

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE EMILY T. SPEAR

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Emily T. Spear, a judge of the Los Angeles County Superior Court since January 2019. Her current term began in 2019. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, Judge Spear and her attorney, Andrew J. Waxler, appeared before the commission on August 23, 2023, to contest the imposition of a tentative public admonishment issued on June 2, 2023. Judge Spear waived her 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 Judge Spear and her 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 statement of facts and reasons set forth below.

As described below, the commission concluded that, in 2021 and 2022, while she was assigned to the Family Law Division at the Compton Courthouse, Judge Spear engaged in a pattern of behavior that conveyed a persistent disregard and disrespect for her judicial and administrative obligations, for her judicial colleagues, and for her supervising judges and court administration. Judge Spear's misconduct included numerous unauthorized and undocumented absences and early departures from court; disparaging remarks about a judicial colleague; discourteous conduct toward, and false statements to, her supervising judge; and manipulation of her calendar for personal benefit.

Judge Spear's conduct was, at a minimum, improper action.

STATEMENT OF FACTS AND REASONS

Unauthorized and Undocumented Absences and Early Departures

In 2021, Judge Spear was absent from the courthouse without prior permission from (or notifying) her supervising judge, and she failed to document her absences, as required, as follows.

- Judge Spear was absent from the bench, and failed to seek prior authorization from (or notify) her supervising judge on: January 7, February 3, February 4, February 25, February 26, April 21, May 27, June 8, and August 18, 2021. She failed to document these absences in Checkboard, the court's attendance tracking program.
- In March 2021, Judge Spear was absent on two consecutive court days (March 19, a Friday, and March 22, a Monday), without obtaining authorization, and without notifying her supervising judge or her family law colleagues. This resulted in two petitions for temporary domestic violence restraining orders, which should have been handled immediately, sitting, without being ruled upon, for multiple days.
- Throughout 2021, Judge Spear left the courthouse early to work from home two to three times per week, sometimes before noon. She typically failed to obtain prior permission from her supervising judge before leaving court, as required, and she did not document her half-day absences.

In addition, on September 1, 2022, Judge Spear left the courthouse at 11:30 a.m., without prior authorization, after she was counseled not to do so, and she did not document her half-day absence.

In her response to the preliminary investigation, Judge Spear admitted to these unauthorized and undocumented absences and early departures. She stated, however, that, until a December 2021 counseling session with Judge Amy Pellman, who, at the time, was the supervising judge of the Family Law Division for the Los Angeles County Superior Court, she did not know that judges were expected to be at the courthouse during court hours (i.e., until 4:30 p.m.), and she did not know she needed to obtain permission to work from home.

Judge Spear also emphasized that her unauthorized full-day absences in 2021 were due to illness, but she did not explain why she did not seek authorization from,

or notify, her supervising judge about those absences or why she failed to document them. She also stated that she was unable to document her absences because Checkboard only permits the documentation of half- or full-day absences (and not shorter absences). Judge Spear additionally asserted that a judge's failure to document absences due to illness should not be of interest to the commission because judges "ha[ve] unlimited sick pay." At her appearance before the commission, Judge Spear also claimed that there was an unwritten policy at the Compton Courthouse that judges were not required to get formal approval from the supervising judge before leaving the courthouse early.

The commission concluded that, even if, as the judge contends, she was too ill to work on all the days she was not at the courthouse in 2021 when she was expected to be there, Judge Spear was obligated to seek prior authorization from, or at least notify, her supervising judge, and she did neither. Regarding her routine unauthorized early departures from the courthouse to work from home (two to three times per week), the commission found unpersuasive the judge's contention that she did not know she was expected to be at work during work hours, as well as her contention that she did not know she needed authorization to work from home. The commission also found irrelevant the judge's statement that she was unable to document her absences because Checkboard only permits the documentation of half- or full-day absences (and not shorter absences), in that many of Judge Spear's absences were undocumented half- and full-day absences.

