



**JUDICIAL DISCIPLINE INVOLVING PUBLIC DEFENDERS AND OTHER  
CRIMINAL DEFENSE COUNSEL**

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

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## JUDICIAL MISCONDUCT INVOLVING PUBLIC DEFENDERS AND OTHER CRIMINAL DEFENSE COUNSEL

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### **Abuse of Authority**

Judge Connolly received a public admonishment for embroilment and abuse of his authority by setting multiple post-trial hearings, including an ex parte evidentiary hearing, relating to statements a defense attorney made at sidebar during a July 2010 criminal trial, without citing the attorney for contempt or issuing an order to show cause (OSC) re contempt. During the trial, after Judge Connolly called for a sidebar conference to ask defense counsel for an offer of proof, defense counsel said his courtroom observer had reported seeing the prosecutor signal a police officer witness by slowly shaking her head. Judge

Connolly told defense counsel that his statement was “outrageous” and that they would “take this up at a later time.”

After the defendant was acquitted, Judge Connolly set six hearings over six months relating to defense counsel’s statement, even though the statement does not appear to have constituted contempt of court. The commission determined that the judge abused his authority by setting the hearings without citing either attorney for contempt or issuing an OSC re contempt. At the outset of the hearings, Judge Connolly contacted a judge in a different courthouse to obtain information and transcripts relating to another possible contempt matter involving other statements by the same defense attorney that reflected negatively on a prosecutor. Judge Connolly continued at least two hearings to obtain transcripts from this unrelated case. The commission found that these actions gave the appearance that the judge was not acting as an impartial factfinder, but was conducting an independent investigation into defense counsel’s conduct, and that he was embroiled and biased against defense counsel.

On February 3, 2011, Judge Connolly presided over an evidentiary hearing with the apparent intention to obtain evidence that could be used in future contempt proceedings. The commission found that the judge failed to give the attorney notice of the subjects of his inquiry prior to conducting the evidentiary hearing. Before the hearing, the judge engaged in improper ex parte communications when he met privately in his chambers with a deputy district attorney who was representing the prosecutor in the underlying case. The substance of their discussion was not disclosed to defense counsel. The commission found that the meeting in chambers and the failure to disclose its substance to defense counsel violated the prohibition on ex parte communications and gave rise to an appearance of impropriety and bias.

Judge Connolly conducted part of the February 3 hearing with the prosecutor and her attorney excluded from the courtroom, and, over defense counsel’s objection, excluded him from part of the hearing. In defense counsel’s absence, Judge Connolly called his court reporter as a witness and permitted the deputy district attorney to call two witnesses. The judge also provided the district attorney’s office, but not defense counsel, with transcript excerpts pertaining to two occasions during the trial on which defense counsel had arguably questioned the integrity of the prosecutor, and informed the prosecution that he was inquiring into both incidents. After the witnesses testified, Judge Connolly called defense counsel back into the courtroom, said he would file an OSC re contempt on February 23, 2011, and ordered defense counsel to appear on that date. On February 23, 2011, Judge Connolly took the contempt matter off calendar. The commission found that the February 3 evidentiary hearing and the ex parte

manner in which it was conducted constituted an abuse of authority. No cause was pending before Judge Connolly at the time, neither attorney had been cited for contempt, no OSC's re contempt had been issued, and the underlying case had concluded months earlier. Judge Connolly's determination to proceed with an evidentiary hearing gave the appearance that he was conducting an independent investigation into both attorneys' conduct, which was beyond the scope of his authority. He also violated defense counsel's procedural rights by excluding him from part of the hearing over his objection with no legal basis, and failing to give him notice of the specific subjects of his inquiry. [*Public Admonishment of Judge Patrick E. Connolly* (2016).]

A judge imposed an enhanced sentence based on the judge's belief that a defendant, who had not testified at trial, had lied to defense counsel. There were no facts concerning the defendant's alleged dishonesty in the record at trial. The judge's conduct and remarks at sentencing gave an appearance of retaliation for the defendant's exercise of the right to trial. The judge also routinely locked the courtroom door during arraignments and told a defense attorney that the judge "preferred" that the defense attorney not be present in the courtroom during proper arraignments. [Com. on Jud. Performance, Ann. Rept. (2012), Private Admonishment 5, p. 26.]

Judge Jacobson was disciplined for his conduct toward defense counsel who appeared at 9:00 a.m. and sought a continuance of a preliminary hearing set the next day. After stating that he could not rule until the other defendants were present, the judge then ordered the attorney to "spend every waking moment between now and when we are next in court working on this case." The attorney replied that she could not be ready the next day. Judge Jacobson told her again to "spend every waking moment working on it" and expressed the view that the 13 days the attorney had had to read and absorb 1,000 pages of discovery was "plenty of time." The attorney disagreed. The judge said the matter would be taken up the next day, when all parties were present, and said, "Work all day today, work all night. Get up early tomorrow morning – ." Judge Jacobson abused his authority by ordering the attorney to spend "every waking moment" working on the case until the time set for the preliminary hearing. The remarks were also demeaning and discourteous, and because they were made in the presence of the attorney's client, were of a nature that could be expected to damage the attorney-client relationship. The judge was also disciplined for abuse of contempt for his handling of contempt proceedings against the attorney. [*Public Admonishment of Judge Morris D. Jacobson* (2012).]

Judge McBride was disciplined for misconduct that included abusing his judicial authority while presiding over the master criminal calendar by improperly advancing a trial date without notice to, or consent of, the defendant's attorney. [*Public Admonishment of Judge James J. McBride* (2008).]

Judge Velasquez was removed from office for conduct that included improperly issuing bench warrants for two defendants who had authorized counsel to appear for them pursuant to Penal Code section 977 and refusing to recall them. Thereafter, defense counsel disqualified the judge and sent letters to the presiding judge. When the attorney later appeared before Judge Velasquez on an unrelated matter, the judge demanded that the attorney provide him copies of the letters that had been sent to the presiding judge. In so doing, the judge exceeded his authority and acted for an improper purpose, that is, to pursue his personal interest in proving that the attorney had lied to the presiding judge. Judge Velasquez's conduct was in bad faith and was willful misconduct. [*Inquiry Concerning Judge José A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

In a criminal matter, a judge had ordered the defendant to appear for trial but then set a hearing on a motion to dismiss the case for violation of the defendant's right to a speedy trial. The hearing was set for a date after the scheduled trial date. The defense attorney assumed that the trial date had been vacated and told the defendant not to appear. The judge issued a bench warrant when the defendant did not appear on the trial date. After the defendant was arrested on the warrant, the judge refused to reinstate the defendant's own recognizance release although the defendant's explanation that he relied on counsel's advice was undisputed. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2004), Private Admonishment 2, p. 22.]

Judge Ormsby appeared to treat a defendant harshly because he was irritated that the defendant had not been interviewed by the public defender in a timely manner as he had directed. There was additional misconduct. [*Censure of Judge William M. Ormsby* (1996).]

Judge Mireles, annoyed at the absence of a particular deputy public defender from his courtroom, directed two police officers to bring him to the court, adding they should bring "a piece of" or "a body part" of the attorney. The officers went to another courtroom and used physical force to remove the attorney. Judge Mireles witnessed the forcible delivery of the attorney to his courtroom, but did not rebuke the officers or make any inquiry into their conduct despite the attorney's protests. The commission found that the judge did not actually intend force to be used, but carelessly allowed that impression to be created. [*Public Reproval of Judge Raymond D. Mireles* (1989).]

Judge Ryan was removed from office for rejecting a defendant's "no time" plea offer in a DUI case and requested a jury trial. The judge privately told the deputy district attorney that he was going to teach the defendant's attorney a lesson for seeking a jury trial. The judge said he would sentence the defendant to 30 days in jail if convicted for refusing the standard plea bargain. The judge added that he could further justify the long sentence by stating that the defendant committed perjury at trial. The defendant was convicted and the judge sentenced him to 30 days. After refusing defense counsel's request that the judge state the reasons for the sentence, the judge stated to the press that the sentence was intended to discourage costly and time-consuming trials and that "there had to be some incentive not to go to trial." During habeas proceedings challenging the sentence, the judge stated that the sentence was justified by the defendant's perjury at trial. The judge's conduct was determined to be willful misconduct because the judge based his sentence on improper factors (teaching the attorney a lesson) and fabricating a justification for a challenged ruling, evidencing moral turpitude and dishonesty. [*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518.]

A judge engaged in an inappropriate display of impatience and anger when the judge refused to let a defendant consult with counsel before entering a plea. When the defendant then declined to enter a plea, the judge revoked the defendant's own recognizance release and ordered him into custody. [Com. on Jud. Performance, Ann. Rept. (1987), Advisory Letter, p. 10.]

A judge appeared to have "overreached," or acted in excess of the judge's authority. The judge issued a bench warrant for a defendant as a result of pique at an attorney. [Com. on Jud. Performance, Ann. Rept. (1984), Advisory Letter, p. 9.]

Judge Gonzalez was removed from office for conduct including refusing to hear an own recognizance release motion after the public defender acted to protect his client's interests. After the prosecution made a motion to dismiss, the judge began questioning the defendant directly on the facts of the case. When the public defender objected and instructed his client not to answer, the judge fixed bail at \$500, set a pretrial date, and refused to entertain the defendant's OR release motion. The Supreme Court noted that the evidence suggested the judge refused to hear the OR motion after turning down the prosecution's motion to dismiss because it was the public defender who had "opened his mouth" during the judge's questioning of the defendant. "Such hostile, arbitrary, and unreasonable conduct jeopardizes the liberty of an indigent defendant for reasons not related to the merits of the case" and constitutes willful misconduct. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

Judge Geiler was removed from office for conduct including prodding a deputy public defender with a “dildo” during a conference in chambers one morning, and later that day referring to the incident twice in open court so as to curtail the deputy public defender’s questioning of two witnesses during a preliminary hearing. The conduct was determined to be willful misconduct. [*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270.]

### **Denial or Disregard of Rights**

Among other misconduct, the judge engaged in a pattern of making statements that gave the appearance that the judge would punish defendants for asserting their right to a speedy trial. The judge received substantial mitigation for successful completion of the commission’s mentoring program and other actions that the judge undertook voluntarily. [Com. On Jud. Performance, Ann. Rept. (2021), Advisory Letter 10, p. 42.]

