



## **JUDICIAL MISCONDUCT INVOLVING PROSECUTORS**

**(Commission on Judicial Performance & Supreme Court Cases)**

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## JUDICIAL MISCONDUCT INVOLVING PROSECUTORS

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### Intrusion Upon Prosecutorial Function

In one criminal case, Judge Tamietti signed a warrant for the arrest of a person for annoying or molesting a child, a misdemeanor. The judge set bail at \$7,500, but did not impose any bail conditions. The subject person was arrested on the warrant later that day. After interviewing the arrestee, a police officer requested that bail be increased to \$150,000. Judge Tamietti authorized the increase by telephone, but again did not impose bail conditions, based on his expectation that the arrestee would not post bail and would appear for arraignment within 48 hours of his arrest. The next day, the arrestee posted bond, was released, and was scheduled to appear three months later in September. The next day, in an email with the name of the arrestee in the subject line, Judge Tamietti initiated an ex parte contact with a DDA and asked, "Who is the DA [district attorney] on this child molest case? He bailed ... and we need to get him in more quickly for bail conditions." Three days later, in an email at 9:50 a.m., the DDA assigned to the case replied to Judge Tamietti, "It will be my case, Your Honor." At 9:53 a.m., the judge responded by email, stating, "Thank you. He posted bail to September. I want to see him before then to impose bail conditions. Judge T." At 2:34 p.m., the assigned DDA sent the following response: "I will do my best to bring him into court as soon as we make a filing decision, Your Honor. As of now, unfortunately, I have no reports to review."

On September 4, in an email to the assigned DDA with the subject line of the arrestee, the judge initiated another ex parte contact and stated, "We still have not seen a complaint on this case. What is up?" On September 6, at 11:37 a.m., the assigned DDA responded, "Further investigation and questions were taking place in the background. I am meeting with Truckee PD next week."

On September 6, at 12:25 p.m., in an email to the assigned DDA, DA, Assistant DA, and Presiding Judge, Judge Tamietti stated: "He bonded out on June 20 and has been free without any conditions since then despite facing child molestation charges and having an extensive occupational and avocational history of dealing with minors. This level of 'service' is far below what the citizens of this community expect and deserve."

At 3:07 p.m., the DA responded:

Good afternoon Judge Tamietti: Please do not try to influence my Office's filing decisions. You have no idea what is going on in the case nor should you. A rush to filing could very well jeopardize a case and result in serious injustice. You can be assured the "level of service" to the citizens of Truckee is extensive and [the assigned DDA] is appropriately handling the matter. Regards, [DA]

At 4:33 p.m., Judge Tamietti responded: "Baloney. When the inaction and/or inattention of your office or any other agency puts this community at risk I have a duty to speak up. If that offends you in this circumstance, so be it."

In another criminal case, the defendant was charged in a criminal complaint with assault with a deadly weapon, battery with serious bodily injury, and street terrorism (involving active participation in a criminal street gang), all felonies. The alleged assault occurred as a number of people were leaving a late night party, and the victim was seriously injured. At a preliminary hearing, Judge Tamietti granted the prosecutor's motion to dismiss the assault with a deadly weapon and street terrorism counts but, after hearing testimony, concluded that there was sufficient evidence to hold the defendant on the remaining count, battery with serious bodily injury. Several months later, the DA asked that the case be dismissed because tainted witness statements prevented proof beyond a reasonable doubt. After questions and comments about the evidence, Judge Tamietti stated:

I got a couple of problems here with this file. One is I have got a victim beaten within an inch of his life who thankfully survived. Two, I have got this insinuation, I'll call it, of gang activity, which is a cancer that seems to be

working its way into this community and to which most of the citizens of the community are oblivious. Sitting where I sit doing what I do, I'm a little less oblivious than average to that. And there was enough of an insinuation of gang involvement in this circumstance that it initially got charged as a gang case. And then the gang aspects of the case got dismissed, for whatever reason, some of which is attributable to your assistant DA's statement that we are not, meaning you, are not prepared to try a gang case. And I think the citizens of this community are probably ready to have a gang case tried for a couple of reasons: One, to figure out, if in fact, that's true; and two, to educate the community about the risks that are inherent in that insinuation into the society of this community. So I heard the preliminary. I remember what was said. And I haven't seen the investigative work that the defendant's investigator, for which I have signed a couple of orders, has performed, I don't know what they say. I'm at a little bit of disadvantage there.

But the mere fact that people are not getting their stories straight or recanting their stories, there is a lot of different reasons that might be happening in a case that has gang insinuation. I'm not suggesting that I have any evidence of [*sic*] [the defendant], or any of his cohorts are pressuring witnesses, but I don't think that's a naive thing to assume that might be happening and might be an explanation for the result of some of the investigative works performed by the defense.

I would point out, which is my question to you, was whether your office had expended any investigative resources on this file? I don't see [Truckee police officers] here, so I don't know what their views are on that subject.

After the DA provided more details regarding the decision to move to dismiss the case, how the case was investigated, and his efforts to fill vacant DDA positions; and after hearing arguments for dismissal, Judge Tamietti stated:

Well, I would observe that having been the felony judge on the other side of the county for five years, before I got this assignment, that had this crime happened in [the] Safeway parking lot of Grass Valley, it is my impression that a whole bunch more of resources would have been thrown at this case than would have been thrown at this one. If Mr. Torres was improperly charged, he deserves an apology. If he was properly charged, we ought to take the case to trial and let a jury of 12 citizens of this community decide whether or not witnesses who are recanting, have been pressured into recanting.

I have some live testimony at the preliminary and most of it was 1153 from Detective Lopez, so I can't make any real independent assessment about those people's statements given to Detective Lopez and Detective Lopez isn't here to amplify on that. So I'm put in the very uncomfortable situation of not doing what I think is my best to protect the citizens of this community, which is the principal reason they gave me this job in the first place. So I don't like the spot I'm being put in here, Mr. Newell.

And I credit my disgust, in large part, to your office and its handling of this file. But I'll grant the motion without prejudice, dismiss the case, in return for his plea to the dead bang we found you with drugs indicia for sale.

*[Public Admonishment of Judge Robert L. Tamietti (2020).]*

In addition to other misconduct, the judge made statements about refiling a case that appeared to intrude on the district attorney's charging decision. [Com. on Jud. Performance, Ann. Rept. (2016), Advisory Letter 2, p. 27.]

After the Court of Appeal reversed a criminal conviction, the judge who had presided over the trial sent the prosecutor an ex parte email that was apparently intended to influence the prosecution to seek review in the Supreme Court. [Com. on Jud. Performance, Ann. Rept. (2015), Private Admonishment 9, p. 24.]

In addition to other misconduct, without any involvement of a prosecutor, a judge added criminal contempt charges to a defendant's misdemeanor cases after the defendant failed to surrender to jail to serve the defendant's sentence. [Com. on Jud. Performance, Ann. Rept. (2015), Private Admonishment 3, p. 23.]

In addition to other misconduct, in a criminal case, the judge improperly completed a report for a state agency that only the prosecutor was authorized to complete. [Com. on Jud. Performance, Ann. Rept. (2010), Private Admonishment 2, p. 24.]

Judge Spitzer was removed from office for conduct that included embroilment in a criminal case and attempting to intrude on the functions of the executive branch of government. Near the end of a murder trial, the judge urged the prosecutor to charge gross vehicular manslaughter as an alternative to murder; when he declined, the judge questioned his qualifications and asked that he speak with his supervisor. The judge also asked to meet with the supervisor, who appeared before the judge that day to explain his office's filing decision. After the jury deadlocked on the murder charge, the judge addressed several members of the decedent's family in the courtroom, telling them that the case should be settled

with a plea to vehicular manslaughter. When the defendant's mother arrived after court had recessed, the judge directed that she come into chambers to talk to him. In a manner she perceived as intimidating, the judge attempted to enlist her in his efforts to convince the district attorney's office to agree to a manslaughter disposition. At a subsequent court appearance, the judge continued to pressure the prosecutor for a manslaughter conviction, and gave his impression that the mother was "not hostile" to such a disposition. After the defendant declined to plead guilty to manslaughter at a later trial readiness conference, the judge called a supervising prosecutor to see whether there was a possibility of further negotiations, and said that the mother was not opposed to a manslaughter plea. [*Inquiry Concerning Judge Robert G. Spitzer* (2007) 49 Cal.4th CJP Supp. 254.]

In addition to other misconduct, Judge Mills criticized the district attorney's office's filing of a theft case as a misdemeanor instead of a felony. "This is felony conduct. The fact that this got filed as a misdemeanor, I'm just absolutely appalled. My hair is on fire." After discussing his extensive experience as a prosecutor, the judge stated: "[s]omebody is going to go back to the drawing board, have this reviewed by somebody that can intelligently assess what ought to have been charged...." The commission found that Judge Mills had assumed the role of prosecutor and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter. [*Public Admonishment of Judge Bruce C. Mills* (2006).]

