 2019 was vacated. Mr. Judlin provided a limited time waiver to the trial date of July 11, 2019. The Trial Readiness Conference for June 24, 2019 remained on calendar.

The Trial Readiness Conference held on June 24, 2019 was attended by DDA Mark Beallo, Deputy Public Defender ("DPD") Savina Haas, and Mr. Judlin, who was in custody. The parties informed the court that they had reached an agreement to resolve the case and vacate the trial. The parties informed the court that if Mr. Judlin would enter a plea to Count 1 (misdemeanor child abuse in violation of Penal Code section 273a(b)), Count 2 and 3 would be dismissed and he would be given credit for time served.

The court inquired as to how many custody days Mr. Judlin had, as he was required to serve 180 days in case PR036712. Neither attorney could provide the

information to the court. After analyzing case PR036712, it was determined that he would have no custody time in the current case CR036853 unless the court ran time concurrent. However, there was no information as to why the court should consider concurrent time rather than consecutive time pursuant to Rule of Court Rule 4.425 in cases PR036712 and CR036853. Therefore, it was determined that Mr. Judlin had no time served in CR036853.

To assist with resolving the case, the court asked if counsel were seeking probation with credit for time served. Both responded "no, that they were seeking a terminal disposition for credit for time served," but neither had any knowledge as to what the custody time actually was (i.e., zero) in order for the court to make such a finding.

Counsel were informed that Mr. Judlin's criminal history is well known to the court. The court then inquired of counsel how the proposed disposition was in the best interest of society/public safety and how it complied with the Rules of Court. Counsel provided no response other than it would prevent a trial from having to occur.

The court informed counsel that, based upon Mr. Judlin's criminal history, the allegations against Mr. Judlin, and the procedures established by both statute and the Rules of Court, if they were seeking a terminal disposition then the maximum exposure of 6 months would probably be a good starting point for discussion of an appropriate disposition. Neither attorney wished to reconsider what an appropriate disposition would be based upon a plea bargain.

During the proceedings, Mr. Judlin voluntarily informed the court that he did not want to accept the offer but was told by counsel that he should. He claimed that he did not commit any of the alleged violations but was uncertain how matters would turn out if he went to trial. The court informed Mr. Judlin of his constitutional rights pertaining to trial.

After further discussion with counsel and information provided by Mr. Judlin, the court informed the parties that even if the court wished to accept a plea bargain, it could not do so based upon Mr. Judlin's voluntary comments made to the court, because the court would be unable to make the necessary findings that the plea was being entered into knowingly and freely by Mr. Judlin.

With a plea bargain breaking down and with Mr. Judlin's indication to the court that he was not guilty, the court was obligated to and did confirm the trial – thereby concluding the Trial Readiness Conference. On June 27, 2019, the court granted DA Rios' request to dismiss, as the DA determined the case was not likely to result in a guilty verdict at trial.

e. *June 25, 2019 jury deliberation room*

After a reasonable inquiry concerning the alleged statements, Judge Mallery can neither admit nor deny that he made them, however, the Commission needs context to the alleged statements. As a preliminary matter – it is established practice for the judicial officer(s), the criminal attorneys (both prosecution and defense), and probation to assemble prior to court in an attempt to narrow the issues on calendar. As to the June 25, 2019 date, Judge Mallery's and his colleague, then Assistant Presiding Judge Mark Nareau, had lengthy discussions

on the matter of attorneys' continued attempts to usurp the court's sentencing authority. The issues pertaining to plea bargains were not isolated to one judicial officer. Judge Nareau confirmed he was facing similar issues with the plea bargaining process and attorneys.

Judge Nareau and Judge Mallery agreed that Judge Mallery should be the one to discuss the issues with the attorneys in Judge Nareau's jury deliberation room, and to address the issue with attorneys on this date. Issues to be discussed included the plea bargaining process and current issues impacting the court's ability to make appropriate and informed decisions.

Prior to this meeting, Judge Mallery had attempted to work with the attorneys over an extended period of time to no avail (see above). Far too many proposed plea bargains presented to the court failed to meet the requirements. The court had continued to receive proposed plea bargains, entirely devoid of the required law and facts to support them, thereby presenting a threat to public safety. These same plea bargains also failed to comply with the Rules of Court.

In an effort to discuss a plan which would accommodate the individual duties in compliance with the separation of powers afforded each branch of government (as outlined in the Constitution), and in an effort to promote judicial economy (so that the plea bargaining process would become more productive and efficient in the future) – on June 25, 2019, Judge Mallery explained to the attorneys the duties and obligations necessary when requesting the court accept a proposed plea bargain. This was not new information, it is the law.

Judge Mallery informed the attorneys that judicial approval is an essential condition precedent to the effectiveness of the bargain negotiated between the defense and prosecution. There appeared to be a misunderstanding of separation of powers, as some of the attorneys asserted that the court could not reject a plea bargain, despite the fact that the law on this issue is both well-settled and basic.

Judge Mallery informed the attorneys that there are factors to be taken into consideration for sentencing, and he directed them to California Rule of Court 4.410 regarding the objectives of sentencing. Judge Mallery informed the attorneys that the plea bargains regularly presented to the court are contrary to those objectives because they include unreasonable dispositions which pose a threat to public safety and/or are inconsistent with the best interest of society and/or would be an illegal sentence requiring a recall and a resentencing.

With the intention of working with the attorneys—to promote judicial economy and to encourage them to provide the necessary information for the court to make an informed decision—Judge Mallery was repeatedly met with hostility. The attorneys have implied by their actions that they control the court. Judge Mallery was explicitly and directly threatened by attorney, Jordan Funk, that he would be filing a complaint with the Commission. Attorneys Jacob Zamora and Stephen King immediately blurted out that they would be joining Mr. Funk in the complaint.

The only attorney present that appeared to understand the intention of the conversation was Eugene Chittock; he indicated that he appreciated the court's attempt to have meaningful plea bargains that were in the best interest of society

and public safety. Chittock further noted this was an awkward stance for him because he was a defense attorney, but he acknowledged that he does live in the community and that the community could benefit from strengthened dispositions.

In no way did Judge Mallery ban plea bargaining. Rather, he simply informed these attorneys that, if they continue to provide the court with inadequate information when requesting the court to accept a plea bargain, the court would be unable to accept said plea bargains. In other words, Judge Mallery informed the attorneys that the court will not be able to appropriately participate in accepting the negotiated plea agreements until and unless they can provide the necessary information to support a disposition that would be in the best interest of society while adhering to the general objectives in sentencing pursuant to California Rules of Court, Rule 4.410.

Count 13

a. *14601.1*

Judge Mallery admits having a conversation with DA Rios about charging violations of Vehicle Code section 14601.1 as infractions, but he denies he made that suggestion so that defendants would not be afforded counsel and a jury trial; rather, he made that suggestion because it is a simpler way to handle such violations and it had been in practice for years in Lassen County under the prior District Attorney. Regardless, Judge Mallery is well aware that the Constitution affords the elected DA the authority to charge crimes as she sees fit pursuant to her executive power.

b. *Trespass*

Judge Mallery denies that he directed the DA's office to amend the complaint. At the arraignment, the court was provided a citation listing the same defendant with the same incident date and a violation of Penal Code section 602(t). The court inquired with Deputy District Attorney ("DDA") Ross Helmbold as to whether he wished to proceed as charged or as noted on the citation. After further review, it was determined based upon information provided by the DA that the defendant had committed two different trespasses on the same day. Since the defendant had not been arraigned on the original complaint, the DDA was asked if he wished to seek leave to amend to add a count two regarding the second trespass noted on the citation. The DDA requested the court for leave to amend and it was granted. The defendant was arraigned on the two charges and waived any irregularities of a conforming complaint to be filed by the DA adding the second count.

c. *Mr. Massey*

Judge Mallery denies that he did anything improper by reducing Mr. Massey's bail. Penal Code section 1269b requires that—in circumstances such as this—judges set bail at the scheduled bail amount. In Lassen County, all unenumerated misdemeanors have a scheduled bail of $5,000. Thus, setting bail at $5,000 was appropriate. However, in lieu of requiring Mr. Massey to post bail in that amount, and in the face of the COVID-19 pandemic, Judge Mallery instructed the sheriff to cite Mr. Massey out. Nothing about that was improper.

At 8:47 a.m. on Wednesday, March 18, 2020, the court received information from Ellie Brown of the Lassen County Sheriff's Department that

there would be only one person, Kenneth Robert Massey, on the 4:00 p.m. arraignment calendar for March 18, 2020. Through its Penal Code section 1320.10(e) prearraignment review of the complaint filed by the District Attorney at 11:11 a.m., the court noted that Mr. Massey was being charged with one count for the crime of Interference With a Wireless Communication Device in violation of California Penal Code section 591.5, a misdemeanor.

Penal Code section 1320.10(e) allows the court to make prearraignment reviews and if the court finds the person appropriate for prearraignment release, the arrested person shall be released on the person's own recognizance, or on supervised own recognizance, with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and the arrested person's appearance in court as required.

