

**STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**

**IN THE MATTER CONCERNING
JUDGE MICHAEL J. MULVIHILL, JR.**

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

This disciplinary matter concerns Judge Michael J. Mulvihill, Jr., a judge of the San Joaquin County Superior Court. Judge Mulvihill and his counsel, Paul S. Meyer, have entered into a stipulation with Senior Staff Counsel Sonya Smith of the Commission on Judicial Performance, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Mulvihill by imposition of a public censure. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on October 19, 2022, pursuant to the following terms and conditions and stipulated facts and legal conclusions. A copy of the Stipulation is attached.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Mulvihill.
2. The commission shall issue a censure based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing a censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, the Stipulation and the commission's decision and order shall be made public.
5. Judge Mulvihill waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Michael J. Mulvihill, Jr. became a judge of the San Joaquin County Superior Court in 2014, following election to that office. His current term began in January 2021.

I. The DUI and Related Conduct

On January 1, 2022, at approximately 5:51 p.m., Judge Mulvihill crashed his vehicle on Pacific Avenue in Stockton while driving under the influence of alcohol.

Another driver videotaped the accident, as well as some of its aftermath, and uploaded the video to YouTube. The video was shared widely, and news broadcasts used portions of the video in their reporting of the accident. The video captures the judge's vehicle speeding as it approaches a bridge crossing the Calaveras River, crashing into a sign and a barrier on the left side of the roadway at the overpass, swerving and crashing into the curb and fencing on the right side of the roadway, and then coming to a stop. The judge's vehicle suffered significant damage: all airbags had deployed; the front right quarter of the vehicle was peeled back; the passenger side-view mirror was broken off; the left front tire was flat and separated from the rim; the rear right tire was pushed inward; and the rear passenger side window was shattered.

After the accident, and before law enforcement arrived, Judge Mulvihill tried to re-enter his vehicle, telling bystanders that he was going to drive home. The bystanders blocked the judge's entry to the vehicle, and tried to confiscate his keys, telling him that he was in no condition to drive. The judge tried to convince the bystanders to allow him to leave the scene, falsely stating that this would be "extra bad" for him because he was a truck driver. After unsuccessful attempts to re-enter his vehicle, the judge walked away from the scene of the accident. One of the bystanders chased after the judge on foot and convinced him to return to the scene, and he did so.

Shortly thereafter, a police officer with the Stockton Police Department arrived at the accident scene. The responding officer asked the judge what happened, and Judge Mulvihill responded that he had been texting and driving; he did not state that he had been drinking alcohol or that he was intoxicated. When the officer (who observed that the judge was swaying in place while standing; had glossy, red, watery eyes; and displayed slurred speech) asked the judge how much he had had to drink that night, Judge Mulvihill responded falsely: "I had two beers."

At his sergeant's instruction, the responding officer drove Judge Mulvihill from the scene of the accident to the police station. At the station, another police officer conducted field sobriety tests. Before beginning the tests, that officer asked the judge several questions, including where the accident had occurred. Judge Mulvihill described the location of the accident, stated that he had been "doing something stupid," and explained that he had been on his phone, texting, while he was driving. He did not state that he had been drinking alcohol or that he was intoxicated. The officer then asked Judge Mulvihill what he had been drinking that night, and the judge falsely told the officer that he had consumed three pints of beer. After the officer conducted field sobriety tests, he arrested Judge Mulvihill for driving under the influence (DUI) and for texting while driving.

At 8:49 p.m., nearly three hours after the accident, Judge Mulvihill's blood was drawn at a local hospital. The blood test revealed that the judge had a blood-alcohol concentration (BAC) of 0.25 percent, more than three times the legal limit for driving. (Pursuant to California Vehicle Code section 23152, subdivision (b), it is unlawful for a person with a BAC of 0.08 percent or more to drive a motor vehicle.)

Through counsel, on January 4, 2022, Judge Mulvihill promptly reported his arrest to the commission, as required by canon 3D(3).