After initiating a perjury complaint, the judge gave the appearance of attempting to influence the district attorney's investigation by contacting witnesses and repeatedly contacting the district attorney. [Com. on Jud. Performance, Ann. Rept. (2004), Private Admonishment 1, p. 22.]

Judge Fletcher was removed from office for various acts of willful misconduct and prejudicial misconduct. One of the instances involved the judge's handling of a case involving a DUI with a prior DUI conviction. As part of a plea bargain in a separate matter, the district attorney moved to dismiss. The judge refused, ordering the DA to file an amended complaint adding another prior conviction. The DA again moved to dismiss. The judge refused, had his clerk review the file and subpoena all prosecution witnesses. The DA was a political rival of the judge. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

A judge contacted a local deputy district attorney regarding a pending criminal matter on behalf of a defendant with whom the judge had a financial relationship. [Com. on Jud. Performance, Ann. Rept. (1997), Private Admonishment 3, p. 20.]

Judge Ormsby was disciplined for conduct that included, on occasion, putting inordinate pressure on prosecutors to offer dispositions and on defendants to enter guilty pleas. On other occasions, the judge engaged in conduct which appeared aimed at avoiding conducting preliminary hearings in cases which involved multiple counts or multiple defendants. In such cases, Judge Ormsby pressured defendants to waive preliminary hearings and prosecutors to offer dispositions. [*Censure of William M. Ormsby* (1996).]

Judge Doan was removed from office for various acts of willful misconduct, prejudicial misconduct and persistent failure to perform judicial duties. In one of the instances of willful misconduct, the judge did not disqualify herself from a criminal case involving the nephew of a close friend of the judge who had loaned the judge money and did not disclose the relationship or her discussions of the case with her friend. At a pretrial conference, when a plea bargain was being discussed, the judge exerted pressure on the deputy district attorney to reduce the charge of resisting arrest to disturbing the peace, including telling defense counsel to bring a motion to suppress and saying that the deputy district attorney was inexperienced and had overcharged. The judge's conduct was found to be for the corrupt purpose of further ingratiating herself with her friend in order to advance their relationship. [*Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294.]

A judge made repeated contact with prosecutors in the judge's county about the progress of their investigation and prosecution of a case in which a relative of the judge was alleged to be a victim. The communications could have been construed as an attempt to influence the prosecutor. The judge used court stationery in communicating with a prosecutor about the matter. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 39, p. 17.]

Judge Ryan was removed from office for various acts of willful misconduct and prejudicial misconduct. One of the instances of willful misconduct involved the judge's interference with the district attorney. After a preliminary hearing, the district attorney decided to charge the defendant with a misdemeanor only. The judge called the district attorney ex parte and urged him to pursue a sodomy charge as a felony rather than a misdemeanor. [*Ryan v. Commission on Judicial Performance* (1988) 15 Cal.3d 518.]

After the jury in a criminal case announced that it was unable to reach a verdict, a judge directed the prosecutor to retry the case and referred to the defendant's prior convictions, previously unknown to the jury. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 5.]

Judge Gonzalez was removed from office for a continuous course of overreaching and abuse of judicial authority. In one matter, the judge improperly conditioned dismissing a case against the defendant – who the district attorney conceded should not have been in custody – on the defendant’s stipulation to the validity of the arrest. The Supreme Court noted that it is the prosecutor’s prerogative – not the court’s – to condition consent to a dismissal of charges on a stipulation of probable cause to arrest. Further, the court found that nothing in the controlling authority suggested that when a prosecuting authority declines to request a probable cause stipulation because the defendant had been mistakenly taken into custody and held in jail for two days, a judge may compound the injustice by insisting on the stipulation. The court found that the judge acted deliberately and unreasonably and that his action was a form of judicial coercion and constituted willful misconduct. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

Judge Spruance was removed from office for conduct including his attempt to influence the disposition of a DUI case pending before another judge. Judge Spruance was a friend of the defendant. Defense counsel was dating Judge Spruance’s daughter and was associated in practice with a longstanding close personal friend of the judge. A mistrial had been declared. While the case was pending for resetting, on a number of occasions, Judge Spruance approached the assigned deputy district attorney, as well as that deputy’s supervisor, in an attempt to influence them to reduce the charge to reckless driving. [*Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778.]

### **Improper Delegation of Judicial Authority**

Judge Fletcher was removed from office for various acts of willful misconduct and prejudicial misconduct. One of the instances of prejudicial misconduct involved the judge engaging in ex parte communications with family members of a defendant seeking drug diversion. The judge failed to disqualify himself but indicated that he had a conflict. When defense counsel asked the judge to decide the diversion request nonetheless, the judge delegated the decision to the district attorney, which the Supreme Court stated was an improper delegation of judicial authority. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

### **Abuse of Judicial Authority**

A judge sent a letter to the district attorney concerning problematic conduct by a deputy district attorney. The wording of the letter created the appearance that the judge was not merely taking appropriate corrective action but encouraging

the district attorney to reassign the deputy district attorney and/or take disciplinary action against the attorney. The judge sent copies of the letter to other judges and court administrators. [Com. on Jud. Performance, Ann. Rept. (2015), Advisory Letter 15, p. 26.]

In addition to other misconduct, in two criminal cases in which Judge Moruza had made comments to the effect that she did not think the cases should be pursued, the judge set distant trial dates despite the prosecution's request for earlier dates. The judge's conduct gave the appearance that she was setting trial dates because of her view that the cases should not be tried. [*Public Admonishment of Christine K. Moruza* (2008).]

In addition to other misconduct, the judge inappropriately accused a prosecutor of unethical conduct for speaking to a defendant who was represented by counsel. The judge engaged in an abuse of judicial authority by ordering the prosecutor to call the prosecutor's supervisor and remain in the courtroom until the supervisor arrived. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 17, p. 28.]

In addition to other misconduct, the judge accused the defendant's attorney of unethical conduct in open court and stated that the attorney's unethical practices disgraced the legal profession. When the attorney later filed a statement of disqualification, the judge gave the appearance of soliciting the prosecution's assistance in opposing it. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 18, p. 28.]

Former Judge Danser was disciplined for an extensive scheme of ticket-fixing and other misconduct. In one case, when a deputy district attorney in court observed a lenient disposition on a DUI on which no DDA was assigned, the DDA requested a copy of the transcript. The judge told the clerk that the DDA could not have a transcript as it was not her case. When the DDA appeared in court and asked the judge for the transcript, the judge responded: "Denied. You can't have it." The judge also said, "Screw your office. Screw [your supervisor]. Screw you." [*Censure and Bar of Former Judge William Danser* (2005).]

Judge Van Voorhis was removed from office for a pattern of misconduct involving loss of judicial temperament, abuse of authority and embroilment. In one DUI case, the prosecutor had been an attorney for three months. At trial, the DDA sought to introduce pre-field sobriety test statements. The judge excluded the statements. After trial, in critiquing the attorney's performance, the judge suggested that he excluded the statements to see how the DDA would handle

herself faced with an unanticipated ruling. The judge's comments gave the appearance that he had deliberately made a wrong ruling.

During another DUI trial, the deputy district attorney attempted to admit results of a gaze nystagmus test through the arresting officer without calling a separate expert witness. Although inexperienced, the DDA's position was legally sound. In front of the jury, Judge Van Voorhis suggested that the DDA was acting inappropriately and perhaps unethically by asking: "Now that we have opened the door to something that you really have no intention of completing. Do we leave the jury with these half-truths?" The judge then conducted a lengthy colloquy with the DDA in a "sing-song, sarcastic and very condescending tone of voice" in front of the jury. The DDA later attempted to introduce the police officer's testimony regarding the defendant's inability to follow the directions on the gaze nystagmus test. With a red face and in a tense and raised voice, the judge pointed at the DDA and told her to instruct the jury that the information she was seeking "did not mean anything."

In a third DUI trial, the DDA objected to defense counsel questioning the defendant about whether he drank more at home or when he went out. Judge Van Voorhis ruled that the evidence was admissible character evidence. In front of the jury, the judge forced the DDA to agree with him regarding the relevance of the evidence. [*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.]

A judge appeared to condone improper conduct by a prosecutor. [Com. on Jud. Performance, Ann. Rept. (1997), Private Admonishment 8, p. 21.]

In addition to other misconduct, the judge frequently and arbitrarily dismissed misdemeanor cases on the day set for trial if the prosecutor was unable to proceed that day without giving consideration to the prosecution's request to trail the matters within the 10-day grace period set forth in Penal Code section 1382. [*Censure of Judge William M. Ormsby* (1996).]

In addition to other misconduct, at the conclusion of trial in one case, the prosecutor and defense counsel had concluded that there were valid grounds for a new trial. Judge Hintz attempted to add to their stipulation exculpatory language to the effect that the judge had committed "no legal error or ethical breach" in the trial. When the parties refused to agree to the judge's stipulation, the judge granted a new trial on the grounds of prosecutorial misconduct – grounds initiated and advanced by the judge. [*Public Reproval of Judge Steven F. Hintz* (1992).]