The purpose of contacting the District Attorney prior to the 4:00 p.m. arraignment was in furtherance of the court's Penal Code section 1320.10(e) prearraignment review – to determine if the charge for Penal Code § 591.5 had any connecting factors relevant to said review – including, but not limited to: (1) any domestic violence which would cause Penal Code section 1203.097 to be taken into consideration; (2) whether or not Mr. Massey was a flight risk; and (3) whether or not Mr. Massey was a threat to public safety.

If the District Attorney could not provide such information [*which they could not*], then there would be no apparent need to continue to detain Mr. Massey until the 4:00 p.m. arraignment as he could [*and should*] be released pursuant to Penal Code section 1320.13 on his own recognizance, or on

supervised own recognizance, with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and Mr. Massey's appearance in court as required.

Had Mr. Massey remained on calendar for the 4:00 p.m. arraignment, bail would have been set at $5,000.00 only if the court found Mr. Massey to be a flight risk or a threat to public safety based upon information that would have to be provided by the district attorney. Otherwise, he would be released on his own recognizance and be provided a new court date.

In consideration of the fact Mr. Massey was the only individual to be arraigned, the fact that the charge was not a felony or misdemeanor domestic violence/ child endangerment, and health and safety concerns of COVID-19 issued by the Governor and Chief Justice, the court properly exercised its authority under Penal Code §1320.13. In ordering Mr. Massey released on his signed promise to appear, the court was acting in furtherance of the spirit of Penal Code §1320.13 and in consideration of the COVID-19 pandemic health/safety concerns of both the Governor and the Chief Justice and for no other reason.

Count 14

a. *Ordering CCRC*

Judge Mallery admits that he instructed the parents to go the the CCRC and open a family case, but he denies that he engaged in an impropriety. He fulfilled his judicial obligations to ensure the safety of the children and of a vulnerable victim and never attempted to assert jurisdiction over Ms. Faulkner.

Relevant law and judicial resources

"In addition to their inherent equitable power derived from the historic power of equity courts, all courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority. It is beyond dispute that courts have inherent power to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council. That inherent power entitles trial courts to exercise reasonable control over all proceedings connected with pending litigation in order to insure the orderly administration of justice. Courts are not powerless to formulate rules of procedure where justice demands it. The legislature has also recognized the authority of courts to manage their proceedings and to adopt suitable methods of practice." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal. 4th 953, internal citations and quotations omitted.)

Below is information provided by the Judicial Council as to what constitutes domestic violence - Domestic Violence - dv_abuse_selfhelp (ca.gov)

> **What Is Domestic Violence?**
>
> Domestic violence is abuse or threats of abuse when the person being abused and the abuser are or have been in an intimate relationship (married or domestic partners, are dating or used to date, live or lived together, or have a child together). It is also when the abused person and the abusive person are closely related by blood or by marriage.
>
> The domestic violence laws say "abuse" is:
>
> - Physically hurting or trying to hurt someone, intentionally or recklessly;
> - Sexual assault;

- Making someone reasonably afraid that they or someone else are about to be seriously hurt (like threats or promises to harm someone); OR

- Behavior like harassing, stalking, threatening, or hitting someone; disturbing someone's peace; or destroying someone's personal property.

The physical abuse is not just hitting. Abuse can be kicking, shoving, pushing, pulling hair, throwing things, scaring or following you, or keeping you from freely coming and going. It can even include physical abuse of the family pets. Also, keep in mind that the abuse in domestic violence does not have to be physical. Abuse can be verbal (spoken), emotional, or psychological. You do not have to be physically hit to be abused. Often, abuse takes many forms, and abusers use a combination of tactics to control and have power over the person being abused.

What a restraining order CANNOT do

A restraining order cannot:

- End your marriage or domestic partnership. It is NOT a divorce.

- Establish parentage (paternity) of your children with the restrained person (if you are not married to, or in a domestic partnership with, him or her) UNLESS you and the restrained person agree to parentage of your child or children and agree to the court entering a judgment about parentage.

The 4 Stages of Battered Woman's Syndrome - Marriage - LAWS.com states:

Battered woman's syndrome is an extremely detrimental psychological condition that effects women who are subjected to repeated abuse and violence. This syndrome helps to explain why women stay in abusive relationships and do not seek assistance for their harmful situation. There a various stages that an individual who is suffering from this condition will experience. When an individual begins to experience domestic violence, they will often deny the abuse that they are suffering from. They will refuse to admit that anything is wrong.

Once a victim accepts the fact that abuse is occurring, they will experience guilt and shame. Victims will

often believe that the abuse is their fault and not the fault of the offender. Eventually, a victim of domestic violence will realize that they are not to blame for the brutality that they are being subjected to. Despite the realization that their partner is victimizing them, the individual will choose to remain in the abusive relationship. It may take some time, but sooner or later, the victim will understand that in order to protect themselves and their family they must escape their harmful relationship. These stages can be observed in many of the victims of domestic violence and abuse.

Denial

The first stage of battered women's syndrome is denial. Denial occurs when a victim of abuse is unable to admit and acknowledge that they are being subjected to domestic violence. During this stage, a victim of intimate partner abuse will not only avoid admitting the abuse to their friends and their family members, but they themselves will not acknowledge the brutality that they are suffering from. They will fail to recognize that there are any problems between themselves and their partner. There are multiple factors that may contribute to a victim's unwavering denial.

In many instances, an individual does not realize that they are being subjected to domestic violence. This is largely due to the manipulative and coercive behavior of their abuser. The acts of abuse may be so covert that they do not appear to be harmful or detrimental. In other instances, a victim of domestic violence may believe that denial is the most effective way to avoid being subjected to further violence and brutality. Whatever the cause, denial is extremely adverse. Until a victim admits and confronts the abuse that they are experiencing, they will not be able to provide themselves with the help and the protection that they need.

Guilt

After an individual experiences the denial phase, they will move on the guilt stage. During this phase of the battered women's syndrome, victims of domestic violence will experience feelings of extreme guilt and disgrace. They will believe that they have caused the abuse that the perpetrator has subjected them to. In many cases, the offender will convince their victim that they are forced to resort to physical violence in order to punish the victim for

their negative characteristics. They may use brutality to teach their victim not to take part in behaviors that they disapprove of.

Individuals who subject their partner to abuse will often defame and put down their victim in order to establish control. As a result, the victim will experience low self-esteem and depression. Once this occurs, it is not difficult to convince an individual that they are being subjected to abuse due to their own faults and shortcomings. If they were better at certain tasks and if they lived up to the expectations of their partner, then they would not be experiencing domestic violence and abuse. Victims of intimate partner abuse will believe this. Therefore, they will not report the abuse that they are experiencing because their partner is not to blame for the cruelty.

Enlightenment

One of the most important phases of the battered women's syndrome is enlightenment. This occurs when a victim of abuse recognizes that they are not to blame for the abuse that they are experiencing. They will begin to understand that no one deserves to be subjected to domestic violence no matter what characteristics they possess. The fact that an offender does not approve of their victim's behavior does not justify subjecting the victim to abuse and violence.

During this stage, a victim will begin to acknowledge that their partner has an abusive and violent personality, and that the domestic violence that the victim is experiencing is the fault of the abuser. It is now that a victim may begin to realize the importance of seeking domestic violence help. Despite the realization that they are living in an unhealthy environment and with a dangerous individuals, victims will continue to remain with their abuser. They will commit themselves to saving their marriage. They will often use various different reasons in order to justify this decision. However, individuals who choose to remain in their detrimental environment will soon find that in most cases, the abuse will not get better, it will increase in severity.

Responsibility

Once a victim of abuse recognizes that the domestic violence they are suffering from is the fault of their abuser, it is only a matter of time before these victims understand the importance of escaping their current

environment. In the majority of cases, domestic violence does not improve over time. Most individuals who subject their partners to violence and brutality are repeat offenders and they will continue to expose their victim to intimate partner abuse. When an individual acknowledges this, they will understand that their safety, and the safety of their children, depends on leaving their abusive relationship. During the responsibility stage of the battered women's syndrome, a victim of domestic violence may experience a vast array of difficulties.

It is essential that individuals who have decided to escape their detrimental situation ensure that they are safe and secure. Women are in the most danger when they make the decision to flee their current environment. Therefore, it is essential that an individual plan their escape well. If a victim would like support and advice about leaving an abusive relationship then they can contact a law enforcement agency or an abuse hotline. Domestic violence shelters may also be able to provide victims with information and support.

The Judicial Council website, Restraining Orders - abuse_selfhelp (ca.gov), provides in part the following information.

A restraining order (also called a "protective order") is a court order that can protect someone from being physically or sexually abused, threatened, stalked, or harassed. The person getting the restraining order is called the "protected person." The person the restraining order is against is the "restrained person." Sometimes, restraining orders include other "protected persons" like family or household members of the protected person.

What does a restraining order do?

In general, restraining orders can include:

1. Personal conduct orders

These are orders to stop specific acts against everyone named in the restraining order as a "protected person." Some of the things that the restrained person can be ordered to stop are:

o Contacting, calling, or sending any messages (including e-mail);

o Attacking, striking, or battering;

o Stalking;

o Threatening;

o Sexually assaulting;

o Harassing;

o Destroying personal property; or

o Disturbing the peace of the protected people.

