[No. 203. Nov. 6, 2019.]

INQUIRY CONCERNING JUDGE JOHN T. LAETTNER

SUMMARY

After an evidentiary hearing conducted by special masters, the Commission on Judicial Performance removed the judge from judicial office and disqualified him from acting as a judge. The commission determined that there were five acts of willful misconduct and 11 acts of prejudicial misconduct. The commission adopted the special masters' factual findings as to all counts and the masters' legal conclusions as to most, but not all, of the allegations. The judge was found to have committed willful misconduct by engaging in three improper ex parte communications and by engaging in retaliatory conduct when he remanded a criminal defendant without affording his attorney notice and the right to be heard. The judge was found to have committed prejudicial misconduct by remanding a different defendant without affording her attorney the right to be heard regarding bail; by making undignified and inappropriate remarks to, and about, a number of women, which reflected gender bias; and by displaying poor demeanor. The commission determined that much of the judge's misconduct reflected a pattern of engaging with attorneys appearing before him in a manner that was governed by his emotions, rather than by the California Code of Judicial Ethics. His desire to have certain attorneys like him and not be upset or "mad at him" about his rulings, and action he had taken when he was angry or upset with them, had, at times, overridden his compliance with the canons of judicial ethics. The factual findings of the special masters suggested that the judge failed to maintain the necessary professional distance between himself and attorneys appearing before him, or

that he became embroiled. The judge had also displayed a pattern of inappropriate treatment of women in his courtroom that reflected bias based on gender, as well as physical appearance. He had taken responsibility for some, but not all, of the improper comments he was found to have made to and about women, but he had not accepted responsibility for the other misconduct that the special masters found was proven (i.e., denying criminal defendants due process, improper ex parte communications, and discussing peremptory challenges against him with the deputy public defenders who were filing them). There was substantial evidence that, during his 13 years as a judge, the judge had an exemplary work ethic and had been a responsible, conscientious judge, and an asset to his court. However, given the commission's mandate to uphold high standards of judicial conduct, protect the public, and preserve the integrity and impartiality of the judiciary, it was the judge's lack of candor during the disciplinary proceeding, and his selective and limited acknowledgment of his misconduct, that led the commission to conclude that removal from the bench was the appropriate discipline. (Opinion by Nanci E. Nishimura, Chairperson.)

HEADNOTES

(1) Judges § 6.4—Discipline—Removal—Lack of Candor—Acknowledgement of Misconduct.—There was substantial evidence that, during his 13 years as a judge, the superior court judge had an exemplary work ethic and had been a responsible, conscientious judge, and an asset to his court. But given the Commission on Judicial Performance's mandate to uphold high standards of judicial conduct, protect the public, and preserve the integrity and impartiality of the judiciary, it was the judge's lack of candor during the disciplinary proceeding, and his selective and limited acknowledgment of his misconduct, that led to the conclusion that removal from the bench was the appropriate discipline.

[Cal. Forms of Pleading and Practice (2019) ch. 317, Judges, § 317.85.]

(2) Judges § 6.2—Misconduct—Types.—There are three types of judicial misconduct: willful misconduct, prejudicial misconduct, and improper action.

(3) Judges § 6.2—Misconduct—Willful—Elements.—Willful misconduct is the most serious type of judicial misconduct. Its elements are: (1) unjudicial conduct, (2) committed in bad faith, (3) by a judge acting in a judicial capacity. Unjudicial conduct occurs when a judge fails to comply with the canons of judicial ethics. A judge acts in bad faith by: (1) performing a judicial act for a corrupt purpose (which is any purpose

other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority.

(4) **Judges § 6.2—Misconduct—Prejudicial.**—The second most serious type of judicial misconduct is conduct prejudicial to the administration of justice that brings the judicial office into disrepute, also referred to as prejudicial misconduct (Cal. Const., art. VI, § 18, subd. (d)). Prejudicial misconduct does not require bad faith; rather, it is conduct that a judge undertakes in good faith, while acting in a judicial capacity, but that nevertheless would appear to an objective observer to be not only unjudicial but prejudicial to public esteem for the judicial office.

(5) **Judges § 6.2—Misconduct—Improper Action.**—Improper action occurs when a judge's conduct violates the canons of judicial ethics, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. Improper action may be the basis for a public or private admonishment, but not censure or removal (Cal. Const., art. VI, § 18, subd. (d)).

(6) **Judges § 6.4—Disciplinary Proceedings—Burden of Proof.**—The examiner for the California Commission on Judicial Performance has the burden of proving the charges by clear and convincing evidence. Evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. Clear and convincing evidence is so clear as to leave no substantial doubt. It is sufficiently strong to command the unhesitating assent of every reasonable mind.

(7) **Judges § 6.4—Disciplinary Proceedings—Special Masters—Factual Findings and Legal Conclusions—Review.**—Factual findings of the special masters are entitled to special weight because the masters were in a position to observe and assess the demeanor of the witnesses, but the legal conclusions of the masters are entitled to less deference because the Commission on Judicial Performance has expertise with respect to the law concerning judicial ethics. Thus, if the commission reaches a contrary legal conclusion, it is free to disregard the legal conclusion of the masters.

(8) **Judges § 6—Ex Parte Communications.**—Ex parte communications for scheduling, administrative purposes, and emergencies should only be used when it is impossible or impracticable to assemble everyone.

(9) **Judges § 6—Adjudicative Responsibility—Assistance—Exclusions.**—Cal. Code Jud. Ethics, canon 3B(7)(a), specifically excludes the lawyers

in a proceeding before the judge from assisting the judge in his or her adjudicative responsibility.

(10) Judges § 6.4—Disciplinary Proceedings—Special Masters—Fact Issues—Credibility—Review.—The Commission on Judicial Performance should give special weight to the special masters' resolution of fact issues that turn on the credibility of testimony taken in their presence.

(11) Judges § 8—Adjudicative Responsibility—Assistance—Bailiffs.—Bailiffs are expressly permitted to assist the judge under Cal. Code Jud. Ethics, canon 3B(7).

(12) Civil Rights § 3.2—Employment—Sexual Harassment.—Sexual harassment requires a finding that the harassing conduct was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex.

(13) Judges § 14—Disqualification—Grounds—Lack of Impartiality.—Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii), provides that a judge must be disqualified if, for any reason, a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

(14) Judges § 6—Disclosures—Adult Child Working in District Attorney's Office.—A judge must disclose that his or her adult child works in the district attorney's office in every case in which the district attorney's office appears. The requisite disclosure is for the benefit of the parties, so that they might evaluate whether to seek to disqualify the judge.

(15) Judges § 1—Integrity of Judiciary.—The integrity of the judiciary depends upon the unflinching posture by judges that necessary but unpopular decisions will always be made.

(16) Judges § 6.2—Misconduct—Willful—Stopping Peremptory Challenges.—Willful misconduct occurs when a judge acts on the desire to stop Code Civ. Proc., § 170.6, challenges from being filed against the judge by initiating any communication with the lawyer or the law firm involved.

(17) Judges § 6.4—Discipline—Determining Appropriate Level.—In determining the appropriate level of discipline for a judge, the Commission on Judicial Performance considers its mandate to protect the public, to enforce rigorous standards of judicial conduct, and to maintain public confidence in the integrity and impartiality of the judiciary.

(18) Judges § 6.4—Discipline—Factors.—The Commission on Judicial Performance has identified several factors to consider in determining the appropriate sanction for a judge, including the judge's honesty and integrity, the number of acts and seriousness of the misconduct, whether the judge appreciates the impropriety of the conduct, the likelihood of future misconduct, the impact of the misconduct on the judicial system, and the existence of prior discipline. The commission may also consider the effect of the misconduct on others and whether the judge has cooperated fully and honestly in the commission proceeding. Foremost in the commission's consideration of the foregoing factors is honesty and integrity. Honesty is a minimum qualification expected of a judge. A judge who does not honor the oath to tell the truth cannot be entrusted with judging the credibility of others. The commission takes particularly seriously a judge's willingness to lie under oath to the three special masters appointed by the Supreme Court to make factual findings critical to its decision. There are few judicial actions that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the commission in the course of its investigation into charges of willful misconduct on the part of the judge.

(19) Evidence § 23—Admissibility—Relevancy—Probative Value and Probability of Undue Consumption of Time.—Evid. Code, § 352, allows the court to exclude evidence if, in its discretion, the probative value of the evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

(20) Judges § 6.4—Discipline—Appreciation or Admission of Impropriety.—A judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform.

(21) Judges § 6.4—Discipline—Mitigating Circumstances.—Because the aim of Commission on Judicial Performance proceedings is protection of the public and not punishment, in the more serious cases involving willful and prejudicial misconduct, mitigating circumstances have only limited appeal. The commission has removed judges from the bench who had no prior misconduct, particularly where dishonesty was involved.

(22) Judges § 6.4—Discipline—Factors—Lack of Veracity.—Even a good reputation for legal knowledge and administrative skills does not mitigate willful misconduct or prejudicial misconduct by a judge. If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental.

(23) Judges § 6—Honesty and Integrity.—Judges must, at a minimum, be honest and have integrity.

OPINION

NISHIMURA, Chairperson.—

I. INTRODUCTION

This disciplinary matter concerns Contra Costa County Superior Court Judge John T. Laettner. The Commission on Judicial Performance commenced this inquiry with the filing of its notice of formal proceedings on September 14, 2018.

Judge Laettner is charged with nine counts of misconduct, which, with subparts, include 28 allegations of misconduct. The allegations involve remanding criminal defendants without notice and the opportunity to be heard in two cases (counts 1 and 3); three improper ex parte communications (counts 1 and 2); a pattern of undignified and inappropriate comments to women (counts 2, 4, and 5); making statements that give the appearance of prejudgment and bias (count 6); improperly instituting a new program to address a backlog of criminal cases (count 7); failing to disclose and/or disqualify in some cases involving his son, who is a deputy district attorney (count 8); and attempting to persuade certain deputy public defenders not to file peremptory challenges against him (count 9).

The California Supreme Court appointed Hon. M. Kathleen Butz, Associate Justice of the Court of Appeal, Third Appellate District; Hon. Douglas Hatchimonji, Judge of the Orange County Superior Court; and Hon. Russell L. Hom, Judge of the Sacramento County Superior Court, as special masters to conduct an evidentiary hearing.

The 10-day hearing took place between February 25 and March 8, 2019, with closing arguments on April 26, 2019. The masters filed a report containing their findings of fact and conclusions of law on June 14, 2019. The commission heard oral argument on October 2, 2019.

The special masters found that the allegations in counts 1 (in part), 2 (in part), 3, 4 (in part), 5 (in part), and 9 (in part) were proven by clear and convincing evidence, and that the allegations in counts 6, 7, and 8 were not proven. They concluded that Judge Laettner committed willful misconduct as to counts 1 (in part) (ex parte communication with a prosecutor), 3 (remanding a criminal defendant without notice and an opportunity to be heard), and 9 (discouraging deputy public defenders from filing peremptory challenges); that he committed prejudicial misconduct as to counts 1 (in part) (remanding a criminal defendant without notice and an opportunity to be heard), 2, 4, and 5 (in part) (gender bias and inappropriate comments to and about women);

and that his conduct constituted improper action as to count 5 (in part) (gender bias and inappropriate comments to and about women).

We conclude, based on our independent review of the record, that the masters' factual findings as to all counts are supported by clear and convincing evidence, and we adopt them in their entirety. We include in our decision some additional facts that are supported by clear and convincing evidence.

The masters also found that Judge Laettner was "not credible or not truthful as it relates to his testimony concerning several of the events making up this inquiry," and that "[h]is lack of candor regarding several of the allegations is troubling." We agree with, and adopt, the masters' credibility findings.

We adopt the masters' legal conclusions as to most, but not all, of the allegations. In some instances, we reach our own independent legal conclusions. We base our decision on five acts of willful misconduct and 11 acts of prejudicial misconduct that we find Judge Laettner committed.

Much of Judge Laettner's misconduct reflects a pattern of engaging with attorneys appearing before him in a manner that is governed by his emotions, rather than by the California Code of Judicial Ethics. His desire to have certain attorneys like him and not be upset or "mad at him" about his rulings, and action he has taken when he was angry or upset with them, has, at times, overridden his compliance with the canons of judicial ethics. The factual findings of the special masters suggest that Judge Laettner failed to maintain the necessary professional distance between himself and attorneys appearing before him, or that he became embroiled. "Once a judge becomes embroiled in a matter, fairness, impartiality, and the integrity of decisions leave the courtroom." (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 1:35, p. 27 (hereafter Rothman).)

Judge Laettner has also displayed a pattern of inappropriate treatment of women in his courtroom that reflects bias based on gender, as well as physical appearance. He has taken responsibility for some, but not all, of the improper comments he was found to have made to and about women, but he has not accepted responsibility for the other misconduct that the special masters found was proven (i.e., denying criminal defendants due process, improper ex parte communications, and discussing peremptory challenges against him with the deputy public defenders who were filing them).

(1) There is substantial evidence that, during his 13 years as a judge, Judge Laettner has had an exemplary work ethic and has been a responsible, conscientious judge, and an asset to his court. In light of this evidence, if we

were to consider only his acts of willful and prejudicial misconduct, we would impose a censure. But given our mandate to uphold high standards of judicial conduct, protect the public, and preserve the integrity and impartiality of the judiciary, it is Judge Laettner's lack of candor during this proceeding, and his selective and limited acknowledgment of his misconduct, that leads us to conclude that removal from the bench is the appropriate discipline.

Judge Laettner is represented by James A. Murphy, Esq., Janet L. Everson, Esq., and Joseph S. Leveroni, Esq., of Murphy, Pearson, Bradley & Feeney in San Francisco, California. The examiners for the commission are commission trial counsel Mark A. Lizarraga, Esq., and commission assistant trial counsel Bradford Battson, Esq.

II. LEGAL STANDARDS

A. *Levels of Misconduct*

(2) There are three types of judicial misconduct: willful misconduct, prejudicial misconduct, and improper action.

1. *Willful Misconduct*

(3) Willful misconduct is the most serious type of misconduct. Its elements are (1) unjudicial conduct, (2) committed in bad faith, (3) by a judge acting in a judicial capacity. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1091 [77 Cal.Rptr.2d 408, 959 P.2d 715] (*Broadman*).) Unjudicial conduct occurs when a judge fails to comply with the canons of judicial ethics. (*Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 662 [34 Cal.Rptr.2d 641, 882 P.2d 358].) A judge acts in bad faith "by (1) performing a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority." (*Broadman, supra*, 18 Cal.4th at p. 1092.)

2. *Prejudicial Misconduct*

(4) The second most serious type of misconduct is "conduct prejudicial to the administration of justice that brings the judicial office into disrepute," also referred to as "prejudicial misconduct." (Cal. Const., art. VI, § 18, subd. (d).) Prejudicial misconduct does not require bad faith; rather, it is conduct that a judge undertakes in good faith, while acting in a judicial capacity, but that nevertheless would appear to an objective observer to be not only unjudicial

but prejudicial to public esteem for the judicial office. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 284 [110 Cal.Rptr. 201, 515 P.2d 1].)

3. *Improper Action*

(5) Improper action occurs when the judge's conduct violates the canons, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. (*Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89 (*Ross*), citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 897–899 [42 Cal.Rptr.2d 606, 897 P.2d 544] (*Adams II*).) Improper action may be the basis for a public or private admonishment, but not censure or removal. (Cal. Const., art. VI, § 18, subd. (d).)