The commission further found the judge's assertion that, because judges have "unlimited sick pay," the commission should not be bothered with a judge's failure to document absences properly, is misguided. The commission is concerned with excessive judicial absence. Indeed, pursuant to rule 10.603(c)(4)(A) of the California Rules of Court, presiding judges must notify the commission of: "(i) A judge's substantial failure to perform judicial duties, including any habitual neglect of duty, persistent refusal to carry out assignments as assigned by the presiding judge, or persistent refusal to carry out the directives of

the presiding judge as authorized by the rules of court; or (ii) Any absences caused by disability totaling more than 90 court days in a 12-month period” Rule 10.603(c)(2)(I) requires presiding judges to “establish a system to monitor judges’ absences from court and maintain records of those absences.” Toward that end, the Los Angeles County Superior Court requires all judges to document their time off in Checkboard. Further, Judge Spear submitted no evidence in support of her claim that judicial officers serving at the Compton Courthouse were not required to get formal approval before leaving the courthouse early.

“A judge’s responsibilities are not limited to the completion of the daily calendar. Judges who conclude their calendars early in the day may be assigned other duties, including presiding over cases other courts are unable to handle due to time limitations or disqualification and handling ex parte motions. Unapproved absences can have a significant impact on the operation of the court . . .” (*Censure of Judge Christopher J. Sheldon* (2009) p. 4.) Further, “[p]ublic confidence in the integrity of the judiciary is seriously undermined when a judge routinely leaves the courthouse early without approval. Taxpayers of the State of California have a right to expect that judges are available to provide the services for which they are paid.” (*Id.* at p. 5.)

The commission concluded that Judge Spear’s unauthorized and undocumented full-day absences in 2021, her routine unauthorized and undocumented early departures from the courthouse in 2021 that resulted in absences of one-half day or more, and her unauthorized and undocumented half-day absence on September 1, 2022, constitute violations of rule 10.608(3) of the California Rules of Court, which requires each judge to request approval of the presiding judge for any intended absence of one-half day or more, within a reasonable time before the intended absence; canon 2A, which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary; canon 3, which requires judges to perform the duties of judicial office competently and diligently; and canon 3C(2),

which requires judges to maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business.

Disparaging Remarks about a Judicial Colleague

In October 2021, Judge Spear made disparaging and profane remarks about a judicial colleague, which were heard by many of the approximately 29 judicial officers at the Compton Courthouse. Specifically, on the morning of October 21, 2021—shortly after Judge Spear and her family law colleague, Judge Esther Kim, debated, through their judicial assistants, which of them should be assigned to a particular civil harassment restraining order matter¹—Judge Spear logged on (remotely) to the weekly meeting of the Compton bench officers. Before the meeting began, but after many judicial officers had joined the meeting, Judge Spear separately telephoned the third family law bench officer in Compton, Commissioner Kimberly Dotson; and, apparently believing she was muted from the courthouse-wide meeting, Judge Spear said words to the effect of: “Esther doesn’t want to do her fucking job,” and “She won’t fucking take it even though it’s her fucking case.”

In her response to the preliminary investigation, Judge Spear admitted the conduct, acknowledging that she created an “uncomfortable and sad situation.” She noted, however, that she had intended her remarks to be private and that, afterwards, she apologized to Judge Kim.

“It is improper to make intemperate remarks about other judges” (Rothman et al., *Cal. Judicial Conduct Handbook* (4th ed. 2017) § 5:61 at p. 321.) Such conduct has the potential to “undermine public respect and confidence in the integrity of the judicial system.” (*Ibid.*) According to Judge Rothman, “[t]he proper course for dealing with complaints about a colleague is speaking directly with the colleague or judicial managers of a court (presiding or supervising judge);]

¹ The restraining order matter had been assigned to Judge Spear, but she thought it should be handled by Judge Kim, and Judge Kim disagreed.

[i]ntemperate public criticism and disputatiousness are not . . . appropriate means for dealing with disagreements among judicial colleagues.” (*Id.* at p. 322.)