On February 28, 2022, the San Joaquin County District Attorney's Office filed a criminal complaint, charging Judge Mulvihill with one count of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol) and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or more), each with an enhancement, pursuant to Vehicle Code section 23578, for driving with a BAC of more than 0.15 percent. (No. STK-CR-MDUI-2022-0001987.) San Diego County Superior Court Judge Steven E. Stone presided over the case. On May 25, 2022, Judge Mulvihill appeared in court and informed Judge Stone and the deputy district attorney that he would plead guilty and accept sentencing. On June 1, 2022, Judge Stone accepted Judge Mulvihill's no-contest plea to both charges and imposed a sentence of 10 days in jail (with two days' credit for time served and eight days stayed), three years of informal probation, and a nine-month DUI class.

Judge Mulvihill's conduct (driving under the influence with a BAC of 0.25 percent, causing an accident, attempting to leave the scene of the accident, falsely informing bystanders that he was a truck driver to try to persuade them to let him leave the scene, misleading law enforcement officers about the cause of the accident, and underreporting to law enforcement the amount of alcohol he had consumed) violated the Code of Judicial Ethics, canons 1 (failing to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved), 2 (failing to avoid impropriety and the appearance of impropriety), and 2A (failing to comply with the law and failing to act in a manner that promotes public confidence in the integrity of the judiciary). Judge Mulvihill's conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, § 18, subd. (d).)

II. Nguyen v. Rapoza

On September 21, 2021, Judge Mulvihill presided over a proceeding in *Patrick Nguyen v. Julia Rapoza* (STK-CV-LUDR-2021-0006200), an unlawful detainer case. The transcript of this proceeding reflects that the judge called Ms. Rapoza a “smart aleck,” accused her of being “smart-alecky,” criticized her tone of voice, and stated, sarcastically: “I understand what they were going to testify about, ma’am, I’m not an idiot, okay.”

Judge Mulvihill’s conduct toward Ms. Rapoza violated the Code of Judicial Ethics, canons 3B(4) (failing to be patient, dignified, and courteous) and 2A (failing to act in a manner that promotes public confidence in the integrity of the judiciary), and constitutes, at a minimum, improper action.

III. Additional Factors Relevant to Discipline

Judge Mulvihill has no prior discipline. Judge Mulvihill admitted, accepted responsibility for, and expressed remorse and contrition for his conduct. Judge Mulvihill has taken significant steps to ensure that he does not drive under the influence of alcohol again. Several of Judge Mulvihill’s judicial colleagues submitted letters on Judge Mulvihill’s behalf, attesting to his strong work ethic and fair administration of justice, and commending him for taking responsibility for his actions.

DISCIPLINE

The starting point of the commission’s analysis concerning the appropriate level of discipline is the Supreme Court’s admonition that the purpose of judicial discipline “ ‘is not punishment, but rather the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system.’ ” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112 (*Broadman*), citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.)

Based on Supreme Court decisions, the commission has identified a number of factors that are relevant to determining appropriate discipline. As relevant here, the factors include the number and nature of the acts of misconduct; the existence of prior discipline; whether the judge appreciates that he or she committed misconduct, acknowledged that the acts occurred, and has shown an appreciation of their impropriety; whether the judge cooperated fully and honestly in commission proceedings; whether the judge has evidenced an effort to change or modify their conduct; and whether the misconduct undermines the integrity of, and respect for, the judiciary or the administration of justice. (Policy Declarations of Com. On Jud. Performance, policy 7.1.) Applying these factors here, and as discussed more fully, *infra*, we are satisfied that the stipulated censure is the appropriate level of discipline because it fulfills the commission's mandate of protecting the public, enforcing rigorous standards of judicial conduct, and maintaining public confidence in the integrity of the judicial system, and it resolves this matter without the delay and expense of further proceedings. (See *Broadman, supra*, pp. 1111-1112; Cal. Const., art. VI, § 18, subd. (d).)

As to the DUI and related misconduct, the commission recognizes that all of the acts of misconduct included in the stipulation arose out of one drunken lapse of judgment to get behind the wheel of a car. However, that lapse is no more excusable here than when anyone else makes a similar mistake while under the influence. While there is no indication of any pattern or history of similar behavior by Judge Mulvihill, nonetheless, Judge Mulvihill's conduct in driving under the influence of alcohol and his resulting criminal conviction are utterly irreconcilable with the minimum standards expected of a judge, and, as stipulated, with the requirements of canons 1 and 2A.