Judge Kloepfer was removed from office for various acts of willful misconduct and prejudicial misconduct. The instances of prejudicial misconduct included the judge's handling of the district attorney's office's pursuit of a petition for writ after the judge denied a continuance when the deputy district attorney assigned to the case was called away by a family emergency after the first day of trial. An alternative writ was issued which the judge willfully failed to comply with. The DA's office obtained a second alternative writ ordering the judge to grant a continuance. The judge granted a shorter continuance than was being sought and excused the jury – attributing any hardships on them to the prosecutor. After a mistrial was declared, the judge called a meeting with senior members of the DA's office to express his displeasure with their handling of the case which made him “look bad” and for “pulling a fast one on him.” The judge also distributed a memo to all judges in the county, the public defender and the district attorney regarding writs that was critical of the DA for seeking and for the appellate department of the court for granting the writ. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

Judge McCullough was removed from office for various acts of willful misconduct and persistent failure to perform judicial duties. One instance of willful misconduct involved the judge's handling of a misdemeanor charge against an old friend who came to the judge's home the day before his arraignment. The friend told Judge McCullough about the case and asked the judge to excuse him from appearing the next day. The next day the judge continued the case, without informing the prosecutor. Over the next two years, the judge continued the case 20 times. Finally, the judge dismissed the case, also without informing the prosecutor. [*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186.]

On the day that his son was to be arraigned in the county where Judge Schatz presided, the judge went to the chambers of the arraigning judge, identified himself as a judge, and proceeded to discuss the case. When a deputy prosecutor entered the room, the judge continued the discussion. The judge also telephoned the district attorney in an adjoining county and met for breakfast; the judge initiated a discussion of the burglary case pending against the judge's son. The judge indicated that his son was seeking a dismissal so that he could enter the military. The DA agreed to pass the information along to the assigned DDA. [*Public Reproval of Judge John Schatz, Jr.* (1989).]

Judge Gonzalez was removed from office for numerous acts of willful misconduct and prejudicial misconduct. The acts of willful misconduct included the judge's exploitation of his judicial office by attempting to intercede in criminal matters and influence their disposition on behalf of friends and benefactors. As exemplified

by two matters, the Supreme Court found that the judge often approached representatives of the district attorney to urge dismissal of cases. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

Judge Roberts was censured for various acts of prejudicial misconduct. In one instance, after the judge granted a motion to suppress certain evidence, the district attorney informed the judge that he would file a petition for writ of mandate. The judge angrily told the DA that he was “chicken to take the case to trial” and poked the DA in the chest with his finger and told him, “Buddy boy, you’re not going to get away with this.” The judge also stated, “I’m going to see that you lose this case big.” When the DA protested the threat, the judge replied: “I’ll threaten you any time I feel like it.” [*Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

Judge Wenger was removed from office for various acts of willful misconduct and prejudicial misconduct. One of the instances of willful misconduct involved the judge excluding a deputy district attorney from his courtroom in order to prevent her from reporting his conduct to the commission. [*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615.]

Judge Spruance was removed from office for various acts of willful misconduct and prejudicial misconduct. One of the instances of willful misconduct involved a deputy district attorney who appeared in court seeking execution of a search warrant. The district attorney’s office had filed an appeal of the judge’s decision in another matter. The DDA seeking the execution of the search warrant had sworn to and filed an affidavit in support of the appeal. When the DDA approached the judge regarding the search warrant, the judge brought up the case on appeal and questioned the DDA about the contents of his affidavit. When the DDA tried to avoid discussion of the matter on appeal, the judge had the DDA placed under restraint.

In another matter, Judge Spruance was presiding over a case involving charges of marijuana possession and being under the influence of drugs in a public place. The defendant’s father was an aide to the mayor and had been active in the judge’s campaign for office. Defense counsel was a campaign supporter and long-time personal friend of the judge. During the course of the trial, Judge Spruance made a suggestion, which he had been informed prior to trial would be unacceptable, that the district attorney’s office permit the defendant to plead to the being under the influence of drugs in public charge and dismiss the marijuana possession charge. The DDA refused to accede. The judge stated that the DA’s office had put him “in a box” and that he would have to do something he did not wish to do. It was not clear whether a formal suppression motion was ever made

but the judge ordered the evidence suppressed on both counts and the defendant was found not guilty on both counts. At the conclusion of the trial, the judge stated that although the defendant was guilty, he had been saved by a technicality. The Supreme Court found the judge guilty of willful misconduct, finding that the judge's handling of the case was motivated not only by political favoritism but also by a desire to punish the deputy district attorney for his refusal to accept petitioner's suggestion of a negotiated plea. [*Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778.]

### **Demonstration of Bias Toward or Against a Party**

On various occasions during criminal proceedings in open court, Judge Vlavianos said words to the effect of, "The DA wants to put you in jail, but I'm not going to do that"; "Probation, do you really think this person deserves to go to prison?"; "The DA wants to send you away, how do you feel about that?"; and that a deputy district attorney was "addicted to jail," "coming from a position of anger," and "coming from a position of fear." The commission determined that these remarks were discourteous and gave the appearance of bias. [*Censure of Judge Richard A. Vlavianos* (2023).]

At a criminal hearing, the judge made comments that were critical of the district attorney's office, creating an appearance of bias or prejudice. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 3, p. 32.]

The judge posted remarks on social media, expressing points of view on controversial issues, that conveyed an appearance of bias against prosecutors and law enforcement. [Com. on Jud. Performance, Ann. Rept. (2021), Advisory Letter 1, p. 41.]

The commission found that Judge Bennett engaged in a pattern of conduct that was undignified, discourteous, and offensive in 17 different incidents, that conveyed, at a minimum, the appearance of bias against prosecutors, including the following. In a chambers conference in which the People were represented by a deputy attorney general, the judge stated that he had just finished an important environmental case with the Attorney General, and they messed that one up, too. When the judge made preliminary rulings that excluded most of the prosecution's evidence, the deputy attorney general noted that she had no case if most of her evidence was excluded. The judge stated in response, "You can tell [Attorney General Xavier] Becerra that's what he gets for going against my president," or words to that effect. The judge also stated, "It's my job to give the government a bad time," or words to that effect. In a criminal case, Judge Bennett called the attorneys, including a DDA, back to his courtroom and told

them that he had changed his mind and had decided to deny the motion to suppress evidence that he had granted the day before. After excusing the attorneys, the judge asked the DDA to approach the bench on an unrelated matter in which the DDA needed his signature for an order of forfeiture. The judge signed the order and then began telling the DDA about his time as a police officer, Chief DDA, and judge. While speaking about supervisors in the district attorney's office, the judge made a statement to the effect of, "Tell [DDA Brent] Nibecker he's an idiot. I've told him to his face, I don't care."

While presiding over a misdemeanor hit-and-run case, Judge Bennet met in chambers with a DDA and deputy public defender to discuss a possible resolution. After the DPD asked for a case disposition of credit for time served, restitution, fines, and no probation, the judge asked the DDA if he was "going to make a big stink about that," or words to that effect. The DDA stated that he was not going to make a "big stink," but would object. In response, the judge became angry, raised his voice, and used profanity, including the words "fucking" and "shit." The judge stated that he had been waiting for an opportunity to address the issue of prosecutors "playing games like this," or words to that effect, and admonished the DDA about prosecutors agreeing to deals in chambers, then objecting on the record. The judge criticized other judges in the courthouse for "playing along with the prosecutors' games," or words to that effect. The judge said he was "sick" of being "bad mouthed" by attorneys in the district attorney's office, both in the newspapers and otherwise, or words to that effect. The judge told the DDA that, if he was going to object on the record, then he (the judge) was going to bring up a jury panel and put on a jury trial. The judge stated that there appeared to be pressure in the district attorney's office to push cases to trial that should not be going to trial; that he got to where he was by "not going along with the program[]"; and that he knew all of the policies in the district attorney's office. He asked the DDA if he knew how he (the judge) knew about the policies and then stated, in a raised voice, "Because I wrote the fucking book," or words to that effect, pointing his index finger at the DDA. [*Public Censure of Judge Jeffrey Bennett* (2020).]

In one criminal case, Judge Tamietti signed a warrant for the arrest of a person for annoying or molesting a child, a misdemeanor. The judge set bail at \$7,500, but did not impose any bail conditions. The subject person was arrested on the warrant later that day. After interviewing the arrestee, a police officer requested that bail be increased to \$150,000. Judge Tamietti authorized the increase by telephone, but again did not impose bail conditions, based on his expectation that the arrestee would not post bail and would appear for arraignment within 48 hours of his arrest. The next day, the arrestee posted bond, was released, and was scheduled to appear three months later in September. The next day, in an

email with the name of the arrestee in the subject line, Judge Tamietti initiated an ex parte contact with a DDA and asked, "Who is the DA [district attorney] on this child molest case? He bailed ... and we need to get him in more quickly for bail conditions." Three days later, in an email at 9:50 a.m., the DDA assigned to the case replied to Judge Tamietti, "It will be my case, Your Honor." At 9:53 a.m., the judge responded by email, stating, "Thank you. He posted bail to September. I want to see him before then to impose bail conditions. Judge T." At 2:34 p.m., the assigned DDA sent the following response: "I will do my best to bring him into court as soon as we make a filing decision, Your Honor. As of now, unfortunately, I have no reports to review."