A DPD testified that Judge Laettner did not revoke the defendant’s bail, or raise and reset bail, in her presence, and also did not give her an opportunity to be heard on the subject of defendant’s bail. The judge was found not to be credible in explaining why the order he claimed he made exonerating and resetting bail was not reflected in the transcript of the proceeding and that the “only reasonable inference” from the evidence was that he did not exonerate and reset bail in open court. In a separate matter, Judge Laettner failed to provide the defendant with notice and an opportunity to be heard with respect to the revocation of his own-recognizance (OR) release and remand, and failed to reject, in open court, a peremptory challenge that the defendant’s attorney had filed. The revocation of the OR release and remand of the defendant were not reflected in the transcript of the proceedings, nor were they mentioned in notes taken by Judge Laettner during an in-chambers conference or when he was later on the bench. Similarly, Judge Laettner’s rejection of the peremptory challenge was not reflected in the transcript, court minutes, or Judge Laettner’s contemporaneous notes. [*Inquiry Concerning Judge John T. Laettner* (2019) 8 Cal.5th CJP Supp 1.]

After remanding a defendant whom the judge believed was self-represented, the judge refused to recall the matter later that day at the request of the defendant’s counsel. [Com. on Jud. Performance, Ann. Rept. (2019), Advisory Letter 13, p. 36.]

While presiding over a misdemeanor probation violation, the judge refused the defendant’s attorney’s request to be heard on the issue of bail, denied the defendant bail and remanded the defendant into custody. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 19, p. 26.]

During a criminal trial, the judge summarily precluded the defense from presenting surrebuttal evidence, improperly ruling that the defense had no such right. The judge displayed impatience toward the defense attorney when the attorney objected. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 16, p. 25.]

Judge Gildner was disciplined for conduct suggesting a pattern of failing to ensure the rights of criminal defendants. In two cases, the judge issued bench warrants without legal authority and abused his power by refusing to give the defendants an opportunity to explain their earlier non-appearance as originally ordered. In the first matter, a defendant had been ordered to appear at 9:00 a.m. for a pre-preliminary hearing conference, but the public defender advanced the matter to 8:30 a.m. for the purpose of declaring a conflict of interest so that new counsel could be appointed. When Judge Gildner called the case at 8:45 a.m., the defendant was not present. Judge Gildner issued a bench warrant for the defendant, although he had not been ordered to appear at 8:30 a.m., and the public defender did not know whether he had been notified to appear at the earlier time. When the defendant appeared during the 9:00 a.m. calendar call, he was taken into custody on the warrant. When defense counsel asked Judge Gildner to recall the matter that day, Judge Gildner refused to do so.

In the second matter, a defendant had been ordered to appear for a pre-preliminary hearing conference, but the public defender placed the matter on calendar six days before the date set for the conference in order to declare a conflict and facilitate appointment of new counsel. The defendant had not been notified that he needed to be present on this earlier date. Nonetheless, over objection of the public defender, Judge Gildner issued a no-bail bench warrant for the defendant. When the defendant appeared on the date previously set for the pre-preliminary hearing conference, the public defender attempted to address the court. Judge Gildner refused to allow him to do so. After appointing private counsel to represent the defendant, Judge Gildner ordered the defendant taken into custody on the previously issued bench warrant. [*Public Admonishment of Judge Stephen P. Gildner* (2005).]

Judge Ross was removed from office for misconduct that included his treatment of a public defender who objected to the judge's refusal to conduct a probation violation hearing, stating that he had already found the defendant in violation of probation and would proceed to sentencing. After the public defender had a heated exchange with the judge and was removed from the courtroom, the judge continued with the sentencing proceedings. Another public defender who was in the courtroom stated his appearance, but neither he nor the judge understood him to have replaced the public defender who had been representing the



defendant or to have been in a position to provide effective representation of the defendant. The judge addressed the defendant directly. The matter was continued to the afternoon. The next day, after being told that the public defender's office intended to boycott his courtroom, Judge Ross set a formal probation violation case in the case. The commission determined that Judge Ross committed willful misconduct. The judge presumptively knew, through his experience as a prosecutor, that a defendant in a probation violation hearing has a right to a hearing, and that the defendant's lawyer insisted on that right. The judge either intentionally disregarded the defendant's fundamental rights, knowingly acted beyond his judicial power or with conscious disregard for the limits of his authority. Alternatively or additionally, the judge displayed embroilment evidencing anger, pique, revenge or other improper purpose. [*Inquiry Concerning Judge Kevin A. Ross* (2005) 49 Cal.4th CJP Supp. 79.]

Judge Roeder engaged in a practice at arraignments in felony and misdemeanor cases of stating that the defendants had waived their rights to preliminary hearings and misdemeanor trials within applicable time limits, without consulting with the defendants or obtaining their consent to a waiver of those rights in the manner prescribed by law. This was done immediately after appointing either the public defender or private counsel, but before counsel had the opportunity to consult with their clients. According to the judge, the public defender or private counsel needed time to open files and investigate cases. The judge's motive was found to have been to accommodate defense counsel, accomplished at the expense of the defendants' right to a speedy preliminary hearing or trial. [*Public Admonishment of Judge James L. Roeder* (2003).]

In addition to other misconduct, Judge Ormsby remanded a defendant into custody for being late to court without giving him or the deputy public defender representing him an opportunity to explain his tardiness.

In another matter, Judge Ormsby criticized a deputy public defender for filing motions to suppress evidence and stated that the question of standing was going to come up, whether or not it was raised by the prosecution. The judge had previously been reversed for, on his own motion, refusing to allow the deputy public defender to call witnesses on the issue of standing in a motion to suppress. [*Censure of Judge William M. Ormsby* (1996).]

In addition to other misconduct, a judge expressed anger and threats when an attorney refused to waive the right to a speedy trial, showing disregard for the law and defendant's rights. [Com. on Jud. Performance, Ann. Rept. (1994), Private Admonishment 5, p. 17.]

When two defendants were not present at the first calendar call, a judge revoked their bail. They arrived a few minutes later. The judge refused to hear their attorney's (quite reasonable) explanation for their lateness. The defendants were held in jail overnight before the judge reinstated their bail. The advisory letter concerned the judge's refusal to listen to the attorney's explanation. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 23, p. 24.]

### **“Tricking” Counsel**

Judge Broadman was censured for conduct including getting a time waiver from counsel while concealing the reason for requesting the waiver. When a defendant appeared before Judge Broadman for sentencing, the judge asked for a time waiver in order for the court to present some questions to counsel to research before sentence was imposed. Both the prosecutor and defense counsel agreed to postpone the sentencing hearing. When defense counsel expressed concern about the delay and inquired as to the need for two months of research, the judge replied: “Trust me.” Only after obtaining a time waiver from both defense counsel and the defendant did Judge Broadman reveal that he wanted the attorneys to research whether the judge could order prison authorities to withhold from an HIV-positive inmate, such as the defendant, any medical treatment for that condition. Defense counsel then strenuously objected and objected to the waiver as not knowing as defense counsel did not know the reason for it. The Supreme Court found that Judge Broadman had “tricked” counsel into agreeing to the continuance. A judge's attempt to take an attorney unawares by concealing material information is an abuse of the judicial process and willful misconduct. [*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079.]

### **Transferring or Banishing Counsel and Improper Referrals to State Bar**

While presiding over a case, the commissioner accused counsel of misconduct and threatened to report the attorney to the State Bar, in the presence of the attorney's client. [Com. on Jud. Performance, Ann. Rept. (2017), Advisory Letter, p. 30.]

A judge made rude and sarcastic remarks to an attorney, in open court and, in the presence of the attorney's client, threatened to relieve the attorney as counsel and report the attorney to the State Bar, when the attorney sought to continue a preliminary hearing on the day of the hearing (without advance notice to prosecution) and contended that the attorney was unable to proceed. [Com. on Jud. Performance, Ann. Rept. (2015), Private Admonishment 10, p. 24.]

In addition to other misconduct, during a hearing in a criminal case, the judge was impatient and discourteous towards an attorney who was questioning a witness. Later, in open court, and in the presence of the attorney's client, the judge threatened to report the attorney to the State Bar if the attorney had engaged in improper conduct, which had not been determined. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 28, p. 24.]

In addition to other misconduct, Judge Ormsby accused a deputy public defender of unethical conduct and of trying to commit a fraud on the court in connection with the deputy public defender's attempt to disqualify the judge. The judge denied the disqualification motion, but recused himself from further proceedings in the case. Thereafter, without giving the attorney an opportunity to respond, Judge Ormsby stated his intention to refer the attorney to the State Bar and ordered the attorney never to appear in his courtroom again. The next day, when the attorney's supervisor went to Judge Ormsby to discuss the situation, the judge threatened to have the deputy public defender arrested if he appeared, and ordered the supervisor physically removed from the courtroom. [*Censure of Judge William M. Ormsby* (1996).]

After a pretrial conference in which the judge failed to persuade an attorney to endorse a plea bargain, the judge "heard" from some source that the attorney had a conflict of interest. The judge irresponsibly referred the matter to the State Bar, which investigated and cleared the attorney. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 12, p. 22.]

In addition to other misconduct, the judge exerted pressure on the Public Defender to transfer a deputy public defender with whom the judge was upset. [Com. on Jud. Performance, Ann. Rept. (1987), Private Admonishment, p. 9.]

### **Abuse of Contempt**

Judge Jacobson was disciplined for his conduct toward defense counsel who appeared at 9:00 a.m. and sought a continuance of a preliminary hearing set the next day. After repeatedly ordering the attorney to work nonstop on the case, the attorney said, "Your Honor, I don't need your advice on how to be competent." Judge Jacobson responded, "That is contemptuous. That was disrespectful. Take a seat."

The attorney took a seat in the courtroom, and Judge Jacobson called a brief recess during which he went into chambers to gather his thoughts and review a checklist to be followed in adjudicating a contempt. He returned to the bench and began calling other cases. At around 10:20 a.m., while the judge was

hearing another matter, the attorney walked across the courtroom to obtain a portion of the case file to review. The judge told the attorney to take a seat and remain in the courtroom as she had been told. She complied. About 45 minutes later, the judge called the case and ordered the attorney to return at 2:00 p.m. that afternoon for a hearing. The attorney apologized for her earlier remark, which she said was “improper and too informal.”

At about 2:35 p.m., Judge Jacobson called the matter for a contempt hearing. After some discussion, including another apology from the attorney, the judge decided not to find the attorney in contempt. The judge’s conduct was determined to be an abuse of the contempt power and abuse of authority in that it was improper for the judge to order her to remain in the courtroom for a period of over an hour and a half without adjudicating the alleged contempt. The judge was also disciplined for abuse of authority for his admonitions to the attorney to spend “every waking moment” on the case. [*Public Admonishment of Judge Morris D. Jacobson* (2012).]

