

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING  
FORMER JUDGE DEREK W. HUNT

DECISION AND ORDER IMPOSING  
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Derek W. Hunt, a former judge of the Orange County Superior Court from August 1997 to June 2023, when he retired. His most recent term began in January 2017. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, former Judge Hunt and his attorney, Paul S. Meyer, appeared before the commission on August 23, 2023, to contest the imposition of a tentative public admonishment issued on June 2, 2023. Former Judge Hunt waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by former Judge Hunt and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution and rule 113 of the Rules of the Commission on Judicial Performance, based upon the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

The commission found that Judge Hunt engaged in misconduct in connection with three civil actions, as set forth below.

1. *Mohammad Abuershaid v. County of Orange* (No. 30-2022-01243989-CU-OE-CJC)

Judge Hunt presided over this defamation lawsuit that Mohammad Abuershaid filed in February 2022. Mr. Abuershaid alleged that a senior member of the Orange County District Attorney's Office routinely referred to him as a terrorist and that those remarks had become public. He filed the lawsuit using a fictitious name. On May 25, 2022, Judge Hunt, sua sponte, set an Order to Show Cause (OSC) hearing regarding why he should not stay the case under

section 367 of the Code of Civil Procedure,<sup>1</sup> until the plaintiff amended the complaint to reflect his legal name.

a. At the OSC hearing on July 8, 2022, the transcript reflects that Judge Hunt made the following remarks concerning the plaintiff's use of a fictitious name.

But I'm going to talk about the defamation case, which is brought by a deputy public defender who has filed his case under a fictitious name. He will now be known as Mr. Doe until I'm finished with this. He did that because he says that if his real name were made public, the alleged defamation, which meant that somebody had called him a "terrorist," would damage his professional reputation as a deputy public defender.

(R.T. 2:12-19.)

Now, I bet I'm older than everybody on the line right here, so it's true, the world has changed since I grew up. And we have become in my lifetime rather what I consider to be hypersensitive to people's feelings. [¶] You know, I have even heard about young people being described as "snowflakes" because they are supposedly so insecure that they need to have what are called "safe spaces" if they are confronted with situations or things that they are unfamiliar with.

(R.T. 3:4-12.)

But I cannot believe that there's a public policy in the state of California that permits adults to bring lawsuits under fictitious names just because of their transient, personal feelings having been hurt or damaged. [¶] I'm talking about adults here. Adulthood means a recognition that life routinely brings adversely [sic]. It means self-sufficiency. It means strength of mind, courage, and wisdom, and resilience. You're talking about an old-fashioned person here. And I believe in those things. And honestly, I bet those of you who don't have a case hanging there believe those things, too, about adults. Adulthood routinely brings adversity. The

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<sup>1</sup> Section 367 provides, "Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute."

law expects -- routinely, it expects the characteristics I've listed are a normal condition of adulthood. [¶] It is only when those qualities that I've just listed are proved to be abnormally lacking, like cases of mental illness or stuff like that, that the law will recreate [*sic*] some very closely-edged exceptions, all consistent with due process by the way.

(R.T. 3:25-4:17.)

Anyway, Mr. Murray [*sic*], I mean I'll take your arguments to the contrary, but my tentative ruling will be, as you get to put in your brief an alternative, to give you a week to amend your complaint. [¶] Tell your client to step up to the bar and give his name and litigate like a grown-up. And if you do, I will give the defendant 14 days to respond to the new complaint.

(R.T. 5:5-11.)

In his response to the preliminary investigation letter, the judge argued that his remarks in *Abuershaid* reflected “a different generation giving advice and insight to a younger generation, each of whom was speaking a different language” and that his discussion about cultural changes and heightened sensitivities of young people was interpreted negatively. Judge Hunt’s remarks, on their face, however, insinuated that Mr. Abuershaid was “hypersensitive,” was a “snowflake,” and needed to “litigate like a grown-up.” Further, the remarks were gratuitous and unrelated to whether Mr. Abuershaid could legally file a complaint with a fictitious name. As Rothman states, comments reflecting improper demeanor often occur when the judge is “focusing on or reacting to something other than [proper judicial] goals and objectives.” (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 2:46, p. 117.)

In his objections to the notice of tentative public admonishment, Judge Hunt argued that his “snowflake” remark was collateral and not directed at the plaintiff. The commission found, however, that the “snowflake” remark was made in the context of Judge Hunt referencing Mr. Abuershaid as “hypersensitive” and having hurt feelings, and admonishing him to act “like a grown-up.” As such, the

remark was not collateral but was personal, critical, and created the appearance of bias against Mr. Abuershaid.