On September 4, in an email to the assigned DDA with the subject line of the arrestee, the judge initiated another ex parte contact and stated, "We still have not seen a complaint on this case. What is up?" On September 6, at 11:37 a.m., the assigned DDA responded, "Further investigation and questions were taking place in the background. I am meeting with Truckee PD next week."

On September 6, at 12:25 p.m., in an email to the assigned DDA, DA, Assistant DA, and Presiding Judge, Judge Tamietti stated: "He bonded out on June 20 and has been free without any conditions since then despite facing child molestation charges and having an extensive occupational and avocational history of dealing with minors. This level of 'service' is far below what the citizens of this community expect and deserve."

At 3:07 p.m., the DA responded:

Good afternoon Judge Tamietti: Please do not try to influence my Office's filing decisions. You have no idea what is going on in the case nor should you. A rush to filing could very well jeopardize a case and result in serious injustice. You can be assured the "level of service" to the citizens of Truckee is extensive and [the assigned DDA] is appropriately handling the matter. Regards, [DA]

At 4:33 p.m., Judge Tamietti responded: "Baloney. When the inaction and/or inattention of your office or any other agency puts this community at risk I have a duty to speak up. If that offends you in this circumstance, so be it."

In another criminal case, the defendant was charged in a criminal complaint with assault with a deadly weapon, battery with serious bodily injury, and street terrorism (involving active participation in a criminal street gang), all felonies. The alleged assault occurred as a number of people were leaving a late night party, and the victim was seriously injured. At a preliminary hearing, Judge Tamietti

granted the prosecutor's motion to dismiss the assault with a deadly weapon and street terrorism counts but, after hearing testimony, concluded that there was sufficient evidence to hold the defendant on the remaining count, battery with serious bodily injury. Several months later, the DA asked that the case be dismissed because tainted witness statements prevented proof beyond a reasonable doubt. After questions and comments about the evidence, Judge Tamietti stated:

I got a couple of problems here with this file. One is I have got a victim beaten within an inch of his life who thankfully survived. Two, I have got this insinuation, I'll call it, of gang activity, which is a cancer that seems to be working its way into this community and to which most of the citizens of the community are oblivious. Sitting where I sit doing what I do, I'm a little less oblivious than average to that. And there was enough of an insinuation of gang involvement in this circumstance that it initially got charged as a gang case. And then the gang aspects of the case got dismissed, for whatever reason, some of which is attributable to your assistant DA's statement that we are not, meaning you, are not prepared to try a gang case. And I think the citizens of this community are probably ready to have a gang case tried for a couple of reasons: One, to figure out, if in fact, that's true; and two, to educate the community about the risks that are inherent in that insinuation into the society of this community. So I heard the preliminary. I remember what was said. And I haven't seen the investigative work that the defendant's investigator, for which I have signed a couple of orders, has performed, I don't know what they say. I'm at a little bit of disadvantage there.

But the mere fact that people are not getting their stories straight or recanting their stories, there is a lot of different reasons that might be happening in a case that has gang insinuation. I'm not suggesting that I have any evidence of [*sic*] [the defendant], or any of his cohorts are pressuring witnesses, but I don't think that's a naive thing to assume that might be happening and might be an explanation for the result of some of the investigative works performed by the defense.

I would point out, which is my question to you, was whether your office had expended any investigative resources on this file? I don't see [Truckee police officers] here, so I don't know what their views are on that subject.

After the DA provided more details regarding the decision to move to dismiss the case, how the case was investigated, and his efforts to fill vacant DDA positions; and after hearing arguments for dismissal, Judge Tamietti stated:

Well, I would observe that having been the felony judge on the other side of the county for five years, before I got this assignment, that had this crime happened in [the] Safeway parking lot of Grass Valley, it is my impression that a whole bunch more of resources would have been thrown at this case than would have been thrown at this one. If Mr. Torres was improperly charged, he deserves an apology. If he was properly charged, we ought to take the case to trial and let a jury of 12 citizens of this community decide whether or not witnesses who are recanting, have been pressured into recanting.

I have some live testimony at the preliminary and most of it was 1153 from Detective Lopez, so I can't make any real independent assessment about those people's statements given to Detective Lopez and Detective Lopez isn't here to amplify on that. So I'm put in the very uncomfortable situation of not doing what I think is my best to protect the citizens of this community, which is the principal reason they gave me this job in the first place. So I don't like the spot I'm being put in here, Mr. Newell.

And I credit my disgust, in large part, to your office and its handling of this file. But I'll grant the motion without prejudice, dismiss the case, in return for his plea to the dead bang we found you with drugs indicia for sale.

On Monday, at 9:56 a.m., the DA sent an email to Judge Robert Tice-Raskin with the subject heading, "KNCO article," about a radio interview of an attorney in the DA's office who made comments about legislation related to pretrial release and detention and about the statute on pre-arraignment review. The email stated:

Good morning Judge, Hope you had a good weekend. Have you had a chance to listen to the whole interview in question? Chris had no idea how or what was excerpted from that interview. From my view he spoke negatively about another state's (there's a couple) well documented reform failure but [sic], followed with how it has given us opportunity to better craft ours. Not mentioned by the article is how judges need all the info, how it's incumbent on us to provide some of it and, Probation's role in completing the assessments thoroughly. Given the radio show in its entirety, I can't hold him to task for a reporter's inarticulate description or headline taken out of context. That said, I believe he could be more articulate on my Office's policy as it relates to SB10/ 1320.10, which is support. I will make that clear publically [sic] and, I will make sure, if he has any more public speaking, he uses the correct talking points. I am going to be on the radio myself later this week talking about it as well. I'll

let you know when that is when I find out. I'm available all week if we need to discuss further.

Thank you, [DA]

At 10:50 a.m., Judge Tice-Raskin responded with an email addressed to the DA and copied to all other Nevada County Superior Court judges, including Judge Tamietti. The email stated: "Mr. [DA], I have forwarded your thoughts to the whole bench. We will be in touch. Thanks. SRT"

At 1:15 p.m., Judge Tamietti responded to Judge Tice-Raskin's email with an email addressed to the DA and the other judges. The email stated: "So if he was so horribly misquoted, why hasn't he tried to get it corrected? More fecklessness from [DA]." [*Public Admonishment of Judge Robert L. Tamietti* (2020).]

In addition to other misconduct, during *Marsden* hearings, the judge made comments that conveyed that the judge had a special relationship with defense counsel and made discourteous remarks about the prosecutor that gave the appearance of a lack of impartiality. [Com. on Jud. Performance, Ann. Rept. (2016), Private Admonishment 3, pp. 26-27.]

In addition to other misconduct, during a criminal calendar not staffed by the district attorney's office, the judge made comments to a defendant that gave the appearance that the judge was not impartial and was trying to give the defendant an advantage in the proceedings. [Com. on Jud. Performance, Ann. Rept. (2016), Advisory Letter 2, p. 27.]

In addition to other misconduct, the commission found that former Judge Zellerbach that made comments about the district attorney's office that created an appearance of bias and were disparaging, undignified and discourteous. In a criminal case in which a defendant was seeking discovery to prove that the district attorney had a conflict of interest in prosecuting the case, the judge told a prosecutor whose handling of the discovery issue he considered inadequate that he was faced "all the time ... these days" with the issue of prosecutors "not doing their job properly." In the same case, the judge made a reference to the district attorney's "PR firm." [*Public Admonishment of Former Judge Paul E. Zellerbach* (2011).]

In addition to other misconduct, after learning that a defendant's probation had terminated, the judge made several remarks that reflected embroilment, including asking the prosecutor to "keep tabs" on the defendant. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 3, p. 25.]

Judge Edwards commented in a crowded courtroom that a certain misdemeanor was “just another example of the DA overcharging.” The commission concluded that the comment violated the canon requiring judges to be patient, dignified and courteous and also created an appearance that the judge was biased against the district attorney’s office. [*Public Admonishment of Judge Anthony C. Edwards* (2010).]

A judge appeared to be personally embroiled in a number of cases. This raised questions about the judge’s detachment and neutrality. For instance, the judge urged a defendant to accept an offered plea bargain, suggesting an additional charge that the prosecutor might have brought, but did not. When the defendant declined the offer, the judge displayed anger and frustration and invited the prosecutor to add the suggested charge. In the course of the investigation, the judge recognized the problem and promised improvement. [Com. on Jud. Performance, Ann. Rept. (1990), Private Admonishment D, p. 19.]