2. Stay-away orders

These are orders to keep the restrained person a certain distance away (like 50 or 100 yards) from:

o The protected person or persons;

o Where the protected person lives;

o His or her place of work;

o His or her children's schools or places of child care;

o His or her vehicle;

o Other important places where he or she goes.

For the person to be restrained, having a restraining order against him or her can have very serious consequences:

• He or she will not be able to go to certain places or to do certain things.

• He or she might have to move out of his or her home.

• It may affect his or her ability to see his or her children.

• He or she will generally not be able to own a gun. (And he or she will have to turn in, sell or store any guns they have now and not be able to buy a gun while the restraining order is in effect.)

- It may affect his or her immigration status if he or she is trying to get a green card or a visa.

Response to this allegation

On February 3, 2021, Jayne M. Faulkner ("Mother" from herein) filed a Request for Domestic Violence Restraining Order and Request for Child Custody and Visitation Orders, Case Number DV63429, pursuant to Family Code section 6200 et. seq., seeking protection from her husband, Andrew P. Skaggs ("Father" from herein) for the benefit of herself and her three children. Mother also was requesting the court to grant her sole legal/physical custody of the children and requesting a child custody/visitation order as she and Father did not have one.

Mother declared under penalty of perjury under the laws of the State of California that the information she provided in the Request for Domestic Violence Restraining Order is true and correct. Mother's allegations were of Father's egregious abuse. Based upon the information provided by Mother in her Request for Domestic Violence Restraining Order and Request for Child Custody and Visitation Orders, Case Number DV63429, a Temporary Restraining Order was granted on February 3, 2021. At the hearing on February 16, 2021, Mother requested her petition be dismissed in part due to the Criminal Protective Order issued on February 3, 2021 in Case Number CR038661, pursuant to Penal Code § 136.2(c) and (e), Family Code section 6405(b) having enforcement precedence over other restraining/protective orders.

On February 3, 2021, the Lassen County District Attorney filed a three-felony count complaint against Father, Case Number CR038661, alleging the following occurred on February 1, 2021:

> Count 1: California Penal Code § 273.5 (a), the crime of injuring a spouse, cohabitant, fiancé, boyfriend, girlfriend or child's parent;
>
> Count 2: California Penal Code § 245(a)(1), assault with a deadly weapon; and
>
> Count 3: California Penal Code § 422(a) with enhancement pursuant to California Penal Code § 12022(b)(1), criminal threats and personally using a deadly and dangerous weapon, to wit, a knife.

Based upon the plea offer made by the District Attorney to Father to reduce count 1 and 3 to misdemeanor and dismiss counts 2 upon entry of plea to counts 1 and 3, Father accepted the District Attorney's offer and entered pleas on March 4, 2021. The matter was referred to probation for a full report. Probation provided a report, which documents a horrendous incident of violence and abuse.

On March 29, 2021, Father in Case Number CR038661 was granted formal probation for a period of 3 years pursuant to the terms and conditions outlined in the Order Granting Formal Probation filed March 29, 2021. The terms and conditions of probation included the issuance of a restraining order, Criminal Protective Order – Domestic Violence (CLETS – CPO) Judicial Council Form CR-160, pursuant to Penal Code §1203.097, protecting the victim and the children from further acts of violence, threats, stalking, sexual abuse, harassment, and contained residence exclusion and stay-away conditions.

The Warnings and Notices found on page two of the Criminal Protective Order – Domestic Violence (CLETS – CPO), Judicial Council Form CR-160, provides the following information:

> 1. VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION. Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261 (a)(l) (1994).
>
> 2. NOTICE REGARDING FIREARMS. Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a $1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms (by surrendering the firearm to local law enforcement, or by selling or storing it with a licensed gun dealer) and not own or possess any firearms during the period of the protective order. (Pen. Code, § 136.2(d).) Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime.
>
> Specified defendants may request an exemption from the firearm relinquishment requirements stated in item 8 on page 1 of this order. The court must check the box under item 8 to order an exemption from the firearm relinquishment requirements. If the defendant can show that the firearm is necessary as a condition of continued employment, the court may grant an exemption for a particular firearm to be in the defendant's possession only during work hours and while traveling to and from work. If a peace officer's employment and personal safety depend on the ability to carry a firearm, a court may grant an exemption that allows the officer to carry a firearm on or off duty, but only if the court finds, after a mandatory psychological examination of the peace

officer, that the officer does not pose a threat of harm. (Code Civ. Proc., § 527.90.)

3. ENFORCING THIS ORDER IN CALIFORNIA

• This order must be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).

• Law enforcement must determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement must advise the restrained person of the terms of the order and, if the restrained person fails to comply, must enforce it. (Fam. Code, § 6383.)

4. CONFLICTING ORDERS-PRIORITIES FOR ENFORCEMENT

If more than one restraining order has been issued, the orders must be enforced according to the following priorities:

a. Emergency Protective Order: If one of the orders is an Emergency Protective Order (form EPO-OOI) and is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders. (Pen. Code, S 136.2(c)(1)(A).)

b. No-Contact Order: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.

c. Criminal Order: If none of the orders include a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in effect and enforceable.

d. Family, Juvenile, or Civil Order: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

5. CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).

This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.

6. EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS

- These orders are effective as of the date they were issued by a judicial officer.

- These orders expire as ordered in item 2 on page 1 of this order, or as explained below.

- Orders under Penal Code section 136.2(a) are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a county jail or state prison commitment. (See People v. Stone (2004) 123 Cal.App.4th 153.)

7. CHILD CUSTODY AND VISITATION

- Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.

- Unless box a or b in item 16 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.

- If box a or b in item 16 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

Based upon the conduct of Father, information contained within the probation report and the children being vulnerable due to domestic violence in the residence and their age, the Criminal Protective Order imposed on March 29,

2021 and filed with the court on April 2, 2021 did not allow Father to have contact with the protected parties. However, at the sentencing hearing on March 29, 2021, the court informed Father if he complied with the court orders, attended his courses and was making progress, the court would bring Father back for a review to determine if the Criminal Protective Order should be modified.

On June 7, 2021, Father returned to court to provide information pertaining to his compliance with the court orders of March 29, 2021. Mother attended. Upon Father presenting favorable information to the court of his progress since March 29, 2021 and Mother statements and request to the Court to modify the Criminal Protective Order, the court found their requests to be warranted. However, it was uncertain if Father would continue to comply with the Court orders and the wellbeing of the children.

The Court discussed with Father and Mother the implication of the Criminal Protective Order and Father ability to interact with the children, as they did not have a custody/visitation order issued by the court. Understanding the importance of reunification of the family in a safe manner, the court determined that Father could be around his children so long as the interactions were supervised by Mother at all times and that Father continue to stay 100 yards away from Mother's residence.

When discussing the Criminal Protective Order with the parties, Father was informed that if he wished to have set visitation with the children with more regularity, he would need to file a custody and visitation petition with the court and go attend mediation with Mother and Child Custody and Recommending

Counselor. Both Father and Mother indicated that they would like to do so. Both were informed that if that were in fact their request to the court, the Criminal Protective Order would be addressed to allow them to attend mediation upon one or both of parties filing a petition in the family court seeking visitation orders. However, if a petition was not filed there would be no visitation orders for the court to consider, as such orders are usually handled in the Family Law Court. Thus, Father would need to comply with the orders pertaining to his interaction with the children as stated in the Criminal Protective Order.

The directive for the parents to go to CCRC and open a family case was reflective of the parties' intentions and request for the court to modify the order. It should be noted that parties to a Family Law matter do not need to file a dissolution action to file a custody action, despite the initial filing by Mother in the Family Law Court.

On August 12, 2021, Father returned to court to provide information pertaining to his compliance with the court orders. Mother also appeared. Father provided information to the court that he was still in full compliance with the court orders and his interactions with the children and Mother have been positive and healthy. Mother addressed the court and added additional positive information regarding Father and his interactions with their children and Mother.

Father and Mother informed the court that they had not pursued a family law case and had complied with the terms of Criminal Protective Order regarding Father interactions with the children and Mother. Mother requested the court to allow Father to return home and modify the order to a no negative contact order.

In doing so, there would no longer be a present need for the parties to open a family case and attend CCRC, as Father would be able to return home with Mother and the children.

When considering the request of Mother, safety issues for all members of the family must be taken into consideration when pursuing reunification for victims impacted by domestic violence. Both Father and Mother were working diligently on ameliorating the concerns discussed with the parties during the previous court appearances. Both had made substantial changes in their lives and how they interacted with each other and the children. Both were ready, willing, and able to care for the other and their children and a common bond was growing between the parents in providing a safe and stable home. The parents' genuine interest in maintaining a relationship with each other and their children, their commitment to attend self-betterment courses, Father compliance with court orders and consideration of what is in the best interest of the family caused the court to find good cause in which to modify the orders to a no negative contact order on August 12, 2021.

Judge Mallery takes domestic violence very seriously. It is the duty of the court to protect the best interest of the children as well as the parents. The court did not attempt to exert jurisdiction over Mother. The parties were placed on notice that if said Criminal Protective Order were to be modified in the future, as the Court was informed would occur, the behavior in that household would have to change drastically for the Court to entertain such a modification. This includes the mother of the children to create a safe environment for her and her children to

include a safety plan. That does not constitute embroilment, it constitutes a textbook approach to such alarming facts since Mother was willing to place her children and herself right back in the home by changing her statement at the behest defendant by and through his parents.