B. *Burden of Proof*

(6) The examiner has the burden of proving the charges by clear and convincing evidence. (*Broadman, supra*, 18 Cal.4th at p. 1090.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.]" (*Ibid.*) Clear and convincing evidence is so clear as to leave no substantial doubt. It is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Ibid.*)

C. *Standard of Deference to Findings and Conclusions of Special Masters*

(7) The California Supreme Court has held that factual findings of the special masters are entitled to special weight because the masters were in a position to observe and assess the demeanor of the witnesses, but the legal conclusions of the masters are entitled to less deference because the commission has expertise with respect to the law concerning judicial ethics. (See *Adams II, supra*, 10 Cal.4th at p. 880, citing *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 832 [264 Cal.Rptr. 100, 782 P.2d 239] (*Kloepfer*).) Thus, if the commission reaches a contrary legal conclusion, it is free to disregard the legal conclusion of the masters. (*Inquiry Concerning Freedman* (2007) 49 Cal.4th CJP Supp. 223, 232.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. *Count 1*—People v. Imlay

Judge Laettner is charged with (a) an improper ex parte communication with a law enforcement officer; (b) remanding a criminal defendant without

exonerating and resetting bail in open court, and then later increasing bail in the defendant's absence and without a hearing on the appropriate bail amount, thereby failing to accord the defendant and her attorney the full right to be heard according to law; and (c) an improper ex parte communication with a prosecutor. The misconduct allegedly occurred while Judge Laettner was presiding over *People v. Imlay*.

The special masters found that Judge Laettner committed willful misconduct by engaging in an improper ex parte communication with a prosecutor, but that his ex parte communication with a law enforcement officer was not misconduct. They also found that Judge Laettner committed prejudicial misconduct by failing to afford a criminal defendant and her attorney the right to be heard regarding bail.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with one additional canon violation (Cal. Code Jud. Ethics, canon 3B(7) (further references to a canon are to this code)), discussed below.

1. *Findings of Fact*

In May 2017, Judge Laettner presided over a misdemeanor and felony arraignment courtroom in the Martinez courthouse of the Contra Costa County Superior Court, conducting arraignments and pretrial hearings. His courtroom was one of the busiest in the county, often hearing over 100 cases per day.

a. *May 18, 2017*

On May 18, 2017, Judge Laettner presided over *People v. Imlay*, a criminal matter in which Stephanie Imlay was alleged to have a diversion failure, two probation violations, a misdemeanor drug case, and a felony attempted car theft. Imlay was represented by Deputy Public Defender Krista Della-Piana, and had been released on bail, on all cases. That morning, before her cases were called, Imlay was found sleeping on the floor outside Judge Laettner's department. Imlay was later found asleep inside Judge Laettner's courtroom.

When Deputy Public Defender Della-Piana appeared in Judge Laettner's courtroom on May 18, 2017, she presented to the court an executed waiver of rights form, intending for Imlay to enter a change of plea. Judge Laettner asked Della-Piana about Imlay's condition, stating: "Ms. Della-Piana, your client doesn't look like she feels too well." Della-Piana responded: "She's doing okay. She's ready to proceed." Judge Laettner said he was going to have a law enforcement officer examine Imlay to determine whether she was

under the influence, which would affect her ability to competently waive her rights. Operations Sergeant Garrett Schiro volunteered to perform a drug abuse recognition examination of Imlay. Della-Piana was present for some or all of the examination. Sergeant Schiro formed the opinion that Imlay was under the influence of a controlled substance. He then went into Judge Laettner's chambers and told the judge his opinion. Della-Piana was not present during this conversation in chambers. Judge Laettner and Sergeant Schiro returned to the courtroom, where Judge Laettner put on the record that Sergeant Schiro had performed the examination of Imlay and was of the opinion that she was under the influence, so the court was unable to proceed with the change of plea at that time.

After summarizing on the record his conversation with Sergeant Schiro, Judge Laettner remanded Imlay into custody. When Imlay was handcuffed, she became upset, loudly crying and talking directly to Judge Laettner, and protesting her remand and asking to be released. Judge Laettner indicated his belief that Imlay had been released on her own recognizance, but Deputy Public Defender Della-Piana told him that Imlay was out on bail. After some colloquy, Judge Laettner left the bench.

Deputy Public Defender Della-Piana testified that Judge Laettner did not revoke Imlay's prior bail, or raise and reset bail, in her presence, and that he did not give her a chance to be heard about bail.

Judge Laettner testified that, when he returned to the bench a few minutes later, his clerk told him that he needed to set bail in the *Imlay* matter. He testified that he exonerated bail and set new bail in open court, with Deputy Public Defender Della-Piana present. At some point, the judge's clerk prepared minute orders setting bail at $25,000 in each of Imlay's cases.

The masters found that Judge Laettner was "not credible" when he testified that he exonerated and reset Imlay's bail in open court, and in Deputy Public Defender Della-Piana's presence, and that he gave Deputy Public Defender Della-Piana a chance to be heard on bail. He testified that, although the prosecutor was at the counsel table, he called Della-Piana into the well between the counsel table and the bench so that she could receive the minute orders, where he told her that he had reset bail at $25,000 on each case, and she did not object. Della-Piana testified that this did not occur. The bailiff, Deputy Scott Reed, testified that the normal procedure in Judge Laettner's courtroom was to make the orders available to public defenders by putting them in a bin he had for them. The masters said Judge Laettner's stated reason for calling Della-Piana into the well "rings hollow" because there was "no rational reason" for him to want to see that Della-Piana got the paperwork in the well, especially since he must have assumed, at the time, that the court

reporter was taking down his open court order to exonerate and reset bail. And it would have been improper for the judge to talk to the public defender in the well while opposing counsel sat at counsel table, as both sides have the right to be heard on bail.

Judge Laettner objects to this finding based on his explanation described above, which the masters found was not credible. We agree with the masters.

The masters also found that Judge Laettner was "not credible" in explaining why his order exonerating and resetting bail, which he said he had issued in open court, was not reflected in the transcript of the proceedings. He testified that he believed his court reporter, Jennifer Michel, was not present when he set bail because she was difficult to locate. But Michel was his court reporter for 11 years and, other than *Imlay* and another case involved in these proceedings (*People v. Ventura*), he could recall only one occasion when he discovered something was not in the transcript that he was sure he had said. He also testified, inconsistently, that things did not appear in the record because Michel *was* present but was not taking things down. The masters found no basis for believing that Judge Laettner's court reporter would not have transcribed a bail order, if he had made one in open court, and that the "only reasonable inference" from the evidence is that he did not exonerate and reset bail in open court, thereby denying the defendant the opportunity to be heard as to bail.

Judge Laettner objects to this finding based on his explanation described above, which the masters found was not credible. We agree with the masters.

b. *May 25, 2017*

Imlay was set for another hearing on May 25, 2017. Deputy Public Defender Della-Piana and another deputy public defender noticed that Imlay had not given an *Arbuckle* waiver[1] on the diversion case, so Judge Laettner could not sentence her on that case. They brought this to the clerk's attention. The clerk went into the judge's chambers and told him this. Judge Laettner said this meant that he could not sentence Imlay on the diversion case, and he needed to get a deputy district attorney to the other judge's courtroom to handle sentencing.

Judge Laettner asked to speak to Deputy District Attorney Jun Fernandez in his chambers. Deputy Public Defender Della-Piana testified that she was in the courtroom when this occurred. Judge Laettner testified that he did not see her

[1] *People v. Arbuckle* (1978) 22 Cal.3d 749, 756–757 [150 Cal.Rptr. 778, 587 P.2d 220] provides that a defendant who enters a guilty plea before one judge is entitled to have the same judge impose sentence, unless the right is waived.

in the courtroom and did not know where she was. Fernandez testified that Della-Piana was not in the courtroom when Judge Laettner called him into chambers.

Judge Laettner testified that he told Deputy District Attorney Fernandez, "We can't discuss the cases," that he was going to send the diversion case to another judge, and that a deputy district attorney would be needed to cover that appearance.

Deputy District Attorney Fernandez testified that Judge Laettner asked him in chambers, "What do you want to do on these matters?" The court reporter, Michel, testified that she overheard the judge say to Fernandez, ". . . 'so what are we going to do about the time waiver or the *Arbuckle* waiver,' something along those lines."

When Deputy District Attorney Fernandez returned to the courtroom from the judge's chambers, Deputy Public Defender Della-Piana asked him if he and the judge had been discussing the *Imlay* cases. He said that they had and that, because there was no *Arbuckle* waiver in one case, Judge Laettner would be sending the cases to a different judge. Fernandez testified that his conversation with the judge in chambers took 30 seconds to one minute.

When Judge Laettner went back on the record, he said the clerk had brought to his attention the lack of an *Arbuckle* waiver on the diversion case and that he would be sending that case to a different judge. Deputy Public Defender Della-Piana then stated that Imlay had been "illegally detained" and asked that Imlay be released. The following exchange occurred:

"MS. DELLA-PIANA: . . . I would also like to put on the record that the court asked Jun Fernandez, the DA in this case, to go back in chambers without anyone from my office being present, discussed this case and what would happen in this case, and the *Arbuckle* waiver without counsel present for Ms. Imlay. [¶] So Ms. Imlay's rights are being violated multiple ways, and I'm asking that she be released immediately.

"THE COURT: Yes. [¶] Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present.

"MS. DELLA-PIANA: I do because I asked Mr. Fernandez.

"THE COURT: So we—I told Mr. Fernandez that this case was going back to Judge Mills because there was an *Arbuckle* problem."

Deputy Public Defender Della-Piana testified that on June 8, 2017 (about two weeks later), Judge Laettner discussed with her in chambers the *Imlay* matter

and his ex parte communication with Deputy District Attorney Fernandez, and that he told her the reason he had not included her in his conversation in chambers with Fernandez: "You want me to tell you why I—why I only brought in Jun Fernandez? I was mad at you. I was mad at you about the *Imlay* case. I was still mad at you that day." The masters found Della-Piana's testimony on this topic to be credible. They also found that Judge Laettner's "petulant" response to Della-Piana's question about the ex parte communication ("Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present.") is consistent with him being mad at her. They noted that "expressing his upset with counsel is an established pattern of conduct," which includes admitting that Della-Piana was mad at him, that he "snapped" at Deputy Public Defender Christy Wills-Pierce, and that he was angry or upset with Deputy Public Defender Jermel Thomas (discussed below).

Judge Laettner objects to the masters' findings regarding his ex parte communication with Deputy District Attorney Fernandez. First, Judge Laettner contends that Deputy Public Defender Della-Piana was not present in the courtroom when he called Fernandez into his chambers, which made "her inclusion [in the conversation] impossible." Although the judge, court reporter Michel, and Fernandez testified that Della-Piana was not in the courtroom, Della-Piana testified that she was present.

(8) The masters found it unnecessary to resolve the dispute about whether Deputy Public Defender Della-Piana was in the courtroom when Judge Laettner called Deputy District Attorney Fernandez into his chambers because, even if she had not been present at that moment, there is "no reason to believe that it was impossible or impracticable for Judge Laettner to wait until Della-Piana was present in the courtroom." "Ex parte communications for scheduling, administrative purposes, and emergencies should only be used when it is impossible or impracticable to assemble everyone." (Rothman, *supra*, § 5:5, p. 269.)

The masters found that the evidence was clear that Deputy Public Defender Della-Piana was in the courtroom when the clerk took the *Imlay* files into the judge's chambers to discuss the lack of *Arbuckle* waiver, and she was in the courtroom when Deputy District Attorney Fernandez emerged from the judge's chambers, where he said he spent only 30 seconds to one minute. Judge Laettner could, therefore, have either had Della-Piana summoned to the courtroom or waited for her to return for the impending hearing, at which she was to be present.

Second, the judge argues that the exception under canon 3B(7)(b) for ex parte communications for scheduling purposes applies because there is no evidence that the subject of the ex parte was anything other than scheduling. Deputy District Attorney Fernandez testified that, when the judge called him

into chambers, the judge asked him what he wanted to do on the *Imlay* matters. He also testified that he "got the idea that it was just about procedures." Court reporter Michel heard the judge say, ". . . 'so what are we going to do about the time waiver or the *Arbuckle* waiver,' something along those lines." By asking Fernandez, "What do you want to do on these matters?" the judge appears to have been asking how the prosecutor wanted to handle them. The masters found, and we agree, that this was more than just a question about "scheduling." Scheduling pertains to a date or time something will occur; there is no evidence that setting dates or times for anything was discussed.

But even if the ex parte communication with Deputy District Attorney Fernandez had been to discuss "scheduling," the masters found that Judge Laettner did not promptly disclose it, as required by canon 3B(7)(b)(ii). Judge Laettner claims he promptly disclosed the conversation to the parties, but this is inconsistent with the transcript, which reflects that it was Deputy Public Defender Della-Piana who brought up the ex parte communication, which she learned about from Fernandez, and not the judge. And when she brought it up, the judge said: "Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present." The judge's response does not constitute prompt disclosure.

(9) Third, Judge Laettner argues that Deputy District Attorney Fernandez was assisting him in his adjudicative responsibility, which is permitted by canon 3B(7)(a). Canon 3B(7)(a), however, specifically excludes the lawyers in a proceeding before the judge. Fernandez was a lawyer in the proceeding.

(10) Fourth, Judge Laettner asserts that there is no reliable evidence, "given its source [Deputy Public Defender Della-Piana]," that he told Della-Piana on June 8, 2017, that he was "mad" at her, and contends that this is contradicted by his and Michel's testimony that his conversation in chambers with Della-Piana was about restoring a good working relationship. The masters, who are in a better position to evaluate credibility, found Della-Piana to be credible on this point. The commission should "give special weight to the special masters' resolution of fact issues that turn on the credibility of testimony taken in their presence." (*Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552, 557 [37 Cal.Rptr.2d 581, 887 P.2d 937].) In addition, Michel testified that she probably heard less than a minute of the conversation between the judge and Della-Piana. Contrary to what the judge contends, having a conversation about a good working relationship is consistent (and not inconsistent) with the judge discussing with Della-Piana why he was upset with her, and she with him, with regard to what occurred in *Imlay*. It is also consistent with the judge's pattern of being overly concerned about how he is perceived by deputy public defenders and his desire to be liked by them, and by Deputy Public Defender Della-Piana in particular.

Fifth, Judge Laettner says that after Deputy Public Defender Della-Piana accused him of having an ex parte communication with Deputy District Attorney Fernandez, he told Supervising Judge Theresa Canepa about the conversation, and she concluded that, because it related to scheduling only, it was proper. Judge Canepa's opinion is irrelevant, especially because it is based on Judge Laettner's (unsubstantiated) representation that he and Fernandez discussed only scheduling.

We agree with, and adopt, the masters' factual findings.

2. *Conclusions of Law*

a. *May 18, 2017*

The masters concluded, based on clear and convincing evidence, that Judge Laettner directed his clerk to reflect on minute orders that bail was exonerated and reset at $25,000 per case, without giving Imlay, through her counsel Deputy Public Defender Della-Piana, the opportunity to be heard. They took into account the busy environment of the judge's courtroom and indicated that what occurred could have been a mistake. The masters determined that the judge's action constituted prejudicial misconduct and violated canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 3B(2) (a judge shall be faithful to the law and shall maintain professional competence in the law). We find, in addition, that Judge Laettner's conduct violated canon 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law).

Judge Laettner objects to the finding of prejudicial misconduct and argues that there was no misconduct. We agree with the masters that there is clear and convincing evidence that the judge remanded Imlay without exonerating and resetting bail in open court, thereby denying her and her attorney the due process right to be heard.

The examiner objects to the masters' finding of prejudicial misconduct and argues that the judge committed willful misconduct based on his knowing or reckless failure to provide defendant Imlay with due process. The examiner submits that the judge was acting in bad faith by acting with "reckless or utter indifference" as to whether his orders exceeded the bounds of his prescribed powers.

The masters found that Judge Laettner had the authority to remand Imlay; his order doing so did not exceed the bounds of his prescribed powers. The

issue is whether he failed to give Imlay and her counsel, Deputy Public Defender Della-Piana, notice and the right to be heard on the issue of bail, a denial of due process. We agree with the masters' finding that, by failing to give notice and the right to be heard about bail, Judge Laettner engaged in conduct that was prejudicial to public esteem for the judiciary, but was not in bad faith. Based on our independent review of the record, we do not conclude that there was clear and convincing evidence that Judge Laettner had a corrupt purpose, or acted recklessly, or with utter indifference, when he revoked and reset Imlay's bail without affording Imlay, through Della-Piana, the right to be heard.