After continued hearings on sentencing in a probation violation matter, Judge Espinosa announced what sentence he would impose before defense counsel had a full opportunity to speak. The judge treated defense counsel in a rude and impatient manner for attempting to be heard and abused the contempt power by holding in contempt and immediately incarcerating an attorney who had sought to be heard on his client’s behalf. The contempt order was subsequently annulled as the record did not disclose a clear instance of disorderly, contemptuous, or insolent behavior towards the court. The Court of Appeal vacated the defendant’s sentence and remanded the case for resentencing before a different judge, finding that Judge Espinosa precluded defense counsel from completing his argument and refused to listen during an earlier portion of that argument. The appellate court also found that the judge failed to grant the attorney a stay before taking him into custody for contempt, as required by law, mischaracterized the record of proceedings leading to the contempt order at a subsequent hearing and made material omissions and misstatements in a written contempt order. Based on these findings, the court held there was a doubt that Judge Espinosa could maintain his objectivity, necessitating the remand for resentencing before another judge. [*Public Admonishment of Judge Ruffo Espinosa, Jr.* (2006).]

In addition to other misconduct, Judge Ormsby was disciplined for unnecessarily threatening a deputy public defender with contempt for conferring with in-custody defendants instead of out-of-custody defendants whose cases the judge wished to resolve. [*Censure of Judge William M. Ormsby* (1996).]

In addition to other misconduct, Judge Vassie was disciplined for abusing the contempt power and interfering with the attorney-client relationship. A deputy public defender appeared with a defendant charged with DUI and informed the court that he wished to set the matter for a hearing on a motion to suppress and a jury trial. The district attorney involved the court that an offer had been made. Judge Vassie then said to the defendant, "You understand ... that the offer that the prosecution has made will not be repeated." Her attorney said that he had relayed the offer to the defendant. The judge replied, "I am talking to her." The public defender said that he objected to the judge talking to his client. The judge then told the attorney that if he interfered with the judge asking his client something, he was in contempt for interfering with the lawful process of the court. The attorney then repeated that the judge had no right to speak to his client. The judge then held the deputy public defender in contempt for interrupting the judge's conferring with the defendant and for interrupting the judge when the judge asked the attorney what was his legal authority for objecting to the judge talking to his client. The attorney was remanded to custody for five days but was released a few hours later. The judge was found to have completely failed to follow proper contempt procedures by jailing the attorney immediately, with no hearing or written order of contempt. [*Public Reproval of Judge Kenneth E. Vassie* (1995).]

Judge Kloepfer was removed from office for conduct including threatening the defendant in a criminal case with contempt because the defendant whispered to his attorney. The judge's conduct was prejudicial misconduct. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

Judge Wenger was removed from office for conduct including numerous abuses of the contempt power. After being disqualified from a drunk driving case, the judge issued an OSC to defense counsel with no indication of the subject matter. The judge testified that he wanted to discuss concerns about the attorney not being candid with the successor judge about conflicting court appearances, failing to disclose a prior request for a continuance to the subsequently assigned judge and tardiness at the trial. The Supreme Court held that Judge Wenger clearly abused the contempt process and was guilty of willful misconduct. Noting that the successor judge had the power to treat misrepresentation to obtain a continuance or tardiness at trial as direct contempt, that power was not conferred on Judge Wenger.

In another case involving the same attorney, a convicted defendant failed to surrender at the time required. The defendant was ordered to appear in Judge Wenger's court the following week and did so with counsel. The judge questioned counsel in chambers about the advice given to the client about

surrendering. The judge questioned the client on the same subject in court, found him in contempt and sentenced him to five days in jail, to commence immediately. After sentencing, the judge told counsel that if he thought the attorney had any role in the client not reporting for jail, he would have held counsel in contempt. The Supreme Court found more than a “threat to consider” contempt on the judge’s part. The judge did not inform counsel prior to questioning him that the judge was contemplating contempt proceedings. The judge suspected counsel of a contemptuous act and interrogated him to obtain evidence for a contempt proceeding. Had counsel known the purpose of the examination, he could have invoked his privilege not to testify. Judge Wenger’s attempt to take counsel unawares was an abuse of the judicial process and willful misconduct.

In a third matter involving the same attorney, after being disqualified from the case, Judge Wenger issued an OSC re: contempt for the attorney’s failure to appear on the date set by Judge Wenger for a hearing after he was disqualified. The attorney had been in touch with the successor judge and a different date had been agreed to for the hearing. The attorney’s reason for not appearing on the date set by Judge Wenger had been fully explained to the successor judge and it was proper for the attorney to deal with the successor judge in making scheduling arrangements. The Supreme Court determined that Judge Wenger’s issuance of the contempt charge appeared to have been made because of the judge’s animosity toward the attorney rather than his good faith perception of any contemptuous conduct and thus, constituted willful misconduct.

In yet another matter involving the same attorney, the attorney advised his client to execute a statement under penalty of perjury that he did not believe he could obtain a fair trial without excessive penalties in order to seek the transfer of the case to another court. The attorney’s advice to the client was based upon his personal conflicts with Judge Wenger. The declaration and accompanying motion were filed at the client’s arraignment. Under questioning by the judge, the client admitted that he had never met the judge and had made the declaration based on his attorney’s advice. The judge charged the attorney with contempt, accusing him of filing a false declaration, and invited an explanation. In addition to objections to the proceedings, the attorney readily conceded that the client’s declared inability to obtain a fair trial before Judge Wenger had been formed because the attorney “persuaded him to believe it.” The judge held the attorney in contempt and sentenced him to five days in jail, beginning ten days later, the day after Thanksgiving. The Supreme Court held that Judge Wenger abused the contempt power. The client’s belief that the judge would not give him a fair trial was consistent with its being based wholly on information about strained relations between the judge and counsel. The court held the judge knew or should have

known that the lawyer's advice to his client was proper. Because the contempt order and jail sentence appeared motivated by personal animosity, rendering them was willful misconduct.

Judge Wenger issued an OSC re: contempt against an attorney for grounds including the attorney's alleged violation of his duty to his client and that as a result the client was denied a hearing and incarcerated. After a bench warrant was issued against his client for failing to appear at arraignment, the attorney determined to disqualify Judge Wenger and contacted the substitute judge who was assigned to Judge Wenger's court that afternoon to hear his request for OR release that afternoon. When the attorney and his client appeared at court, he stated that he was there to make a motion for OR release. Judge Wenger said he could only hear the OR motion if the attorney withdrew the disqualification. The attorney suggested that the substitute judge hear the motion. Judge Wenger declined to allow the substitute judge to hear the motion and ultimately remanded the client into custody. The Supreme Court noted that the denial of the OR hearing and subsequent incarceration resulted from Judge Wenger's refusal to honor the attorney's request that the matter be heard by the substitute judge, not from the attorney's refusal to withdraw the disqualification. To charge the attorney with contempt for a consequence for which petitioner himself was responsible constituted willful misconduct. [*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615.]

Judge Cannon was removed from office for conduct that included "particularly egregious" the bad faith and maliciousness with which the judge arbitrarily ordered the immediate incarceration for contempt of public defenders who displeased her, and denied the effective right to counsel to their clients who were required to defend against charges in on-going criminal proceedings with substituted counsel who were afforded no reasonable opportunity to prepare. The judge arbitrarily cited public defenders for contempt on grounds she never sought to establish "if in fact they could have been established and, knowing they would be entitled to immediate release by extraordinary writ, nevertheless subjected them to the embarrassment and indignity of being charged and incarcerated as criminals." The court rejected the judge's assertion that her exercise of the contempt power constituted at worst an erroneous judicial ruling, because the judge "completely ignored" proper procedures in punishing for contempt and willfully failed to comply with the statutory requirements. The court found Judge Cannon's primary concerns were first to inflict a completed punishment before the deputy public defenders were afforded a due process determination that punishment was warranted and, second, to accomplish her objectives in a manner to insure that such conduct would be insulated from judicial review and collateral attack. The court concluded that "such a planned

subversion of justice and misuse of the judicial power could be undertaken only in bad faith.” The court likewise found that the judge’s change of public defenders and substitution of new counsel constituted unlawful interference with the attorney-client relationship, was committed in bad faith and was willful misconduct. Her deliberate ridiculing of the attorneys also constituted willful misconduct. [*Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678.]

### **Abuse of Counsel Affecting Defendant’s Rights**

Judge Shaw was disciplined for mistreatment of participants in multiple criminal cases; in four of the cases, Judge Shaw mistreated defense counsel and sometimes, their clients. In one case, the Court of Appeal reversed the conviction and held that the defendant was entitled to a retrial before a different judge, partly due to Judge Shaw’s “persistent and indefensible misconduct.” Judge Shaw engaged in “elementary school scolding of defense counsel” that was unwarranted and a “demeaning lecture” of defense counsel over a hearsay issue that was “wholly uncalled for.” The appellate court noted: “It was enough to sustain the objection. Making fun of a lawyer in front of the jury is unacceptable, particularly where, as here, the lawyer is doing her best to represent her client and, while perhaps making mistakes from time to time, is not demonstrating disrespect of the court.” The court concluded that Judge Shaw “belittled, scolded and punished” defense counsel in front of the jury, made “caustic, condescending remarks” to the defendant and his counsel, created an “atmosphere of unfairness” and “[s]ubstantively undermined the defense theory of the case.” The commission determined that Judge Shaw became embroiled in the case and lacked patience, dignity and courtesy and engaged in prejudicial misconduct. [*Censure and Bar of Former Judge Susanne S. Shaw* (2006).]

Judge Kloepfer was removed from office for conduct including exhibiting open hostility to the defense, the defendant and defense witnesses in a nonjury trial. He also acted in an intimidating manner toward defense counsel, who testified that the judge’s abusive and intimidating behavior deterred him from questioning or challenging his actions because he feared he would be put in custody. The court held that the judge’s intimidation may well have affected the adequacy of defense counsel’s representation of the defendant. Counsel testified that he was intimidated to the point that he felt compelled to withdraw a request to recall a witness and did not challenge the propriety of contempt citations directed to his client when they were made. The judge’s conduct was determined to be prejudicial misconduct. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]



A judge's abuse of defense counsel in a single case deprived defendant of a fair and impartial trial. [Com. on Jud. Performance, Ann. Rept. (1985), Private Admonishment, p. 6.]

### **Improperly Relieving Counsel**

In addition to other misconduct, during a pretrial hearing, the judge threatened to relieve defense counsel without adequate grounds. [Com. On Jud. Performance, Ann. Rept. (2016), Private Admonishment 6, p. 27.]

Judge McBride was disciplined for conduct that included improperly relieving the public defender's office from five cases. The deputy public defender assigned to the cases had not personally appeared before the judge on her cases, including a matter in which a motion to suppress was scheduled, a few days earlier because she was then engaged in an ongoing trial in another courtroom, although it was in recess that day. The judge had also improperly relieved the public defender's office from a case in which a different deputy public defender had failed to appear a few days earlier due to a calendaring error. The commission found that in these matters, there was no indication of any conflict or that the attorneys' representation was inadequate, or that the impairment of court proceedings caused by the attorneys' absence was substantial enough to warrant removal of the public defender's office. The commission also found that the judge relieving the public defender's office created the appearance that the judge was acting out of pique and for the purpose of punishing the attorneys for not appearing. [*Public Admonishment of Judge James J. McBride* (2008).]