This matter was handled well within the law, guidelines for domestic violence cases put out by the Judicial Council and suggested standards in judicial trainings.

b. *Inappropriate questions*

After a reasonable inquiry concerning the alleged statements, Judge Mallery can neither admit nor deny that he made them, however, the Commission needs context to the alleged statements. Judge Mallery questioned Father about the children's activities and whether they were socializing. If Judge Mallery asked Father about their attendance at church, it was only after Father raised the topic, and it was in that context, like their participation in other healthy activities.

Count 15

a. *Kele Kaona (previously Hathaway)*

Judge Mallery admits that he made the alleged statements; however, the Commission should understand the context. Judge Mallery has the highest respect for Ms. Kaona and meant no harm. Judge Mallery has known Ms. Kaona long before she became employed with the court. Prior to assuming office as a judge, Judge Mallery represented Ms. Kaona as an attorney. They also have children who are the same age and attend the same school, and - as such - they have regularly interacted with one another in a friendly and informal fashion.

Ms. Kaona applied for the position of Court Clerk I in or about April of 2013. It was not until early May of 2013 or later, following an offer and Ms. Kaona's acceptance of the Court Clerk I position, that Judge Mallery began to have any regular interaction with Ms. Kaona while at the courthouse.

With that said, Ms. Kaona is extremely proud of her Hawaiian heritage and injects it into relatively pedestrian and inoffensive conversation. Ms. Kaona is also extremely proud of her athleticism and freely shares her accomplishments in events like the "Warrior Dash," again injecting it into relatively pedestrian and inoffensive conversation. Ms. Kaona also has a "tongue-in-cheek" sense of humor when she talks about either of these items with coworkers and friends.

When Ms. Kaona clerked for Judge Mallery in court, Judge Mallery would routinely thank her for her contributing efforts. Her responses were remarks akin to those alleged (e.g., that she was the Hawaiian princess, that she was the Hawaiian warrior, or that she had worked her tribal magic).

b. *Ms. Stalter's country of origin*

Judge Mallery denies that he asked Ms. Statler about her entry into the United States. Context, Ms. Stalter regularly brags about her family being cattle ranchers in Latin America and riding Brahma Bulls as a child before her family's naturalization into the United States and English being her second language. She has even offer to assist Judge Mallery's children with their Spanish homework and speaking skills. As noted above, the rapport between Ms. Stalter and Judge Mallery was one of trust, where they often spoke about their families. Ms. Stalter would often ask about how Judge Mallery's kids were doing in school, sports, etc.

The comment was made in a protective way, in that he inquired as to the difficulty of the naturalization process as to the citizens from all boarders are not following that process. There was nothing negative or inappropriate about the question. It was one of which Judge Mallery was attempting to acquire education and understanding from someone who has openly discussed going through the naturalization process. He never discussed or commented about Ms. Stalter coming across the boarder from Mexico, as she has openly made it clear that she is from Latin America. This entire exchange stemmed from a discussion between Judge Mallery and Ms. Stalter regarding the steps the Government was requiring government entities to take and regarding proactive measures the court had to take to protect those in the court and those entering the court against the unreasonable spread of Covid-19 during the pandemic. This was an ever-changing issue as OSHA, CDC, State, and Federal guidelines did not always parallel one another. Judge Mallery and Ms. Stalter had to discuss navigation through this pandemic regularly as the guidelines were rapidly changing along with the introduction of new variants into the United States. Judge Mallery was alarmed at the possibilities for negative impact based upon the new information that had surfaced from President Bidens new directive. Judge Mallery was tasked with trying to balance access to justice and public safety while keeping the court running and the staff healthy.

c. *Chinese virus*

Judge Mallery admits that he referred to the Coronavirus as the "Chinese virus," however, Judge Mallery harbors no racial bias although he regrets some of

his choice in words. While discussing Covid-19 protocol at the Lassen Superior Court with Ms. Stalter, who was adamant the Court follow all requirements as she did not wish for the Court to receive any unnecessary government fines for not complying with mandated requirements, the conversation led to how monitored the courts and other entities were by government agencies to minimize a potential epidemic. Judge Mallery commented that while government is doing a good job monitoring the interior United States, it appears that the Biden Administration had not put the same efforts into our borders to protect the safety of this country from Covid-19, as it appeared a significant number of the individuals coming into the United States were not complying with the established process to enter the United States. This comment was not directed at a particular boarder, it was encompassing the entire United States.

Judge Mallery acknowledges Ms. Barron informed Judge Mallery that she had tested positive for COVID-19. Ms. Barron asked Judge Mallery if he was out because he was sick and if he tested. This was not an appropriate question from Ms. Barron. Judge Mallery informed her that he had not tested as he did not see the need to become another statistic to the "Chinese virus," or words to that effect. Despite the information that the first detection of the Coronavirus was first detected in Wuhan, China in late 2019 setting off a Global Pandemic, Judge Mallery now understands that he should have referred to the virus as COVID-19 or Coronavirus and in any other fashion may show an appearance of bias. Judge Mallery apologizes for the statement and understands the need to properly address the virus by its official name. To be clear, this was not intended to offend.

Count 16

a. *Ryann Brown*

1. Judge Mallery denies that he made the alleged comments, and he contends that his actual comments were appropriate. Judge Mallery did not call Ms. Brown a party girl, he stated that she is "the life of the party." Judge Mallery saw this designation of Ms. Brown in his son's high school annual. Judge Mallery did not deny how he learned of this designation. For purpose of life of the party, this is a person who is very lively and engaging at a party or other social gathering. The designation given to Ms. Brown her senior year in high school is fitting as she is a lively and an engaging person.

2 and 3. Judge Mallery denies the allegation that he made an inappropriate comment about Ms. Brown to the high school group. Judge Mallery told the individuals who attend teen court that they may remember Ms. Brown from high school as she attended high school at the same time as what would be this year's senior class in Teen Court. The idea was to encourage those students to think about their future and how someone just like them was working at the court.

4. The allegations from December 6, 2021 are flat out false. All of Judge Mallery's files were either placed on a long credenza outside his office or in an office cubical outside his office. Staff was aware of the locations to place files for Judge Mallery and it was not in his office. Furthermore, Judge Mallery would have to role his chair approximately 6' to block the doorway and this would be visible by others in the judicial area. The statements alleged are inflammatory and did not occur.

5. Judge Mallery briefly had a conversation with Mr. Brown on her 21st Birthday. Ms. Brown informed Judge Mallery that she was going to go to dinner and possibly enjoy a margarita to celebrate being 21 and intended to be home early as she had to work the next day. Judge Mallery wished her well and to be safe.

b. *DA Rios*

Judge Mallery incorporates and restates his answer to Count 7(c) here.

c. *Ms. Stalter*

1. Judge Mallery admits making these statements; however, the Commission needs context. Judge Mallery denies that any of his comments were inappropriate. As noted above, Ms. Stalter and Judge Mallery worked together regularly to address issues of the court and had candid conversations, sharing concerns, strengths, limitations and goals for the court. As noted above, Ms. Stalter asked Judge Mallery probing but relevant questions regarding the history of the court, current state and desired direction/vision for the court, the investigations Judge Mallery has had to endure with the Commission, and what may have caused allegations to be filed against Judge Mallery. Ms. Stalter appeared to be genuinely concerned regarding the behavior of staff and the need for correction, training, and direction. Ms. Stalter's behavior towards Judge Mallery created the illusion of a person who was looking out for the court's and Judge Mallery's interests.

Based upon the comfortable protected environment Ms. Stalter created when communicating with Judge Mallery, Judge Mallery did not view her as any

specific classification, but rather, as a confidant in moving the court forward whom he could trust, and with whom opinions and comments could be shared freely. It was in this context that Judge Mallery made those statements.

2. Judge Mallery admits making these statements; however, the Commission needs context. Judge Mallery denies that any of his comments were inappropriate. Based upon the comfortable protected environment Ms. Stalter created when communicating with Judge Mallery, Judge Mallery discussed his observations regarding Judge Nareau and how Judge Nareau appeared to give preference to individuals-especially women— with generally pleasant appearances. Judge Mallery noticed this in the way Judge Nareau addressed staff, potential employees of the court, litigants and attorneys. Judge Mallery made his statement for the purpose of protecting the staff, Ms. Stalter included, knowing that she would be working very closely with Judge Nareau.

Judge Mallery was concerned and offended by the way Judge Nareau treated Chris Vose, former CEO, who left employment with the court based upon the bad conduct of Judge Nareau. This resentment was known by others in the court, including Ms. Cook. Leading up to Mr. Vose' departure, Judge Nareau conducted an investigation based off a complaint filed by Anthony Lane against Mr. Vose. Interestingly, the complaint was addressed specifically to Judge Nareau, not Judge Mallery who was Presiding Judge. While the investigation absolved Mr. Vose of any wrongdoing, Judge Nareau criticized Mr. Vose' responses and informed Mr. Vose that he is an at-will employee. After the investigation, Judge Nareau made it clear to Judge Mallery that Mr. Vose would

not have a job with the court upon Judge Nareau becoming the Presiding Judge. Mr. Vose was aware of this and the work environment became increasingly hostile. Feeling the pressure from Judge Nareau's behavior, Mr. Vose felt for his economic and professional future, and he resigned in March 2021.