The masters found that Judge Laettner did have an ex parte conversation with Sergeant Schiro in chambers, but they did not conclude that it was improper, as charged, because they found that it related to Sergeant Schiro's "aiding Judge Laettner in his adjudicative responsibilities, within the meaning of canon 3B(7)(a)." They concluded it was within Judge Laettner's discretion to have Imlay undergo a drug abuse recognition examination to ascertain her competency, and that Sergeant Schiro's communication with Judge Laettner related to assisting the judge in his adjudicative responsibilities.

The examiner objects to this conclusion and argues that the communication does not fall within the canon 3B(7) "court personnel" exception because "court personnel" excludes "employees of other governmental entities, such as lawyers, social workers, or representatives of the probation department," and Sergeant Schiro was an employee of the Contra Costa County Sheriff's Department, an "other governmental entity." The examiner asserts that, although Sergeant Schiro was the court security supervisor who oversaw the bailiffs' activities, he was not one of the judge's bailiffs.

(11) Bailiffs are expressly permitted to assist the judge under canon 3B(7). The judge's bailiff during the *Imlay* proceedings, Deputy Scott Reed, was not qualified to conduct the drug examination, so Sergeant Schiro offered to perform it. We find that, because Sergeant Schiro was acting as the court security supervisor overseeing the bailiffs, who are also employees of the sheriff's department, he was properly assisting the judge in carrying out his adjudicative responsibilities, which include determining whether a defendant is competent to waive her rights. (Cal. Judges Benchbook: Felony Arraignment and Pleas (CJER 2013) Benchguide No. 91, § 91:26.) Further, we find that Sergeant Schiro conveyed information to the judge that was consistent with the proper performance of his duties, and that the judge promptly disclosed his communication with Sergeant Schiro to Deputy Public Defender Della-Piana. We concur with the masters' conclusion that the judge's ex parte communication with Sergeant Schiro does not constitute misconduct.

b. *May 25, 2017*

The masters concluded that Judge Laettner committed willful misconduct by engaging in an ex parte communication with Deputy District Attorney Fernandez in chambers about the *Imlay* cases, in violation of canons 1, 2, 2A, 3B(2), 3B(4) (a judge shall be patient, dignified, and courteous to those with whom the judge deals in an official capacity), and 3B(7) (a judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding). They found that there was no reason for the judge to have talked to Fernandez without Deputy Public Defender Della-Piana present. Although Judge Laettner argued that the ex parte communication with Fernandez involved only scheduling, the masters found that the judge and Fernandez talked about more than scheduling because Fernandez testified that the judge asked, "What do you want to do about these matters?" and the court reporter heard the judge say something similar. Judge Laettner also did not promptly notify Della-Piana about the conversation. The masters found that his subsequent statement to Della-Piana that he was "mad at her" demonstrated that he knowingly engaged in the ex parte communication for a corrupt purpose, which is any purpose other than the faithful discharge of judicial duties.

Judge Laettner posits that this ex parte communication is analogous to the ex parte communication he had with Sergeant Schiro, which the masters found was not improper. The difference between the two ex parte communications is that Judge Laettner had the ex parte communication with Deputy District Attorney Fernandez for an improper purpose—because he was mad at Deputy Public Defender Della-Piana. Moreover, Judge Laettner did not initially promptly disclose the ex parte communication with Fernandez; it was Della-Piana who raised it with him. In contrast, the ex parte communication with Sergeant Schiro was for the legitimate purpose of conducting court business, and it was promptly disclosed, as required.

We agree with, and adopt, the masters' legal conclusions.

B. *Count 2—Treatment of Deputy Public Defender Della-Piana*

Judge Laettner is charged, in six subcounts, with engaging in a pattern of conduct toward Deputy Public Defender Della-Piana that was unwelcome, undignified, discourteous, and offensive, and that would reasonably be perceived as sexual harassment or sexual discrimination.

The special masters found that five of the six subcounts were proven and that Judge Laettner's conduct toward Deputy Public Defender Della-Piana, taken as

a whole, constituted prejudicial misconduct because the incidents involve conduct that is undignified, discourteous, and offensive, and brings disrepute to the bench. They further found that much of Judge Laettner's conduct in count 2 (except count 2B), as well as in counts 4 (except count 4C) and 5, taken as a whole, constituted gender bias, in violation of canon 3B(5)(a). They did not find sexual harassment.

In response to Judge Laettner's assertion that "maintaining collegial relationships among the criminal justice partners is essential for the orderly administration of justice in criminal courts," the masters stated that it is the relationship between opposing counsel in criminal courts that allows for the efficient and effective administration of court calendars, and it is appropriate for the court to seek to foster that working relationship, but "[d]eputy district attorneys and deputy public defenders are not partners nor are they colleagues of the court, to the extent that these terms imply an equality of relationship." The masters stated: "The Special Masters are not suggesting that judges must be unsmiling imperious souls. The Special Masters recognize that in these courtrooms judges are witnesses to a wide range of human emotion among the litigants and the attorneys that appear before the court. Judges must view and manage this drama with understanding, empathy, humor, and flexibility, with a calm and steadying hand—but always positionally aware—aware of the proper role of the judge."

The masters found that Judge Laettner's misconduct was "the failure to be aware of and adhere to the boundaries attending with his position as a judge."

We adopt the masters' findings of fact, which are summarized below, in each of the six subcounts. We also agree with the masters' conclusions of law as to the canons violated. We respectfully disagree, however, with the masters' conclusion that all five of the proven subcounts constitute prejudicial misconduct and find that three subcounts (counts 2D, 2E and 2F) constitute willful misconduct, for the reasons discussed below.

(a) *Count 2A: "Having a teenage daughter"*

1. *Findings of Fact*

Judge Laettner admitted that, in approximately May 2016, he said to Deputy Public Defender Della-Piana words to the effect of, "Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want," followed by: "It's a compliment. Take a compliment." This was said outside another judge's chambers. Judge Laettner testified that he made the comment during a "friendly teasing conversation" in which his comment started as a joke, but

then he told her it was a compliment because "maybe [he] wasn't getting the response that [he] expected." He testified that he did not think the comment was demeaning because of the context of their interaction and his rapport with Della-Piana at the time.

Deputy Public Defender Della-Piana testified that the "teenage daughter" comment made her feel demeaned and that her "face definitely showed that [she] didn't care for that."

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that Judge Laettner's "teenage daughter" comment was undignified and inconsistent with the judge's obligation to maintain high standards of conduct, but that it would not be reasonably perceived as sexual harassment or discrimination, as charged. They stated that Judge Laettner's reference to a "teenage daughter" who just "keep[s] talk, talk, talking" "invokes a stereotypical image of a young, immature, adolescent girl," and that it "is inconceivable that a young professional female attorney would interpret such a comparison as a compliment." The masters further found that, intended or not, there is a gender element to the judge's stereotypical statement, as no one would ever say, "You're like a teenage *son*. You just keep talk, talk, talking . . . ."

They found that Judge Laettner violated canons 1, 2, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in count 2 constituted prejudicial misconduct.

Neither party objects to these legal conclusions, and we adopt them.

(b) *Count 2B: Winking*

Judge Laettner allegedly winked at Deputy Public Defender Della-Piana during a hearing and called her to the bench to ask her if she saw him winking at her.

The masters found that this allegation was not proven by clear and convincing evidence.

Neither party objects to the factual findings or legal conclusion. We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

(c) *Count 2C: "I want it to be you"*

1. *Findings of Fact*

On August 24, 2016, Judge Laettner presided over *In re Lauryn G.*, a case involving a juvenile. Deputy Public Defender Karen Moghtader represented Lauryn G., but asked Deputy Public Defender Della-Piana to appear for her because she had a meeting. Della-Piana appeared for Moghtader before Judge Laettner. Della-Piana testified that when she told the judge that Moghtader would be able to appear after her meeting, he said, "No, I want it to be you," and when Della-Piana responded, "I don't think you really get to decide that," Judge Laettner sort of smiled at her and said, "Well, I'm telling you I want it to be you."

After the case was called, there was a discussion about setting the date of a contested probation violation hearing. Deputy Public Defender Della-Piana refused to waive Lauryn G.'s right to a speedy hearing. The following exchange occurred:

"THE CLERK: Last day is September 15.

"MS. DELLA-PIANA: I don't know if there needs to be a lot of prep since it was already prepped. Can we do it earlier than that? Ms. Moghtader is out the 15th and 16th. Any other day works. [¶] The Monday of that week maybe? No?

"THE COURT: No, no, we'll set it for the 15th given my schedule. *Somebody else is going to have to cover*.

"THE CLERK: Thursday, September the 15th at 1:30 in Department 25."

Deputy Public Defender Della-Piana testified that, during this discussion, the judge locked eyes with her, "sort of tilted his head," and said, "Well, I guess someone else is just going to have to appear." She testified that this comment and "No, I want it to be you" made her uncomfortable.

Judge Laettner testified that he believed Deputy Public Defender Della-Piana was Lauryn G.'s assigned attorney, not Deputy Public Defender Moghtader. He said: "Well, there was, in my mind, confusion as to who Lauryn G.'s attorney was. I believed her attorney was Ms. Della-Piana. And then there were [*sic*] Ms. Moghtader got into the mix somehow." He also testified that it was his preference that the assigned attorney appear because a stand-in attorney does not know the case.

Judge Laettner also testified that he set September 15 as the next hearing date because it was the best date on his personal calendar, there was no time

waiver, he did not expect Deputy Public Defender Della-Piana to be at the date set, and her testimony about his tone was "fantasy."

The special masters found "not credible" Judge Laettner's testimony that, on August 24, 2016, he was confused about whom Lauryn G.'s attorney was. The transcript reflects that Deputy Public Defender Della-Piana announced that she was "standing in for Karen Moghtader," and that she referred to Deputy Public Defender Moghtader and her unavailability on September 15 and 16 as a reason to set the hearing on a different date. Further, the transcript of the hearing the day before reflects that Moghtader had appeared before Judge Laettner, representing Lauryn G., and had engaged in substantive discussions with him about the case, including the issuance of a warrant. The judge referenced those discussions when Della-Piana appeared in Moghtader's place the next day. Finally, Della-Piana later wrote down what occurred in court that day from memory, without the benefit of a transcript. The masters found that the unexplained contradiction between the judge's stated preference for having the assigned attorney present and then setting the hearing on a date when the assigned attorney was not available corroborates Della-Piana's belief that Judge Laettner wanted her to appear.

Judge Laettner objects to the masters' finding that his testimony that he was confused about who represented Lauryn G. was not credible, and says he was credible.

We agree with, and adopt, the masters' findings, including that Judge Laettner was not credible when he testified that he was confused about who represented Lauryn G. Deputy Public Defender Moghtader had appeared on Lauryn G.'s behalf the previous day and engaged in substantive discussions with the judge about her case. And Deputy Public Defender Della-Piana informed Judge Laettner at the outset of the hearing that she was "standing in" for Moghtader and referred to Moghtader's availability when discussing scheduling with the judge. We agree with the masters that the judge's claim is contradicted by the evidence.

2. *Conclusions of Law*

The masters concluded that the judge's conduct violated canons 1, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in count 2 constituted prejudicial misconduct.

Neither party objects to these legal conclusions, and we adopt them.

(d) *Count 2D: Conversation regarding* In re Eric B.

1. *Findings of Fact*

Judge Laettner presided over *In re Eric B.*, which involved a mentally ill juvenile. Deputy Public Defender Della-Piana represented Eric B. Juvenile proceedings had been suspended due to Eric B.'s incompetency, and he was receiving treatment or competency restoration services in juvenile hall. A hearing in August 2016 involved whether Judge Laettner would order the involuntary administration of medication to Eric B., to which Della-Piana objected.

On October 6, 2016, Judge Laettner released Eric B. from custody to his mother, deemed his sentence satisfied, and set a future competency review date for January 5, 2017.

On October 12, 2016, while Deputy Public Defender Della-Piana was conversing in the courthouse hallway outside Judge Laettner's courtroom with a prospective juror she knew, Judge Laettner approached them, in what he described as "basically a sea of jurors," and initiated a conversation with Della-Piana. He testified that he spoke to Della-Piana because, in his words: "I wanted to make sure everything was okay, because I knew she had been frustrated with Eric B. being in custody for a long time. And I wanted to say in general terms that I was not insensitive to people who are mentally ill." He denied that he discussed the *Eric B.* case during the conversation and said, "I went to the issue of mental health generally with her."

Deputy Public Defender Della-Piana testified that Judge Laettner did bring up the *Eric B.* case, and said he was aware that she was upset with him about the *Eric B.* case and that she should not be upset with him.

The examiner objects that the masters did not make a finding regarding allegations that the judge commented to Deputy Public Defender Della-Piana that he noticed how happy she was when he ordered Eric B. released from custody, and that he said he could tell by her face that she was happy when he did so. Judge Laettner testified that he did not discuss the *Eric B.* case with Della-Piana and that he only discussed mental health generally. While we agree that Judge Laettner was obviously discussing the *Eric B.* case, we do not find it necessary to amplify the masters' findings here to include Della-Piana's additional testimony regarding this conversation (see count 2F).

2. *Conclusions of Law*

The masters concluded that the conversation Judge Laettner initiated with Deputy Public Defender Della-Piana in the courthouse hallway constituted an

improper ex parte communication, in violation of canon 3B(7), because the matter was still pending, with a future competency review date that the judge had set six days earlier.

The masters also found that Judge Laettner did specifically reference the *Eric B.* case during the conversation, and, even if he did not say the name of the case, it was apparent that he was talking about that case. They stated that "any reasonable trial lawyer would perceive Judge Laettner's comments under such circumstances as not simply a coincidental happenstance," and that "[a] reasonable attorney would immediately realize that, by bringing up the subject matter of a case the attorney was frustrated about and that had just been heard six days before, the judge is talking about that specific case." The masters said that it "belies common sense to think that Judge Laettner and [Deputy Public Defender] Della-Piana did not know they were talking about the *Eric B.* case, even if the minor's name was not used."

The masters further found that the conversation was undignified and created the appearance of impropriety because it took place amongst "a sea of jurors," who had been before Judge Laettner and knew he was the judge before whom they were providing their jury service. The masters stated that the judge's desire to make sure things were "okay" with Deputy Public Defender Della-Piana after the contentious *Eric B.* hearing reflected a "solicitousness for her and their relationship that was inappropriate to express in a public hallway."

They found that the conversation violated canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7). They included this charge in their conclusion that Judge Laettner's conduct as alleged in count 2 constituted prejudicial misconduct.

We respectfully disagree with the conclusion that Judge Laettner's hallway ex parte conversation with Deputy Public Defender Della-Piana in a "sea of jurors" about the *Eric B.* case constituted prejudicial misconduct; instead, we find that it constituted willful misconduct, as urged by the examiner, because Judge Laettner was not acting in the faithful discharge of his judicial duties. In *Inquiry Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1 (*Kreep*), the commission found that it was willful misconduct for Judge Kreep to engage in ex parte communications with attorneys about a pending case for the corrupt purpose of venting his frustration about being the subject of peremptory challenges. (See also *Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 275 [comments made for the purpose of venting frustration are for a purpose other than the faithful discharge of judicial duties].) Similarly, in this matter, Judge Laettner engaged in an improper ex parte communication about a pending case with an attorney in that case—Deputy Public Defender Della-Piana—in a public venue for a purpose not related to his judicial duties; i.e., his "solicitousness for her and their relationship" and his excessive concern about how she felt about him, which creates the appearance of a

lack of impartiality. We find it aggravating that Judge Laettner indulged in this type of conversation with a deputy public defender in a public hallway in the presence of jurors serving in his courtroom.

(e) *Count 2E—"Your parents hadn't spanked you enough"*

1. *Findings of Fact*

On June 8, 2017, Judge Laettner asked his clerk to ask Deputy Public Defender Della-Piana to speak with him. The judge and Della-Piana then had a conversation in his chambers. Judge Laettner admitted that, during this conversation, he called Della-Piana a "hard one" and told her, "[Y]our parents hadn't spanked you enough." At the evidentiary hearing, he acknowledged that it was wrong and apologized because it was something he should not have said.