A judge had outbursts of temper. The judge also relieved appointed counsel for trivial reasons and publicly criticized attorneys on inadequate grounds. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 8, p. 23.]

Judge Geiler was removed from office for conduct including relieving the public defender's office as counsel in eight cases at the preliminary hearing in violation of Code of Civil Procedure section 284 (requiring an application by either attorney or client, after notice from one to the other). The defendants were eligible for representation by the public defender and the public defender's office was willing to represent and was appearing for each defendant. There was no evidence to show there was a conflict of interest between the public defender and the defendants. At the outset of the proceedings, the judge explained his sentencing policy. In each case, the defendant advised the court of his desire to plead to a misdemeanor, but the public defender refused to plead the defendant guilty for a variety of reasons such as the desire to consolidate the case with other pending cases so the defendant's jail time might be reduced, the judge's

refusal to make a record of the plea bargain, uncertainty as to the effect of a guilty plea on the defendant's parole status and a request by the public defender for additional time to research a possible defense suggested by the defendant. In each case, Judge Geiler relieved the public defender and appointed private counsel at the request of the defendants for the purpose of the plea only and without compensation. The Supreme Court found that any excuse for Judge Geiler's noncompliance with Code of Civil Procedure section 284 was precluded by the fact that he did not act in good faith because he interfered in the attorney-client relationship between the public defenders and their clients. His conduct constituted conduct prejudicial and willful misconduct. In determining that Judge Geiler acted in bad faith by indulging his "petty animosity toward public defenders," the court stated:

No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude. The ideal of our legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if one man clothed with judicial power may ignore with impunity such a basic institutional mandate as the sanctity of the attorney-client relationship merely because the attorneys are young public defenders and their clients are indigent.

[*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270.]

### **Conducting Proceedings in Counsel's Absence**

When a criminal defendant's counsel of record failed to appear for trial, the judge said that the defendant was nevertheless going to trial or pleading that day. The defendant pled that day, assisted by another attorney. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 14, p. 27.]

Judge Ormsby imposed sentence on a defendant in the absence of the defendant's retained counsel, although the judge knew the defendant was represented by counsel. [*Censure of Judge William M. Ormsby* (1996).]

Judge McCullough was removed from office for conduct including ordering a defendant's DUI trial to proceed despite the absence of herself and her attorney. On the day before the scheduled trial, the defendant's counsel was ordered to appear before a court in another county the following day. Defense counsel contacted the court and the district attorney, who had no objection to the

continuance, but informed counsel that the court normally required 48 hours written notice of requests for continuances. Since defense counsel did not have sufficient time to prepare a written motion for a continuance, defense counsel made arrangements for a local attorney to specially appear at trial to make the request. The local attorney did not appear personally but telephoned the court with a request for a continuance. Judge McCullough denied the request and ordered the trial to proceed despite the absence of the defendant, her counsel of record, or the local attorney. The prosecutor informed the judge that he did not object to a continuance and suggested that the judge sanction the attorney for failing to comply with the court's 48-hour rule instead of proceeding with the trial. Later that day, defense counsel learned that the trial proceeded without him or his client and made a motion for a new trial which Judge McCullough granted. Nonetheless, the Supreme Court found the judge had engaged in willful misconduct for seriously interfering with the defendant's Sixth Amendment right to representation by conducting judicial proceedings in the absence of the defendant and her counsel. Recognizing the power to grant a continuance and the power to impose sanctions are discretionary, the court noted that the judge failed to hold the requisite hearing to determine whether the noncomplying request was made in good faith. The court also stated that the judge should have given greater consideration to sanctioning defense counsel rather than penalizing the defendant by ordering the trial to proceed in the absence of both her and her attorney.

Judge McCullough ordered another DUI trial to proceed even though the defendant's attorney was not present. The attorney was involved in a trial in another county that did not end the day before the trial in Judge McCullough's court. He telephoned to request a continuance and was advised of the 48-hour rule. Defense counsel contacted the district attorney who did not object to a continuance. Defense counsel arranged for a local attorney to make a special appearance at trial to request a continuance. Local counsel appeared with the defendant at trial and made the request which Judge McCullough denied. He ordered the trial to proceed, notwithstanding local counsel's indication that he would not represent the defendant at trial. The defendant burst into tears as she was not prepared to represent herself. She did not call witnesses, cross-examine the prosecution's witnesses, or herself take the stand. She was convicted of the charge. When her attorney learned that the trial had proceeded without him, he moved for a new trial, which Judge McCullough denied. The Supreme Court found that the judge had again ignored the hearing requirement of the continuance statute and the availability of sanctions and allowed his impatience with a defendant's attorney to outweigh a defendant's right to a fair trial and representation of her choice and concluded that the judge's conduct

constituted willful misconduct. [*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186.]

Judge Kloepfer was removed from office for conduct including proceeding without counsel in matters involving a represented defendant. The defendant appeared before the judge for arraignment on criminal charges and probation violations in four cases, three of which were four and five years old because the defendant had failed to appear. In one of the cases, counsel had not been appointed. The defendant appeared without counsel and advised Judge Kloepfer that he wished to plead guilty. He failed to notify counsel who had been appointed in two of the cases and proceeded in their absence. He accepted a guilty plea and an admission of probation violation without eliciting proper waivers, and sentenced the defendant without obtaining a probation report or notifying counsel. The judge's knowing failure to ensure the constitutional rights of a criminal defendant in order to avoid the burden of proceedings in which the defendant would have adequate representation constituted willful misconduct. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

Judge Ryan was removed from office for conduct that included conducting proceedings with represented defendants in the absence of their counsel. A defendant, represented by the public defender, pled guilty to two misdemeanors. He failed to appear for sentencing and was picked up on the bench warrant that was issued. Without notice to counsel, the judge asked the defendant whether he wanted to proceed with sentencing without counsel. The defendant said that he did not think it would make any difference and he wanted to get it over with. The judge sentenced the defendant to jail. Defendant's counsel filed a habeas petition that was granted on the grounds that counsel should have been formally notified of the sentencing and that the defendant had not made a knowing and intelligent waiver of his right to counsel. The court determined that the judge committed prejudicial conduct rather than willful misconduct in light of the defendant's statement that he wanted to proceed without counsel.

In another case, a defendant was represented by counsel and pled guilty to a misdemeanor and was placed on probation. Subsequently, the defendant appeared before the judge when a petition to revoke probation was filed. The judge asked the defendant if he wanted an attorney. The defendant stated that he did and the judge appointed a public defender to represent the defendant. Without waiting for the public defender to arrive, however, the judge asked the defendant if he had done the acts alleged in the petition to revoke probation. By ignoring the defendant's request for counsel and extracting a confession from him, the judge committed prejudicial misconduct. [*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518.]

Judge Gonzalez was removed from office for conduct that interfered with the defendant's right to counsel and with the attorney-client relationship. When a deputy public defender was delayed in appearing on a motion to set aside his client's motion to declare a prior conviction unconstitutional due to an appearance in another courtroom, Judge Gonzalez commenced the proceedings without the defendant's counsel and commenced taking testimony from the defendant. In another case, a deputy public defender arrived in Judge Gonzalez's courtroom and discovered that the hearing on his client's motion to suppress evidence had been commenced without him and the judge was questioning the police officer witness. The Supreme Court stated that conducting judicial proceedings in the absence of counsel for one of the parties seriously interferes with the attorney-client relationship and may also infringe on the right of the accused to effective representation by counsel. Even though the judge may not have intended to harm the interests of any of the parties involved, the court found that the judge acted intentionally and in bad faith and therefore engaged in willful misconduct. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

### **Not Allowing Defendants to Appear Through Counsel**

After an attorney appeared for a defendant pursuant to Penal Code section 977, which permits a defendant charged with a misdemeanor to appear through counsel, the attorney failed to appear on the next court date. A judge issued a bench warrant for the defendant, notwithstanding the authorization for the attorney to appear on the defendant's behalf and the fact that the defendant had not been ordered to appear. The commission concluded that the judge's conduct involved disregard of fundamental rights and abuse of authority, and was of a nature that could seriously undermine the attorney-client relationship. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 15, p. 22.]

Judge Velasquez was removed from office for conduct that included issuing bench warrants in seven misdemeanor cases in which the defendants had authorized counsel to appear for them pursuant to Penal Code section 977, but neither the attorney nor the defendant had appeared. In some of these cases, the judge refused to recall the bench warrants after the attorneys asked that they be recalled. The judge's issuance of the bench warrants "manifested a callous indifference to the bounds of his authority" and was done "for the improper purpose of teaching the defendants' attorneys a lesson" and constituted willful misconduct. [*Inquiry Concerning Judge José A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

A judge issued a bench warrant for a misdemeanor defendant who appeared at a pretrial conference through his attorney as provided by law. No order had been made requiring the defendant to appear personally. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 21, p. 25.]

### **Other Interferences With or Denial of Right to Counsel**

In addition to other misconduct, a judge made a disparaging remark to a defendant and appeared to be reacting punitively by refusing to recall a bench warrant or allowing the defendant's attorney to be heard about bail. [Com. On Jud. Performance, Ann. Rept. (2016), Private Admonishment 5, p. 27.]

In addition to other misconduct, a judge failed to respect criminal defendants' right to counsel by questioning them directly when they had counsel or had the right to have counsel appointed. [Com. on Jud. Performance, Ann. Rept. (2015), Private Admonishment 5, p. 24.]

A judge spoke to a represented defendant regarding disposition while the defendant's attorney was out of the courtroom. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 25, p. 27.]

A defendant in a criminal case sought to substitute in new counsel. A judge allowed the substitution but tripled the defendant's bail and remanded the defendant into custody, creating the impression that the judge was punishing the defendant for seeking new counsel or causing a delay in the case, neither of which is a valid basis for raising bail. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 17, p. 26.]

A judge's handling of a defendant's motion to discharge privately retained counsel reflected intentional disregard of the applicable law and disregard of the defendant's right to counsel of choice. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 14, p. 26.]

A judge improperly refused to hold a hearing on a defendant's motion to discharge appointed counsel, under circumstances that reflected prejudgment and disregard of the litigant's full right to be heard according to law. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 15, p. 26.]

On a number of occasions, the judge's advisement about a defendant's right to appointed counsel and obligation to pay for appointed counsel was misleading.

There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 28, p. 24.]

In addition to other misconduct, Judge Ormsby told a defendant that the services of the public defender's office were for trials and that if he wanted drug diversion he could not have a public defender. In addition, on occasion, when represented defendants who had failed to appear and had bench warrants issued for their arrest later appeared in court, Judge Ormsby refused to let counsel speak for them, stating that because bench warrants had been issued, they no longer had counsel. [*Censure of Judge William M. Ormsby* (1996).]