To fill the void, until a new CEO could be selected. Kim Gallagher, who was acting as the Assistant CEO to Mr. Vose, assumed the role of Acting CEO pending the appointment of a new CEO. The Lassen Superior Court listed the position for CEO and approximately five individuals applied. Prior to determining which applicants the court would contact for an interview, Judge Mallery inquired with Judge Nareau, requesting his opinion on Kim Gallagher and if he would consider her as the CEO. Judge Mallery had asked this question because Judge Nareau had previously stated that he was uncertain if there was a place for Ms. Gallagher at the court when he became the Presiding Judge, despite the fact Ms. Gallagher had been an established and grounded employee of the court for approximately 20 years with a majority of her time serving in various management positions. In addition, she had been performing faithfully and competently her duties as the Acting CEO along with her duties as Operations Manager. Judge Nareau informed Judge Mallery that he did not support Ms. Gallagher as the CEO and he further implied it was unlikely Ms. Gallagher would be employed by the court once he became the Presiding Judge.

Judge Mallery was seeking a CEO who would not unnecessarily be the subject of a revolving door. Said another way, Judge Mallery was not looking for an employee who would be terminated upon Judge Nareau becoming Presiding

Judge, without actual merit. Based upon Judge Nareau's negative expressions about Ms. Gallagher and Judge Nareau's imminent assumption of the role of Presiding Judge in January 2022, two individuals, both residing outside of California, were selected collaboratively by Judge Mallery and Judge Nareau to interview for the position of CEO. [Due to Judge Mallery being directed by Judge Nareau , without providing any legal authority, to stay away from the courthouse, Judge Mallery is unable to provide the names and information regarding the two individuals selected to interview with the court. However, both candidates were from out of state.]

The first candidate interviewed had worked for courts in the past in lower management but left the courts and went to work for a company that developed software for courts to assist with case management systems. While very pleasant during the interview, she lacked many of the qualifications required of a CEO. Furthermore, Ms. Gallagher had more knowledge and experience than the first candidate. Other than the first candidate's knowledge of the case management system to which the Lassen Superior Court was transitioning, she brought nothing new to the court that the court did not already have internally.

The second candidate was superior in knowledge of court proceedings based upon her position with the court she was serving in Colorado. She possessed skills that individuals at the court did not have. The only issues causing some reserve was that she was not familiar with California courts, and she had limited experience in addressing court finances.

Judge Mallery and Judge Nareau addressed the strengths and weaknesses of each candidate, but neither judge agreed on the same candidate. Judge Mallery felt Judge Nareau was basing his decision based upon the physical appearances of the two candidates and not the qualities and skills possessed by the candidates as there was one clear choice based upon qualifications. As the Presiding Judge, Judge Mallery could have proceeded with selecting the most qualified candidate after discussing the matter with Judge Nareau, but he did not as Judge Mallery was protecting the best interest of the court by seeking a CEO who would have longevity with the court and an ability to work with both judges. Furthermore, Judge Mallery was concerned that if he as the Presiding Judge made the ultimate decision of who the CEO would be, he would be reported to the Commission for some meritless violation.

As neither candidate was selected, Judge Mallery and Judge Nareau agreed to have Ms. Gallagher continue as the Acting CEO while Judge Mallery and Judge Nareau worked towards finding a new CEO. When doing this, Judge Nareau indicated that he was satisfied with the performance of Ms. Gallagher as the Acting CEO, but would not support her as the permanent CEO. Judge Mallery asked Judge Nareau about the possibility of Patrick Walton for CEO. Mr. Walton had interviewed for the HR/Financial position that was ultimately filled by Teresa Stalter. Judge Mallery did not serve on that interview committee; however, Judge Mallery is informed and believes that Judge Nareau was initially very impressed with Mr. Walton in the HR position.

Judge Nareau reversed course and decided that Ms. Stalter would be the better candidate. Judge Mallery suggested Mr. Walton for the CEO position as it appeared that Judge Nareau would have a good working relationship with Mr. Walton. When Judge Mallery suggested Mr. Walton as the CEO, Judge Nareau was very negative and indicated that he would not consider Mr. Walton for any position at the court. Judge Mallery at that time was confused with Judge Nareau's complete 180 degree turn around.

Finding a need to establish stability at the Court and its management, Judge Mallery continued to seek input from Judge Nareau. In September 2021, Judge Nareau again suggested to Judge Mallery that Ms. Stalter become the new CEO of the Court. Having experienced the capabilities of Ms. Stalter, her willingness to work with Judge Mallery and Judge Nareau and a desire not to have a revolving door (have longevity in the position upon the annual rotation of the Presiding Judges), Judge Mallery agreed to offer the CEO position to Ms. Stalter. Before offering the position of CEO to Ms. Stalter, Judge Mallery discussed the concerns he had regarding the selection of a CEO as the Human Resource Department is the intended gateway for all applicants seeking employment with the Lassen Superior Court. Ms. Statler accepted the position of CEO and stated in October 2021.

Judge Malley discussed with Ms. Stalter Judge Nareau's unwillingness to consider Kim Gallagher as the CEO and what would occur if Kim Gallagher did become the CEO. Judge Mallery found Judge Nareau's statement alarming and arrogant as Judge Nareau appeared to make the selection of CEO a personal

matter absent the best interest of the court, despite Ms. Gallagher's obvious qualifications including her approximately 20 years of institutional knowledge and dedication to the Lassen County Superior Court.

In or about November 2021, Judge Nareau requested a meeting with Judge Mallery and Ms. Stalter as Judge Nareau was going to become the Presiding Judge in January 2022. Judge Nareau was concerned about the budget and asked if there were any needs of the court that had not been addressed. Judge Mallery found the comment interesting as Judge Mallery had shared the budget information with Judge Nareau, the court's needs were being met and any discretionary spending should be limited to the end of the fiscal year to assure there will be enough funds for the court to make it to the end of the fiscal year for all necessary liabilities. Not knowing why such a statement would be made, as it is prudent to address all necessary liabilities, Judge Mallery inquired with Judge Nareau if he knew of any obligations or needs of the court that were not being addressed. Judge Nareau had no response.

Judge Nareau's question appeared to be a bit odd as he had no information to indicate the obligations or needs of the court were not being addressed and no other input on the issue. It appeared Judge Nareau had a personal interest in discretionary and excess funds of the court to which he did not disclose what he would like to do with such funds upon becoming the Presiding Judge. This further caused concern as to whether Judge Nareau understood the court's budget as he had left early from budget meetings with the Judicial Council and did not attend other meetings the court had with the Judicial Council in 2021 addressing the

court's need to complete the 2020-2021 fiscal year and the budget for the upcoming 2021-2022 fiscal year. Furthermore, Judge Mallery had shared with Judge Nareau year-to-date budget information Judge Mallery received from Ms. Stalter. Given this concern, Judge Mallery informed Ms. Stalter that she may need to give assistance to Judge Nareau so that he may fully understand the courts needs and the budget when he became the Presiding Judge for the first time in January 2022.

Judge Mallery concedes that he may have drawn conclusions that Judge Nareau had improper motives when he hired Ms. Rados and he concedes that he shared his opinions. When he hired Ms. Rados, Judge Nareau failed to fulfill the principles of democracy established by the California Constitution and California Statutes in the selection, implementation and appointment of a new court Commissioner to the Lassen County Superior Court. Judge Mallery concluded that Judge Nareau must have had an improper motive if he were willing to violate these bedrock principles. To be clear, Judge Mallery has the utmost respect for Ms. Rados. This had nothing to do with Ms. Rados and everything to do with Judge Nareau once again refusing to follow the established rules even after Judge Mallery reminded Judge Nareau of the requirements necessary to bring on a Commissioner to the court. Further, there was not a need for a full-time Commissioner, as the court was allocated only a 0.3 Commissioner by the state, and Judge Mallery felt that it was fiscally irresponsible, especially during these volatile economic times and the court budget is always a concern. Further, Judge Nareau's actions deprived many other qualified candidates from the selection

process. Judge Naruau had Ms. Rados ready to onboard as soon as he became Presiding Judge on January 1, 2022. Judge Mallery further believes that Ms. Stalter joined in the actions of Judge Naruau after being placed on notice of the procedure to acquire a Commissioner, as she would be serving at the pleasure of the Presiding Judge [Judge Nareau].

It first came to Judge Mallery's attention that Judge Nareau had hired a Commissioner on behalf of the court during the morning calendar on December 29, 2021. Deputy District Attorney Jolanda Elaine Ingram informed Judge Mallery that Ms. Rados stated that she would be working for the court. Judge Mallery asked Ms. Ingram which court Ms. Rados would be working for and Ms. Ingram responded by saying this court. Upon conclusion of the arraignment calendar Judge Mallery contacted Ms. Stalter to inquire if she had any knowledge of Ms. Rados coming to work for the court. Ms. Stalter stated she had no such knowledge. Judge Mallery believes that Ms. Stalter was untruthful with him based upon her actions to the contrary. Judge Mallery also contacted Samantha Ngotel, Administrative Services Manager, to see if she had recently received any applications for positions with the court, including but not limited to, Commissioner, research attorney or management position. Ms. Ngotel indicated she had not received any applications.