The commission concluded that Judge Hunt's remarks were discourteous, gave the appearance of bias and prejudgment, and violated his duties to be patient, dignified, and courteous to litigants and lawyers, and others with whom the judge deals in an official capacity (canon 3B(4)); perform judicial duties without bias or prejudice and, in the performance of judicial duties, refrain from engaging in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice, including bias or prejudice based upon race, religion, national origin, or ethnicity (canon 3B(5)); and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A).

b. Counsel for the plaintiff, Matthew Murphy, contended that the case was not about his client's "hurt feelings," but about defamation per se. Judge Hunt then stated, "It actually may not be [defamation] per se. The material that you've alleged does not mention that guy's name. It doesn't even mention his name." (R.T. 6:1-6.)

The commission found that this remark gave the appearance that Judge Hunt had prejudged the case before the parties had presented any evidence, in violation of canon 3B(5).

c. Mr. Murphy noted that media coverage of the allegedly defamatory remarks had mentioned his client's name. Mr. Murphy argued that having a senior member of the district attorney's office refer to Mr. Abuershaid as a terrorist affected his client's ability to make a living as an attorney. Judge Hunt suggested that Mr. Murphy was trying to get the case before the Court of Appeal and offered to dismiss the case to make it "easier" for him to appeal, as reflected in the following colloquy.

THE COURT: Let me come back to Mr. Murphy. [¶] I said my ruling is going to be to give you a week to file an amended complaint. It sounds to me like you really want to put this up in front of the DCA.

MR. MURPHY: Well, Your Honor, I want as much time as the court will give me. So --

THE COURT: Well, right now, I just want to figure out what I'm supposed to do. [¶] I'm happy to do that, give you a chance to amend the complaint in seven days and just move forward with the lawsuit. [¶] But if you want to make this a catalyst for getting your case in front of the DCA, if you don't mind, I'll just dismiss the case for failure to --

MR. MURPHY: No, I do mind that, Your Honor. Of course I mind that. I mean, what kind of statement is that from the court, that I don't mind that you're going to dismiss the case? And I don't understand where that even comes from, judge. Of course I mind.

THE COURT: Well, it --

MR. MURPHY: And I'm sorry, Your Honor. It would be malpractice for me to agree to that. [¶] So with the court's permission --

THE COURT: All right. I'll do what I said [*sic*] was going to do. I'll do what I said --

MR. MURPHY: -- I need to research this and I need to put it together. [¶] And we're -- this is something that is going to be devastating for my client, as flippant as people may be from the county and others, regarding the impact that this has on this man. [¶] I would like all of the time that this court is willing to give me so that I can properly research this and submit it to the DCA. [¶] And, no, I'm not asking for a dismissal from the court. I don't even know where that comes from.

THE COURT: Where it comes from is it might be able to expedite your situation between me and Judge Howard and getting it in front of the DCA. [¶] Forget it. I just thought it would make it easier on you. [¶] I will

just go back to my original tentative ruling. I'll give you a week to amend the complaint. And if that amended complaint does not come in in seven days, I will then dismiss the case without prejudice.

(R.T.11:23-13:15.)

Judge Hunt's remarks were discourteous to Mr. Murphy. The judge's remarks also gave the appearance of embroilment and suggested that he had prejudged the outcome of the case and would dismiss it for improper reasons unrelated to its merits. The commission found that the judge's conduct violated his duties pursuant to canons 3B(4), 3B(5), and 2A.

2. *Brewer v. Oso Valley Green Belt Association* (No. 30-2021-01200103)

In this civil action, on June 23, 2022, Judge Hunt granted the defendant's ex parte request to advance the hearing on their summary judgment motion. On August 8, 2022, the plaintiff filed a petition for writ of mandate and requested that the judge's order be immediately stayed. (*Brewer v. Super. Ct.*, October 27, 2022, No. G061666.) On September 27, 2022, the Presiding Justice of the Fourth District Court of Appeal, Kathleen E. O'Leary, vacated Judge Hunt's decision and issued an alternative writ, or order to show cause.

The day after Justice O'Leary vacated Judge Hunt's decision and issued the alternative writ, Judge Hunt sent the following email:

**From:** Derek Hunt [REDACTED]  
**Sent:** Wednesday, September 28, 2022 12:08 PM  
**To:** O'Leary, Kathleen <[REDACTED]>  
**Subject:** Confidential

I may be stupid, but I know it when someone is saving face.