Judge Kloepfer was removed from office for various acts of willful misconduct and prejudicial misconduct. In one of the instances of prejudicial misconduct, the judge repeatedly criticized the office of the district attorney for exercising its right to seek extraordinary relief from one of his rulings, convened a meeting with senior members of the office to express his displeasure with the handling of the case which made the judge “look bad” and remained angry at the office for “pulling a fast one” on him. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

### **Bias or Appearance of Bias Toward a Particular Class**

When a deputy city attorney made appearances in Judge Kreep’s courtroom, he referred to her several times as “Star Parker,” whom he stated was a beautiful African American woman and a friend whom the attorney resembled. The judge commented on the physical attractiveness of several female attorneys who appeared before him. Regarding a deputy city attorney who was pregnant, he made remarks such as, “Let’s get on with this case. . . .We don’t want [the deputy city attorney] to have her baby in the courtroom,” and “She wants to go home and have her baby. I’ll pick on her today.” On one occasion, when another deputy city attorney entered the courtroom, Judge Kreep said, “Speaking of prostitution, here’s [the deputy city attorney].” Judge Kreep was on the bench and court staff and other attorneys were present when Judge Kreep made the comment. To a law student intern with the City Attorney’s Office, before he went on the record, Judge Kreep picked up a plastic container of animal crackers, gestured at the intern, and said in the presence of the intern’s supervisor and court staff, “If you’re good during your argument, I’ll give you some cookies, little boy.” During

a sidebar conference for a prostitution case, Judge Kreep used the words “Chinese prostitutes,” then turned to a deputy city attorney (DCA) and said, “No offense to Chinese people,” in the presence of one of the DCA’s supervisors, a City Attorney’s Office intern, and a deputy public defender. The DCA testified she was bothered by the “[n]o offense to Chinese people” comment because Judge Kreep constantly mentioned her ethnicity. By way of example, she mentioned a time when Judge Kreep introduced visitors from Korea. Judge Kreep told the visitors the DCA was from China and spoke Mandarin. The DCA is not from China. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp. 1]

Judge Gonzalez was removed from office for numerous acts of willful misconduct and prejudicial misconduct. Instances of prejudicial misconduct included, in a colleague’s chambers, the judge responding to news that a black deputy district attorney’s wife had had a miscarriage in essence, “Oh good, one less minority.” Also, at a Christmas party, the judge asked a female Jewish deputy district attorney whether “with all the inbreeding your people do, aren’t you afraid that they will produce a race of idiots?” or words to that effect. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

### **Ex Parte Communication; Acting Without Notice to Prosecutors**

After the San Diego City Attorney’s Office filed a “blanket” peremptory challenge against Judge Kreep, he was reassigned to traffic court and instructed by his supervising judge to report immediately to that court. Instead, Judge Kreep went to a courtroom where he was not assigned and spoke with the deputy public defenders and public defender interns who were present, informed them of the challenge filed against him, referred to at least one pending case in which he had granted a request of a deputy public defender to set for hearing a motion to enforce a plea agreement, and asked them to tell that deputy public defender something like the following: “If they’re coming for me, they are likely coming for you.” As the judge left the courtroom, he gestured toward two deputy city attorneys and said something like, “You know why I’m not talking to them.” The commission found Judge Kreep’s explanation that he went to the courtroom merely as a courtesy to tell the deputy public defenders that another judge would be hearing their cases, and that he could not have discussed any of the cases on calendar that day, was not credible. The commission found that the judge was angry and upset when he learned of the blanket challenge, that he specifically went to the other courtroom in order to vent his anger and in contravention of his supervising judge’s instruction, and that Judge Kreep engaged in an ex parte discussion of at least one case. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp. 1]

Judge Stanford was removed from office for diverting to his own court and acting on traffic tickets issued to his son-in-law, friends, and a juror over a seven-year period. The commission found that the judge engaged in ex parte communications with the individuals who had received the tickets and failed to give the district attorney the right to be heard. Although the district attorney's office had not appeared on traffic infractions for many years due to limited resources, the district attorney's office's non-appearance policy was limited to matters that are legitimately before the judge, that is, without a conflict of interest in the normal course of business. The commission added that it is not necessary for district attorneys to specifically advise judicial officers that they are not consenting to communications with litigants that by definition are improper, e.g., at the judge's house, or through an intermediary. [*Inquiry Concerning Judge Richard W. Stanford* (2012) 53 Cal.4th CJP Supp. 1.]

In addition to other misconduct, after a hearing concluded with the taking of a plea, Judge Mills talked about diversion with the defendant ex parte in the courtroom. The defendant's attorney returned to the court and joined the conversation. The judge summoned the probation officer to discuss diversion. Without the prosecutor being present or notified, the judge set aside the plea and granted diversion. When the district attorney subsequently contacted the judge ex parte to complain about the diversion order, the judge put the case back on calendar, terminated diversion and reinstated criminal proceedings against the defendant. [*Public Admonishment of Judge Bruce C. Mills* (2006).]

Former Judge Wasilenko was censured and barred for giving special treatment to friends and acquaintances by handling nine traffic tickets and misdemeanors not assigned to him in chambers without notice to and without the participation of the district attorney's office. [*Inquiry Concerning Former Judge David E. Wasilenko* (2005) 49 Cal.4th CJP Supp. 26.]

In addition to other misconduct, the judge engaged in an extensive scheme of dismissing traffic tickets and giving lenient dispositions on DUI's to friends and acquaintances based on ex parte communications. [*Censure and Bar of Former Judge William Danser* (2005).]

The judge conducted all or portions of some criminal proceedings without the prosecutor being present. [Com. on Jud. Performance, Ann. Rept. (2001), Advisory Letter 8, p. 20.]

On behalf of two attorney friends, the judge engaged in a pattern of accommodating their requests to change orders entered by other judges on cases not before the judge such as changes in bail, own recognizance release,

modification of probation and changes in sentences. The requests were often ex parte and the actions often taken without notice to the prosecution. [*Public Admonishment of Former Judge Luis Cardenas* (2000).]

The judge engaged in ex parte communications with a defendant and his attorney about a possible sentence modification and then – without prior notice to the prosecutor – the judge modified the sentence. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 12, p. 22.]

Judge Fletcher was removed from office for various acts of willful misconduct and prejudicial misconduct. In one of the instances of prejudicial misconduct, the judge contacted a witness in a criminal case by telephone from the bench while deciding whether to accept the prosecutor’s proposed plea bargain. The district attorney and defense counsel could only hear the judge’s side of the conversation. On the basis of the telephone conversation, the judge rejected the plea bargain. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

Judge Maciel engaged in ex parte discussions with defense counsel in a capital murder case pending before another judge. The discussions concerned strategy and the filing of a peremptory challenge against the assigned judge. When the case was reassigned to the judge, he did not disclose his ex parte discussions with defense counsel. [*Public Admonishment of Judge Ronald Maciel* (1997).]

When a prosecutor failed to appear after a short recess in a criminal trial, the judge conducted the proceedings in the prosecutor’s absence. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 37, p. 17.]

After an ex parte conversation at home with the defendant’s mother, a member of the State Assembly, the judge entered lenient decisions on the defendant’s two traffic matters in chambers, without notice to the prosecution. [*Public Reproval of Judge Bruce A. Clark* (1989).]

Judge Gonzalez was removed from office for numerous acts of willful misconduct and prejudicial misconduct. His acts of willful misconduct included entering the jury room during deliberations without counsel for both parties. The judge admitted entering the jury room but denied that he ever did so in the absence of defense counsel: “I’ve never gone in by myself. I’ve never gone in without cause just to see what they’re doing, not without exception of the times that I’ve gone into the jury room when one or both or all three of us were present. I wasn’t concerned if the D.A. wasn’t present, but I was always concerned if the defense

attorney wasn't present." [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

Judge Spruance was removed from office for conduct including his handling of a case in which the defendant was charged with engaging in a speed contest. The defendant was the nephew of a friend and political supporter of the judge. The defendant had given his citation to a bail bondsman who had told him he would see what he could do about it. Judge Spruance was contacted by the bail bondsman and met with the judge in chambers. The judge made notations on the citation about having the charge reduced to illegal parking, so that there would be no referral to the Department of Motor Vehicles, and that the defendant would do 40 hours of community service and complete traffic school. The judge told the bail bondsman to have the defendant appear in his department on the date cited. The defendant did appear on that date but was given another date to return as his matter was not on calendar. Unbeknownst to Judge Spruance, criminal charges had been filed arising out of the speed contest and were pending before another judge. The defendant failed to appear on the date he was cited to appear and the other judge had issued a bench warrant. The defendant appeared before Judge Spruance who quashed the bench warrant and reduced the charge to illegal parking, to which the defendant pled. There was no notice to or appearance by the district attorney's office and no order from the presiding judge transferring the case to Judge Spruance. The judge's improper assumption of jurisdiction in the case and acting without notice to the district attorney were determined to be willful misconduct. [*Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778.]