Judge Mallery proceeded to contact Judge Nareau and inform him of the events that had occurred. Judge Nareau indicated that he had been speaking to Ms. Rados at the court and Ms. Rados had expressed to Judge Nareau that she was looking for other employment as she did not wish to continue working in the

District Attorney's Office. Judge Mallery asked Judge Nareau why he had heard that. Judge Nareau again stated he did not offer her a job. It is evident that Judge Nareau was again blatantly untruthful with Judge Mallery.

A short time later, Judge Mallery received information that Ms. Rados was heard saying that she would be making more than the District Attorney by working at the court. Based upon Transparent California, Ms. Rados' regular pay in 2018 was $128,621.00. Based on this information, Judge Mallery questioned Judge Nareau again regarding the information that Ms. Rados was coming to work for the court. Judge Nareau once again stated he had not offered her a job, but had discussed opportunities at the court with Ms. Rados. Judge Mallery asked if he had discussed more as it appeared Ms. Rados was relying on conversations she had with Judge Nareau based upon her giving notice to her employer. Judge Nareau once again stated he had not offered her a position.

Prior to the end of the 2021 calendar year, Judge Mallery and Judge Nareau had another discussion regarding Ms. Rados. Judge Nareau informed Judge Mallery that there was a place at the courthouse for Ms. Rados. Judge Mallery asked what that meant. Did it mean that he intended to have Ms. Rados act as the Child Support Commissioner, A.B. 1058, to act as a research attorney, self-help attorney, family law facilitator or management? Judge Mallery informed Judge Nareau that the Judicial Council has assigned and funded only a .3 Commissioner to the Lassen County Superior Court. Judge Mallery asked whether the budget allowed for such a hiring, whether Ms. Rados had been vetted and by whom, whether Ms. Rados filed an application with the court, whether

references were provided and contacted, and why Judge Nareau had not discussed what his intentions were with his only colleague in a two-judge court. Judge Nareau responded by saying "there is a place for her in this court." Judge Nareau did not state what Ms. Rados' duties/position would be with the court, what her pay would be, what her qualifications were or his authority to address and offer employment to Ms. Rados when he was not the Presiding Judge.

On January 1, 2022, by operation of law, the role of the Presiding Judge at the Lassen County Superior Court rotated and Judge Nareau for the first time became the Presiding Judge of the Lassen County Superior Court since taking office. As the Presiding Judge, Judge Nareau elected to have Judge Mallery's title remain as a Superior Court Judge and not as the Assistant Presiding Judge, a title that Judge Mallery conferred upon Judge Nareau immediately after his appointment on December 27, 2017, to the bench in the two-judge court.

After Judge Nareau became the Presiding Judge, Judge Mallery continued to ask Judge Nareau for information on Ms. Rados including for an application, references, writing samples, qualifications, how Ms. Rados would be vetted and who would be vetting Ms. Rados, what Ms. Rados' salary would be and what her job description would be. Judge Nareau did not provide any relevant response. On January 13, 2022, Judge Mallery again expressed his concerns to Judge Nareau. Judge Nareau stated that Ms. Rados would be coming to the court as the Commissioner and she had been vetted.

It is telling that Ms. Rados did not have any communications with Judge Mallery outside of a forced greeting when passing in the hallway. Nor had Judge

Nareau facilitated any meetings with the three of them to discuss the future of the court. It appears that Judge Nareau and Commissioner Rados are in league and are trying to push Judge Mallery out of the court. Judge Mallery acknowledges that this sequence of events led him to believe that Judge Nareau's motives were not proper. It was not the first time Judge Nareau's motives based on physical preference were publicly questioned. When Judge Nareau asked Judge Mallery about the comments, Judge Mallery acknowledged the comments he could remember and said to Judge Nareau, "don't act like you have not heard these allegations before," which Judge Nareau acknowledged by nodding his head in the affirmative. [The comments regarding Judge Nareau were based upon comments Judge Nareau made to Judge Mallery when applying to The Commission on Judicial Nominees Evaluation (JNE) seeking the appointment for Lassen County in 2017. Judge Nareau was concerned about the JNE questioning him pertaining to his morality based upon events that led to his untimely departure from employment with Lassen College, issues surrounding his divorce and current marriage and other rumors in the community that the JNE may become aware of.] Judge Mallery apologized to Judge Nareau, which he accepted, and upon conclusion of the meeting after Ms. Stalter left, Judge Nareau gave Judge Mallery a hug and stated it was behind him and he wished to move forward. After leaving the meeting, Judge Mallery reflected and realized he remembered events that Judge Nareau questioned him about that he did not recall previously. Judge Mallery shared as much with Judge Nareau. Judge Nareau thanked Judge

Mallery and once again informed Judge Mallery that it was behind him and stated he forgave him and a desired to work together going forward.

Conceding that he drew that conclusion and made those statements about Judge Nareau, Judge Mallery still wants to highlight that Judge Nareau did not allow him to participate in the indispensable democratic selection process courts abide by when appointing a new Commissioner. Judge Nareau did not fly the job and did not have the new court Commissioner comply with the Lassen Superior Court's process of submitting an application, cover letter, and resume to the Administrative Department of the Court. Furthermore, Judge Nareau did not conduct a careful and critical investigation to ensure that the new court Commissioner is suitable for a job which requires experience in family law and Title IV-D Child Support Enforcement pursuant to the Child Support Commissioner Standard Agreement executed by Lassen County Superior Court and the Judicial Council. Judge Nareau has also failed to disclose any determination of impartiality, freedom from bias, diligence, integrity, honesty, legal experience, professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills and job-related health before self-appointing the new Commissioner. Again, this has nothing to do with Ms. Rados and everything to do with Judge Nareau refusing to follow the established procedures.

Count 17

a. *Game playing*

Judge Mallery denies he said "if he makes this a fucking game," or words to that effect. With respect to Ms. Jones, she had sent an email to Mr. King on June 10, 2020 at Judge Mallery's request, wherein she wrote that: "Judge Mallery would like a day and time you could meet regarding the Ron Wood billing." In his response email to Ms. Jones, Mr. King wrote: "I am available next week. I will need a court reporter present. If that is unacceptable, I am not interested in meeting and I will represent Mr. Wood in a claim and lawsuit. Please feel free to relay this message, verbatim."

Ms. Jones subsequently approached Judge Mallery after receipt of this email, seeking further direction on how to proceed. It is Judge Mallery's recollection [*as well as that of another court staff member who was present at the time and overheard the conversation*] that he stated: "If he wants to make this a *funky* game [*i.e., bizarre, kooky, weird, etc.*], then he won't be appointed on any future cases," or words to that effect. While Judge Mallery generally does speak candidly and frankly, he avoids coarse language when speaking with others – most especially when speaking with court staff and uses alternatives to expletives.

b. *Jury summons*

Judge Mallery admits that he and Ms. Barron had a disagreement when she failed to send the appropriate number of jury summons. Based upon the coronavirus pandemic, extensive efforts were put forth to gather data regarding the number of jurors reporting for jury service being reported by other superior court presiding judges who had conducted trials during the pandemic, a

defendant's right to a jury trial, the cost to conduct a jury trial and the need to have a sufficient number of potential jurors appear for a jury trial so that a mistrial does not occur. It was determined that 350 jury summons would need to be issued in hopes that a minimum of 70 potential jurors would appear for jury service. This information was shared with Chris Vose, CEO, Kim Gallagher, Assistant CEO of Lassen County Superior Court and Lori Barron, Clerk III (Jury Commissioner) and discussed at length to arrive at the appropriate number of summons for upcoming jury pools during the pandemic.

As a rule of thumb in Lassen County, a jury pool of 70 potential jurors are necessary to avoid the potential of a mistrial due to there being an insufficient number of jurors to fill 12 jury seats plus 1-5 alternate jurors after hardships, challenges for cause and peremptory challenges have concluded. Prior to the coronavirus pandemic, approximately 30-35 percent of the jurors summonsed by the Lassen County Superior Court were appearing for jury service. Based upon information received from other presiding judges during the coronavirus pandemic approximately 20 percent or less of the jurors summonsed were appearing for jury service.

Understanding the requirement to hold jury trials during the coronavirus pandemic and the need for there to be a sufficient number of potential jurors to avoid a mistrial, prior to jury summons being issued for the first trial to be conducted during the coronavirus pandemic, Judge Mallery met with management to develop policies, protocols and procedures. As the jury commissioner, Ms. Barron was actively involved in establishing the number of

jurors that would be summonsed and how they would be processed once they arrived at the court in order to maintain social distancing. One of the many issues discussed was the number of jury summons that would need to be issued to obtain a sufficient jury pool to avoid a mistrial. Based upon discussions in which Judge Mallery, Mr. Vose, Ms. Gallagher and Ms. Barron participated, the number of 350 jurors was determined as the necessary number to be summonsed and would remain the number to be summonsed until further discussion by all parties to determine if the number should be adjusted. This information, procedures and the process undertaken to determine the number of 350 jurors was shared with Judge Nareau prior to the first jurors being summonsed during the coronavirus pandemic. Prior to March 15, 2021, Judge Mallery was not made aware of any further discussions on the matter or adjustments to the agreed upon number of 350 potential jurors to be summonsed.