Judge Mulvihill's conduct following the accident was egregious. Judge Mulvihill attempted to leave the scene of the accident, falsely informed bystanders that he was a truck driver to try to persuade them to allow him to

leave the scene, misled law enforcement officers about the cause of the accident, and underreported to law enforcement the amount of alcohol he had consumed. Such conduct reflects poorly on Judge Mulvihill's integrity and negatively impacts the public's perception of him, and of the judiciary in general, and is seriously at odds with the canons and expected judicial behavior.

Judge Mulvihill has no prior discipline by the commission during his eight years on the bench. Judge Mulvihill also has no prior history of any alcohol-related offenses or misconduct. In assessing the likelihood of whether Judge Mulvihill will commit future misconduct, and whether he has evidenced an effort to change his conduct, the commission has taken into consideration the judge's actions since his arrest, including daily attendance at Alcoholics Anonymous meetings, voluntary enrollment in a continuous alcohol monitoring program, and individual counseling. Further, Judge Mulvihill promptly reported his arrest, acknowledged that he had committed serious misconduct, and cooperated fully and honestly in commission proceedings. The commission also notes that Judge Mulvihill has strong support from his judicial colleagues who submitted letters on Judge Mulvihill's behalf, attesting to his strong work ethic and fair administration of justice, and acknowledging that he has taken responsibility for his actions. Finally, Judge Mulvihill has stipulated to the imposition of this censure as the appropriate sanction that is commensurate with his admitted serious wrongdoing.

As to Judge Mulvihill's discourteous remarks toward Ms. Rapoza, the judge acknowledged and expressed regret for his lack of dignity and patience. The commission determined that the judge's misconduct as to that matter does not increase the appropriate level of discipline beyond a censure.

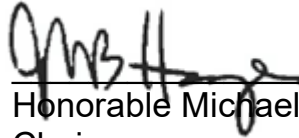
Based on the foregoing analysis and appraisal of Judge Mulvihill's wrongdoing, the commission concludes the misconduct here does not rise to the level of wrongdoing in which the Supreme Court has imposed the ultimate sanction of removal from office. The commission also concludes that the purposes of judicial discipline as enunciated in *Broadman* – protection of the

public, enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system – can be accomplished through a censure. Accordingly, the commission hereby imposes this public censure of Judge Mulvihill.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Mr. Eduardo De La Riva; Rickey Ivie, Esq.; Ms. Kay Cooperman Jue; Ms. Sarah Kruer Jager; Hon. Lisa B. Lench; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted to accept the Stipulation and to issue this public censure. Commission member Hon. William S. Dato did not participate. One attorney member position was vacant.

Date: October 27, 2022

On behalf of the
Commission on Judicial Performance,

A handwritten signature in black ink, appearing to read "MB Harper", is written over a horizontal line.

Honorable Michael B. Harper
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE MICHAEL J. MULVIHILL, JR.

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Michael J. Mulvihill, Jr. of the San Joaquin County Superior Court, represented by counsel, Paul S. Meyer, and commission counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letter dated April 20, 2022. The parties request that the commission resolve this matter by imposition of a censure. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Mulvihill because, among other reasons, in light of the stipulated facts and legal conclusions, a censure adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

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

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

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

6. Judge Mulvihill agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate in light of those facts.

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

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

STIPULATED FACTS AND LEGAL CONCLUSIONS

This disciplinary matter concerns Judge Michael J. Mulvihill, Jr. of the San Joaquin County Superior Court. Judge Mulvihill was elected to judicial office on June 3, 2014. His current term began in January 2021.

I. The DUI and Related Conduct

On January 1, 2022, at approximately 5:51 p.m., Judge Mulvihill crashed his vehicle on Pacific Avenue in Stockton while driving under the influence of alcohol.

Another driver videotaped the accident, as well as some of its aftermath, and uploaded the video to YouTube. The video was shared widely, and news broadcasts used portions of the video in their reporting of the accident. The video captures the judge's SUV speeding as it approaches a bridge crossing the Calaveras River, crashing into a sign and a barrier on the left side of the roadway at the overpass, swerving and crashing into the curb and fencing on the right side of the roadway, and then coming to a stop. The judge's vehicle suffered significant damage: all airbags had deployed; the front right quarter of the vehicle was peeled back; the passenger side-view mirror was broken off;

the left front tire was flat and separated from the rim; the rear right tire was pushed inward; and the rear passenger side window was shattered.