A judge regularly told criminal defendants that they could be represented by a public defender if they pled guilty but would have to pay for an attorney if they exercised their right to a jury trial. When law prohibiting this practice was brought to the judge's attention, the judge discontinued the practice. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 37, p. 27.]

In addition to other misconduct, a judge refused to allow a defendant's attorney to be present while the judge answered the jury's questions. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 10, p. 12.]

### **Interference with Attorney–Client Relationship**

The judge engaged in a pattern of discourteous and undignified conduct with inexperienced public defenders. The judge made comments that were gratuitous and demeaning, could reasonably be expected to impair the attorney-client relationship, and conveyed an appearance of embroilment and bias against the attorneys. [Com. on Jud. Performance, Ann. Rept. (2023), Private Admonishment 1, p. 40.]

At numerous hearings, the judge made comments to deputy public defenders that were sarcastic, disparaging, or discourteous or that reflected embroilment. Many of the comments had a tendency to interfere with the attorney-client relationship. The judge received substantial mitigation for successful completion of the commission's mentoring program and other actions that the judge undertook voluntarily. [Com. on Jud. Performance, Ann. Rept. (2021), Advisory Letter 10, p. 42.]

The judge made discourteous comments about a criminal defense attorney that could reasonably be expected to impair the attorney-client relationship. [Com. on Jud. Performance, Ann. Rept. (2019), Private Admonishment 2, p. 34.]

While presiding over a preliminary hearing, Judge Novak accused the criminal defense attorney of being “extremely unprofessional this afternoon,” “disparaging of the witness,” “unprofessional to the witness,” “unprofessional to this court,” and “disrespectful to the court.” The judge accused defense counsel of “hav[ing] a temper tantrum,” and advised her to “act like the professional that you are.” The commission found that Judge Novak’s comments were discourteous and demeaning toward defense counsel and constituted a violation of the judge’s duty to be patient, dignified, and courteous to lawyers and others who appear before the judge. Moreover, the commission found several of the judge’s remarks, made in open court and in the presence of the defendant, were of a nature that could reasonably be expected to impair the attorney-client relationship, and that constituted improper accusations of professional misconduct. [*Public Admonishment of Judge Lisa A. Novak* (2018).]

While in his courtroom, Judge Kreep referred to interns in the San Diego Public Defender’s Office as “Bun Head,” “Ms. Dimples,” and “Shorty,” all nicknames he came up with. Judge Kreep said to a friend of a deputy city attorney who was observing a court proceeding, “We’ve got all sorts of very attractive, young PD’s around here, so.” A deputy public defender testified that Judge Kreep commented on the physical appearance of female attorneys who appeared before him. As an example, she said Judge Kreep said to a defendant, “the lovely attorney next to you went over the form, correct?” A deputy city attorney who appeared before Judge Kreep testified Judge Kreep referred to a deputy public defender as “the pretty brown one.” Judge Kreep conceded he may have said to a defendant, “The lovely woman next to you is your public defender.” He believed the comment was descriptive, not demeaning. He also admitted that on a date prior to August 2, 2013, during an appearance by a female defendant charged with prostitution who was represented by a male deputy public defender, he made a comment about how attractive the male deputy public defender was to a defendant. Judge Kreep said “he was going for a laugh” but agreed his comment was wrong. [*Inquiry Concerning Judge Gary G. Kreep* (2017) 3 Cal.5th CJP Supp. 1]

In addition to other misconduct, during a pretrial hearing, the judge made statements that highlighted defense counsel’s lack of experience and that were likely to undermine the attorney-client relationship. [Com. On Jud. Performance, Ann. Rept. (2016), Private Admonishment 6, p. 27.]

During a criminal trial, a judge expressed impatience and annoyance and reprimanded defense counsel in front of the jury. During the same trial, when the judge began questioning the defendant about being late to court, defense counsel requested that the judge’s questions be directed to counsel, not the



defendant. The judge responded that the defendant's own recognizance release was revoked. The judge's revocation of the defendant's OR release appeared to be in retaliation for defense counsel's assertion of the defendant's right to have counsel, rather than the defendant, respond to questions. [Com. on Jud. Performance, Ann. Rept. (2012), Advisory Letter 27, p. 27.]

In addition to other misconduct, in a probation violation matter, Judge Van Voorhis improperly engaged in an unauthorized ex parte communication concerning a pending proceeding when he telephoned an attorney from court. The judge asked the attorney whether he had advised the defendant, who was appearing before the judge pro per, that a guilty plea in another county could result in separate punishment for violation of probation. This communication gave the appearance of interference with an attorney-client relationship. [*Public Reproval of Judge Bruce Van Voorhis* (1992).]

Judge Gonzalez was removed from office for conduct including improprieties in matters of bail-setting and OR release. On multiple occasions, the judge offered to grant OR motions which he had originally denied if defense counsel – in each case a public defender – would post a check in the amount of \$25, payable to counsel's favorite charity, which he would hold and return on termination of the case. In one case, the judge told private counsel appointed to represent a defendant that he would grant the OR motion on condition that the attorney post his own \$50 in cash as bail. The court cited the "obvious" legal impropriety of the judge's conduct in that it violated the Rule of Professional Conduct prohibiting attorneys from paying personal or business expenses for a client, threatened to strain the attorney-client relationship if the attorney refused or was unable to pay, and to the extent that the judge engaged in this conduct "to educate" young lawyers to the realities of criminal defense practice as he claimed, he impermissibly sought to use his office to further a "purpose other than the faithful discharge of judicial duties" and his action constituted willful misconduct. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

Judge Wenger was removed from office for conduct including attempting to dissuade an attorney from representing a client. A newly admitted attorney was retained to represent an individual whom Judge Wenger had jailed for contempt based on courtroom conduct. The attorney filed a petition for habeas corpus and obtained an order to show cause that he served on the judge in chambers. On two occasions, the judge tried to dissuade the attorney from representing the contemnor, at one point telling him that if he stayed in the case he could probably never practice again before the judge and probably not in western El Dorado County. He added that the attorney's office associates also might have difficulties practicing in his court. One of the attorney's associates telephoned

the judge, hoping he would reconsider. The judge merely reiterated to the associate what he had told the attorney. The Supreme Court held that the judge's remarks to the attorney and his associate were improper attempts to dissuade counsel from representing a client and constituted willful misconduct. [*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615.]

### **Disparaging Counsel and Other Poor Demeanor**

During a criminal trial, the judge refused to permit counsel to ask clarifying questions about a ruling, and made sarcastic, discourteous comments to defense counsel. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 16, p. 34.]

Two criminal defense attorneys represented co-defendants. A day after the governor announced a statewide stay-at-home order due to the COVID-19 pandemic, one of the attorneys called the court to request permission to appear by telephone for the arraignment scheduled that afternoon and spoke with the judge, who later allowed counsel to appear at the arraignment by telephone later that day. At the arraignment, the attorneys appeared by telephone; their clients were in custody and appeared in person. When the attorneys separately asked that their respective client be released on his own recognizance, citing, among other reasons, health concerns, the judge seemed sarcastic and impatient and interrupted both attorneys with remarks about them not being in the courtroom, though there was no evidence of provocative conduct by counsel, they appeared polite and respectful, and the judge had given them permission to appear by telephone. [*Public Admonishment of Patrick Connolly* (2021).]

At numerous hearings, the judge made comments to deputy public defenders that were sarcastic, disparaging, or discourteous or that reflected embroilment. Many of the comments had a tendency to interfere with the attorney-client relationship. The judge also engaged in a pattern of making statements that gave the appearance that the judge would punish defendants for asserting their right to a speedy trial. The judge received substantial mitigation for successful completion of the commission's mentoring program and other actions that the judge undertook voluntarily. [Com. On Jud. Performance, Ann. Rept. (2021), Advisory Letter 10, p. 42.]

At a criminal trial before a jury, the judge made remarks to a defense attorney that were disparaging and sarcastic, and that included profanity. [Com. On Jud. Performance, Ann. Rept. (2021), Advisory Letter 2, p. 41.] On June 29, 2011, Judge Jacobson presided over a calendar in a felony trial department. During an arraignment on calendar that day, Judge Jacobson spoke sharply to a deputy

public defender who was new to the felony trial department. After the hearing, Judge Jacobson asked to speak to the DPD. The DPD then approached and put her hand on the bench. After apologizing for speaking sharply to her during the arraignment, Judge Jacobson “hit her hand, and inadvertently used enough force to leave a visible impression.”

The commission confirmed that “Judge Jacobson’s act of hitting [the DPD’s] hand, and doing so with enough force, albeit inadvertent, to leave a visible impression, constitutes particularly serious misconduct.” The commission added, “Judges have at their disposal many tools for carrying out their judicial duties; hitting an attorney’s hand is unequivocally not among them.” This misconduct constituted, at a minimum, prejudicial misconduct. [Public Admonishment of Judge Morris D. Jacobson (2019).]

Judge Novak was disciplined for misconduct that included failing to be patient, dignified, and courteous to a criminal defense attorney. After calling the case while presiding over a preliminary hearing, counsel stated their appearances, and defense counsel said, “There is a defense motion to exclude any witnesses.” Judge Novak did not address the motion. During defense counsel’s cross-examination of the prosecution’s first witness, Judge Novak interrupted, said that one of the attorney’s questions was inappropriate because it assumed facts not in evidence, and admonished defense counsel to avoid asking questions that might force the witness to incriminate himself. Judge Novak said she would not allow a question that assumed the witness had committed a crime, despite the absence of an objection by the prosecution, because she had a duty to protect the witness’s rights. Defense counsel continued with a different form of the question. Before closing arguments, the judge and defense counsel again argued about whether the motion to exclude had been made. The judge admonished defense counsel not to interrupt and accused her of being “extremely unprofessional this afternoon,” “disparaging of the witness,” “unprofessional to the witness,” “unprofessional to this court,” and “disrespectful to the court.” The judge accused defense counsel of “hav[ing] a temper tantrum,” and advised her to “act like the professional that you are.” The commission found that Judge Novak’s comments were discourteous and demeaning toward defense counsel and constituted a violation of the judge’s duty to be patient, dignified, and courteous to lawyers and others who appear before the judge. Moreover, the commission found several of the judge’s remarks, made in open court and in the presence of the defendant, were of a nature that could reasonably be expected to impair the attorney-client relationship, and that constituted improper accusations of professional misconduct. [*Public Admonishment of Lisa A. Novak* (2018).]

In addition to other misconduct, in another case, the judge's demeaning remarks in open court about a defense attorney who was not in court gave the appearance of retaliation. [Com. On Jud. Performance, Ann. Rept. (2016), Private Admonishment 6, p. 27.]

During a hearing in a criminal case, the judge repeatedly criticized defense counsel's brief in a sarcastic and demeaning manner, and questioned the attorney about the defendant in a sarcastic manner. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 27, p. 24.]