Judge Laettner said he made the comments because he felt Deputy Public Defender Della-Piana was being "stubborn, unreasonable and petulant," and he wanted to resolve a misunderstanding and she did not. He testified that, after the *Imlay* hearing on May 18, 2017, his relationship with Della-Piana was strained and that she was upset with him. He said he had seen her the day before, on June 7, and she was ignoring him and "didn't say hi or didn't acknowledge [him] on purpose." He testified that he wanted to "correct her attitude" because he does not want to see people who are upset, and he wants people to be happy. He also said that the purpose of his conversation with Della-Piana was to "try to mend the fences, smooth things over, so she could be comfortable coming back to [his] court if she wanted to." He also said he was "a little bit exasperated" with her because he wanted a "truce," but she did not.

Deputy Public Defender Della-Piana testified that, during this conversation, Judge Laettner said a lot of things, including that he did not want things to be bad between them, that he had been thinking a lot about the other day, that she was so mad at him about the *Imlay* case, and that he did not want her to be mad at him anymore. She stated: "I knew he was referring to *Imlay*. And my understanding was that he thought we were in a fight with each other and that we needed to make up. And he sort of wanted to know, did I still care and like him and wanted to kind of pull me back in and make sure I was good with him and close with him." Della-Piana described Judge Laettner as appearing to be "pretty frantic and emotional" during this conversation.

Deputy Public Defender Brooks Osborne testified that he saw Deputy Public Defender Della-Piana on June 8, 2017, and she told him that Judge Laettner had just told her that her parents did not spank her enough. Osborne said she was "ashen" and "looked horrified."

Judge Laettner twice denied discussing the *Imlay* cases with Deputy Public Defender Della-Piana during this conversation. The masters, however, found that Judge Laettner's testimony was impeached by his answer to the notice of formal proceedings, in which he "does not deny a conversation with Ms. Della-Piana regarding the *People v. Imlay* cases." And he testified that, during this conversation, he told Della-Piana that his conversation with Deputy District Attorney Fernandez about *Imlay* was not an impermissible ex parte communication, which is inconsistent with his testimony that he did not talk to her about the *Imlay* cases during their conversation in chambers.

The examiner contends that additional facts regarding what Judge Laettner said to Deputy Public Defender Della-Piana during this conversation, which were alleged in the notice of formal proceedings, should be included in the findings. We find that the masters' description of Della-Piana's testimony regarding what Judge Laettner said adequately conveys her testimony.

2. *Conclusions of Law*

The masters concluded that Judge Laettner's June 8, 2017 conversation with Deputy Public Defender Della-Piana was "injudicious, inappropriate and undignified," and constituted an improper ex parte communication concerning *Imlay*, in violation of canon 3B(7). They stated that calling an attorney a "hard one" or saying that the attorney's parents did not "spank you enough" is contrary to the judge's ethical obligations. They noted that conveying to an attorney that his or her feelings about a judge's decision are relevant to the judge gives the appearance of partiality, suggests embroilment, and is undignified. They added that Judge Laettner's purpose for calling Della-Piana to his chambers—to "mend fences" over his decision in *Imlay*—demonstrated that her upset over his decision was of significant enough import that he expressed his frustration by calling her a "hard one" and saying she had not been "spanked" enough. They found that Judge Laettner's conduct violated canons 1, 2A, 3B(4), 3B(5)(a), and was prejudicial, but they did not find that it could reasonably be perceived as sexual harassment, as charged, because Della-Piana did not express that the judge's comments were offensive as sexual harassment.

We agree with the masters' conclusion that Judge Laettner initiated a conversation with Deputy Public Defender Della-Piana that constituted an improper ex parte communication, in violation of canon 3B(7), because they discussed the pending *Imlay* cases. We also agree with the other canon violations found. We respectfully disagree with the masters, however, that Judge Laettner's ex parte communication with Della-Piana, in which he discussed the *Imlay* cases, was prejudicial misconduct and find that, because he initiated the conversation for a purpose not related to the faithful discharge of his judicial

duties, his actions constituted willful misconduct. As discussed above, Judge Laettner made the improper comments to Della-Piana because he cared excessively about how Della-Piana perceived him, a motive that was personal rather than a part of his judicial duties, and created the appearance of partiality.

(f) *Count 2F: "I know you're mad at me"*

1. *Findings of Fact*

Deputy Public Defender Della-Piana testified that, approximately 10 to 15 times in 2016 and 2017, Judge Laettner asked her to approach the bench to check in to see if she was mad at him. She testified: "But usually when he ruled against me, I would sort of know that that was coming next. And he would want to debrief, almost as if we were having like a relationship fight or something . . . . Like a relationship talk. And he wanted reassurance that I wasn't mad at him. Or he would often comment on my facial expressions, the facial expressions I would make during the hearing. 'Say, you know, I noticed that you were really happy when I said this.' Or 'you didn't like when I said this. I could tell from your face,' and comment how well he knew and could read my facial expressions and how that affected him essentially."

Judge Laettner admitted that he understood that Deputy Public Defender Della-Piana was mad at him at times and does not deny that he probably acknowledged that to Della-Piana.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that Judge Laettner's conduct violated canons 1, 2A, and 3B(4), and was part of a pattern of undignified, discourteous, and offensive conduct toward women, constituting gender bias in breach of canon 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in count 2 constituted prejudicial misconduct. They stated that attempting to "smooth over" the anger or upset of counsel resulting from a judge's decision "gives the appearance that counsel's emotional response to a decision matters," which illustrates a solicitousness that suggests embroilment. They noted that the United States Supreme Court has stated that judges are to represent the "impersonal authority of law" and provide "that atmosphere of austerity . . . indispensable for an appropriate sense of responsibility on the part of court, counsel and jury." (*Offutt v. United States* (1954) 348 U.S. 11, 17 [99 L.Ed. 11, 75 S.Ct. 11], quoted in Rothman, *supra*, § 2:1, pp. 58–59.)

We respectfully conclude that Judge Laettner's repeated summoning of Deputy Public Defender Della-Piana to the bench to discuss their relationship was willful misconduct because it was for a purpose unrelated to his judicial duties, which was to make sure she was happy with how he was discharging his judicial duties. This is improper because it creates the appearance of partiality and is inconsistent with his duty to remain neutral as to those appearing before him. We find it aggravating that Judge Laettner did this frequently in open court, where his preference for Della-Piana could be perceived by others in his courtroom.

C. *Count 4—Treatment of Other Female Attorneys*[2]

Judge Laettner is charged, in eight subcounts, with making unwelcome, undignified, discourteous, and offensive comments, some of which would reasonably be perceived as sexual harassment or sexual discrimination, to and about other female attorneys who appeared before him.[3]

The masters found that seven of the eight subcounts in count 4 were proven, except that they did not find sexual harassment or sexual discrimination. Concluding that Judge Laettner's treatment of the various female attorneys involved, taken as a whole, constituted prejudicial misconduct, they stated: "Lady Justice wears a blindfold. Centuries ago, William Penn explained: 'Justice is justly represented Blind, because she sees no Difference in the Parties concerned.' (William Penn, *Fruits of Solitude*, The Harvard Classics (1909-14), Part. I, 'Impartiality,' No. 407.) [¶] Saying that a female attorney is beautiful or otherwise commenting upon her looks lifts Lady Justice's blindfold by suggesting that one of a person's immutable characteristics, her appearance, matters to the judge; suggesting that the judge is partial to the woman he has declared to be beautiful. Even though the judge may have meant the comment to be an innocent courteous compliment, intended to create and maintain a 'friendly' and 'collegial atmosphere,' does not excuse such a statement. Whether the recipient of the comment was offended or made uncomfortable, as in the case of [Deputy Public Defender] Emi Young, or not, as in the case of [Deputy District Attorney] Devon Bell, is not the issue upon which the propriety of the statement turns. The reason a judge's declaration that someone is beautiful or attractive is misconduct is due not only to its effect on the person to whom the comment was directed, but also because of the potential impact the statement has upon those who may not perceive themselves as attractive

[2] We address counts 4 and 5 after count 2 because all three concern Judge Laettner's improper treatment of women. Count 3, which involves an unrelated issue, follows the discussion of count 5.

[3] Some of the subcounts are outside the statute of limitations and cannot be considered for censure or removal, but can be considered in evaluating whether the judge cooperated honestly in the proceeding. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(b).)

or beautiful. If two attorneys appear before a judge, and one attorney perceives herself to be unattractive, and the judge says to the other attorney, 'Here is the beautiful Ms. Bell,' it is reasonable for the other attorney to question the fairness and impartiality of the judge. [¶] . . . That the attorneys noted and took advantage of Judge Laettner's favoritism is corrosive to the fair and impartial administration of justice."

They also noted, in connection with count 4F: "Unprofessional remarks made in the courtroom concerning an attorney's personal appearance, pregnancy, or sexuality, can have an impact on the credibility of women in court; and when addressed to a woman lawyer, such remarks would make it difficult for her to effectively represent her clients." (See Rothman, *supra*, § 2:11, p. 75 ["Judges should not make unprofessional remarks concerning an attorney's personal appearance, pregnancy, or sexuality."].)

The masters found it relevant that Judge Laettner's conduct spanned 11 years, from 2006 to 2017, because, after 10 years on the bench, "it can be expected that a judge's words and conduct will have conformed to the demands of the canons." They found that Judge Laettner's words and conduct did not.

We adopt the masters' findings of fact, which are summarized below, and their conclusions of law as to each of the eight subcounts.

(a) *Count 4A: Comments to Deputy Public Defender Sarah MonPere*

1. *Findings of Fact*

Deputy Public Defender Sarah MonPere testified that, between October 2007 and June 2008, Judge Laettner made various comments to her and very frequently asked her personal questions, including whether she had a boyfriend. After a colleague appeared in court with a client who had a fussing infant, and MonPere held the baby while the client finished her plea, Judge Laettner commented, on more than one occasion, about how natural MonPere looked holding the baby, and asked her if she wanted to have children. He also called her his "favorite" and "teacher's pet," and said something to the effect that she "had him on a chain," implying that she controlled him or could get him to do what she wanted.

Deputy Public Defender Nicole Eiland testified that she heard Judge Laettner ask MonPere personal questions and refer to MonPere as his "favorite" more than once. She also testified that he favored MonPere, and she viewed the judge's behavior toward MonPere as "very flirtatious." Deputy Public Defender Osborne testified that he heard Judge Laettner tell MonPere that he

"could not say 'no' to her," that it was obvious that MonPere was the judge's favorite, and that it seemed like he treated her and her clients differently. Deputy Public Defender Matthew Cuthbertson testified that Judge Laettner interacted differently with MonPere, in sort of a flirtatious manner.

Judge Laettner denied most of the alleged comments to Deputy Public Defender MonPere, and claimed he had a "purely professional" relationship with her, but he admitted that he would compliment her on occasion for the purpose of "building her confidence" and thinks he did refer to her as his "favorite."

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that Judge Laettner made the statements attributed to him by Deputy Public Defender MonPere, in violation of canons 1, 2A, 2B(1) (a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge), 3B(4), and 3B(5)(a). They found that his statements were "inappropriate and lacked any appearance of impartiality."

Judge Laettner objects on the ground that this count is barred by the statute of limitations because the comments were made before January 1, 2013, the cutoff date for the statute of limitations (six years before the commencement of the judge's current term, which was Jan. 1, 2019). (Cal. Const., art. VI, § 18, subd. (d).) Due to the statute of limitations, we consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see, *ante*, fn. 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

(b) *Count 4B: Comment to Deputy Public Defender Kim Mayer about her husband*

1. *Findings of Fact*

Deputy Public Defender Kim Mayer testified that, in 2012 or 2013, Judge Laettner asked her to approach the bench and commented that he had just found out to whom she was married and that he was the same age as her husband, in a tone that was "somewhat suggestive" or "just inappropriate." This made her uncomfortable because her husband is 14 years older than she is, and it felt like Judge Laettner was comparing himself to her husband.

Judge Laettner testified: "I called her up to the bench in one of our slow moments, and I said, 'I just found out that you're married to Oscar Bobrow.' And she said, 'Yes, yes, I am.' And I said something to the effect of, '*He's a little bit older than you*.' Something like that. And she said, 'Yes.' And that

was really it. You know, it was just commenting on that. And I had told her also that I did a felony possession trial with him."

2. *Conclusions of Law*

The masters found Deputy Public Defender Mayer's testimony credible and that Judge Laettner indeed made the comment to Mayer that he was the same age as her husband. The comment violated Judge Laettner's duty to be dignified and courteous, and the suggestive nature of the comment was part of a pattern of conduct that would reasonably be perceived as gender bias, in violation of canons 1, 2, 3B(4), and 3B(5)(a).

Judge Laettner objects that this allegation is barred by the statute of limitations because it occurred in 2012, before the January 1, 2013 cutoff date. Deputy Public Defender Mayer testified that she believes Judge Laettner took over the calendar in 2013, but Judge Laettner testified that the comment occurred in 2012. We agree with the judge that the comment is barred by the statute of limitations. We consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see *ante*, fn. 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

(c) *Count 4C: Poor demeanor toward Deputy Public Defender Kim Mayer*

During a March 11, 2013 hearing in *People v. Pastega*, Judge Laettner allegedly reprimanded Deputy Public Defender Mayer for interrupting him, demeaned her by asking if she knew what a proffer was, and told her not to argue with him.

The masters found that there were interruptions and interjections during the hearing, but that there was not clear and convincing evidence that Judge Laettner committed misconduct.

The examiner argues that the judge's comments constitute prejudicial misconduct because they were sarcastic and belittling, contrary to canon 3B(4). The masters found that the comments do not rise to the level of misconduct because the words on their face seem de minimis at most, and there is no evidence that the tone used by the judge was sarcastic or belittling. We adopt the masters' conclusion and find no misconduct.

(d) *Count 4D: Poor demeanor toward Deputy Public Defender Christy Wills-Pierce*

1. *Findings of Fact*

Judge Laettner presided over *People v. Williams* on November 1, 2013. Deputy Public Defender Christy Wills-Pierce represented the defendant.

Judge Laettner admitted that, after Deputy Public Defender Wills-Pierce questioned him about the basis for drug testing the defendant, he snapped at her and replied: "Our prior discussions with regard to this case. I know you're coming in late [to the case]. I'm not going to pretry every case all over again because you're here today." After the hearing, he called Wills-Pierce up to the bench and said that he was sorry he was mad earlier, but it was Wills-Pierce's friend who had made him so mad. When Wills-Pierce asked him whom he meant, he said, "Ms. Thomas," referring to her colleague, Deputy Public Defender Jermel Thomas.

Deputy Public Defender Thomas testified that Deputy Public Defender Wills-Pierce told her about this, which embarrassed her, and she went to Judge Laettner's chambers that day to ask him whether he had said, "Ms. Thomas makes me so angry and she makes me so upset and so mad." Judge Laettner told Thomas that he had said that to Wills-Pierce and that she does make him upset.

Judge Laettner testified that, "I think I snapped at her [Deputy Public Defender Wills-Pierce] because I didn't want to spend two hours going over every case we just pretried." He admitted calling Wills-Pierce to the bench and apologizing to her, and that he probably told her that he was mad at her friend, Deguty Public Defender Thomas. Yet on cross-examination, Judge Laettner testified that he did not remember making the statement.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters found that Judge Laettner's conduct violated canons 1, 2, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in count 4 constituted prejudicial misconduct.

Neither party objects to these legal conclusions.

(e) *Count 4E: Comments to Deputy Public Defender Nicole Herron*

1. *Findings of Fact*

Between 2014 and 2017, Judge Laettner repeatedly told Deputy Public Defender Nicole Herron that she looked like an actress named Caroline Catz, who appeared on the television show, "Doc Martin." Herron testified that Judge Laettner referred to Catz and the show about 12 to 20 times during Herron's weekly appearances in his department, often saying, "I saw you on TV last night."

Deputy Public Defender Herron testified that, when Judge Laettner mentioned the show, he seemed "overly excited," and that his comments felt "creepy" to her. The comments made her uncomfortable because they were

about her physical appearance and were made in open court, where other people could hear them, including clients who later commented to her about the judge's statements.