### **Ex Parte Communications With Prosecutors**

Judge Mills received a censure and bar for, in addition to other misconduct, engaging in a conversation with the deputy district attorney (DDA) in a jury trial as the jury was deliberating and the DDA was gathering his papers to leave the courtroom. Outside the presence of the defendant and defense counsel, Judge Mills asked the DDA, in the context of the trial, "[D]o you want to know what I would have done?" and talked to him about an argument that might have "defeat[ed] the defense theory," or words to that effect. Judge Mills then offered the DDA advice about how he could have countered the expert presented by the defense. The commission concluded that Judge Mills's conduct constituted willful misconduct. [*Inquiry Concerning Judge Bruce Clayton Mills* (2018) 6 Cal.5th CJP Supp 1.]

A judge engaged in ex parte communications with a prosecutor concerning a matter pending before the judge. [Com. on Jud. Performance, Ann. Rept. (2017), Advisory Letter 11, p. 25.]

Judge Scott received a public admonishment for knowingly engaging in improper ex parte communication about a case that was pending sentencing before him. Less than three hours after the jury found the defendant guilty, the judge asked to speak to the prosecutor privately. Before they met in the judge's chambers, the prosecutor told the judge that she was looking forward to getting his feedback on her performance in trial, but that several people in her office had told her that it was necessary to wait until after sentencing. Judge Scott told the prosecutor not to worry and that they would be discreet. Judge Scott then closed his chambers door and told the prosecutor to sit down. He told the prosecutor she had done a great job. She interrupted to say that she had pending matters in the department next door with the deputy public defender who had opposed her in the trial, who might be waiting for her. Judge Scott again said not to worry, that they would be discreet, and that she should just "sit tight." He then gave her additional feedback on her trial technique and made negative comments about defense counsel. She again told Judge Scott she might have to leave, and he said not to worry and that this would be discreet. After they discussed what sentence might be imposed on the defendant, the prosecutor told the judge she had several readiness conferences next door and had to go. As she left Judge Scott's chambers, he said, "This conversation never happened." [*Public Admonishment of Stuart Scott* (2016).]

A judge initiated an ex parte communication with a prosecutor regarding the merits of anticipated motions and settlement prospects in a criminal case pending before the judge. In another case, the judge made comments at sentencing that gave the appearance that the judge rejected probation department recommendations based on considerations outside the record. [Com. on Jud. Performance, Ann. Rept. (2016), Private Admonishment 1, p. 26.]

A judge engaged in an ex parte meeting with a prosecutor about a pending case. [Com. on Jud. Performance, Ann. Rept. (2016), Advisory Letter 14, p. 28.]

Before a pro per defendant was brought into the courtroom for a preliminary examination, the judge permitted the prosecutor and the complaining witness to talk to the judge about the witness's fear of testifying. The judge then encouraged and ordered the witness to testify and made remarks that gave the appearance of lack of impartiality. In addition to engaging in an improper ex parte communication, the judge failed to promptly inform the defendant of the discussion or give the defendant an opportunity to respond, as required by the

Code of Judicial Ethics. [Com. on Jud. Performance, Ann. Rept. (2015), Advisory Letter 7, p. 25.]

During a hearing in drug court, the judge engaged in a sidebar conference with a deputy district attorney and a representative of a residential treatment program. The defendant, who was present in court in custody but whose counsel was not present, was not included. The judge then considered and acted upon the ex parte information. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 10, p. 21.]

The judge participated in ex parte communication by email with a district attorney about a pending case. [Com. on Jud. Performance, Ann. Rept. (2007), Advisory Letter 13, p. 32.]

The judge met ex parte with representatives of the prosecution to discuss a pending motion. [Com. on Jud. Performance, Ann. Rept. (2002), Advisory Letter 9, p. 24.]

Judge Shaw received a public admonishment for conduct including an ex parte communication with two deputy district attorneys about an animal rights case over which she was presiding, telling them that she did not want the district attorney's office to "undercut" her on the indicated sentence. The commission found that the remark was an improper ex parte communication and gave the appearance of embroilment. [*Inquiry Concerning Judge Susanne S. Shaw* (2000) 48 Cal.4th CJP Supp. 125.]

In addition to other misconduct, the judge appeared to engage in an ex parte conversation with the prosecutor, prior to a hearing, but refused to allow defense counsel to make a record of the incident. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 28, p. 24.]

The judge engaged in an ex parte communication about a case with the prosecutor while the defendant was out of the courtroom. [Com. on Jud. Performance, Ann. Rept. (1997), Advisory Letter 28, p. 22.]

The judge engaged in an improper, undisclosed ex parte conference with a prosecutor before an arraignment calendar. In permitting the prosecutor to upgrade a traffic infraction to a misdemeanor and in setting extraordinarily high bail, the judge apparently was relying on information given by the prosecutor in the improper communication. [Com. on Jud. Performance, Ann. Rept. (1991), Private Admonishment E, p. 10.]

In addition to other misconduct, the judge held an ex parte meeting with a supervisor from the district attorney's office during a hearing. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 10, p. 12.]

A prosecutor showed some material, which had not been admitted into evidence, to a courtroom clerk who took the material into the judge's chambers. The judge looked at and considered the material, and reached a decision based on it. Only later did the prosecutor make the material available to the defendant. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 24, p. 14.]

Before a court session began, a deputy prosecutor told the judge that the opposing attorney, who was unknown to the judge, was "weird." The judge chastised the opposing attorney in open court for stating the intention of filing a peremptory challenge of the judge. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 26, p. 14.]

### **Disclosure, Disqualification and Related Misconduct**

During a sentencing hearing, Judge Bennett told a deputy district attorney that a case "got fouled up, by the way, for purposes of [the] record because people are filing papers against judges all over the place, judges are recused. You know, it's a difficult problem for the same reasons that the courthouse is, quite frankly, a mess often around here because people have personal agendas." While in chambers with attorneys in another case, the judge made a statement to a deputy district attorney to the effect of, "Why are you guys papering me?" or "I know who's papering me and I know why." The judge also stated that a female prosecutor, who had moved to Orange County, told him that the Ventura County District Attorney's Office had a policy of filing peremptory challenges against him. [*Public Censure of Judge Jeffrey Bennett* (2020).]

A DDA filed a felony complaint against an arrestee and an "Invitation to the Honorable Judge Robert L. Tamietti to Recuse Himself." The "Invitation" attached the judge's emails and requested that the judge recuse himself to protect the rights of the defendant and ensure public confidence in the judiciary, but stated that "[t]he People do not believe Judge Tamietti holds actual bias in this case." In a response filed the same day, Judge Tamietti stated that the "Invitation" did not set forth grounds that would require that he disqualify himself. A few days later, the DDA filed a timely peremptory challenge, stating that Judge Tamietti was prejudiced against the People. "Instead of allowing the case to be reassigned as required by Code of Civil Procedure," Judge Tamietti "questioned the DDA about the challenge, suggested that he may have committed perjury, advised him of his Fifth Amendment right to remain silent, and alluded to a possible inquiry by the

State Bar.” In addition, instead of notifying the presiding judge of the peremptory challenge so the case could be reassigned, Judge Tamietti improperly chose the successor judge, in violation of the Code of Civil Procedure. [*Public Admonishment of Judge Robert L. Tamietti* (2020).]

In addition to other misconduct, Judge Trice was disciplined for failing to disclose on the record his close personal friendship with a criminal defense attorney who appeared frequently in his court. He claimed the prosecutors were aware of his relationship with the attorney. [*Public Censure of John A. Trice* (2016).]

In addition to other misconduct, in multiple criminal cases, the judge failed to disclose a social relationship with the prosecutor. [Com. on Jud. Performance, Ann. Rept. (2016), Private Admonishment 4, p. 27.]

Over an extended period, the judge failed to disclose a relative’s employment with the district attorney’s office when attorneys from that office appeared before the judge. [Com. on Jud. Performance, Ann. Rept. (2016), Advisory Letter 10, p. 28.]

A judge had a romantic relationship with a deputy district attorney whose colleagues appeared before the judge in criminal cases. The judge did not disclose the relationship on the record at all relevant times. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 12, p. 25.]

In addition to other misconduct, former Judge Zellerbach failed to disclose on the record the fact that he was actively considering running for district attorney against the incumbent district attorney when he presided in the criminal case in which a defendant was seeking discovery to prove that the district attorney had a conflict of interest prosecuting the case. The commission stated that although the judge was not required to disclose information about the judge’s inquiry to a firefighters’ union about their endorsement in all criminal cases, disclosure was required in the case before him because it involved issues concerning the incumbent district attorney. [*Public Admonishment of Former Judge Paul E. Zellerbach* (2011).]

Judge Hall was removed from office for a DUI conviction and bad faith violations of the Fair Political Practices Commission in her campaign for reelection. In addition, when a deputy district attorney filed a peremptory challenge of the judge, the judge asked the DDA in court why he had filed the challenge. [*Inquiry Concerning Judge Diana R. Hall* (2006) 49 Cal.4th Supp. 146.]