During a criminal trial, in the presence of the jury, the judge made a remark expressing a negative personal opinion of the defense attorney. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 5, p. 21.]

Judge Salcido was disciplined for misconduct that included referring to another judge as "aka assistant public defender" and repeatedly referring to a deputy public defender as "Mr. Federal Case." In a case involving another deputy public defender who stated that his client felt unable to travel from Maine to attend court because of her pregnancy, and provided a letter from his client's physician stating her due date, Judge Salcido expressed the view that pregnancy would not preclude travel, and then tore up the physician's letter while on the bench. [*Censure of Judge DeAnn M. Salcido* (2010).]

Judge Gibson was disciplined for misconduct that included rude and insensitive and inappropriate remarks to defense counsel. The case was before Judge Gibson for assignment to a trial department. A male attorney, appearing in place of the female attorney representing the defendant, announced ready for trial but informed the court that defense witnesses had not been subpoenaed to appear until the following week. The judge displayed irritation, impatience and sarcasm toward the attorney. Later that day, the female attorney appeared before the judge and explained why the witnesses had been subpoenaed for the following week. Although the judge told the attorney that she was probably right in her reasoning, he also displayed sarcasm and annoyance toward her in open court. Later the same day, Judge Gibson ordered the female attorney and another attorney from the same office into chambers where he made inappropriate remarks to her about the male attorney who had appeared for her. The judge made a statement to the effect of, "He was incompetent and just stood in the courtroom scratching his balls and picking his nose," or "He was incompetent and just stood in the courtroom scratching his ass and picking his nose." The judge accompanied this remark with gestures indicating those actions. [*Public Admonishment of Judge John B. Gibson* (2010).]

Judge Moruza was disciplined for misconduct that included comments about publicly-funded defense counsel in two cases – telling defendants, “You get what you pay for,” and “If you really want good service, then you pay an attorney \$10,000 to do this” – suggesting that she believed that indigent defendants were entitled to receive, and consequently did receive, legal service and court access inferior to that provided to defendants who could not afford to pay attorneys. It was found that the remarks could be expected to have a negative impact on the attorney-client relationship, and to undermine confidence in the criminal justice system. In addition, the comments reflected a lack of patience and courtesy, and conveyed bias. [*Public Admonishment of Judge Christine K. Moruza* (2008).]

Judge McBride was disciplined for misconduct that included making rude and condescending comments to a deputy public defender, telling her that the defendant with whom she was appearing was not waiving time “if you understand the doctrine.” When defense counsel stated that she did not want to have the defendant waive his last day yet, the judge said: “I don’t know if you have any business in it, but thank you for your....” [*Public Admonishment of Judge James J. McBride* (2008).]

Judge Bryant was disciplined for misconduct that included his failure to be patient, dignified and courteous to a defense attorney appearing before him. The attorney, appearing with her client for arraignment that had been added to the calendar, requested that the judge call the case after he left the bench to take a recess but before he had left the courtroom. Upon returning to the bench, Judge Bryant asked the attorney if she had a matter she wished to call, and then, in the presence of her client, called her “obnoxious.” [*Public Admonishment of Judge Paul M. Bryant, Jr.* (2008).]

In addition to other misconduct, the judge told an attorney whose client previously had been released on bail that the judge hoped, if the client reoffended while released, the attorney or someone close to the attorney would be the client’s next victim. The judge agreed to retire and not to seek judicial office or to sit on assignment. [Com. on Jud. Performance, Ann. Rept. (2008), Private Admonishment 3, pp. 25-26.]

In open court, while presiding over a criminal matter, a judge accused the defendant’s attorney, who was asserting the client’s rights, of being unethical, and stated that the attorney’s unethical practices disgraced the legal profession. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2008), Advisory Letter 18, p. 28.]

Judge Velasquez was removed from office for conduct that included making disparaging remarks about defense counsel in open court. In one matter, the defendant's attorney was making "a passionate but reasonable plea that his client, who was suffering from a disabling disease, not be placed in custody, even though the client herself had intimated otherwise." Judge Velasquez responded, "Let me wake up." In another matter, the defendant appeared without her attorney who had allegedly failed to file proof of acknowledgement of the terms of probation. After asking the name of the attorney, the judge said in a crowded courtroom, "[T]his is the second case he blows it for his client." Later, the judge said: "You can bill him at \$300 bucks an hour, charge him two hours." [*Inquiry Concerning Judge José A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

Judge Shaw was censured and barred for mistreatment of participants in multiple criminal cases; in four of the cases, Judge Shaw mistreated defense counsel and sometimes their clients. In one case, the Court of Appeal affirmed the conviction but severely criticized Judge Shaw's judicial demeanor during the trial. In response to one question by defense counsel, the judge stated, "Who cares? How's that's relevant?" The judge called another question "kind of silly." When defense counsel attempted to respond to an objection the judge stated, "Excuse me, let me make the rulings. You do your part and I do mine." When defense counsel told the judge he wanted to clarify what the defendant was referring to, the judge stated in front of the jury: "I don't think there is any one of us that doesn't know except you." When defense counsel was attempting to raise a problem with the interpretation during his client's testimony, the judge said, "You know what, when you become a judge, in the meantime, let me do it. Thanks."

In the second case, the Court of Appeal affirmed the defendant's convictions, but was critical of Judge Shaw's "style" and demeanor, citing a number of sarcastic and demeaning remarks to defense counsel.

In the third case, Judge Shaw made a number of sarcastic remarks to defense counsel, including stating when counsel asked the judge to review a case in connection with a motion: "Why isn't that nice of you? But why isn't that in your motion knowing that you were going to appear in front of me and take my time away from my jury trial?" When defense counsel informed the court that he had been told by the judge's courtroom clerk that it was not necessary to calendar the matter, the judge responded: "Oh, yeah, my clerk makes rulings like that." [*Censure and Bar of Former Judge Susanne S. Shaw* (2006).]

Judge Mills made sarcastic, demeaning and belittling comments to attorneys and litigants appearing before him. For example, to one public defender the judge stated: "Sometimes I can't protect people from themselves, and sometimes I

can't protect people from an attorney that is giving them the wrong advice. What I can tell you Mr. [], is that this is just stupidity and arrogance"; "We'll see where this gets you" and "Perhaps it's time you start picking up the books and figuring out what you're doing." To another public defender who argued after trial that the judge's dismissal of the interpreter had been the basis for the jury's conviction of her client, the judge stated that he was not going to continue to pay for an interpreter, if the judge believed the defendant could understand English, "to conduct a charade with the defendant that ... is having the interpreters here to establish the fictional defense" and referred to the defendant feigning that he didn't understand the questions and "it was just a game" and "a dog and pony show." In reference to her argument, the judge stated that it was "entertaining that you have this opinion" but that it was not founded in the law. There was additional misconduct. [*Public Admonishment of Judge Bruce Clayton Mills* (2006).]

In addition to other misconduct involving his interactions with counsel, Judge Van Voorhis was removed from office for conduct that included mistreating attorneys on numerous occasions. In one criminal trial, in front of the jury, the judge interjected a lengthy series of questions and comments about defense counsel's cross-examination that disparaged the attorney's professional competence; these included questions about what the attorney should have learned in law school. ("That's not the way to prove a case in criminal court. Didn't you learn that in law school?"; "You learned what hearsay was in law school"; and "Now you need to ask him the question that you learned in law school is a legitimate question.") This constituted prejudicial misconduct. [*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.]

Judge Velasquez was censured for conduct that included disparaging statements about attorneys appearing before him. He accused private counsel who had filed peremptory challenges of the judge of malpractice and of collusion with the presiding judge and court administrator to get cases out of Judge Velasquez's court. He repeated allegations of malpractice for having failed to file timely disqualification motions in a written response to a motion to disqualify the judge. The judge also made disparaging remarks in open court about a deputy public defender who was not present, referring to a problem "with her comportment, with her demeanor and with her lack of respect for any in-chambers conversations" and her "continuous disrespect for the Deputy DA." The judge also stated, "Maybe she should be reassigned." [*Censure of Judge José A. Velasquez* (1997).]

Judge Drew appeared to exhibit animosity toward the public defender's office and certain attorneys in that office. While not acting in a judicial capacity, the

judge made improper, derogatory comments about the public defender's office and attorneys in that office. He also appeared to display personal embroilment and animosity toward the public defender's office by writing to the public defender and accusing his office of taking a case for improper reasons. There was additional misconduct. [*Public Admonishment of Judge Stephen Drew* (1996).]

In addition to other misconduct, in four separate matters, Judge Ormsby was rude and insulting to a deputy public defender in open court, and on some occasions in the presence of the attorney's other clients. [*Censure of Judge William M. Ormsby* (1996).]

Judge Cannon was removed from office for conduct including rude treatment of attorneys. On one occasion, when an accused refused after dismissal on a preliminary hearing to stipulate to probable cause for his arrest, the judge challenged the accused's public defender, had him swear under oath that he had read the arrest report aloud to his client, inquired into his legal training and experience, and when it appeared that the deputy public defender had been in practice but six weeks, stated: "Six weeks and you are telling me you know everything there is to know about the law?" On another occasion, the judge stated to private counsel in a criminal matter in front of his clients that she was ashamed of his poor representation and wished to refer him to the State Bar. She later apologized to him in the presence of his clients. During the court session that followed, the judge required counsel to submit a written offer of proof as to what he would establish through various witnesses and took the bench an hour and a half later without indicating she had read the offer of proof. She next refused to accept a stipulation as to what a chemist would testify to and ordered the chemist to be present, recessing until 8:00 p.m., but refusing to allow counsel's request to obtain food from a vending machine on another floor of the building. When counsel attempted to argue his motion to dismiss charges, the judge cut him off with threats of contempt. [*Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678.]

Judge Geiler was removed from office for conduct including, after a preliminary hearing, inviting the female defense attorney and another female attorney who accompanied defense counsel into chambers where he discoursed on the salacious nature of the evidence adduced in criminal cases concerning homosexual acts and rape, punctuating his commentary with profane terms for bodily functions. [*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270.]



## **Questioning Counsel's Competence**

In addition to other misconduct, during a pretrial hearing, the judge made statements that highlighted defense counsel's lack of experience and that were likely to undermine the attorney-client relationship. [Com. On Jud. Performance, Ann. Rept. (2016), Private Admonishment 6, p. 27.]

A judge questioned defense counsel in a criminal matter about the attorney's qualifications and competence. The questioning, some of which was demeaning, was done in open court, in front of the defendant and over the objection of defense counsel. [Com. on Jud. Performance, Ann. Rept. (2006), Advisory Letter 13, p. 33.]