The commission concluded that Judge Spear’s disparaging and profane remarks about Judge Kim, carelessly conveyed to Commissioner Dotson such that they were heard by several judicial colleagues, constituted a failure to uphold the integrity of the judiciary and maintain and personally observe high standards of conduct so that the integrity of the judiciary is preserved, in violation of canon 1; a violation of canon 2A; and a failure to be patient, courteous, and dignified to those with whom the judge deals in an official capacity, in violation of canon 3B(4).

Disrespectful Conduct Toward Supervising Judge – December 2021

On December 20, 2021, Supervising Judge Amy Pellman counseled Judge Spear about her unauthorized and undocumented absences and early departures from the courthouse, as described above. During (or regarding being summoned for) this meeting, Judge Spear made statements that conveyed annoyance at having to meet in person with Judge Pellman. Specifically, she complained about having to drive downtown (to the Stanley Mosk Courthouse, where Judge Pellman presides) from Compton, and she told Judge Pellman that she needed to get back to Redondo Beach (where she lives). In addition, Judge Spear was hostile toward Judge Pellman during the meeting, and she exhibited no remorse for the conduct for which Judge Pellman counseled her, took no responsibility for her actions, and conveyed no recognition of how her unauthorized absences and early departures from court could undermine public confidence in the integrity and impartiality of the judiciary or adversely affect her judicial colleagues.

The day after Supervising Judge Pellman counseled Judge Spear, as described above, Judge Pellman telephoned Judge Spear to again counsel her about prioritizing her judicial responsibilities and not inconveniencing her judicial colleagues. Judge Spear had been scheduled to cover another judge’s calendar that afternoon, but mid-morning, she informed the site supervising judge at

Compton that she had personal lunch plans and would not be back in time to cover the calendar, as planned. During the counseling call, Judge Spear exhibited annoyance toward Judge Pellman for contacting her and remarked, sarcastically, “I didn’t know I had to tell people about my personal lunch plans,” or words to that effect.

In her response to the preliminary investigation, Judge Spear admitted that she was annoyed with Judge Pellman for summoning her downtown for the December 20 meeting, but she implied that her annoyance was justified because Judge Pellman had scheduled the meeting without disclosing the purpose, and on short notice, which Judge Spear characterized as “an ambush.” Judge Spear also argued, in her response, that, by scheduling a 2:30 p.m. meeting without notice, Judge Pellman “essentially displayed a total disregard for Judge Spear’s childcare issues.” Judge Spear did not deny the allegations that, during the meeting, she was hostile, exhibited no remorse, took no responsibility for her actions, and conveyed no recognition of the consequences of her conduct. She also did not deny the allegations about her disrespectful conduct toward Judge Pellman when they spoke by telephone on December 21.

“A judge’s failure to cooperate with supervising judges and court officials in a professional manner makes the demanding job of administering court business more difficult and stressful for those involved.” (*Censure of Judge John A. Trice* (2016) p. 24.) The commission concluded that Judge Spear’s hostility toward Supervising Judge Pellman at the December 20 meeting and during the December 21 telephone call, Judge Spear’s remarks reflecting annoyance at having been summoned downtown on short notice and at being directed to preside over a calendar, as scheduled, and her sarcastic remark about having to “tell people about [her] personal lunch plans,” constitute violations of canons 3C(2) and 3B(4). The commission found unpersuasive Judge Spear’s contention, in her response to the commission, that Judge Pellman “displayed a total disregard” for Judge Spear’s childcare issues by scheduling a meeting with her in the middle of

the court day. As she was counseled during that meeting, Judge Spear, like all judges, is expected to work a full day at the courthouse, absent exceptional circumstances and prior authorization.

Disrespectful and Deceitful Conduct Toward Supervising Judge and Manipulation of Her Calendar for Personal Benefit – August 2022

In August 2022, to arrange a longer vacation than she had arranged with her judicial colleagues in the Family Law Division at the Compton Courthouse, Judge Spear made false representations to Supervising Judge Pellman and unilaterally manipulated matters on her calendar, without regard for the consequences to her colleagues and litigants.