Judge Harris received a public admonishment for misconduct including his response to a peremptory challenge. When a deputy city attorney appeared before the judge on a misdemeanor and approached the bench to assist the judge in finding the complaint in the court file, the judge tossed the file toward her; the file came apart on the floor. When the deputy next appeared, she informed the court that there would be a disposition involving the forfeiture of a large amount of seized cigarettes. Judge Harris asked, “Are you going to smoke them yourself?” In a subsequent case, when the deputy city attorney filed a peremptory challenge of the judge, the judge asked her to make a record of her reasons for filing the challenge. Before the deputy city attorney left the courtroom, the judge asked the deputy city attorney on the next case if she wanted “to file some papers.” The judge asked whether he had “tossed files” at her and stated that he tried to be selective when he threw things. The commission further found that when the judge tossed the file, asked her if she was going to smoke confiscated cigarettes, and said he was selective in throwing things at attorneys, he did not reflect a patient, dignified or courteous demeanor. [*Inquiry Concerning Judge John D. Harris* (2005) 49 Cal.4th CJP Supp. 61.]

At sentencing, the judge failed to disclose an association between the judge and the prosecutor and failed to disclose that the judge and the prosecutor had attended a weekend function the week before the sentencing hearing. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 2, p. 21.]

Judge Fletcher was removed from office for various acts of willful misconduct and prejudicial misconduct. In one matter, prosecutors filed a peremptory disqualification motion against the judge who nonetheless continued hearing a speedy trial motion. The prosecutors filed a petition for writ, which was issued. As he was recusing himself, the judge committed prejudicial misconduct by criticizing the prosecutors for his peremptory disqualification – accusing them of “playing games,” notwithstanding their pledge to uphold the law, support the Constitution and protect “the peoples’ rights” and by also criticizing the court that issued the writ. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

### **Lack of Patience, Dignity and Courtesy**

While in chambers and in the presence of a deputy district attorney, Judge Bennett repeatedly stated that he was the “only one in the courthouse with the balls to make a ruling,” or words to that effect. [*Public Censure of Judge Jeffrey Bennett* (2020).]

Regarding a deputy city attorney who was pregnant, Judge Kreep made remarks such as, “Let’s get on with this case. . . .We don’t want [the deputy city attorney] to have her baby in the courtroom,” and “She wants to go home and have her baby. I’ll pick on her today.” On one occasion, when another deputy city attorney entered the courtroom, Judge Kreep said, “Speaking of prostitution, here’s [the deputy city attorney].” Judge Kreep was on the bench and court staff and other attorneys were present when Judge Kreep made the comment. To a law student intern with the City Attorney’s Office, before he went on the record, Judge Kreep picked up a plastic container of animal crackers, gestured at the intern, and said in the presence of the intern’s supervisor and court staff, “If you’re good during your argument, I’ll give you some cookies, little boy.” In another case, Judge Kreep was discussing the date for a continued criminal case with defense counsel. When defense counsel indicated he would like to have the hearing completed by 9:30 a.m. on the continued date, Judge Kreep responded, “if [the deputy city attorney] isn’t here, I’ll kick her in the butt.” The deputy city attorney was present when Judge Kreep made the statement. Judge Kreep explained he simply wanted the deputy city attorney, who was routinely late for the morning calendar, to be on time. The testimony of other witnesses corroborates Judge Kreep’s testimony that the deputy city attorney was habitually tardy. Judge Kreep acknowledged he used inappropriate language in this instance. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp. 1]

In addition to other misconduct, the judge made gratuitous, discourteous remarks to prosecutors. [Com. on Jud. Performance, Ann. Rept. (2016), Private Admonishment 5, p. 27.]

In addition to other misconduct, in a domestic violence case, when the prosecutor disagreed with Judge Moruza’s statements that the case was “a crazy waste of time” and that pursuing it amounted to “stupidity.” The judge replied that she had lived about 30 years longer than the prosecutor and that she knew “a lot more about relationships and life and the court system.”

In another case, a question was raised as to whether a police officer had been able to smell a small amount of marijuana found in a closed container inside a vehicle. The prosecutor claimed that he could smell the marijuana 15 feet away, to which Judge Moruza responded, “How old are you? Eighteen?” In further sidebar discussions, after the prosecutor expressed the view that the judge had taken an “amateurish” approach to making a factual determination in the case, the judge responded, “You’re the amateur.” [*Public Admonishment of Judge Christine K. Moruza* (2008).]

In addition to other misconduct, Judge McBride was disciplined for improper demeanor, and making sarcastic and denigrating comments to and about attorneys. In one matter, the judge said that he was “going to suggest that the district attorney get their act together by two o’clock this afternoon,” adding, “How about that? Is that too much to ask?” He then said, “Now that the district attorney’s had the benefit of everybody explaining everything to them, maybe they’ll figure out what they want to do.” In another matter, the judge said sarcastically, “I’m so glad the public has a district attorney who’s not punitive and really sees the light here.” [*Public Admonishment of Judge James J. McBride* (2008).]

In addition to other misconduct, in refusing to accept a plea bargain reached by a prosecutor and defense attorney, Judge Bryant made a comment to the effect that the prosecutor must have “rocks for brains” to agree to the proposed disposition.

In another matter, Judge Bryant heard a prosecutor tell the bailiff that he had spoken with the judge’s clerk that morning about having the judge review a box of discovery documents for a proceeding later that day. During the proceeding, the judge stated in open court, in reference to the prosecutor, “I heard him ... say one of the dumbest things I ever heard a lawyer say, which is he thought ... I was actually going to go through that box.” When the prosecutor responded that the clerk had told him that the judge would review the documents, the judge replied, “With all due respect – no she didn’t. I don’t know about your command of the English language or the lack thereof, what you hear and what you don’t want to hear, but I heard what the woman said. She didn’t tell you I was going to go through that.”

In another criminal case, Judge Bryant expressed unwillingness to sentence a criminal defendant to prison and then continue the matter for two months because if the defendant did not show up, there would be no penalty other than the failure to appear, “which the Government never seems to prosecute.” The judge added that “the Government will undoubtedly wimp out and not go after the failure to appear because that’s been my observation over the last 21 years....” [*Public Admonishment of Judge Paul M. Bryant, Jr.* (2008).]

In addition to other misconduct in her handling of criminal cases, when former Judge Shaw called upon the prosecutor to cross-examine a witness, the judge remarked sarcastically: “Rise to the challenge.” When the prosecutor offered to clarify an issue with a witness, the judge responded sarcastically: “That sure would be nice.”

In another case, when the deputy district attorney asked to play a tape of the victim's 911 call, the DDA told former Judge Shaw that she had only two copies of the transcript because they had copied the wrong transcript. In front of the jury, the judge said: "Unbelievable. Okay. So I need sixteen copies, seventeen copies." While copies were being made, the judge said to the jury: "Well, I told them I was going to be their tax dollar at work. You guys are on your own." At another point in the trial, the deputy district attorney asked a victim to identify on a photograph where on his head he received an injury, the judge interrupted and stated: "I mean, it speaks for itself, doesn't it? That red stuff isn't ketchup." When the deputy district attorney backed off, the judge said: "Really, come on. These jurors are not that idiotic." The Court of Appeal cited these remarks in finding that the judge "occasionally lectured and scolded the prosecutor" during trial. [*Censure and Bar of Former Judge Suzanne S. Shaw* (2006).]

In addition to other misconduct, Judge Mills was disciplined for comments made while presiding over a misdemeanor theft case set for trial. The deputy district attorney had learned that morning that a police officer whose availability she had confirmed two days before was now unavailable. The DDA made an oral motion to continue the trial. In open court, the judge criticized the manner in which the DDA prepared her cases, contacted witnesses and prepared witnesses. "If you continue to proceed this way and continue to choose not to do it, you're not going to be welcome any more in this court." The judge also stated: "It is quote, 'malpractice,' end quote, to call witnesses to the stand that have not been prepared. It's malpractice." [*Public Admonishment of Judge Bruce C. Mills* (2006).]

At sentencing, the judge made gratuitous remarks disparaging the criminal justice system in other jurisdictions. The remarks were likely to undermine public confidence in the judiciary, prosecutors and law enforcement. [Com. on Jud. Performance, Ann. Rept. (2006), Advisory Letter 2, p. 32.]

In addition to other misconduct, the judge made insulting remarks in open court to the prosecutor. [Com. on Jud. Performance, Ann. Rept. (2004), Advisory Letter 2, p. 23.]