Judge Kloepfer was removed from office for conduct including his questioning of an attorney about her experience. The attorney had filed a motion for a continuance of a DUI trial that was denied in the master calendar court and the case was assigned to Judge Kloepfer's court. The presiding judge denied the attorney's peremptory challenge of Judge Kloepfer as untimely. The attorney renewed both motions before Judge Kloepfer who denied the disqualification motion and then questioned the attorney about the continuance motion. Although she explained that an out-of-state witness was not available, the judge asked: "Isn't it true you are psychologically afraid to take a case to trial?" He then asked her how many cases she had tried, and demanded that she name them and the courts in which they had been tried. His tone was angry and insulting. The attorney was embarrassed because her client was present. The court determined that regardless of whether the client was present, the judge manifested his concern about possible trial delay in an inappropriate and injudicious manner, publicly suggesting that an attorney was incompetent to represent her client. The judge's conduct was determined to be prejudicial misconduct. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

Judge Roberts was censured for conduct including his manner of questioning an attorney's ability to handle a case. A private attorney assigned one of his newer female associates to try a felony case. When she appeared before Judge Roberts, he called a recess and, in unreported proceedings in his chambers, accused her of being incompetent to represent the defendant, and rudely quizzed her regarding her legal experience. As a result of his loud and angry manner, the attorney began to cry and left the conference to summon her boss. While the Court found that Judge Roberts had a good faith concern about the attorney's competence to litigate a felony case (earlier experience with the attorney, a complaint filed regarding her competence and her failure to cross-examine

witnesses effectively), the court found that his interrogation of her was handled in a callous and abusive manner and, while standing alone might not warrant censure, in light of the entire record reflected a censurable impatience or hostility in his professional relationship with others. [*Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

### **Accusations of Malpractice**

In four cases involving public defenders, the judge improperly made references to “malpractice” when admonishing attorneys while their clients were present. There was additional misconduct. [*Public Admonishment of Judge Bruce Clayton Mills* (2006).]

Judge Maciel was disciplined for improper conduct toward defense counsel in a criminal matter. The judge sanctioned an attorney without prior notice or an opportunity to be heard for failing to give the required notice of a motion to continue a preliminary hearing. The sanctioned attorney had sent another attorney in his place, who requested a continuance on the date set for the preliminary hearing. Judge Maciel commented to the attorney who appeared on the date set for preliminary hearing that his firm’s telling him to prepare for a preliminary hearing the evening before was “the direction of malpractice at a minimum.” These gratuitous remarks about malpractice made to an attorney in open court in the presence of the attorney’s client were determined to be contrary to canon 3B(4) of the Code of Judicial Ethics, which requires judges to be patient, dignified and courteous to those with whom the judge deals in an official capacity. [*Public Admonishment of Judge Ronald J. Maciel* (2006).]

Judge Velasquez was disciplined for conduct that included accusing private counsel who filed disqualification motions against him of malpractice in open court for failing to timely file the motions. Also, after a deputy public defender filed motions to disqualify the judge, the judge made statements in open court disparaging the deputy public defenders to their clients, when the deputy public defenders were not present. The judge stated the deputy public defenders had “failed to look into the files” and were “failing to represent [them]” and “[their] rights [were] being trampled upon by [their] own lawyers. The judge suggested that the defendants “may have a case against them for their abandoning [them] in court” and suggested that they may want to hire an attorney to sue the public defender’s office for “their reckless disregard of [their] due process rights.” In addition to disparaging the deputy public defenders, these statements improperly interfered with the attorney-client relationship. [*Censure of Judge José A. Velasquez* (1997).]

## **Bias Against Counsel – Ethnic, Gender, National Origin**

Judge Laettner said to a DPD, “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[.]” On another occasion, when the same DPD covered an appearance for a DPD who represented a defendant and told Judge Laettner that the colleague could appear after a meeting, Judge Laettner said, “No, I want it to be you[.]” Judge Laettner later set a hearing in the matter for a date that the other DPD was not available, so that the DPD before him would have to appear before him again. Also, on approximately 10 to 15 different occasions, Judge Laettner asked the same DPD to approach the bench, so that he could check to see if she was mad at him. Judge Laettner engaged in gender bias toward other women who appeared as attorneys in his courtroom. For example, Judge Laettner frequently asked one DPD personal questions, including asking whether she had a boyfriend, called her his “favorite,” and implied that she could get him to do what she wanted. Judge Laettner repeatedly told another DPD that she looked like an actress on a television show that he watched, often saying, “I saw you on TV last night.” Judge Laettner also said that this DPD was his “favorite attorney,” and said to her, “I just can’t say no to you,” on five to ten different occasions. Judge Laettner also told grand jurors, on five or six occasions, that a deputy district attorney was “beautiful” or “lovely.” Judge Laettner identified another DPD who appeared before him as “the attractive young Asian woman.” [*Inquiry Concerning Judge John T. Laettner* (2019) 8 Cal.5th CJP Supp 1.]

Judge Krep made comments to a deputy public defender about her accent, whether she had Mexican citizenship, and stated, “I wasn’t planning on having you deported.” [*Inquiry Concerning Judge Gary G. Krep* (2017) 3 Cal.5th CJP Supp. 1]

In addition to other misconduct involving his interactions with counsel, Judge Van Voorhis was removed from office for conduct that included engaging in prejudicial misconduct when he told a deputy public defender born in Ecuador that he should “lose” his accent. [*Inquiry Concerning Judge Bruce Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257.]

Judge Fletcher was removed from office for conduct including remarks about a woman attorney. When the attorney representing a criminal defendant before Judge Fletcher did not appear at a scheduled hearing, the judge stated in open court: “She shouldn’t be handling criminal cases. Here’s another example of a civil attorney who shouldn’t be handling criminal cases.” He then commented that the attorney “probably had something more important to do today, like go to a PTA meeting.” He continued: “She has a whole bunch of kids. She’s been

having kids ever since I've known her.” “Unprofessional, demeaning and sexist” remarks constitute conduct prejudicial. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

A deputy public defender of Japanese-American ancestry appeared before Judge Haugner. As the attorney commenced his argument, Judge Haugner stated:

COURT: No, no. Listen, you filed your papers.... Do you have something to add to those papers which isn't in there, some brilliant case you found somewhere in the Upper Tokyo Reports or somewhere that nobody knows about, tell me about it. Otherwise there is no need to argue over what you already have.

Judge Haugner's reference to "Upper Tokyo Reports" was determined to reflect insensitivity toward persons of Japanese-American ancestry and was offensive to the attorney. Regardless of the judge's intent in making the remark, it was found to be suggestive of racial or ethnic bias. [*Public Repeal of Judge Richard A. Haugner* (1994).]

### **Miscellaneous Failure to Observe High Standards of Conduct**

Judge Harris received a public admonishment for pressing a female deputy alternative public defender who regularly appeared before him for a lunch appointment, which the commission determined constituted improper conduct. There was additional misconduct. [*Inquiry Concerning Judge John D. Harris* (2005) 49 Cal.4th CJP Supp. 61.]

### **Bias and Embroilment**

A judge's treatment of a criminal defense attorney gave rise to an appearance of embroilment. Without an adequate legal basis, the judge set a hearing for an order to show cause re contempt against the attorney, but then failed to follow the procedures required for an order to show cause. When the attorney filed a motion to disqualify the judge for cause, the judge improperly questioned witnesses and argued with the attorney about the facts alleged in the motion. [Com. on Jud. Performance, Ann. Rept. (2016), Private Admonishment 2, p. 26.]

In a criminal case, the judge engaged in a pattern of discourteous treatment toward defense counsel, and asked a witness a question that created the appearance that the judge was not impartial and was biased against the

defendant. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2014), Private Admonishment 1, p. 21.]

Due to embroilment, a judge failed to appoint a deputy public defender in a case, contrary to law; failed to subsequently disqualify from the DPD's cases; stated, in open court, that the DPD was incompetent; and had an ex parte discussion about a pending case with the DPD's supervisor. [Com. on Jud. Performance, Ann. Rept. (2010), Private Admonishment 6, p. 24.]

A judge's conduct at a hearing in a criminal case reflected embroilment. At the outset of the hearing, in open court and on the record, the judge accused the defendant of perjury and his lawyer of submitting false evidence and libeling the court. The judge also accused the attorney of lack of judgment and credibility, reckless disregard for the truth, a lack of integrity, and willingness to aid and abet perjury. The judge then told the attorney that he was not welcome in the judge's court. The judge did not recuse until after the hearing, even though grounds for disqualification existed at the beginning of the hearing. [Com. on Jud. Performance, Ann. Rept. (2009), Advisory Letter 25, pp. 20-21.]

Judge Harris told a female public defender that she should talk to her client about a plea bargain, and that a guilty plea would only be a technicality and did not really matter. When the deputy public defender said that her client was not guilty, the judge responded that the real reason her client wanted a trial was that he wanted to sit next to her for three days. This conduct was determined to be prejudicial misconduct. There was additional misconduct. [*Inquiry Concerning Judge John D. Harris* (2005) 49 Cal.4th CJP Supp. 61.]

Judge Roberts was censured for conduct including his response to a challenge to one of his rulings. After Judge Roberts granted a motion to suppress evidence in a criminal case, the prosecutor informed the judge that he intended to pursue a writ to review. After an angry outburst and threats directed at the prosecutor, the judge met with the defendant's public defender and had several ex parte conversations with him concerning the writ proceedings. During one conversation, the judge told the public defender that "You'd better win this or I won't grant another motion for you[,]" which the public defender believed was a serious statement. The judge also engaged in ex parte communications with the appellate court regarding the writ petition. The Supreme Court stated that the judge's conduct demonstrated an impermissible personal involvement in the litigation, accompanied by overly aggressive or threatening behavior toward both the district attorney and the public defender. His attempt to exert pressure upon the prosecutor, defense counsel and appellate court alike disclosed and unhealthy and wholly improper concern with the protection of his own rulings

from appellate reversal and was prejudicial misconduct. [*Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739.]

Judge Spruance was removed from office for conduct including, while presiding over a criminal trial, when the defendant was on the witness stand, testifying in his own behalf, Judge Spruance emitted a contemptuous sound commonly called a “raspberry” to indicate his disbelief of the witness, which the Supreme Court held was at least partially motivated by his anger towards the deputy public defender for having refused the judge’s settlement proposal and was a deliberate and malicious attempt to prejudice the defendant’s case. The Supreme Court found the judge’s conduct to be in bad faith in exceeding the bounds of his lawful power, and therefore willful misconduct. [*Spruance v. Commission on Judicial Qualifications* (1975) 11 Cal.3d 778.]