When Justice O'Leary received the email, she questioned whether the email was from a judge and, a few hours later, alerted Orange County Superior Court's Presiding Judge Erick Larsh and Assistant Presiding Judge Maria Hernandez via email. Justice O'Leary believed the email was a spoof and therefore also alerted the California Highway Patrol personnel at the appellate court.

In Judge Hunt's response to the preliminary investigation letter and at his appearance before the commission, Judge Hunt acknowledged that he should not have sent the email and expressed remorse. He indicated that, upon realizing his error, he immediately apologized to Justice O'Leary.

The commission concluded that Judge Hunt's conduct in sending the email to Justice O'Leary constituted an improper ex parte communication with the appellate court, which also gave the appearance of embroilment, in contravention of his duties to refrain from initiating, permitting, or considering ex parte communications concerning a pending or impending proceeding (canon 3B(7)) and to refrain from engaging in discussions with a judge who may participate in appellate review of the matter (canon 3B(7)(a)). Judge Hunt's conduct also violated section 68070.5, subdivision (b) of the Government Code, which prohibits "communication direct or indirect between any judge hearing the writ and the judge or judicial officer of the court named as a party."

In sending the email, Judge Hunt also made a discourteous and intemperate remark to a judge in another court, in violation of canon 1 (duty to uphold the integrity and independence of the judiciary and to participate in establishing, maintaining, and enforcing high standards of conduct, and to personally observe those standards so that the integrity and independence of the judiciary is preserved); canon 2 (duty to avoid impropriety and the appearance of impropriety in all of the judge's activities); canon 2A; and canon 3C(2) (duty to maintain professional competence in judicial administration, and to cooperate with other judges and court officials in the administration of court business). (See Rothman, *supra*, § 5:61 at p. 321 ["It is improper to make intemperate remarks about other judges or courts. The rationale for this rule is the potential that conduct of this sort could undermine public respect and confidence in the integrity of the judicial system"].)

3. *Shapell Social Rental Properties v. Chico's FAS, Inc.* (No. 30-2020-01171096)

Judge Hunt presided over this commercial unlawful detainer (UD) action that the landlord, Shapell Social Rental Properties (Shapell), filed against Chico's FAS, Inc. (CFI). CFI had leased commercial retail space since 2015. In 2020, CFI did not pay rent in April, May, or June and paid half rent from July through December.<sup>2</sup> In January 2021, CFI resumed making full payments, but never paid the amounts in arrears. On August 17, 2020, Shapell sent a formal notice to CFI's corporate headquarters in Florida, informing CFI that it was in default of the lease due to failure to pay. On August 24, 2020, CFI responded with a letter from its legal counsel notifying Shapell that it had retained Foley & Mansfield "for all real estate disputes . . . arising out of the effects of COVID-19 in the retail sector." The letter requested that Shapell direct communications concerning CFI or the lease(s) for its stores to its corporate counsel at Foley & Mansfield.

On November 19, 2020, Shapell filed a UD action against CFI. On November 20, 2020, Shapell improperly had a registered process server serve the summons and complaint on a store employee at CFI's Laguna Niguel location, instead of sending it to CFI's counsel, CFI's agent for service of process, and/or its corporate headquarters. Shapell also mailed copies of the summons and complaint to the Laguna Niguel store, but not to CFI's counsel or its corporate headquarters. CFI did not respond timely to the complaint.

On December 11, 2020, Shapell filed a request for entry of default and default judgment against CFI, and improperly sent a copy of the request to the Laguna Niguel store. Shapell's counsel, however, did not notify CFI's counsel of its intent to request an entry of default, nor did Shapell send a copy of the

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<sup>2</sup> The appellate decision notes: "In May 2020, CFI's chief operating officer hosted a conference call for its landlords and announced CFI's intent to withhold rents or pay reduced rents and expressed the hope that its landlords would accept reduced payments." (*Shapell v. Chico's FAS, Inc.* (2022) 85 Cal.App.5th 198, 205.)



request to CFI's corporate headquarters. The court entered a default judgment on December 22, 2020.

In March 2021, CFI filed a motion to set aside the default or, in the alternative, the default and default judgment, pursuant to sections 473, subdivision (b) and 473.5 of the Code of Civil Procedure, respectively. At the April 23, 2021 hearing on the motion to set aside the default judgment, CFI's attorney presented evidence that Shapell did not serve the documents at CFI's corporate headquarters in Florida or on CFI's registered agent for service of process in California. CFI's attorney, Angela Sayre, also argued that Shapell had not served the documents on, or sent them to, her firm, which had already contacted Shapell and requested that they send anything concerning litigation to the firm's attention. CFI only learned of the default judgment when Shapell's attorney emailed CFI's attorney informing her that the court had entered a default judgment.