The judge's court reporter, Jennifer Michel, testified that she could tell that the judge's questions made Deputy Public Defender Herron uncomfortable.

Judge Laettner also commented in 2014 and 2015 that Deputy Public Defender Herron "was someone I just can't say no to," was the "best attorney" in the public defender's office or the juvenile court, and his "favorite attorney." He said to her, "I just can't say no to you" about five to 10 times.

Judge Laettner did not deny offering these "compliments." He admitted telling Deputy Public Defender Herron that she bore a physical resemblance to Caroline Catz and that he talked about the show with her a few times.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters found that Judge Laettner's repeated comments about Deputy Public Defender Herron's physical appearance were undignified and discourteous, would reasonably be perceived as gender bias, and conveyed the impression that Herron was in a special position to influence him, in violation of canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). The masters included this charge in their determination that Judge Laettner's conduct in count 4 constituted prejudicial misconduct. They concluded, however, that the judge did not commit sexual harassment (canon 3B(5)(b)), as defined in *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1042–1043 [95 Cal.Rptr.3d 636, 209 P.3d 963], because sexual harassment requires a finding that the harassing conduct was " 'severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex.' " The masters found that, given the conflicting testimony about the number of times Judge Laettner made the comments and the lack of evidence that he described the physical appearance of the actress, his "acts of alleged sexual harassment fall short of establishing a pattern of continuous, sufficiently pervasive harassment, necessary to show a hostile working environment under FEHA [California Fair Employment and Housing Act]."

Neither party objects to these legal conclusions.

(f) *Count 4F: Comments about Deputy District Attorney Devon Bell*

1. *Findings of Fact*

Deputy District Attorney Devon Bell was the grand jury coordinator for the district attorney's office. Once Judge Laettner selected a grand jury, Bell would go to his courtroom and take the grand jurors back to the district attorney's office, where the grand jury hearings took place.

On about five or six occasions, in the presence of grand jurors, Judge Laettner referred to Deputy District Attorney Bell as "beautiful" or "lovely," and said she was a member of the district attorney's volleyball team. He also referred to her as one of his "favorite" attorneys, and said that because he had married her and her husband, he liked to say, "I married Ms. Bell." Transcripts corroborate these remarks.

Judge Laettner testified that the reason he discussed Deputy District Attorney Bell with the grand jurors was because he wanted to tell them that she was "competent and they were in good hands." He said he joked that she was a member of the district attorney's volleyball team after a grand juror said that she was very involved in her daughter's traveling volleyball team.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that Judge Laettner's statements about Deputy District Attorney Bell violated canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in count 4 constituted prejudicial misconduct. They said that even if Bell was not offended by the comments, they were particularly improper because the judge made them in front of other people, including members of the grand jury. And even if the judge intended his references to her playing on the district attorney's volleyball team (which does not exist) to be a joke, they appear to have been comments about her physical stature or build, which are inappropriate for a courtroom setting and suggested that he evaluated women based on their physical appearance. Further, his comment that she was "one of [his] favorite attorneys" reflected bias and conveyed the impression that she was in a special position to influence him.

Neither party objects to these legal conclusions.

(g) *Count 4G: Comments to Deputy Public Defender Emi Young*

1. *Findings of Fact*

In early 2017, before Deputy Public Defender Emi Young had become a permanent employee of the public defender's office, Judge Laettner began asking her personal questions, including about her ethnicity, her childhood, and her relationship with her father. He also once told her that one of his sons was engaged to an Asian woman, which made him interested in Asian people and culture, and he asked about her background or "what kind of Asian" she was. Young responded that she is part Japanese. Judge Laettner replied that he knew two half-Japanese twins in college and that they were very beautiful. Young testified that she felt incredibly uncomfortable because the judge was singling her out in a way that was not appropriate.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that Judge Laettner's inquiries about Deputy Public Defender Young's racial background, his comments about the physical appearance of persons who shared her ethnicity, and his intrusive questions about her background violated canons 1, 2, 2A, and 3B(4). The masters included this charge in their conclusion that Judge Laettner's conduct in count 4 constituted prejudicial misconduct.

Neither party objects to these legal conclusions.

(h) *Count 4H: Comment about Deputy Public Defender Emi Young*

1. *Findings of Fact*

In approximately May or June 2017, Judge Laettner told an attorney who was looking for Deputy Public Defender Young that, "She's the attractive young Asian woman."

Neither party objects to this factual finding.

2. *Conclusions of Law*

The masters found that the judge's comment about the physical beauty of a female attorney violated canons 1, 2, 2A, and 3B(4). The masters included this charge in their conclusion that Judge Laettner's conduct in count 4 constituted prejudicial misconduct.

Neither party objects to this legal conclusion.

D. *Count 5—Comments to Other Women*

Judge Laettner is charged, in six subcounts, with making unwelcome, undignified, discourteous, and offensive comments to and about other women who appeared or worked in his courtroom, some of which would reasonably be perceived as sexual harassment or sexual discrimination.

The masters found that each of the subcounts was proven. They concluded that the judge's conduct violated canons 1, 2A, and 3B(4), and would be perceived as gender bias in violation of canon 3B(5)(a). As to count 5B, they also determined that the judge violated canon 2.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with the exceptions discussed below.

(a) *Count 5A: Court reporter Jennifer Michel*

1. *Findings of Fact*

Jennifer Michel was Judge Laettner's court reporter from March 2006 to June 2017. When she first started working in his department, he made comments about her appearance that made her uncomfortable. In 2006, he said that when he met his wife, she had long, dark hair like Michel, which made Michel uncomfortable because she felt the judge was comparing her to his wife. In 2007, he told her, "You're so pretty. I don't know how you do it."

In 2009, when Michel entered his chambers to report a hearing and asked if the judge wanted the attorneys present, he responded, "You are hot." Judge Laettner substantially corroborated Michel's account of this interaction, but claims it was a joke and that he said something to the effect of, "Well, you are hot, but let's do it the way we always do and bring in the parties." He acknowledged that he did not have a joking relationship with Michel, and she did not receive his comment as a joke. Inconsistently, in his December 18, 2017 supplemental response to a preliminary investigation letter, he denied making the statement.

Several witnesses testified that Judge Laettner would refer to Michel as "very pretty" or "beautiful" when introducing her to the jury. Deputy Public Defender Cuthbertson testified that the judge occasionally commented to prospective jurors that Michel was "quite tall" and "very pretty," and that they would "enjoy looking at her." Judge Laettner conceded that he may have introduced Michel as his "lovely court reporter," but denied telling jurors that they would enjoy looking at her.

Michel testified that she quit working in Judge Laettner's department in 2017 because she "could not take the years of unwelcome and inappropriate comments toward [herself] and others," his "favoritism towards tall, skinny blondes, young females [and] petite Asian women," and his bias against "heavyset, pudgy, dark-haired public defenders and ones that would argue their case too strenuously in front of him." The masters found that the impact of Judge Laettner's inappropriate comments based on the physical appearance of female attorneys or litigants created an environment that resulted in Michel changing her court reporting assignment.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters concluded that the judge's comments about Michel's physical appearance were undignified and discourteous, would reasonably be perceived as gender bias, and constituted prejudicial misconduct, contrary to canons 1, 2A, 3B(4), and 3B(5)(a).

The examiner objects that there was no finding of sexual harassment and asserts that Michel was exposed to repeated references about the physical appearance of herself and other women that were sufficient to create a hostile working environment. Canon 3B(5)(b) provides that a judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as sexual harassment.

We adopt the masters' legal conclusions, with the exception of their failure to find that Judge Laettner committed sexual harassment. We find that the judge did commit sexual harassment by creating a hostile work environment that caused Michel to leave his department, based on the course of his conduct between 2006 and 2017.

Judge Laettner objects that this charge is beyond the statute of limitations because the allegations span from 2006 to 2017. We find that the cumulative effect of Judge Laettner's comments over the years on his court reporter, Michel, constitutes sexual harassment. But even if the conduct were limited to remarks he made to women after January 1, 2013, it created a hostile work environment that caused Michel to seek employment elsewhere.

(12) Sexual harassment requires a finding that the harassing conduct was " 'severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex.' " (*Hughes v. Pair, supra*, 46 Cal.4th at p. 1043.) In our view, there is clear and convincing evidence that Judge

Laettner's pattern of conduct toward women, which the masters determined was gender bias, as observed by Michel, created a hostile work environment. Michel testified that she heard Judge Laettner commenting to Deputy Public Defender Herron, three to five times, about how she looks like an actress in his favorite television show and asking Herron about it; telling certain female defendants charged with driving under the influence that she is a "pretty girl" or "pretty woman"; frequently referring to Deputy District Attorney Bell as "beautiful"; and remarking to defendant Thalia Hernandez, "I always wonder what fat people were thinking when they get tattoos."

(b) *Count 5B: "Women can drive you crazy"*

1. *Findings of Fact*

Judge Laettner admits that, in 2013, while presiding over a domestic violence case, in response to a defendant explaining what he learned from participating in a domestic violence treatment program, the judge said, "On a lighter note, I can take judicial notice that women can drive you crazy." Deputy Public Defender Wills-Pierce, who was representing the male defendant, believed the statement was demeaning and undermined her ability to represent clients in the judge's courtroom. When she explained this to Judge Laettner, he responded that his wife "would be really upset if she heard about this" and, "You know, a judge could get in trouble for something like this." Wills-Pierce memorialized this meeting at the time in an e-mail to her supervisor.

Although Judge Laettner testified that he immediately recognized that the comment was a mistake and apologized for it, it was not until Deputy Public Defender Wills-Pierce confronted him several days after the comment that he expressed contrition. He acknowledged to his supervising judge, Judge Barry Goode, that he made the remark and said it was a "bone-headed statement." Judge Laettner also testified that he and Judge Goode "had a chuckle" about it. The masters found it notable that this conversation occurred as a result of Judge Goode contacting Judge Laettner ostensibly as a result of a complaint.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters found that the comment was prejudicial misconduct and violated canons 1, 2, 2A, 3B(4), and 3B(5)(a). They stated that, although Judge Laettner minimizes the severity of his comment by contending that it was a joke, it was nonetheless inappropriate and demeaning. As stated in the California Judicial Conduct Handbook (Rothman, *supra*, § 3:42, pp. 189–190): "A judge must be mindful not to make jokes at the expense of others. The

temptation to get a laugh is even greater when there is an audience of people seeking the judge's favor. A judge must remember that the people in the courtroom are generally there because of some serious event in their lives, and they may not appreciate humorous exchanges between the judge and counsel. A judge must be mindful that the use of humor may not be in the service of the goals and objectives of a judicial proceeding."

The masters found it particularly aggravating that Judge Laettner made the remark while on the bench and in the presence of multiple individuals, and that it had the effect of undermining the effectiveness of experienced counsel appearing before him. They also found that it could be perceived that he was biased based upon gender or sex, and that this erodes public confidence in the integrity and impartiality of the judiciary, and diminishes the dignity of the judicial process.

The masters further noted that the judge's remark cannot be considered in isolation, as it was consistent with many other incidents where his comments to women or about women were inappropriate and undignified.

Neither party objects to these legal conclusions.

(c) *Counts 5C–E: Comments regarding tattoos and scarring*

The masters found that Judge Laettner engaged in improper action (as opposed to prejudicial misconduct) and violated canons 1, 2A, 3B(4), and 3B(5)(a) by making various comments about the physical appearance of women. The comments included telling female defendants that they were "pretty" and should avoid drinking and driving, or tattoos. The masters found that, although Judge Laettner was motivated by a genuine desire to foster rehabilitation or to impress upon them the seriousness of their conduct, comments about beauty or physical appearance are inappropriate. They said, "An observer might construe such references to the physical appearance of a litigant to imply that there is a different standard of justice based upon appearance."

The examiner asks the commission to reject the masters' conclusions that the comments were improper action and to find that they were prejudicial misconduct, based on *Kreep, supra*, 3 Cal.5th at pages CJP Supp. 30–31. In *Kreep*, the commission determined that a judge's comments on the physical appearance of attorneys appearing in court (e.g., "attractive," "lovely," and "pretty girl") constituted prejudicial misconduct because they " 'were not relevant to the court proceedings, made others in the courtroom uncomfortable, did not afford proper respect to the individuals, diminished the dignity of the judicial process, and may have created the appearance of bias or

impartiality.' " (*Id.* at p. CJP Supp. 31.) In this matter, Judge Laettner's remarks had some relevance to the proceedings; they were in the context of him trying to help the defendants by conveying the serious consequences, including disfigurement, that could occur from drinking and driving. There was testimony that he made similar remarks to a few male defendants. The comments also did not convey the same level of disrespect to the individuals involved in Judge Kreep's case. We do not think that an objective observer would conclude that the comments would erode public esteem for the judiciary, a requirement for a finding of prejudicial misconduct.

We adopt the masters' findings of fact and conclusions of law, but, because the conduct constitutes improper action, do not consider these allegations as a basis for the judge's removal.

(d) *Count 5F: Comment regarding tattoos and "fat people"*

1. *Findings of Fact*

On June 16, 2017, after Judge Laettner presided over a hearing in *People v. Hernandez*, he stayed on the bench and engaged in a discussion with Hernandez about her tattoos. Court reporter Jennifer Michel testified that Judge Laettner remarked, "I always wonder what fat people were thinking when they get tattoos." Judge Laettner acknowledged discussing Hernandez's tattoos, but said it was in the context of her efforts to obtain employment, and he provided her with a workforce reentry form and resources for job training.

Neither party objects to these factual findings.

2. *Conclusions of Law*

The masters found that Judge Laettner engaged in improper action (as opposed to prejudicial misconduct) and violated canons 1, 2A, 3B(4), and 3B(5)(a). We respectfully disagree that Judge Laettner's comment about "fat people" constituted improper action and find that it constituted prejudicial misconduct, as argued by the examiner.

In this matter, like in *Kreep*, we find that Judge Laettner's remark erodes public esteem for the judiciary because it was not relevant to his judicial duties, is disrespectful, and creates the appearance of bias against "fat people" and that there could be a different standard of justice based on someone's physical appearance.

E. *Count 3*—People v. Ventura

Judge Laettner is charged with revoking a criminal defendant's own recognizance (OR) release in the defendant's absence without affording him

or his attorney notice and the opportunity to be heard, and with giving the appearance that he was retaliating for the filing of a peremptory challenge against him by the defendant's attorney.

The masters found that Judge Laettner committed willful misconduct by failing to give a criminal defendant notice and the opportunity to be heard with respect to the revocation of his OR release and remand, and the rejection of the peremptory challenge.

The masters further found that Judge Laettner was "not credible" when he stated that he revoked the defendant's OR release and remanded him, and denied the peremptory challenge as untimely, in open court.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with one exception discussed below.

1. *Findings of Fact*

On October 31, 2013, Judge Laettner presided over *People v. Ventura*. Ventura was represented by Deputy Public Defender Jermel Thomas. Ventura had been arrested for violating probation. He was released on OR, but remained in custody on an immigration hold.

The *Ventura* matter came before Judge Laettner again the next day, November 1, 2013. During an in-chambers discussion between Judge Laettner, Deputy Public Defender Thomas, Deputy District Attorney Catherine DeFerrari, and probation officer Valerie Miramontes, Thomas advised Judge Laettner that she planned to file a peremptory challenge against him pursuant to Code of Civil Procedure section 170.6.[4]

Back in open court, Deputy Public Defender Thomas filed the Code of Civil Procedure section 170.6 challenge against Judge Laettner and informed him on the record that she had done so. Judge Laettner set the case for a further pretrial hearing in his court on November 8, 2013, and a contested probation violation hearing on December 20, 2013, before a different judge.

Judge Laettner testified that, in open court at the November 1, 2013 hearing, he (1) revoked Ventura's OR release and remanded him into custody, and (2) found Deputy Public Defender Thomas's Code of Civil Procedure section 170.6 challenge to be untimely.