Trial was set for March 15, 2021. Judge Mallery was shocked to learn, on March 15, 2021 that only 200 jury summons had been issued as opposed to the 350 jury summons determined and agreed upon after extensive efforts to gather the necessary data to reach the appropriate number of potential jurors necessary. Judge Mallery was concerned as to whether there would be a sufficient number of jurors appear so as to avoid a mistrial. Judge Mallery was further confounded as to why Ms. Barron had deviated from the 350 jury summons that were to be issued without any notice to Judge Mallery that, as the jury commissioner, she had decided to deviate from the number that had been previously established and her reason for doing so.

Judge Mallery learned from Ms. Barron that Crystal Jones, Court Supervisor, and Judge Nareau circumvented Judge Mallery and undermined his directive and instead directed Ms. Barron to issue 200 summons instead of the 350 summons previously established as the number of summons to be issued. Judge Mallery inquired with Ms. Barron why this had not been brought to his attention so that Judge Mallery, Mr. Vose, Ms. Gallagher and Ms. Barron could determine if the previous determination of 350 jury summons needed to be adjusted and if so, to what number.

Based upon what occurred, Judge Mallery discussed what he had learned from Ms. Barron with Mr. Vose and Ms. Gallagher, including the steps necessary to avoid such issues from occurring in the future. It is a mystery as to why Ms. Barron felt compelled to discuss or address the issue with Ms. Jones and/or Judge Nareau after the effort and time put forth in making the determination of the 350 potential jurors to be summonsed. It is further concerning that Ms. Barron, Judge Nareau or Ms. Jones failed to communicate such important information to Judge Mallery, Ms. Gallagher or Mr. Vose. Such failure to communicate such important information and Judge Mallery learning this information on the day of trial could have placed the court in a very untenable situation. Ms. Barron offered no explanation or additional data on which to base her actions.

The District Attorney's Special Prosecutor, Jordan Funk, dismissed the case that gave rise to this allegation before the jury had been summoned to the courtroom. Had Special Prosecutor Jordan Funk not dismissed the case, it is uncertain if the number of jurors who responded to the 200 jury summons would

have been a sufficient number to proceed with a trial after hardships, challenges for cause and peremptory challenges concluded. The court is fortunate that the jury trial never came to fruition as it was possible a mistrial would have occurred due to an insufficient number of jurors being available due to such a small jury pool being summonsed and Lassen County having a historically low turnout for Jury Duty

c. *Lost temper*

Judge Mallery acknowledges the conversation but denies that he lost his temper with Ms. Gallagher. On or about Tuesday, July 21, 2021, the Lassen Superior Court lost power due to the Dixie Fire. The Lassen Superior Court is equipped with a generator and has the ability to operate on a limited basis when the court is powered by the generator. Ms. Gallagher made a unilateral decision to inform the judge assigned to the court from the Judicial Council not to come to the court due to the loss of power at the courthouse.

Wal Mart is deemed an essential service in Susanville and the court is on the same power grid as Wal Mart. Due to Wal Mart being deemed an essential service, the local utility company attempts to provide power to Wal Mart at significant periods of time, if not the entire time, during daytime hours when rolling power outages occur. This in turn benefits the courthouse as it has power from the electric company when rolling blackouts occur, minimizing the need for power from the generator. During the Dixie Fire, the court was able to have limited power interruption due to the court being on the same grid as Wal Mart.

Knowing that power outage at the court is not as sporadic as other parts of the community and the Presiding Judge is responsible for assigning calendars and determining the access to the court, Judge Mallery was concerned why Ms. Gallagher made the call to inform the assigned judge that their services were not necessary. Judge Mallery discussed with Ms. Gallagher her unilateral decision and that she should have not made the decision without first contacting the Judge Mallery (Presiding Judge at that time). The conversation was warranted under the circumstances, as it was foreseeable that this would not be an isolated event and the court needed to communicate on handling power outages going forward.

d. *Clerk IV*

Judge Mallery denies losing his temper with Ms. Stalter and yelling. Clerk IV was a new position requiring new documents to be drafted addressing the new obligations of both the court and the employees who obtained Clerk IV status. As with all documents affecting the court and negotiations with the union, Judge Mallery, as the Presiding Judge, at a minimum should have reviewed and approved all documents that will influence union employees and obligations of the court. When Judge Mallery appropriately questioned Ms. Stalter as to why he had not seen a draft of the proposed Clerk IV position before sending it to the union, Ms. Stalter was very defensive and in a raised voice stated that the Presiding Judge did not need to participate. This is contrary to Rule of Court 10.610]. Ms. Stalter showed Judge Mallery the draft sent to the union and after review noticed corrections needed to be made to the document, which Ms. Stalter addressed and finalized with the union.

e. *Paycheck*

Regarding the paycheck, Judge Mallery admits the conversation occurred, but denies he acted improperly. Judge Mallery asked the benign question to Ms. Stalter of whether the court received his paycheck in late November 2021. When Judge Mallery asked this question, Ms. Stalter's response surprised Judge Mallery as she harshly proceeded to give Judge Mallery a tutorial on the rules about California State Payroll in an angry and much elevated voice. Ms. Stalter continued by stating that the paycheck is not late unless it is received after the 5th of the month. This was nonresponsive to his reasonable inquiry and downright inappropriate and insubordinate. Judge Mallery felt lambasted by Ms. Stalter. Judge Mallery explained to Ms. Stalter simply that it was unusual for his paycheck not to be at the courthouse on or before the last day of the month due to most of his paychecks over the past 8 plus years having been received in such a fashion.

While Judge Mallery was taken by surprise in how Ms. Stalter reacted and a quite disturbed with her conduct, Judge Mallery denies he was angry, his voice was raised, lips were pressed, teeth were clenched, and tone was belittling. He was embarrassed by her rage. He felt threatened and accused.

Count 18

a. Judge Mallery admits that he said this. See response to Count 16(c)(2) for context.

b. Judge Mallery admits that he said this. See response to Count 16(c)(2) for context.

c. Judge Mallery admits that he said this. See response to Count 16(c)(2) for context.

d. Judge Mallery admits that he said this. See response to Count 16(c)(2) for context.

e. *Chambers and "those people"*

Judge Mallery admits that he made the statement, but denies that any of his comments were inappropriate. The Lassen Superior Court has four offices that can be used as judicial chambers. The first chamber was Judge Nareau's and he continued to occupy said chambers on December 29, 2021. The second is the Presiding Judges' chambers which Judge Mallery needed to exit as he would no longer be the Presiding Judge on January 1, 2022, by operation of law. The third and the fourth chambers are separated by a wall that is approximately 8" (inches) thick with the entry doors to both chambers being side by side, attached to the 8" wall. The chambers that Judge Malley was occupying was the farthest chamber separated by the 8" wall. As there were only two offices available for Judge Mallery from which to choose, both being next to each other, Judge Mallery had a choice of one closer or one farther away by 8" from the CEO and soon to be Presiding Judge. Judge Mallery's response was satirical as he only had two choices.

f. Judge Mallery admits that he said this. See response to Count 16(c)(2) for context.

g. Judges only meeting

On January 14, 2022, Judge Mallery met with Judge Nareau and informed Judge Nareau that when there was a meeting for just the judges, he did not wish to have Ms. Stalter present. If a meeting required input from the CEO, then Judge Mallery would understand the purpose for the CEO to be present.

Count 19

Judge Mallery denies ordering DA Ingram-Obie to court. To assist in accommodating the reasonable request of a self-represented defendant to speak with and to have access to a prosecutor and to encourage the free flow of communication and potential resolution of a matter, it is not uncommon for the court to request the appearance of a prosecutor if there is one in the courthouse, available to assist and not currently in the courtroom. Although it is the decision of Lassen County DA to not have a prosecutor present on certain calendars, that fact alone doesn't mean that there is not a prosecutor in the courthouse who may be available to address a remedial request.

The court's requested appearance of DDA Ingram-Obie was just that, a request. It was neither seeking to exercise control over the conduct of the prosecutor nor is it seeking to infringe upon their prosecutorial rights. To the contrary, it was simply a respectful request for their appearance in an effort to resolve a matter before the court. If the request was declined, the court is in a position to continue the matter to a later date to allow the self-represented litigant the opportunity to address the matter with the prosecutor before the next court date, in hopes of a resolution at the next appearance.

Count 20

a. *Michael Morales (1 and 2)*

Judge Mallery concedes that he represented Ronald Morales and that the two were friends. Judge Mallery concedes that although he stated he knew Michael Morales and his family, he did not explicitly describe the nature of the relationship.

b. *The Deal matter*

Judge Mallery admits that the allegations, however, the Commission needs context. At the arraignment, the interaction with Mr. Deal was not to determine the merits of the case. To the contrary, the interaction was an attempt by this judge to engage a citizen of Lassen County—well-known for his severe addiction issue—in a humane manner to express a sincere concern for the well-being of both himself and those who care for him. It was an attempt to determine the extent, if any, of Mr. Deal's awareness of the damage being done by his self-destructive lifestyle, and to determine whether or not he desired help in overcoming these obstacles in his life.