During the April 23, 2021 hearing, Judge Hunt made the following remarks. "I mean, I've got very little indication that your client took it seriously." (R.T. 20:19-20.) "I've got a lot of indication that your client was just dragging its feet, hoping that this would go away." (R.T. 20:22-24.) "But I'm getting a very uncomfortable position about this tenant playing pretty fast and loose with whether they pay rent or not, or whether they want to be there or not." (R.T. 25:24-26:1.)

After hearing oral argument, Judge Hunt took the matter under submission and, on April 26, 2021, he issued a minute order denying CFI's motion. CFI appealed.

In its October 17, 2022 opinion, the Court of Appeal reversed Judge Hunt's order and, "[i]n the interest of justice," ordered his presiding judge to reassign the case to a different judge. (*Shapell v. Chico's FAS, Inc.*, *supra*, at p. 219.) The Court of Appeal made the following findings of fact and law.

Section 473[, subdivision] (b) authorizes the court to set aside a default judgment upon a showing that the default resulted from mistake, inadvertence, surprise, or excusable neglect. . . . [¶] Section 473.5 authorizes the court to set aside a default or default judgment “[w]hen service of a summons has not resulted in actual notice to a party in time to defend the action . . . .”

(*Id.* at p. 212 [citations omitted].)

Shapell’s trial counsel breached its ethical and statutory obligation to advise CFI’s counsel of the intent to seek entry of a default judgment. . . . [¶] The obligation to advise opposing counsel of an impending default is part of an attorney’s responsibility to the court and the legal profession and takes precedence over the obligation to represent the client effectively.

(*Id.* at p. 213 [citations omitted].)

When Shapell had the Complaint served and when it sought to have a default and default judgment entered, it knew CFI was represented by counsel. . . . [¶] Neither Shapell nor its counsel deny knowing who was representing CFI . . . [or] deny failing to warn CFI’s counsel that Shapell intended to request a default judgment.

(*Id.* at p. 214.)

Several factors in combination with counsel’s breach of ethics and violation of section 583.130 [of the Code of Civil Procedure] lead us to conclude the trial court abused its discretion by denying CFI’s motion to set aside the default judgment. [¶] . . . [¶] In the usual case, we must infer the trial court made any and all findings necessary to support an order. [Citations.] But this is not the usual case. From the record presented to us, only one reasonable finding can be made: Shapell intentionally served the Complaint, and sought entry of default and default judgment, in a manner precisely calculated to keep CFI in the dark about what was going on and to produce a substantial possibility of a default. The trial court had no discretion to find otherwise.

(*Id.* at pp. 216-17.)

The trial court [usually] determines the credibility of witnesses presenting testimony by declaration. [Citations.] But we are not bound by credibility determinations that are arbitrary or unreasonable. . . . [¶] The record in the present case does not support a finding that [CFI's attorneys] lacked credibility . . . . There were no conflicts in the declarations for the trial court to resolve.

(*Id.* at pp. 217-18.)

While questioning CFI's integrity, the court completely ignored the ethical and statutory violation committed by Shapell's counsel. [¶] Moreover, if trial court's comments reflected the court's theory, then that theory was unsound [and] . . . not supported by the record.

(*Id.* at p. 219.)

The commission determined that Judge Hunt abused his authority and discretion when he intentionally disregarded the law on default judgments and disregarded CFI's fundamental right to a hearing on its potential eviction when he denied CFI relief from the default judgment. Shapell had an ethical and statutory duty to notify CFI of its intent to seek entry of default and default judgment. (See *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 137.) CFI had presented uncontroverted evidence that Shapell served the UD complaint and the request for default and default judgment in a manner that deprived CFI of actual notice and the Court of Appeal concluded that the "[t]he trial court had no discretion to find otherwise." (*Shapell v. Chico's FAS, Inc, supra*, 85 Cal.App.5th at p. 217.) Judge Hunt ignored that evidence and instead questioned CFI's integrity and credibility. As the Court of Appeal noted, "The trial court [usually] determines the credibility of witnesses presenting testimony by declaration. [Citations.] But we are not bound by credibility determinations that are arbitrary or unreasonable. . . . [¶] The record in the present case does not support a finding that [CFI's attorneys] lacked credibility. . . . There were no conflicts in the declarations for the trial court to resolve." (*Id.* at pp. 217-18.)