[4] A peremptory challenge of a judge pursuant to Code of Civil Procedure section 170.6 is initiated by the filing of a declaration under penalty of perjury, or an oral statement under oath, that the judge is prejudiced against a party or attorney or that the party cannot have a fair and impartial trial before the judge. No other act or proof is required to disqualify the judge. A peremptory challenge can be stricken, without a hearing, if it is untimely.

Regarding his revocation of Ventura's OR release and remand into custody on November 1, Judge Laettner testified: "I was in open court when all parties were present, and I stated very plainly he's remanded. That was on the record." Judge Laettner's decision to remand Ventura is not reflected in the reporter's transcript of the proceeding. It is also not reflected in the contemporaneous notes Judge Laettner took during the in-chambers discussion, and it is not in the contemporaneous notes he made while he was on the bench during the November 1 proceeding. The contemporaneous notes he made for the October 31 and November 8 proceedings, however, do make note of Ventura's release status.

The remand order is reflected on the clerk's minute order. Judge Laettner testified that he turned to his right and told his clerk that Ventura was remanded. When asked whether he looked at Deputy Public Defender Thomas and told her that he was revoking Ventura's OR and remanding him, Judge Laettner testified: "No. I said that to my clerk in court loudly enough that I believed everyone would hear. And I also believe that she [Thomas] knew it was going to happen because [of] what had just happened in chambers. It was no surprise."

Deputy Public Defender Thomas testified that, on November 1, Judge Laettner did not say during the in-chambers conference that he was going to revoke Ventura's OR, and he did not say in open court that he was revoking Ventura's OR and remanding him, or ask if she wished to be heard.

Deputy District Attorney DeFerrari appeared for the prosecution in the *Ventura* matter on November 1, 2013. Consistent with Deputy Public Defender Thomas, her notes for that day reflect that Ventura was on OR status. She does not recall Ventura's OR status being revoked on November 1 or even being discussed that day.

The *Ventura* case came before Judge Laettner again on November 8, 2013. During the morning session of the hearing, Deputy Public Defender Thomas raised the issue of Ventura's remand, stating her belief that the minute order for November 1 "inadvertently" reflected her client's remand without bail. She asked Judge Laettner to correct the minute order "for housekeeping purposes" since the remand order was "in error." She told him: "So it appears as though there was a mistake as to the November 1st hearing because I don't believe we addressed his custodial status at that time. I think we all believed that he would have been released on his own recognizance." According to the transcript, neither Judge Laettner nor Deputy District Attorney DeFerrari said anything to contradict Thomas's statement that Ventura's custodial status had not been addressed on November 1.

Regarding Judge Laettner's testimony that he denied Deputy Public Defender Thomas's Code of Civil Procedure section 170.6 challenge as untimely in open court and in her presence on November 1, the transcript does not reflect Judge Laettner saying the challenge was untimely or the basis for the ruling. The minute order also does not reflect that the judge found the section 170.6 challenge untimely. Judge Laettner admits that it would be appropriate for the clerk's minute order to reflect his finding that the challenge was rejected as untimely. Judge Laettner's contemporaneous notes do not reflect the filing of the challenge or that he found it untimely; he does not know why this is so. Judge Laettner also testified that he did not look at Thomas and tell her he was rejecting her challenge as untimely or ask her if she wished to be heard.

The masters found Judge Laettner's testimony "not credible" that he "very plainly," in open court, revoked Ventura's OR release and remanded him. They stated: "While at some point in time he instructed his clerk that the defendant was to be remanded, it was not announced during his chambers discussion or in open court. The transcript does not reflect his decision, his contemporaneous notes do not show it, the deputy public defender testified it didn't happen, and the deputy district attorney cannot recall it happening. And when asked directly, Judge Laettner admitted that he did not turn to [Deputy Public Defender] Thomas and say: 'Ms. Thomas, I'm revoking his OR. I'm remanding your client. Do you wish to be heard?' "

The masters also found "not credible" Judge Laettner's testimony that he rejected Deputy Public Defender Thomas's Code of Civil Procedure section 170.6 challenge in open court and on the record because the transcript does not reflect it, the court minutes do not show it, and his contemporaneous notes do not show it. The masters said: "The fact that the record is devoid of reference to Judge Laettner's rejection of the 170.6 challenge raises the inference that it was never done."

Judge Laettner objects to the finding that he was not credible about revoking Ventura's OR release and remanding him in open court. In addition to insisting that he did so by turning to the right and telling his clerk about the revocation and remand, he asserts that Deputy Public Defender Thomas knew from the chambers discussions on October 31 and November 1 that Ventura was going to be remanded due to his termination from a treatment program, which was a violation of a term of probation. Ventura was released on OR on October 31, so his remand would not likely have been discussed that day. And even if it were discussed in chambers on November 1, his counsel, Thomas, had the right to be heard before the remand occurred. She denies that Judge Laettner told her on November 1, in chambers or on the record, that he was going to revoke Ventura's OR release from the previous day. Other than the judge's testimony, which the masters found not credible, there is no evidence to contradict the testimony of Thomas.

The judge also contends that Deputy Public Defender Thomas did not address the remand between November 1 and November 8, which corroborates that she knew about it on November 1. She did not do anything because she did not learn about it until November 7, when she saw that the remand box on the minute order for the criminal case was checked. Until then, she believed Ventura was in custody on an immigration hold. She learned about the remand when she and Ventura's immigration attorney were trying to get the immigration hold released by posting bond, which they would not have done had they known that Ventura had been remanded without bail by Judge Laettner. The evidence supports a finding that Thomas did not know about the remand without bail on November 1, and that Judge Laettner did not order the remand in open court in her presence.

Judge Laettner also objects to the masters' finding that he was "not credible" about rejecting the Code of Civil Procedure section 170.6 challenge in open court. He submits that the masters omit that Deputy Public Defender Thomas had previously moved for Judge Laettner to decide contested factual issues, thereby rendering the section 170.6 peremptory challenge untimely. Whether or not the peremptory challenge was untimely or meritorious is not relevant; the issue is whether Judge Laettner's statement under oath that he denied the section 170.6 in open court is true. The masters found that it was not, and we agree, based on the evidence. We agree with the judge, however, that if the peremptory challenge was untimely, the judge was not required to hold a hearing regarding the timeliness of the challenge, and could have simply stricken it. He was, nevertheless, required to advise Thomas of his ruling. The evidence does not support his claim that he did so in open court. It shows, to the contrary, that he did not.

We agree with, and adopt, the masters' findings, including regarding credibility.

2. *Conclusions of Law*

The masters determined that Judge Laettner's conduct in the *Ventura* matter was willful misconduct. They concluded that he abused his authority by failing to give Ventura's attorney, Deputy Public Defender Thomas, notice and the opportunity to be heard as to (1) his decision to revoke Ventura's OR release and remand him on November 1, 2013, and (2) his rejection of her Code of Civil Procedure section 170.6 challenge as being untimely.

To support their finding that his conduct was in bad faith, they referred to the morning session on November 8, when Deputy Public Defender Thomas raised the issue of Ventura's remand, describing it as an error. At the beginning of the afternoon session, Judge Laettner stated that Ventura would have to enroll in a

program as a condition of his OR release. Thomas again raised the issue of the revocation of Ventura's OR, arguing that there had been no changed circumstances to justify his remand. The masters cited the following colloquy from the transcript:

"MS. THOMAS: So the court had previously OR'd him with—subject to no conditions on the 31st of October. I don't believe that there has been any change in circumstance from that date to today.

"THE COURT: He's been remanded. *That's one change*. If you want him released on his OR, those are the conditions. If you don't then we can continue with this hearing on December the 20th with him in custody."

The masters found that Judge Laettner took advantage of Ventura's custodial status by conditioning his release on his enrollment in a program, and that the knowing or reckless failure to provide Ventura the process he was due was willful misconduct. And on November 8, Judge Laettner did not correct Deputy Public Defender Thomas by indicating that he had issued the revoke-and-remand order in open court on November 1; instead, he repeatedly reiterated that Ventura's OR would be conditioned upon his entry into a program.

In support of this conclusion, we note from the record that when Deputy Public Defender Thomas's colleague, Deputy Public Defender Jonathan Laba, accompanied her to court on November 8, the following exchange occurred:

"MR. LABA: . . . Our particular concern, procedurally, is what happened on Friday [November 1] because Ms. Thomas and Mr. Vaca [Ventura's immigration attorney], both of whom were here, have conveyed that the court didn't make any statements on the record about changing the previous day's OR to no-bail remand that showed upon the court's minute order, which is why now we're addressing the issue of his being released with conditions. Either the court did that and did it on the record, or the court did not, but that was not done. I don't know why the minute order reflects that, and I don't know why we are now addressing adding conditions to the OR release."

"THE COURT: Well, he was remanded on the 1st, and we have had many, many cases. I don't have a clear recollection of what happened on the 1st, but I have reviewed the minute order. He was remanded. It would have been with me saying he's remanded. That's where you find him. He is remanded."

Judge Laettner argues that there is no corrupt purpose for his remand of Ventura because Ventura was in violation of his probation by failing his treatment program. But Ventura had already been released on OR without

conditions, and when Deputy Public Defender Thomas asked for him to be released on OR again, the judge required a condition, which appears to be retaliatory.

We further note that on November 1, right after Judge Laettner heard the *Ventura* matter, he heard *People v. Williams*, during which he snapped at Deputy Public Defender Wills-Pierce. He then called her up to the bench and told her that he was sorry he was mad earlier, but that it was her friend, Deputy Public Defender Thomas, who had made him so mad. Thomas testified that when she confronted Judge Laettner about this later the same day, he confirmed that she had made him upset. Judge Laettner testified that he was angry or upset at Thomas because he believed she had been dishonest about her client.

We agree with the masters that there is clear and convincing evidence that Judge Laettner revoked Ventura's OR and remanded him without bail without notifying Deputy Public Defender Thomas or letting her be heard—which the masters found to be a reckless denial of Ventura's due process, the basis for willful misconduct.

We do not find that Judge Laettner was required to give Deputy Public Defender Thomas the opportunity to be heard regarding his denial of her Code of Civil Procedure section 170.6 challenge as untimely. But we do find that he was required to notify her of his ruling, and we agree with the masters that Judge Laettner lacked credibility when he testified that he did so in open court. There is no evidence to support his claim that he did.

The masters determined that Judge Laettner's conduct violated canons 1, 2, 2A, 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), and 3B(2). We agree with those legal conclusions and that his misconduct was willful.

F. *Count 8—Failure To Recuse or Disclose Son's Employment in District Attorney's Office*[5]

Judge Laettner is charged with failing to recuse or timely disclose on the record his son's employment with the district attorney's office in some cases where that office appeared.

The masters found that Judge Laettner had a system for appropriately making disclosures on the record, but that he failed to routinely do so in juvenile cases. They found, nevertheless, that he did not commit misconduct. We respectfully disagree and conclude that the judge's failure to always disclose the conflict on the record in juvenile cases constitutes improper action (which we do not consider for purposes of removal).

[5] We address counts 6 and 7, where no misconduct was found, after counts 8 and 9.

1. *Findings of Fact*

Judge Laettner's son, Max Laettner, was a law clerk at the Contra Costa County District Attorney's Office starting August 18, 2014, and a deputy district attorney starting June 29, 2015. Judge Laettner understood that he was required to disclose his son's employment as an attorney in the district attorney's office. He established a two-step procedure to address the disclosure requirement, which was to give an oral admonition at the beginning of the calendar, before cases were called, and to have the clerks stamp on the minute orders in every case a notice that his son was a deputy district attorney in the district attorney's office. The bailiff would double-check that orders were stamped with the disclosure before distributing them. Judge Laettner testified that he made the oral disclosure every day at the commencement of the calendar, before any cases were called, and that he was supposed to give the oral disclosure in the afternoon, but he is not sure he did it every time. In juvenile cases, however, Judge Laettner only made the disclosure to the attorneys, and only at the beginning of the calendar. It is not clear that all of the attorneys would be present at that point. None of the juveniles or their families would be present when the judge made the disclosure, as the cases came in "one at a time" after the judge purportedly made the oral disclosure.

Three juvenile cases were identified in which the judge did not make the disclosure on the record:

(a) In *In re Vanessa W.*, Judge Laettner presided over the first hearing on April 1, 2014. His son started as a clerk in the district attorney's office in August 2014. The first hearing in the case after Judge Laettner's son started in the district attorney's office, on October 7, 2014, was not reported, and the minutes do not indicate that the judge made a disclosure about his son. There was evidence that Judge Barry Baskin, as the "ethics advisor," had advised Judge Laettner that he was not required to make a disclosure about his son's clerkship. The transcript of the first reported hearing in the case, on April 8, 2016, does not reflect an oral disclosure on the record that day, but the minute order contains the stamped disclosure. Another minute order, dated April 29, 2016, also contains the stamped disclosure.

(b) In *In re Lauryn G.*, Judge Laettner made no disclosure on the record at four hearings. He admitted that, on one occasion, he presided over this case after his son had appeared on an uncontested motion to continue, and that he would have recused from the case had he noticed that. The masters had no doubt that he would have done so.

(c) In *In re Victor E.*, Judge Laettner made no disclosure on the record at a number of hearings. Only some of the minute orders were stamped.

Neither party objects to these factual findings.

2. *Conclusions of Law*

(13) Canon 3E(2)(a) provides that in "all trial court proceedings, a judge shall disclose on the record . . . [¶] . . . [¶] . . . information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." Section 170.1, subdivision (a)(6)(A)(iii), provides that a judge shall be disqualified if, for any reason, a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

The masters found that Judge Laettner was diligent in his efforts to disclose that his son was employed as a deputy district attorney by routinely making an oral disclosure, backed up by a written disclosure on the minute order, which was checked by the bailiff. There was no evidence that Judge Laettner was careless or indifferent about his duty to disclose.

The masters acknowledged that Judge Laettner handled some of the busiest court calendars with a significant number of cases, and they agreed that, in juvenile matters, "group 'disclosures' are impractical due to the sequential nature of the minors' appearances in a courtroom that is not open to the public." They found, nevertheless, that Judge Laettner omitted necessary on-the-record disclosures in several instances, and stated: "Minute orders issued after a hearing, which bear the disclosure stamp, do not remedy the lack of an oral disclosure before a proceeding commences. It is at the outset of a hearing that the parties and attorneys must have the relevant disclosure, in order to decide whether to seek a disqualification before the matter is heard by the judge."

The masters concluded that Judge Laettner failed to recuse himself in *In re Lauryn G.* and failed to timely disclose his son's employment with the district attorney's office in several instances in the *In re Vanessa W.* and *In re Victor E.* matters.

Despite the foregoing, the masters found that, under all of the circumstances, and weighing the court's significant caseload, coupled with the judge's diligent and consistent efforts to comply with the disclosure requirements, there was not clear and convincing evidence that these failures "even approached improper action . . . let alone constituted prejudicial misconduct or willful misconduct," as urged by the examiner.

(14) We respectfully disagree with the masters' legal conclusion regarding Judge Laettner's failure to disclose on the record in every case his son's

employment with the district attorney's office. The rules of ethics are clear that a judge must disclose that his or her adult child works in the district attorney's office in every case in which the district attorney's office appears. (See Cal. Judges Assn. (CJA), Jud. Ethics Update (2017) p. 2; CJA, Jud. Ethics Update (2007) p. 1; CJA, Jud. Ethics Com., Opn. No. 51 (2001) p. 2; Cal. Supreme Ct. Com. on Jud. Ethics Opns., formal opn. No. 2013-002 (2013) p. 8.)

The evidence establishes that Judge Laettner did not always properly disclose his son's employment with the district attorney's office in juvenile cases, and that he knew he was supposed to do so. The requisite disclosure is for the benefit of the parties, so that they might evaluate whether to seek to disqualify the judge. We find that the judge's failure to disclose his son's employment on the record in all juvenile cases violated canon 3E(2)(a). We further find that this was improper action, and not willful misconduct as argued by the examiner, because, in light of Judge Laettner's efforts to comply with the disclosure requirement, as described above, we do not believe that an objective observer would find his failure to do so in every case prejudicial to public esteem for the integrity and impartiality of the judiciary. We also find no corrupt purpose. Because we conclude that it is improper action, we do not consider this charge for purposes of removal.