Further, Judge Mallery intimately understands the challenges a person with addictions must overcome to become clean and sober, as the court has routinely collaborated with local agencies in Drug Court and Prop. 36 Court to address these issues. The complex issues that contribute to the patterns of thinking and behaviors that drive a person to addiction are difficult [if not impossible] to address without first starting a conversation with Mr. Deal regarding the damage being done by his lifestyle choices.

At no point did the Judge Mallery question Mr. Deal about the validity of the pending charges, nor did the court attempt to obtain information on the charges.

Regardless, Mr. Deal was receptive to Judge Mallery's genuine concerns for his well-being and acknowledged that he would like to become clean and sober. Judge Mallery then encouraged Mr. Deal to follow the terms and conditions of his release on own recognizance: to attend the meetings pertaining to the effects of drugs and alcohol, to have an evaluation conducted by Lassen County mental health and drug and alcohol, and to follow any resulting recommendations. Judge Mallery further informed Mr. Deal to keep all court dates and stay in regular contact with his attorney.

Unfortunately, and with great sadness, Mr. Deal's addiction was stronger than any words or actions were in attempting to protect Mr. Deal from his lifestyle. Mr. Deal passed away from his addiction on Monday, December 14, 2020 at the age of 53.

Count 21

a. Lassen Family Services

This issue had been previously addressed by the Commission on Judicial Performance in 2014, and concluded with the Commission's decision to not proceed—such that the level of support provided to Lassen Family Services was determined to be appropriate conduct. Finding no inappropriate conduct at the conclusion of the Commission's prior investigation, limited participation and

support of Lassen Family Services community outreach events has continued in the same manner as alleged in that 2014 investigation.

Moreover, following the Commission's previous investigation in 2014, it was made abundantly clear to Lassen Family Services that Judge Mallery may participate on a limited basis, so long as Lassen Family Services did not use his name, his title as a Superior Court Judge or any other statements that associated Judge Mallery as a judge. This was thoroughly addressed with Jenny Hofman [the coordinator of outreach programs for Lassen Family Services, CASA]. Additionally, and in order to guard against any further questions into his participation, Judge Mallery made it abundantly clear that he would only participate with others under the name "Legal Eagles."

It is true that Judge Mallery has personally attended and participated in events sponsored by Lassen Family Services as part of a group of community minded individuals under the name "Legal Eagles." In fact, Judge Mallery's involvement with Legal Eagles extends far back, while a practicing attorney in Chico and long before taking the bench in Lassen County.

Judge Mallery, his family and the Legal Eagles have supported a number of public events and community organizations since taking office, including:

- Lassen County 4-H
- Future Farmers of America
- Future Business Leaders of America
- Blue Star Moms
- Lassen Land and Trails Trust

- Susanville Symphony
- Cattlewomen
- Cattlemen
- Various Churches
- Funerals
- Weddings
- Toys-for-Tots
- Salvation Army
- Christmas Shopping With A Hero
- Benevolent Protective Order of the Elks
- Soroptimist International
- Lassen Senior Services
- Lassen College Black History Month
- Lassen High School
- Richmond Elementary
- Lassen High Alumni
- Ducks Unlimited
- Pheasants Forever
- NRA
- Safe and Sane Halloween
- Lassen County Fair
- Maidu Bear Dance
- CASA
- Teen Court
- Best of Broadway
- Chimney Fund
- Westwood Chamber of Commerce.

1. Judge Mallery denies this allegation. Judge Mallery, his family and the Legal Eagles do support the community and attend public events. Once or twice, Judge Mallery judged a food competition; however, at no time did Judge Mallery let any organization or event use his title as a Superior Court Judge to promote their event.

2. Judge Mallery denies this allegation. Judge Mallery does not have a catering service business. As stated previously, Judge Mallery and his wife have participated in community events for over 20 years with other like-minded individuals who wish to support and serve at community events, at no cost, under the name of Legal Eagles. Similarly, Mrs. Mallery does not have a catering service business. To the extent the Commission is not already aware of Mrs. Mallery's training and occupation in the course of its investigations over the past seven years, Mrs. Mallery is a licensed attorney in good standing with the State of California.

The name Legal Eagles is often associated with attorneys, advocates, counselors and lawyers. This is the name used by either of the Mallerys, as well as the name used by the group of people who join them in participating at community events. The participation of the Legal Eagles at the community event in question, Dancing for a Brand New Me, was predominately supported by Mrs. Mallery, the Mallery's two children (Zak and Christopher,) Justin Cadili, Gary Bridges, Joe Comino and Amber Klinetobe. Judge Mallery had other obligations, but when he did make it to the event, he participated for a short

time, less than 1.5 hours, cleaning up in the downstairs kitchen. Judge Mallery never even made an appearance upstairs where the event was being held.

3. Judge Mallery admits that he participated in this event and that he was photographed, but denies that he donated anything more than his time and cooking/cleaning services.

b. DVRO

Judge Mallery denies that he acted improperly by hearing the DVRO calendar. The court is not aware of Lassen Family Services appearing on the face, body or attachments of any Request for Domestic Violence Restraining Order (DV-100) informing the court that Lassen Family Services is a party, document preparer, attorney or making some other appearance in a proceeding. Unless a Request for Domestic Violence Restraining Order is filed by an attorney on behalf of a victim, the only name typically seen as the party bringing the action is the name of the person asking for protection.

In a restraining order proceeding under Code of Civil Procedure § 52706(l), if there are allegations of unlawful violence or credible threats of violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges they are a victim of violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges they are a victim of violence in feeling more confident that they will not be injured or

threatened by the other party during the proceedings if the person who alleges the person is a victim of violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

The support person's involvement in the court action is no different than that of, say, an emotional support animal appearing alongside a litigant in court. A judge who supports anti-domestic violence organizations in his private capacity is no more precluded from hearing a matter where a litigant appears in court with a support person than would be a judge who supports the American Society for the Prevention of Cruelty to Animals (ASPCA) in his/her private capacity be precluded from hearing a matter where a litigant appears with an emotional support golden retriever.

The support person is allowed to provide moral and emotional support for a person who alleges they are a victim of violence. They are not a party and are not a witness for the alleged victim. A judge is not precluded from exercising his/her discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

Support persons who appear from Lassen Family services have no personal relationship with Judge Mallery and he does not interact, other than on professional basis, with the support person(s) from Lassen Family Services. At no

time has Justin Cadili or Gary Bridges appeared in court for a restraining order, either as a spectator or support person for Lassen Family Services.

c. Bridges. Judge Mallery denies any impropriety by maintaining this personal relationship. See response to 21(b)

d. Cadili. Judge Mallery denies any impropriety by maintaining this personal relationship. See response to 21(b)

e. Mansfield. Judge Mallery denies any impropriety by maintaining this personal relationship. See response to 21(b)

Conclusion

On the basis of this response, Judge Mallery denies violating any Judicial Canons. As shown above and in his responses to the investigation, Judge Mallery's actions were consistent with and in compliance with the Judicial Canons. This Notice of Formal Proceedings is the product of a Commission who had a goal in mind and is willing to accept obviously false or misleading testimony. The Commission only followed up on leads that they believed would support their case against Judge Mallery, they interpreted their findings in the worst light possible to Judge Mallery without consideration of possible scenarios, and the result shows. While Judge Mallery loathes the idea of having to defend

himself at hearing, he looks forward to setting the record straight, clearing his name, and for the truth to be known.

DATED: September 29, 2022

MURPHY, PEARSON, BRADLEY & FEENEY

By _____
James A. Murphy

CERTIFICATE OF SERVICE

I, Alice Kay, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 580 California St. 11th Floor, San Francisco, California 94104.

On September 29, 2022, I served the following document(s) on the parties in the within action:

RESPONDENT'S VERIFIED ANSWER TO NOTICE OF FORMAL PROCEEDINGS INQUIRY NO. 208

	VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.
X	**VIA E-MAIL:** I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately 12:30 PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is akay@mpbf.com
	BY PERSONAL SERVICE I placed the original or a true copy thereof enclosed in a sealed envelope and delivered such envelope by hand to the office of the addressee.

Emma Bradford, Legal Advisor
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filings@cjp.ca.gov

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Trial Counsel
455 Golden Gate Avenue, Suite 14400
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I declare under penalty of perjury under the laws of the State of California that the foreign is a true and correct statement and that t his Certificate was executed on September 29, 2022.

By: Alice Kay
Alice Kay

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Attorneys for Judge Tony Mallery

THE STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE TONY MALLERY No. 208	**RESPONDENT'S VERIFICATION TO ANSWER TO NOTICE OF FORMAL PROCEEDINGS**

I, Tony Mallery, declare that I am the Responding Judge in Inquiry No. 208, that I have read the foregoing Answer, and know the contents thereof, that I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 9-28-22

By _____
Tony Mallery

CERTIFICATE OF SERVICE

I, Alice Kay, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 580 California St. 11th Floor, San Francisco, California 94104.

On September 29, 2022, I served the following document(s) on the parties in the within action:

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I declare under penalty of perjury under the laws of the State of California that the foreign is a true and correct statement and that t his Certificate was executed on September 29, 2022.

By: _____
Alice Kay