Specifically, Judge Spear had been scheduled to be on vacation the week beginning Tuesday, September 6, 2022,² and Judge Kim was scheduled to cover Judge Spear's calendar that week. A few weeks before the scheduled time off, Judge Spear sought to extend her vacation to include the entire week of September 12. When Judge Spear asked the site supervising judge for Compton, Judge Connie Quinones, if she could take the week of September 12 off (in addition to the previously-scheduled week of September 6), Judge Quinones denied the request, because Judge Spear had insufficient vacation time, and no other bench officer was available to cover her calendar that week. Thereafter, Judge Spear emailed Supervising Judge Pellman to request "pro tem coverage" for the week of September 12 because she had pre-paid travel arrangements. Judge Spear noted that "[i]t would be minimal coverage needed" because "[i]t is only a few restraining orders and TROs." She did not disclose that Judge Quinones had already denied her vacation request. Supervising Judge Pellman responded promptly, explaining that requests for vacation should be directed to Judge Quinones, as the site supervising judge. Later that day, Judge Pellman emailed Judge Spear again, informing her that she had become aware that Judge Quinones had already denied

² Monday, September 5, was a holiday.

the vacation request. Judge Pellman also noted that, contrary to Judge Spear's representation, there were "quite a few cases on [her] calendar that week."

Judge Spear also sought to begin her scheduled vacation earlier by taking off Friday, September 2. Judge Spear did not ask Site Supervising Judge Quinones (or Supervising Judge Pellman) for the day off, and, instead, she instructed her judicial assistant to continue the hearings scheduled in her department on Friday, September 2, to Tuesday, September 6, when she would be on vacation and Judge Kim would be covering her calendar. Judge Spear did not discuss moving the hearings with Judge Kim, nor did she discuss it with Judge Quinones (or Judge Pellman). When Judge Kim discovered the continued matters, she notified Judge Pellman, who, on or about August 24, telephoned Judge Spear and counseled her that it was not acceptable to move cases onto another judge's calendar without asking first. Judge Spear told Judge Pellman that Judge Kim had instructed her to continue the matters to September 6, which was not true. In a subsequent call, on or about the same day, Judge Pellman explained to Judge Spear again why moving her cases onto another judge's calendar without discussing it with that judge first was problematic. Judge Spear did not appear to understand the problem with doing so, and she exhibited exasperation with Judge Pellman, telling her that she was repeating herself. When Judge Pellman reminded Judge Spear that she was trying to help her and had always shown respect for her and expected the same respect in return, Judge Spear responded, "Well, don't *you* get annoyed when lawyers repeat themselves?" or words to that effect.

In her response to the preliminary investigation, Judge Spear admitted that it was a "mistake in judgment" for her to ask Supervising Judge Pellman for the week of September 12 off without disclosing that Site Supervising Judge Quinones had already denied the request. She explained that she did so because she thought Judge Quinones had only denied the request because she (Judge Quinones) was "mad" at her. Judge Spear did not deny the allegations that she misled

Judge Pellman about the number of matters on her calendar the week of September 12 or that she falsely told Judge Pellman that Judge Kim had told her to continue the September 2 matters. She also did not deny the allegation that she treated Judge Pellman disrespectfully during the August 24 telephone conversation (by exhibiting exasperation, telling Judge Pellman that she was repeating herself, and stating, sarcastically, “Well, don’t *you* get annoyed when lawyers repeat themselves?” or words to that effect). Additionally, regarding the allegation that she improperly unilaterally continued hearings from her September 2 calendar to September 6, when Judge Kim would be covering for her, without first discussing it with Judge Kim, Judge Spear responded only that she “rescheduled the matters she had control over and believes they were all timely heard.”