G. *Count 9—Ex Parte Comments to Deputy Public Defenders*

Judge Laettner is charged with making ex parte comments, in response to peremptory challenges exercised by deputy public defenders, that would reasonably be perceived as sexual harassment or sexual discrimination and, at a minimum, gave the appearance that he was attempting to influence the attorneys not to exercise the challenges.

The masters found that Judge Laettner committed willful misconduct by engaging in two ex parte communications with deputy public defenders who were filing peremptory challenges against him. They did not find sexual harassment or sexual discrimination.

The masters further found that Judge Laettner's testimony was "not credible" regarding the statements he made to the deputy public defenders.

We adopt the masters' findings of fact. Due to the statute of limitations, we consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see *ante*, fn. 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

1. *Findings of Fact*

a. *Conversation with Deputy Public Defender Eiland*

In 2008, Judge Laettner presided over the trial in *People v. Ignacio*, a sexual battery case in which defendant Ignacio was charged with grabbing a woman's breast twice. Deputy Public Defender Nicole Eiland represented Ignacio. The jury acquitted Ignacio of sexual battery, but convicted him of simple battery. Judge Laettner sentenced Ignacio to 60 days in jail and probation for three years. The maximum penalty for simple battery is six months in county jail (Pen. Code, §§ 242, 243, subd. (a)).

Deputy Public Defender Eiland considered the sentence to be unduly harsh and began exercising peremptory challenges against Judge Laettner, pursuant to Code of Civil Procedure section 170.6. She testified that, three or four weeks after she began filing the challenges, Judge Laettner called her up to the bench and indicated that he had noticed that there had been challenges filed against him and "couldn't help but think it had something to do with the last case that [they] had together," which was the *Ignacio* case. She testified that he told her that he wanted her to think about "what if this had been [her] or what if this had been Ms. MonPere" whose breast had been grabbed. Eiland testified that Judge Laettner never explicitly said not to file challenges against him, but she felt that she was "being called into the principal's office and told not to do this [file section 170.6 challenges] anymore."

Judge Laettner denied discussing the Code of Civil Procedure section 170.6 challenges with Deputy Public Defender Eiland. He admitted having a conversation with her about whether his sentence in *Ignacio* was too harsh and said he did so because he could see that she was still very upset with him. He testified that he did not say anything about the sentence, but that he said she needed to consider the victims. He denied making reference to Deputy Public Defender MonPere or grabbing her breast, but testified that he might have said, "[W]hat if it had been a family member or a friend that had been a victim in a case?" He said he did this because he wanted Eiland to have empathy for the victims of crime and "basically to defend [him]self." He also said she needed to consider victims because she had a hostile demeanor toward him and, "in fairness to [him], since [he] was considering the victim who had been essentially molested," she should consider victims.

The masters found Deputy Public Defender Eiland's testimony credible. It was partially corroborated by Judge Laettner's testimony that he asked her what if the assault in *Ignacio* had involved a family member or friend, and was further corroborated by Deputy Public Defenders Osborne and Cuthbertson, who testified that Judge Laettner made similar comments to them. The

masters also found that, even though Judge Laettner did not explicitly say not to file Code of Civil Procedure section 170.6 challenges against him, he indirectly referenced Eiland's section 170.6 challenges against him during his conversation with her.

b. *Conversation with Deputy Public Defenders Osborne and Cuthbertson*

Deputy Public Defenders Osborne and Cuthbertson also began exercising peremptory challenges against Judge Laettner in 2008 after his sentence in *Ignacio*. Because their challenges of him "jammed up" the three-judge courthouse, Supervising Judge William Kolin had a conversation with Osborne, during which it was agreed that he and Cuthbertson would pretry cases with Judge Laettner, which Judge Kolin would review.

About a month or so after Judge Laettner sentenced Ignacio, Deputy Public Defenders Osborne and Cuthbertson and a prosecutor were pretrying cases in front of Judge Laettner. The judge asked the prosecutor to leave. Osborne testified: "So Judge Laettner said that, you know, *he wasn't trying to tell us to—to not challenge him on cases*, but he could tell that we were upset with him. And so he—I started telling him about why I was—why I was challenging him on those cases. [¶] And I told him that the sentence for Ms. Eiland's client was grossly unfair and disproportionate to the crime that he was convicted of. And—you know, and after that, Judge Laettner said, well, you know, *what if it had been Ms. MonPere's breast that this man had—had grabbed?*"

Deputy Public Defender Osborne got the sense that Judge Laettner was trying to smooth things over with the public defenders.

Deputy Public Defender Cuthbertson also testified that Judge Laettner asked the district attorney to leave. He said the judge then brought up the challenges, saying: "I would never tell you not to represent your clients to the best of your ability. But I would be lying if I told you that being challenged didn't hurt my feelings or didn't hurt." Cuthbertson also testified that, in talking about the *Ignacio* case, Judge Laettner asked, "[W]hat if that was Ms. MonPere's breast that he grabbed?" Cuthbertson remembers this because it was inappropriate, Deputy Public Defender MonPere was his friend, and the "power dynamics in the room" were such that he "felt what was happening wasn't right."

Judge Laettner admitted having an in-chambers discussion with Deputy Public Defenders Osborne and Cuthbertson about *Ignacio*, but he denied asking the district attorney who had been in chambers to leave. Judge Laettner denied knowing, at the beginning of his conversation with the deputy public defenders, that they had been filing Code of Civil Procedure

section 170.6 challenges against him. He testified that Osborne and Cuthbertson were "kind of my guys" and that he began the conversation by asking them, "[S]o what's going on you guys?" He said Osborne told him they had been challenging him because of his sentence in *Ignacio*, at which point Judge Laettner said he could not discuss challenges with them, and that they should challenge a judge if they thought it was in their client's best interest. He also testified that when Osborne said the reason they were challenging him was because they thought the sentence in *Ignacio* was unfair, he said something like, "[W]hat if it had been a family member or friend or Ms. Eiland or Ms. MonPere that had been the victim?"

The masters found that Judge Laettner was "not credible" when he testified that, until their conversation in chambers, he was unaware that Deputy Public Defenders Osborne and Cuthbertson were filing Code of Civil Procedure section 170.6 challenges against him, because he was in a three-judge courthouse, where two judges were having to do the work of three, and the supervising judge took it upon himself to intercede with the deputy public defenders.

The masters found the testimony of Deputy Public Defenders Osborne and Cuthbertson credible that Judge Laettner engaged them in a discussion about their Code of Civil Procedure section 170.6 filings. Judge David Flinn, formerly on the Contra Costa County bench, testified that when Judge Laettner had been receiving section 170.6 challenges for a week or two, Judge Laettner sought his advice about his experience with section 170.6 challenges. Judge Flinn related that Judge Laettner was frustrated that he could not stop the deputy public defenders in the hallway and ask why they were doing it, or explain the reason he ruled as he did, but he understood that he could not do this. Judge Flinn told Judge Laettner that, by "reaching out and being friendly to the public defenders," the challenges would stop. Cuthbertson's testimony that Judge Laettner said he would be lying if he said being challenged did not hurt his feelings was consistent with the frustration Judge Laettner expressed to Judge Flinn regarding his inability to explain himself to the deputy public defenders. Further, Cuthbertson's testimony that Judge Laettner brought up the challenges is consistent with Judge Flinn's advice (which the masters found "questionable") to reach out and be friendly to the public defenders.

The masters also found "not credible" Judge Laettner's denial that he referred to touching Deputy Public Defender MonPere's breast. He admitted saying to Deputy Public Defenders Osborne and Cuthbertson, "[W]hat if it had been a family member or friend or Ms. Eiland or Ms. MonPere that had been the victim?" The masters reasoned that, if he was trying to impress upon them the seriousness of the situation, which he said he was, then he would

refer to the defendant's conduct, "grabbing breasts," when asking them to imagine if it had been their colleague. And the masters found credible and compelling Cuthbertson's explanation as to why he remembers that Judge Laettner referred to MonPere's breast.

(15) The masters found that Judge Laettner did speak to Deputy Public Defenders Eiland, Osborne, and Cuthbertson about the Code of Civil Procedure section 170.6 challenges, and that, by telling them to consider victims, he was defending his sentence in *Ignacio*. According to the masters, the misconduct in this case is Judge Laettner's defense of his sentence in response to the public defenders' section 170.6 challenges. His suggestion to Cuthbertson that his feelings were hurt by the challenges from his "guys" reasonably calls into question his ability to make a difficult or unpopular decision in the future. As the masters stated, "The integrity of the judiciary depends upon the unflinching posture by judges that necessary but unpopular decisions will always be made."

Judge Laettner objects to the masters' findings that he was not credible. He contends that he never mentioned the Code of Civil Procedure section 170.6 challenges to Deputy Public Defender Eiland, and that she testified that he did not reference peremptory challenges pursuant to section 170.6. But Eiland, whom the masters found credible, testified that, while Judge Laettner never said not to file challenges against him, he told her he could not help but notice that she had been exercising challenges against him, and that he thought it had something to do with their last case.

The judge objects that the masters omitted that Deputy Public Defender Osborne admitted misremembering the events and/or adopting the recollections of other parties regarding the conversation about the *Ignacio* sentence. First, Deputy Public Defender MonPere told Osborne that she did not think he was there when the judge's comment about her was made, but Osborne said he did not think that was the case, and he testified that he had "strong memories" of the conversation with Judge Laettner. Second, Osborne admitted that Deputy Public Defender Cuthbertson reminded him that they had met with the judge when the comment was made, which confirmed his memory. That Osborne was at first uncertain about his memory, and that MonPere thought Osborne was not present, is not determinative of whether the comments were made. We find that there is sufficient evidence to support the masters' finding that they were in fact made.

Judge Laettner argues that there was no "blanket challenge"[6] by the public defenders against him, but that there was one against Judge William Kolin,

[6] "Blanket challenge" refers to the practice of a party or attorney repeatedly filing Code of Civil Procedure section 170.6 challenges against a particular judge.

and that therefore he was credible when he said he did not know that Deputy Public Defenders Osborne and Cuthbertson were filing challenges against him. The masters referred in their report to the filing of Code of Civil Procedure section 170.6 challenges against Judge Laettner by Osborne and Cuthbertson in early 2008 as a "blanket challenge." They are not referring to a "blanket challenge" by the entire public defender's office. The evidence that Osborne and Cuthbertson routinely challenged Judge Laettner for a period of time in 2008 is uncontroverted.

Judge Laettner says that differences in testimony as to whether he referred to Deputy Public Defender MonPere's breast are due to a faulty memory, not dishonesty. But he also asserts that he admitted the conduct before formal proceedings were initiated. In his response to a supplemental preliminary investigation letter and in his verified answer, however, he denied referring to MonPere's breast during his conversation with Deputy Public Defenders Cuthbertson and Osborne. We agree with the masters' finding that Judge Laettner's denial that he made the comment about MonPere's breast lacks credibility.

2. *Conclusions of Law*

(16) The masters determined that Judge Laettner committed willful misconduct because, according to Judge Flinn, he understood that he could not explain himself, but, by asking the public defenders to consider the victim, he was speaking directly to the reason the peremptory challenges were being made. Willful misconduct occurs when a judge acts on the desire to stop Code of Civil Procedure section 170.6 challenges from being filed against him by "initiating any communication with the lawyer or the law firm involved." (Rothman, *supra*, § 5:4, p. 267.) The masters found that, although he did not explicitly tell the deputy public defenders not to file the challenges, because of the "power dynamics in the room," as felt by Deputy Public Defender Cuthbertson, and Deputy Public Defender Eiland's feeling that she was "being called into the principal's office and told not to do this anymore," the act of explaining his sentencing decision, in the context of a blanket challenge, was for a purpose other than the faithful discharge of his judicial duties.

They also found that the judge's comment about considering if it had been Deputy Public Defender MonPere's breast that had been grabbed was undignified and discourteous, contrary to canon 3B(4). They did not find that it constituted gender bias or sexual harassment. As to both subcounts, they found the judge violated canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7).

Due to the statute of limitations, we consider this count only for purposes of evaluating the judge's honesty during this proceeding (see *ante*, fn. 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

H. *Count 6—Comments in Dependency Case*

Judge Laettner is charged with making statements in a case involving a juvenile that gave the appearance of prejudgment and that would reasonably be perceived as bias or prejudice.

We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

I. *Count 7—Instituting Program To Address Backlog*

Judge Laettner is charged with instituting a new program to address a backlog in criminal court, which was allegedly an abuse of authority, had a chilling effect on defendants' constitutional right to trial by jury, and gave the appearance that he intended to give harsher treatment to defendants who asserted their right to trial and were convicted.

We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

IV. APPROPRIATE DISCIPLINE

(17) In determining the appropriate level of discipline, we consider our mandate to protect the public, to enforce rigorous standards of judicial conduct, and to maintain public confidence in the integrity and impartiality of the judiciary. (See *Broadman, supra*, 18 Cal.4th at pp. 1111–1112.)

(18) The commission has identified several factors to consider in determining the appropriate sanction, including the judge's honesty and integrity, the number of acts and seriousness of the misconduct, whether the judge appreciates the impropriety of the conduct, the likelihood of future misconduct, the impact of the misconduct on the judicial system, and the existence of prior discipline. (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1, 95–96 (*Saucedo*).) The commission may also consider the effect of the misconduct on others and whether the judge has cooperated fully and honestly in the commission proceeding. (Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(f), (2)(b).)

Foremost in the commission's consideration of the foregoing factors is honesty and integrity. (*Saucedo, supra*, 62 Cal.4th at p. CJP Supp. 96.) Honesty is a minimum qualification expected of a judge. (*Kloepfer, supra*, 49 Cal.3d at p. 865.) A judge who does not honor the oath to tell the truth cannot be entrusted with judging the credibility of others. (*Inquiry Concerning MacEachern* (2008) 49 Cal.4th CJP Supp. 289, 309 (*MacEachern*).) The

commission takes "particularly seriously a judge's willingness to lie under oath to the three special masters appointed by the Supreme Court to make factual findings critical to [its] decision." (*Saucedo, supra*, 62 Cal.4th at p. CJP Supp. 97.) The California Supreme Court has said, "There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission in the course of its investigation into charges of wil[l]ful misconduct on the part of the judge." (*Adams II, supra*, 10 Cal.4th at p. 914).

Judge Laettner repeatedly asserted, in his posthearing briefs and at his appearance before the commission, that the special masters concluded that he is "honest to a fault." The masters, however, specifically stated in their report that, to the contrary, Judge Laettner was "not credible" in six instances and that his testimony was "impeached" in another. They also rejected much of his testimony in favor of that of other witnesses. While the masters found Judge Laettner's acknowledgment of wrongdoing as to some of the acts charged to be mitigating, they determined that he was "not credible or not truthful as it relates to his testimony concerning several of the events" in this matter, and that his "lack of candor regarding several of the allegations is troubling."

The instances where the masters found, either explicitly or implicitly, that Judge Laettner was not credible include his testimony that:

—He called Deputy Public Defender Della-Piana into the well to ensure she received the minute orders, while the prosecutor was at counsel table, and told her he was resetting Imlay's bail at $25,000 per case.

—His order exonerating and resetting Imlay's bail is not on the record because his court reporter was not present, or was present but did not take his order down.

—He was confused about who represented Lauryn G.

—He did not talk to Deputy Public Defender Della-Piana about *Eric B.* in the hallway.

—He did not talk to Deputy Public Defender Della-Piana about *Imlay* in chambers.

—He revoked Ventura's bail and remanded him in open court.

—He rejected Deputy Public Defender Thomas's Code of Civil Procedure section 170.6 peremptory challenge as untimely in open court.

—He did not know he was being routinely peremptorily challenged by Deputy Public Defenders Osborne and Cuthbertson in a three-judge courthouse.

—He did not refer to Deputy Public Defender MonPere's breast when he said the deputy public defenders should consider the victim in *Ignacio*.