Judge Van Voorhis was removed from office for a pattern of misconduct involving loss of judicial temperament, abuse of authority and embroilment. In one instance, a prosecutor who had tried her first case six weeks before in front of the judge was trying her first theft case. The judge had denied a motion in limine regarding the defendant's prior theft conviction. As the DDA was cross-examining the defendant about his prior conviction, she asked him if he was presently on probation for the prior conviction. In front of the jury, the judge

asked where the DDA had learned “in law school or in the DA’s office” that a defendant’s probationary status was admissible. In front of the jury, the judge asked the DDA about her motives because “they appear to be to break the law.” He also referred to her as “jilting” him and stated that she had “made a mistake” which he would not allow. “You need to be more careful in my courtroom than you just were – or you could be in a lot of trouble.” [*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.]

Judge Shaw received a public admonishment for conduct that included demeaning, discourteous and undignified comments to a deputy district attorney. The judge became angry at the deputy district attorney for not offering the defendant in a DUI case a reduced charge, stating that the DDA lacked discretion and, 20 years later, would regret her refusal to accept a plea to a lesser charge. The judge also commented, in her official capacity and in a judicial setting, that several members of the district attorney’s office had been “major alcoholics” and had “suffered more than one DUI.” The judge also made remarks suggesting that the DDA, her fiancé and her future father-in-law, also a judge, were intemperate drinkers. [*Inquiry Concerning Judge Susanne S. Shaw* (2000) 48 Cal.4th CJP Supp. 125.]

Judge Willoughby was censured for misconduct directed toward a number of women in the courthouse, including referring to a female deputy district attorney as “Old Iron Tits.” [*Inquiry Concerning Judge W. Jackson Willoughby* (2000) 48 Cal.4th CJP Supp. 145.]

Judge Velasquez was disciplined for misconduct that included remarks made in open court about the judge’s sentencing policy in DUI cases that implied that the district attorney’s office did not want defendants who were guilty of DUI to be appropriately punished (“The DA’s are complaining that I’m being too tough”). The judge also made disparaging statements in open court about a deputy district attorney who had previously handled a case that Judge Velasquez was presiding over, including stating that the DDA may have committed “legal malpractice.” The DDA the judge referred to was not present when the judge made those statements. [*Censure of Judge José A. Velasquez* (1997).]

In addition to other misconduct, the judge suggested to a deputy district attorney might have committed misconduct by asking to interview the wife of a defendant before she testified at trial. When the DDA said that if the judge believed the DDA had committed misconduct, the judge should refer him to the State Bar, the judge replied: “I don’t think because of your inexperience or because of your ignorance I will do that.” [*Censure of Judge William M. Ormsby* (1996).]

In addition to other misconduct, the judge belittled an inexperienced prosecutor during and after trial. For instance, in front of the jury the judge asked, “Haven’t you heard of leading questions?” “Didn’t they teach you about hearsay in law school?” [Com. on Jud. Performance, Ann. Rept. (1991), Private Admonishment D, p. 10.]

Judge Kennick was removed from office for persistent failure or inability to perform judicial duties and was also censured for various acts of willful misconduct and prejudicial misconduct. After sharply curtailing a deputy district attorney’s direct examination of the victim at a preliminary examination in a robbery case, the judge then took the DDA into chambers and, engaged in willful misconduct and prejudicial misconduct, by pointing his finger at her and accusing her in a raised voice, without apparent cause, of creating a security hazard in the courtroom. The judge yelled at the DDA for three to five minutes. Later that day, another judge heard the judge laughing with his clerk about how funny it was that he had upset a DDA and made her run out of his courtroom.

In another matter, Judge Kennick screamed at a deputy city attorney in open court when she attempted to make a bail motion and denied counsel’s right to be heard. Later in chambers, when she suggested reassigning some of the conflict cases in order to expedite the afternoon calendar, the judge screamed at her again in an abusive matter. Both instances were determined to be prejudicial misconduct. [*Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297.]

Judge Kloepfer was removed from office for various acts of willful misconduct and prejudicial misconduct. The judge questioned a deputy district attorney recently assigned to the judge’s court about the reason for a negotiated plea in a case assigned to the DDA but in which the plea had been negotiated by another DDA. The DDA indicated that she did not know but would contact the responsible DDA during the recess to find out. In a full courtroom, the judge said to the DDA: “Miss Bartell, you are an embarrassment to the People of the State of California and it’s frightening to think that you represent their interests.” In another matter, after questioning a deputy district attorney about a written disposition she had submitted to the court, the judge stated in open court that he was appalled that the interests of the People of the State of California rested in her hands. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

## **Improper Political Activity**

Judge Ferguson posted a statement about a candidate for judicial office on Facebook with knowing or reckless disregard for the truth of the statement. Deputy District Attorney Karen Schatzle was a candidate for judicial office in 2016. Judge Ferguson supported her opponent, Judge Scott Steiner, whom the commission publicly censured in 2014 for conduct that included sexual activity in the courthouse. On April 26, 2016, Ms. Schatzle posted on the North Orange County Bar Association (NOCBA) Facebook page: “Scott Steiner uses his office for sex and yet so many aren’t concerned, crazy politics!” Judge Ferguson posted in response: “Karen Shatzle [*sic*] has sex with defense lawyer whike [*sic*] shw [*sic*] is a DA on his cases and nobody cares. Interesting politics.” The Facebook page was open to all NOCBA members. After Ms. Schatzle responded to the post (“I’m sure The Judicial Commission of Performance [*sic*] would love to know about your blogging!!”), Judge Ferguson removed it. Both Ms. Schatzle and the defense attorney deny any intimate involvement while they were appearing on the same cases. The judge claimed to be relying on “commonly known information” from many years ago when he made his post, but he could provide no factual support for this reference. He submitted a declaration from one attorney who purportedly had knowledge of the relationship. The attorney admitted having no evidence that Ms. Schatzle and the defense attorney appeared on the same cases while involved in an intimate relationship. [*Public Admonishment of Judge Jeff Ferguson (2017).*]

In addition to other misconduct, while former Judge Zellerbach was actively considering running for district attorney, the judge addressed a gathering of the county’s District Attorney’s Association on the subject of its endorsement of a candidate for district attorney. The judge recommended that the association delay its decision about whom to endorse, referred to public criticism of policies adopted by the incumbent district attorney, and compared the way the office had run when he worked there with the way it was being run at that time. The commission found that by recommending that the association delay its endorsement decision, the judge engaged in political activity that may have created the appearance of political bias or impropriety, and gave the appearance that he was opposing a candidate for non-judicial office. [*Public Admonishment of Former Judge Paul E. Zellerbach (2011).*]

## **Miscellaneous**

When Judge Bennet met in chambers with a deputy district attorney and defense counsel to discuss settlement of a criminal case, the judge shook the hand of the defense counsel, but to the DDA stated that he was not sure he wanted to shake his hand, but did shake his hand. When the DDA asked if something was the matter, Judge Bennett replied with a statement to the effect of, “Do you know how much trouble you have caused me? Do you know how much money I have had to pay lawyers because of you?” The judge then stated that someone had complained to the commission about his conduct in another matter in which the DDA had appeared and that he had spent more than \$10,000 on lawyers and had to obtain personal references and testimonials to clear his name. The commission found that the judge’s comments and conduct toward the DDA “created, at a minimum, the appearance of retaliation” based on the belief that the DDA had “complained to the commission..., or had assisted or cooperated with an investigation that the commission had performed.” The commission also found that the judge’s statements that his name had been “clear[ed]” and that he had had to pay lawyers \$10,000 for his defense were false. [*Public Censure of Judge Jeffrey Bennett* (2020).]

In addition to other misconduct, Judge Steiner contacted the district attorney’s office when a former intern of the judge with whom he was having an intimate relationship applied for a job at the district attorney’s office. The judge had written a letter of recommendation for her and she had interviewed for the position but she was not called back for a further interview. The judge inquired about the interview process of his former intern. When informed by an attorney at the DA’s office that the applicant had not passed the initial interview, Judge Steiner made a statement to the effect of, “Well, I guess writing a letter of recommendation means nothing.” He also contacted another attorney in the office, who was a former colleague from when Judge Steiner had worked in the DA’s office, and asked whether his letter of recommendation had been received. He later asked the same attorney about the interview process and why his former intern had not been hired and if there was anything specific about her that could use improvement. While Judge Steiner did not ask that any particular action be taken with respect to the application, the commission noted that attorneys in the DA’s office regularly appeared before Judge Steiner. The commission found that the judge’s conduct exceeded the bounds permitted to a judge serving as a reference or providing a letter of recommendation and abused the prestige of office to advance the interests of another. [*Censure of Judge Scott Steiner* (2014).]

Judge Harris received a public admonishment for misconduct including setting up a deputy city attorney on blind dates with three different women while the deputy was assigned to the judge's courtroom. [*Inquiry Concerning Judge John D. Harris* (2005) 49 Cal.4th CJP Supp. 61.]

Former Judge Bradley was censured and barred for prejudicial misconduct including making threats and inappropriate telephone calls about a deputy district attorney who had become involved with the judge's estranged wife. [*Inquiry Concerning Former Judge Robert C. Bradley* (1999) 48 Cal.4th CJP Supp. 84.]

Rev. 4/2024