The commission concluded that, by asking Supervising Judge Pellman for time off when Site Supervising Judge Quinones had already denied the same request (and without telling Judge Pellman that Judge Quinones had denied the request), by falsely telling Judge Pellman that she had moved hearings from September 2 to September 6 because Judge Kim had told her to do so, and by underreporting what she had on calendar the week she wanted off, all for the purpose of extending her vacation, Judge Spear exhibited dishonest conduct and a lack of integrity that is not befitting a judicial officer. “The Supreme Court has stated unequivocally that honesty is a minimum qualification for every judge. . . . If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental.” (*Inquiry Concerning Judge Kevin A. Ross* (2005) 49 Cal.4th CJP Supp 79, 89-90, citations omitted.) The commission concluded that Judge Spear’s conduct in this regard violated canons 2A, 3C(2), 3B(4), 3, and 1.

The commission additionally concluded that, by displaying exasperation with Supervising Judge Pellman when Judge Spear was being counseled about manipulating her calendar, and by rudely telling Judge Pellman that she was repeating herself and stating, “Well, don’t *you* get annoyed when lawyers repeat

themselves?” or words to that effect, Judge Spear’s conduct constitutes additional violations of canons 3B(4), 3C(2), 1, 2A, and 3.

The commission further concluded that Judge Spear engaged in misconduct when, without notice to her judicial colleague, she continued matters on her September 2 calendar to a later date on which she knew Judge Kim would be covering for her, for the purpose of taking an unplanned and unauthorized day off. The commission acknowledges that judges must, from time to time, continue matters because of personal circumstances, and that doing so is not necessarily misconduct. But here, Judge Spear’s entire course of conduct surrounding her efforts to extend her September 2022 vacation reflects manipulation and dishonesty to get what she wanted, even though she did not have sufficient vacation time to cover the days off she sought. She did not ask her supervising judge for September 2 off, which would have been the appropriate (and required) way to take a vacation day. Instead, she continued matters on her calendar so that her absence would not be noticed. And in doing so, she added to Judge Kim’s workload, without discussing it with her first (or even informing her afterwards). Judge Spear’s manipulation of her calendar for personal benefit violated canons 3C(2), 3B(4), 3, 1, and 2A.

DISCIPLINE

Judge Spear asserts that her misconduct is mitigated by a number of factors. In both her response to the preliminary investigation, her objections to the notice of tentative public admonishment, and at her appearance before the commission, Judge Spear argued that her health problems—which she characterized as significant, serious, and potentially life threatening—were well known to her supervising judges and the cause of the majority of her misconduct. Judge Spear, however, presented minimal evidence in support of her claim. And, while in her objections and at her appearance before the commission, Judge Spear claimed that she has received “glowing” and “outstanding” reviews of her current performance from her supervising judges, she presented no evidence to the commission in

support of this claim. Further, Judge Spear argues that she has accepted responsibility for her misconduct and is remorseful. Although at her appearance before the commission, Judge Spear acknowledged the impropriety of some of her conduct, in her response to the preliminary investigation she consistently defended her conduct and directed blame towards her colleagues and supervising judges.

In light of the number of incidents of misconduct, the judge's lack of insight into the seriousness of her misconduct, and the fact that some of her misconduct reflected a lack of integrity (Policy Declarations of Com. on Jud. Performance, policies 7.1(1)(a), 7.1(2)(a), 7.1(1)(d)), the commission has determined that a public admonishment is the appropriate discipline.

Commission members Dr. Michael A. Moodian; Hon. William S. Dato; Hon. Michael B. Harper; Ms. Sarah Krueger Jager; Ms. Kay Cooperman Jue; Mani Sheik, Esq.; and Mr. Richard Simpson voted to impose the public admonishment. Commission member Ms. Beatriz E. Tapia was recused from this matter, pursuant to commission policy declaration 6.1. Commission members Mr. Eduardo De La Riva; Rickey Ivie, Esq.; and Hon. Lisa B. Lench did not participate.

Date: September 6, 2023



Dr. Michael A. Moodian
Chairperson