Judge Laettner argues that differences in testimony may be the result of faulty memory, rather than conscious dishonesty. But the masters found, in several instances, that the judge's explanations lacked credibility because they did not make sense. For example, he testified that Deputy Public Defender Della-Piana was in the well when he revoked Imlay's bail, but the masters stated that there would be no reason for this to occur, and it would have been improper. His explanations about why something was not on the record in *Imlay* were inconsistent: he said his court reporter was not present, and he also said she was present but not taking things down. According to the masters, his claim that he was confused as to which deputy public defender represented Lauryn G. was not believable given Deputy Public Defender Moghtader's prior involvement in the case and Della-Piana's references to her during the hearing. And his assertion that he did not know he was being peremptorily challenged is at odds with Judge Flinn's testimony that he sought Judge Flinn's advice on how to handle the challenges.

Judge Laettner also claims that the special masters found that he has taken full responsibility for his mistakes "without excuse." There is no such finding in the masters' report. Judge Laettner denies committing misconduct in three of the six counts the masters found were proven by clear and convincing evidence (counts 1, 3, and 9), and in a fourth count the masters concluded did not constitute misconduct but we did (count 8). Further, he does not take responsibility for the following conduct:

—Ex parte communication with Deputy District Attorney Fernandez—The judge says Deputy Public Defender Della-Piana's absence from the courtroom "made her inclusion [in the ex parte] impossible." (There was no need for the ex parte communication in the first place.)

—"Teenage daughter" comment to Deputy Public Defender Della-Piana—He denies that this was demeaning and said he intended it as a "compliment." (The masters found it "inconceivable" that she might take it as a compliment.)

—Ex parte communication with Deputy Public Defender Della-Piana regarding *Eric B.*—He denies discussing the *Eric B.* case with her. (She testified that he did, and the masters found that he did. And he says in his posthearing brief that he did not explicitly deny referencing *Eric B.* during the ex parte discussion with Della-Piana, but when he was asked whether he discussed that case with Della-Piana on that occasion, he responded, "No.")

—Ex parte communication with Deputy Public Defender Della-Piana regarding *Imlay*—He denies discussing the *Imlay* cases with her. (She testified that he did, he admitted in his answer that he did, and the masters found that he did.)

—Remand of Ventura—He denies that he did this off the record. (The evidence indicates that he did not do it on the record.)

—Denial of Deputy Public Defender Thomas's Code of Civil Procedure section 170.6 request—He denies that he did this off the record. (The evidence indicates otherwise.)

—Discussion of peremptory challenges with Deputy Public Defender Eiland—He denied that he discussed them with her. (She testified that he did, and the masters found her credible.)

—Referring to Deputy Public Defender MonPere's breast when asking the deputy public defenders to consider the victims—He denied doing so. (Deputy Public Defenders Osborne and Cuthbertson testified that he did, and the masters found them credible.)

Judge Laettner emphasizes that he admitted the misconduct in counts 2, 4, and 5, which the masters found reflected a pattern of gender bias against women. But he only admitted some of the misconduct, and, as the masters stated, he attempted to minimize and justify some of his remarks. For example, he said he commented on Deputy District Attorney Bell's looks because he wanted to convey her competence to grand jurors, he claimed that comparing Deputy Public Defender Della-Piana to a teenage girl was a compliment, and he said he told Deputy Public Defender MonPere that she was "his favorite," in front of other attorneys, to build her confidence.

Judge Laettner also contends that he promptly recognizes his mistakes, and cites as an example his response to Deputy Public Defender Wills-Pierce's complaint that he said, "I can take judicial notice that women can drive you crazy." But he did not apologize for the comment until several days later, when Wills-Pierce confronted him about it. Moreover, he testified that he and then-Supervising Judge Barry Goode "had a chuckle" about it, which does not reflect recognition of the effect such a comment could have on a professional female attorney or her clients, particularly in a domestic violence case.

Further, Judge Laettner still blames the Contra Costa County Public Defender's Office, stating in his posthearing briefing that "[i]t cannot be overlooked that all but one complainant" is from there, and that he is facing disciplinary action "only as the result of" circumstances involving a campaign against him by the Contra Costa County Public Defender. The masters found, and we agree, that the source of the complaints is irrelevant; it is the judge's conduct that matters.

Judge Laettner's inability to fully accept responsibility for his behavior was evident at his appearance before the commission on October 2, 2019. While

he acknowledged generally the impropriety of his comments in counts 2, 4 and 5, he continued to deny responsibility for the significant acts of misconduct in counts 1 and 3, and to blame others. Judge Laettner argued that the special masters were incorrect in each of the multiple instances they found his explanations or statements to be not credible, and he denied that he might have been mistaken as to any instance, even after hearing testimony from other individuals that was inconsistent with what he said was his recollection. When asked why he thought the special masters found some of his testimony to be not credible, he responded that they "weren't given the whole story." He claimed that he had "100 other witnesses lined up and ready to go," with "testimony that corroborated [him]," but that the masters did not allow their testimony. This assertion seems disingenuous in light of what actually occurred during this proceeding.

(19) Judge Laettner called close to 40 witnesses on his behalf during the evidentiary hearing (and cross-examined the examiner's many witnesses). After the special masters heard 34 witnesses testify about Judge Laettner's character and honesty, Judge Laettner said he had seven additional witnesses he wished to call (Kim Carmichael, Thomas Wolfrum, Sergeant Mike Parrish, Deputy Sheriff Lisa Berry, Deputy District Attorney Melissa Smith, Peter Silten, and Laura Delehunt). The masters indicated that they had "heard a great deal of testimony with regard to Judge Laettner's character and traits for honesty, respect, and dignity," including "from some of the most well-respected judges in California," and they excluded the testimony of the last four witnesses on the ground that it was cumulative. Evidence Code section 352 allows the court to exclude evidence if, in its discretion, the probative value of the evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (See *Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163 [48 Cal.Rptr.2d 106, 906 P.2d 1260] [masters may exclude cumulative evidence].) Carmichael was not available to testify, but Wolfrum and Sergeant Parrish testified. Judge Laettner's counsel then informed the special masters that the judge had no other witnesses to call.

We note that testimony about the judge's reputation for honesty is different from that of percipient witnesses who would testify about the facts upon which the misconduct findings are based.

After the evidentiary hearing before the special masters was concluded, Judge Laettner submitted with his opening brief to the commission a request to reopen the evidence, pursuant to Rules of the Commission on Judicial Performance, rule 133(a) (further references to rules are to the Rules of the Commission on Judicial Performance), on the ground that his due process

rights under commission rule 126[7] had been denied because the special masters did not let him call additional witnesses to testify as to his "character for honesty."

Judge Laettner's request also sought to introduce declarations and testimony of witnesses with evidence that he claimed was new and that corroborated his testimony in the six instances where the masters expressly found his testimony to be not credible, summarized as follows:

(a) Declaration of former Judge William Kolin: In his proposed declaration, Judge Kolin does "not recall Judge Laettner being 'blanket' challenged under [Code of Civil Procedure section] 170.6 on all public defender cases." Judge Laettner was not alleged to be the subject of a blanket challenge on all public defender cases. The proposed declaration does not refute the masters' finding that Judge Laettner was not credible when he testified that he did not know of a blanket challenge by Deputy Public Defenders Osborne and Cuthbertson.

(b) Declaration of Deputy Sheriff Lisa Berry: Deputy Berry's proposed declaration states that she does not recall public defenders filing peremptory challenges against Judge Laettner on every matter. Like Judge Kolin's declaration, this is not relevant because there is no allegation that public defenders filed peremptory challenges against Judge Laettner on every matter.

(c) Declaration of Deputy District Attorney Jun Fernandez: Fernandez was a witness during the hearing. His proposed declaration seeks to revise his prior testimony. Judge Laettner had ample opportunity during the hearing to elicit from Fernandez all information relevant to the charges. Judge Laettner offered no reason why he did not do so during the hearing.

(d) Declaration of Deputy Scott Reed: Deputy Reed was also a witness during the hearing. The masters did not believe all of his testimony. His proposed declaration states that Judge Laettner said he was exonerating bail and resetting it in *Imlay* in open court with all parties present. Deputy Reed's declaration also states that he cannot recall if the court reporter was present when the judge issued the bail order, that public defenders commonly interchange cases, and that Deputy Public Defender Della-Piana was often flirtatious in the courtroom, whereas the judge was not.

Deputy Reed testified at the hearing, and Judge Laettner had a full opportunity to question him about all of the issues he seeks to address in the

[7] Rule 126 states in relevant part that "[w]hen formal proceedings have been instituted, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses."

declaration, including that of bail in the *Imlay* case, which was a significant charge in the case. The judge offers no reason why he did not elicit the information in Deputy Reed's declaration during the hearing. And whether public defenders exchange cases has no bearing on whether Judge Laettner knew who was representing the defendant in *Lauryn G.* The issue of Deputy Public Defender Della-Piana's alleged flirtatiousness, and that of the judge, was also the subject of testimony and could, and should, have been fully addressed during the hearing.

(e) Testimony of Lisa Humiston: Judge Laettner also sought to reopen the evidence to have Humiston, his courtroom clerk, testify that he said in open court, with all parties present, that Ventura was remanded. Judge Laettner was notified of this allegation on August 4, 2017, and it was thoroughly addressed at the hearing. The judge included Humiston on his witness list, but he chose not to call her at the hearing. He offered no reason for not calling her.

The commission denied Judge Laettner's request to reopen the evidence on the grounds that he failed to establish that his due process rights were being violated or that there was good cause to reopen the hearing to take additional evidence, as required. (See *Inquiry Concerning Hyde* (2003) 48 Cal.4th CJP Supp. 329 [good cause requirement for reopening the record in formal proceedings].)

Accordingly, Judge Laettner's argument at his appearance that the masters did not get the "whole story" because he was precluded from calling "100 other witnesses" who would have refuted the masters' credibility findings is dubious at best.

Regarding the nature and seriousness of the misconduct, we find, for purposes of determining the appropriate level of discipline, that Judge Laettner committed five acts of willful misconduct and 11 acts of prejudicial misconduct. This is a significant amount of misconduct. Judge Laettner's willful misconduct includes two improper ex parte communications with Deputy Public Defender Della-Piana about pending cases for the impermissible purpose of addressing his frustration about her feelings toward him; his ex parte communication with Deputy District Attorney Fernandez because he was "mad" at Della-Piana; and his retaliatory conduct in remanding Deputy Public Defender Thomas's client, without bail, without affording her the opportunity to be heard. His prejudicial misconduct includes the separate incident of remanding defendant Imlay and resetting bail without affording her attorney, Della-Piana, the opportunity to be heard; inappropriate remarks to Della-Piana; inappropriate comments to and about a number of women, many of which reflect gender bias; comments that create the appearance of bias based on physical appearance; and poor demeanor toward Deputy Public Defender Wills-Pierce because he was upset with Thomas.

Judge Laettner claims that he did not know that comments about the physical appearance of women were improper, that he learned this from the commission's investigation letter and discussions with his presiding judge, and that he was not trained on this issue until September 2018. The masters noted that, presumably during Judge Laettner's 10-plus years on the bench, he "received ethics and conduct training, in the form of CJER's New Judge Orientation, and qualifying ethics courses, elective and mandatory, every three years." They also found that, after 10 years on the bench, "it can be expected that a judge's words and conduct will have conformed to the demands of the canons," but that Judge Laettner's did not do so.

We also note that the California Judicial Conduct Handbook that was in effect when Judge Laettner took the bench in 2006 addresses gender bias and states that unprofessional remarks made in the courtroom concerning an attorney's personal appearance can have an impact on the credibility of women in court and, when addressed to a woman lawyer, make it difficult for her to effectively represent her clients. The 1999 handbook also notes that exhibitions of gender bias have been regarded as conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Rothman, Cal. Judicial Conduct Handbook (2d ed. 1999) § 2.11, pp. 37–38.) Thus, Judge Laettner should have been on notice that comments in the courtroom about a woman's personal appearance are inappropriate.

Judge Laettner also argued at his appearance that he has received a lot of counseling and now understands that he should not comment on women's physical appearance. But he introduced no evidence of that counseling at the evidentiary hearing. And his misconduct goes beyond improper comments to women. He did not indicate at his appearance that he understood why the additional misconduct (e.g., denial of due process and improper ex parte communications) was wrong; instead, he claimed that the masters were wrong.

(20) Given the judge's failure to acknowledge the impropriety of much of his misconduct, and his lack of credibility before the masters, we do not believe that he has shown sufficient appreciation of his misconduct to assure us that he will not reoffend. "A judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform." (*Inquiry Concerning Platt* (2002) 48 Cal.4th CJP Supp. 227, 248; see *Ross, supra*, 49 Cal.4th at p. CJP Supp. 139.)

Judge Laettner contends that the masters found "undisputed" evidence that there will be no further misconduct. The masters made no such finding. They described him as an "asset" to the local bench, and, from this, he extrapolates a finding as to his future misconduct that the masters never made.

Judge Laettner's claim that he has committed no misconduct since 2017 is not given much weight because neither he nor the commission members would necessarily know if complaints have been made about him because the commission members are typically not told about a new complaint if it is received while formal proceedings are pending.

Regarding the impact of the judge's misconduct on the judicial system, the masters found that Judge Laettner's actions eroded public confidence in the dignity, integrity, and impartiality of the judiciary. They specifically noted that commenting on the physical appearance of women attorneys and joking about how "women can drive you crazy" diminishes the dignity of the process of the court. They said that partiality, showing favoritism, and referring to an attorney's physical beauty "strikes at the very foundation of the administration of justice and erodes public trust and confidence." We agree with the masters' findings that Judge Laettner's conduct had an adverse impact on the judicial system in general.

We also take into account the effect of the judge's conduct on other individuals. The masters found that two individuals' "employment circumstances changed as a byproduct of Judge Laettner's conduct." His former court reporter, Michel, said she left his department in June 2017 because she "could no longer take" his favoritism toward tall, skinny blondes and petite Asian women. Deputy Public Defender Della-Piana was transferred after bringing the judge's comments about her being a "hard one" and "not spanked enough" to her supervisor's attention.

(21) Judge Laettner has no prior discipline. This is a mitigating factor in light of his 13 years on the bench. But because the aim of commission proceedings is protection of the public and not punishment, in the more serious cases involving willful and prejudicial misconduct, mitigating circumstances have only limited appeal. (Rothman, *supra*, § 12:92, p. 856.) The commission has removed other judges from the bench who had no prior misconduct, particularly where dishonesty was involved (e.g., *MacEachern, supra*, 49 Cal.4th at p. CJP Supp. 311; *Saucedo, supra*, 62 Cal.4th at p. CJP Supp. 102).

(22) We also take into account the testimony of numerous witnesses in favor of Judge Laettner, and we acknowledge his years of judicial service and contributions to the bench. But the California Supreme Court has held that even a good reputation for legal knowledge and administrative skills does not mitigate willful misconduct or prejudicial misconduct. (*Kloepfer, supra*, 49 Cal.3d at p. 865.) And as the commission stated in *Ross, supra*, 49 Cal.4th at page CJP Supp. 90, "If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental."

(23) In light of all of the foregoing factors—but particularly the requirement that judges must, at a minimum, be honest and have integrity—we conclude that removal from the bench is warranted.

ORDER

Pursuant to the provisions of article VI, section 18 of the California Constitution, and rules 120(a) and 136 of the Rules of the Commission on Judicial Performance, we hereby remove Judge John T. Laettner from office and disqualify him from acting as a judge.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Anthony P. Capozzi, Esq.; Mr. Eduardo De La Riva; Ms. Sarah Kruer Jager; Ms. Kay Cooperman Jue; Dr. Michael A. Moodian; and Mr. Adam N. Torres voted in favor of all the findings and conclusions expressed herein and in this order of removal. Commission members Hon. William S. Dato, Hon. Lisa B. Lench, and Mr. Richard Simpson concur as to the factual findings and most of the legal conclusions expressed herein, but dissent as to the order of removal and would have imposed a public censure.

The petitioner's petition for review was denied June 10, 2020.