After the accident, and before law enforcement arrived, Judge Mulvihill tried to re-enter his vehicle, telling bystanders that he was going to drive home. The bystanders blocked the judge's entry to the vehicle, and tried to confiscate his keys, telling him that he was in no condition to drive. The judge tried to convince the bystanders to allow him to leave the scene, falsely stating that this would be "extra bad" for him because he was a truck driver. After unsuccessful attempts to re-enter his vehicle, the judge walked away from the scene of the accident. One of the bystanders chased after the judge on foot and convinced him to return to the scene, and he did so.

Shortly thereafter, a police officer with the Stockton Police Department arrived at the accident scene. The responding officer asked the judge what happened, and Judge Mulvihill responded that he had been texting and driving; he did not state that he had been drinking alcohol or that he was intoxicated. When the officer (who observed that the judge was swaying in place while standing; had glossy, red, watery eyes; and displayed slurred speech) asked the judge how much he had had to drink that night, Judge Mulvihill responded falsely: "I had two beers."

At his sergeant's instruction, the responding officer drove Judge Mulvihill from the scene of the accident to the police station. At the station, another police officer conducted field sobriety tests. Before beginning the tests, that officer asked the judge several questions, including where the accident had occurred. Judge Mulvihill described the location of the accident, stated that he had been "doing something stupid," and explained that he had been on his phone, texting, while he was driving. He did not state that he had been drinking alcohol or that he was intoxicated. The officer then asked Judge Mulvihill what he had been drinking that night, and the judge falsely told the officer that he had consumed three pints of beer. After the officer conducted field sobriety tests, he arrested Judge Mulvihill for driving under the influence (DUI) and for texting while driving.

At 8:49 p.m., nearly three hours after the accident, Judge Mulvihill's blood was drawn at a local hospital. The blood test revealed that the judge had a blood-alcohol concentration (BAC) of 0.25 percent, more than three times the legal limit for driving. (Pursuant to California Vehicle Code section 23152, subdivision (b), it is unlawful for a person with a BAC of .08 percent or more to drive a motor vehicle.)

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Judge Mulvihill's conduct (driving under the influence with a BAC of .25 percent, causing an accident, attempting to leave the scene of the accident, falsely informing bystanders that he was a truck driver to try to persuade them to let him leave the scene, misleading law enforcement officers about the cause of the accident, and underreporting to law enforcement the amount of alcohol he had consumed) violated the Code of Judicial Ethics, canons 1 (failing to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved), 2 (failing to avoid impropriety and the appearance of impropriety), and 2A (failing to comply with the law and failing to act in a manner that promotes public confidence in the integrity of the judiciary). Judge

Mulvihill's conduct also constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, section 18, subd. (d).)

II. Nguyen v. Rapoza

On September 21, 2021, Judge Mulvihill presided over a proceeding in *Patrick Nguyen v. Julia Rapoza* (STK-CV-LUDR-2021-0006200), an unlawful detainer case. The transcript of this proceeding reflects that the judge called Ms. Rapoza a "smart aleck," accused her of being "smart-alecky," criticized her tone of voice, and stated, sarcastically: "I understand what they were going to testify about, ma'am, I'm not an idiot, okay."

Judge Mulvihill's conduct toward Ms. Rapoza violated the Code of Judicial Ethics, canons 3B(4) (failing to be patient, dignified, and courteous) and 2A (failing to act in a manner that promotes public confidence in the integrity of the judiciary), and constitutes, at a minimum, improper action.

III. Additional Factors Relevant to Discipline

In his response to the commission's preliminary investigation letter, Judge Mulvihill admitted, accepted responsibility for, and expressed remorse and contrition for his conduct as set forth herein.

Judge Mulvihill has taken significant steps to ensure that he does not drive under the influence of alcohol again.

Several of Judge Mulvihill's judicial colleagues submitted letters on Judge Mulvihill's behalf, attesting to his strong work ethic and fair administration of justice, and commending him for taking responsibility for his actions.

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

Dated: September 9th, 2022.



Judge Michael J. Mulvihill, Jr.

Dated: 9/9, 2022.



Paul S. Meyer, Esq.
Attorney for Judge Michael J. Mulvihill, Jr.

Dated: 9/9, 2022.



Souya Smith
Senior Staff Counsel