Judge Hunt's conduct in intentionally disregarding the law on default judgments went beyond mere legal error; the judge's failure to be faithful to the law reflected bias against CFI, an abuse of authority, and an intentional disregard of CFI's due process rights to a trial on its potential eviction. Judges are expected to know and follow the law and are not permitted to "act with 'reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge's prescribed power.'" (Rothman, *supra*, § 3:48, p. 198 [citing *Broadman v. Commission Judicial Performance* (1998) 18 Cal.4th 1079, 1092].) The commission found that Judge Hunt's conduct violated his duties to be faithful to the law and to maintain professional competence in the law (canon 3B(2)) and to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A).

The commission also concluded that Judge Hunt's remarks accusing CFI of not taking the UD "seriously," of "dragging its feet, hoping [it] would go away," and of "playing pretty fast and loose with whether they pay rent or not" reflected poor demeanor, gave the appearance of bias against CFI and prejudgment of the underlying UD action.

In his objections to the notice of tentative public admonishment, Judge Hunt argued that his remarks were not improper and were "entirely within what is expected and permitted of a judicial officer in colloquy with counsel regarding contested legal matters."

Judge Hunt's comments were discourteous and unnecessary and his focus on CFI's failure to pay rent for several months, which was also reflected in the contemporaneous notes he included with the response to the preliminary investigation letter, created the appearance of bias and prejudgment in the UD action. The commission found that Judge Hunt's conduct in making these remarks constituted violations of canons 3B(4), 3B(5), and 2A.

In addition, the commission concluded, as did the court of appeal, that Judge Hunt "completely ignored the ethical and statutory violation committed by

Shapell’s counsel.” (*Shapell v. Chico’s FAS, Inc, supra*, 85 Cal.App.5th at p. 219.) Judge Hunt had uncontroverted evidence that Shapell’s attorney had violated section 15 of the California State Bar Guidelines of Civility and Professionalism (“[a]n attorney should not take the default of an opposing party known to be represented by counsel without giving the party advance warning,” and should therefore not “race opposing counsel to the courthouse to knowingly enter a default before a responsive pleading can be filed”) and section 583.130 of the Code of Civil Procedure (“[i]t is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action but that all parties shall cooperate in bringing the action to trial or other disposition”).

In his objections to the notice of tentative public admonishment, Judge Hunt argued that Shapell’s counsel’s ethical violation was an issue that was not raised before him. The issue was, however, raised by CFI in its motion to set aside the default. As the appellate court stated: “In that motion [to set aside the default], CFI called out Shapell on its counsel’s ethical and statutory violation. . . . [¶] The trial court . . . failed to address the breach of ethical and statutory duties by Shapell’s counsel.” (*Shapell v. Chico’s FAS, Inc, supra*, 85 Cal.App.5th at p. 204.) Further, it is not necessary to a finding of misconduct that the issue was raised at the hearing. Canon 3D(2) requires judges to take appropriate corrective action in response to an attorney’s ethical misconduct, which may include reporting the violation to the appropriate authority: There is no prerequisite that the issue be raised by a party.

The commission concluded that Judge Hunt’s failure to address the ethical and statutory violations by Shapell’s attorney contravened the duty to take appropriate corrective action when a judge has personal knowledge or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct (canon 3D(2)).

In determining to impose this public admonishment, the commission considered Judge Hunt’s recent prior discipline to be a significantly aggravating

factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(e).) In July 2022, the commission issued a public admonishment to Judge Hunt, finding that he had engaged in misconduct in four civil cases. In three of those cases, the judge denied the parties a full right to be heard before making orders in their cases. The judge also made remarks reflecting poor demeanor and engaged in conduct that gave an appearance of bias. Judge Hunt also received an advisory letter in 2009 for publicly commenting on a pending case. The judge discussed, with a reporter for a legal newspaper, a case in which the judge had presided over trial and post-trial proceedings, which was then pending, and about to be argued, in the Court of Appeal. The commission notes that some of the misconduct here is substantially similar to that for which the judge has already been disciplined. The commission further notes that Judge Hunt engaged in some of the misconduct at issue here after the commission wrote to the judge in connection with the prior investigation and after the commission issued the public admonishment just one year ago.


The commission also considered Judge Hunt's failure to fully appreciate the impropriety of his remarks as an additional aggravating factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(a).)

The commission determined that Judge Hunt's conduct described above was, at a minimum, improper action.

Commission members Dr. Michael A. Moodian; Hon. William S. Dato; Mr. Eduardo De La Riva; Hon. Michael B. Harper; Rickey Ivie, Esq.; Ms. Sarah Kruer Jager; Ms. Kay Cooperman Jue; Mani Sheik, Esq.; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted to impose the public admonishment.

Commission member Hon. Lisa B. Lench did not participate.

Date: August 31, 2023

  
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Dr. Michael A. Moodian  
Chairperson