Judge McCartney was censured for conduct including harassing the defendant in a criminal case by repetitious questioning and references to certain words and conduct of the defendant. The court found that the judge engaged in “unconscionable harassment” of defense counsel through repetitious and uncalled for questioning of the legal position counsel was advancing. The judge used intemperate language and engaged in uncalled for and unreasonable verbal abuse of the defendant and counsel, and gave the impression of bias towards the defendant and her counsel. The court found that throughout the proceeding, the judge acted as an advocate justifying the proceedings over which he had presided previously rather than as a judge hearing without bias and prejudice motions made in good faith by counsel for defendant. [*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512.]

### **Disqualification & Disclosure**

The judge presided over a criminal matter in which the judge, as a public defender, had previously represented the defendant. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 8, p. 33.]

In a criminal case, the judge failed to disclose information relevant to disqualification. In another case, the judge responded to a question from the jury in the absence of, and without notice to, the parties and counsel, and failed to disclose the communication. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 18, p. 34.]

Judge Laettner engaged in improper communications with some deputy public defenders regarding their use of peremptory challenges against him. [*Inquiry Concerning Judge John T. Laettner* (2019) 8 Cal.5th CJP Supp 1.]

In numerous cases over which he presided, Judge Mason failed to make disclosures on the record about his close personal relationship with an attorney who appeared as counsel of record. Judge Mason had a “personal and sustained” relationship with the attorney that included “ongoing social interactions” after Judge Mason took the bench. In 2017 alone, that attorney appeared before Judge Mason in more than 80 different cases. Although Judge Mason originally represented to the commission that he made disclosures “in every case where ethics and fairness made it necessary,” Judge Mason later conceded that he “may have overstated his diligence regarding disclosing specific information concerning his relationship with [the attorney], on the record, in every matter.”

Judge Mason also stated to the commission that he knew that he could be fair, and that local attorneys knew about the relationship and did not object to him presiding over cases in which his friend appeared as counsel of record. Judge Mason subsequently acknowledged, however, that he “may have erred by substituting the actual views of local attorneys for the more standardized, objective standard,” required by the canons.

The commission confirmed that the canons impose uniform statewide standards for disclosing potential conflicts of interest that are reasonably relevant to the question of disqualification. The commission also stated that Judge Mason’s reference to “local attorneys” leaves out attorneys who are not local, as well as the parties, including self-represented parties, to whom the judge also needed to make disclosures.

The commission also confirmed that such disclosures were required, even if Judge Mason believed there was no basis for disqualification, as the standard is an objective one. The commission added that the question is whether an average person would harbor doubts about the judge’s impartiality, not whether the judge is actually biased. [Public Admonishment of Judge David A. Mason (2019).]

In addition to other misconduct, Judge Garcia was censured and barred for failing to disclose or disqualify when his former partner and other attorneys affiliated with Merced Defense Associates (MDA) appeared before him. From shortly after taking the bench in 2007 to 2012, Judge Garcia received \$250,000 from his former partners’ law firm from funds received under a contract between MDA and Merced County to provide alternate indigent defense services. Prior to taking the bench, then-attorney Garcia was a partner in MDA and had been involved in obtaining the initial contract and a renewal of the contract with the county. After his appointment to the bench, attorney Garcia and his partners

entered into an agreement for dissolution of the joint venture that held the MDA contract with the contract remaining the sole property of attorney Garcia's former partners. They also entered into an agreement under which the firm would pay Judge Garcia \$250,000 in monthly payments of \$4,516 starting in February 2008, for as long as the contract with the county remained in effect. Judge Garcia failed to disqualify or disclose his receipt of the funds from his former partner when the partner appeared before him and failed to disclose when other MDA attorneys appeared before him. [*Censure and Bar of Former Judge Marc A. Garcia* (2015).]

Judge Steiner was disciplined for conduct that included not disqualifying himself in a criminal case when an attorney who was a longstanding and very close friend appeared before him as defense counsel. [*Censure of Judge Scott Steiner* (2014).]

An attorney filed a statement of disqualification after the judge accused the attorney of being unethical. 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.]

Judge Fletcher was removed from office for conduct including his reactions to disqualification motions. After appointed counsel indicated her intent to disqualify Judge Fletcher in one matter, the judge questioned counsel regarding whether she had qualified her client for representation. He then appointed another public defender to represent the defendant without inquiring further about the defendant's eligibility. The court found that the judge's purported concern about counsel's alleged failure to qualify the defendant for representation was merely a pretext for his decision to exclude counsel from the case because of her expressed intent to disqualify him. In so retaliating against counsel, the judge committed prejudicial misconduct.

When the same counsel was before Judge Fletcher on another criminal matter, during a discussion of a proposed disposition, after the judge made remarks that suggested the judge had become impatient with the defendant, the attorney made a reference to disqualification. The judge became angry with defense counsel and yelled at her ("... but I'm getting sick and tired of you ... threatening me with [disqualification]. And I'm not going to have it anymore"). The judge's angry response to the disqualification attempt constituted prejudicial misconduct. [*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.]

In addition to other misconduct, Judge Drew was disciplined for acting unjudicially in handling peremptory challenges. In one case, the public defender



appeared for the defendant after he was taken into custody; the public defender filed a peremptory challenge of Judge Drew. The judge refused to honor this disqualification and ordered it “unfiled” because he had not allowed appointment of the public defender’s office, despite the public defender’s authority to represent the in-custody defendant.

In another case, Judge Drew cited a private defense attorney for contempt based on failure to appear for confirmation of a misdemeanor jury trial, even though the attorney had another attorney appear on his behalf. The cited attorney filed a peremptory challenge against the judge. Judge Drew denied the challenge as untimely and dismissed the contempt charge, but ordered a hearing on sanctions against the attorney. The following day, the attorney obtained a stay order against the judge proceeding with the underlying jury trial. While the stay was under review, Judge Drew had court staff contact the superior court judge who issued the stay regarding legal support for his actions. The same attorney subsequently filed a challenge for cause against Judge Drew. After a denial by Judge Drew, another judge granted the challenge and disqualified Judge Drew from hearing the case. Although he had no standing to do so, Judge Drew improperly sought to disqualify the judge who had been assigned to hear the sanctions matter thereby heightening the impression that he had become personally embroiled in the proceeding. In certain matters involving the filing of peremptory challenges, Judge Drew departed from his usual practice of calling cases handled by private counsel at the beginning of the calendar, thus deliberately causing delays for attorneys who had filed challenges.

Judge Drew also displayed bias against attorneys who had filed peremptory challenges against him, and appeared to retaliate against those attorneys by barring them from areas of the courthouse near his chambers open to other attorneys. [*Public Admonishment of Judge Stephen Drew* (1996).]

After Judge Ormsby remanded a defendant for being late without giving him or the deputy public defender representing him an opportunity to explain his tardiness, the attorney filed a peremptory challenge against the judge. The judge continued the case to the following day before another judge, rather than transferring it immediately to another judge. There was additional misconduct. [*Censure of Judge William M. Ormsby* (1996).]

Judge Kloepfer was removed from office for conduct including his handling of a disqualification motion. When Judge Kloepfer assigned a criminal case to another judge for trial, the defendant’s counsel advised the judge that he planned to file an affidavit of prejudice against that judge during the recess. Counsel did not have the preprinted form with him and the judge refused to give him an

opportunity to get the form. The judge invited counsel to make the motion orally and heard counsel's sworn statement that he believed the judge was prejudiced and should be disqualified. Counsel cited "Penal Code section 170.6," rather than Code of Civil Procedure section 170.6. The judge denied the motion even though he assumed it was made under the correct section, had not advised counsel of the manner in which it was deemed insufficient and knew what counsel was attempting to do on behalf of his client. He testified that he denied the motion because counsel had stated that the judge he sought to disqualify was "prejudiced," rather than stating in statutory language that the defendant believed he "could not receive a fair trial" before that judge. The Supreme Court held that the conduct was at least conduct prejudicial, noting that the judge, after denying counsel the opportunity to obtain the preprinted form on which to make his motion, the judge denied the oral motion he invited on the wholly irrelevant ground that the motion was not worded in the exact language of the statute. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

Judge Spruance was removed from office for conduct including subjecting a defense attorney to improper cross-examination when the attorney took the stand in support of his peremptory challenge of the judge. The judge also improperly levied "witness fees" against the attorney as a precondition to petitioner's disqualification of himself. The attorney testified about an incident between himself and then-attorney Spruance before he became a judge and having heard that the judge had told others that the attorney "better not appear in his Court." Judge Spruance questioned the attorney extensively in open court, demanding to know the source of his purported knowledge that the judge was prejudiced against him. Notwithstanding having recently told two different deputy district attorneys that he remembered the attorney with some displeasure and hostility because of an incident when they were in practice, the judge had himself sworn and testified that he had no present recollection of the prior incident with the attorney. The judge denied the peremptory challenge as untimely but ultimately disqualified himself and continued the matter conditioned, on the district attorney's motion, upon defense counsel paying the witness fees for all of the witnesses summoned by the district attorney for the preliminary examination. The Supreme Court held that the judge abused his judicial authority and acted out of revenge and hostility and was guilty of willful misconduct. [*Spruance v. Commission on Judicial Qualifications* (1975) 11 Cal.3d 778.]

Judge McCartney was censured for conduct including making remarks about the propriety of the public defender's office filing affidavits of prejudice against the judge, when a deputy public defender appeared on a case. The public defender's office had begun filing soon after Judge McCartney began his term of office. The remarks included: "I'm not going to be pushed around by the Public

Defender's Office and the abuse and the perversion that they have engaged in emasculating an elected official of the people" and "And if you're ready to do it, I'll meet you anywhere, any time, any place, buddy, up to the United States Supreme Court, back down again to the court of public opinion and anywhere else justice will stand up." The Supreme Court found the judge's vehement expressions of personal hostility to the public defenders was improper. For purposes of argument, the court noted that even if the filing of the affidavits of prejudice were not supported by a good faith belief in prejudice, "disrespect on the part of the public defender cannot serve to justify petitioner's injudicious response." [*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512.]

### **Ex Parte Communications**

The judge permitted and initiated several ex parte communications with a deputy public defender about a matter. The judge also improperly independently investigated the matter, including initiating another ex parte communication as a part of that investigation. The judge improperly issued ex parte orders without providing the prosecutor with an opportunity to be heard. The judge created an appearance of impropriety by scheduling a follow-up hearing before another judicial officer whom the judge had consulted about the matter. [Com. on Jud. Performance, Ann. Rept. (2022), Advisory Letter 17, p. 34.]

Prior to a hearing, Judge Laettner asked to speak to the prosecutor, and spoke with the prosecutor, in chambers, outside the presence of the defendant's counsel, a DPD. During this ex parte communication, Judge Laettner asked the prosecutor what he wanted to do "on these matters[.]" When Judge Laettner and the prosecutor returned to the courtroom, and the DPD made a record that the ex parte communication had occurred, Judge Laettner responded, "Well, you really don't have any idea what I discussed with [the prosecutor]. First off, you weren't present." Two weeks later, Judge Laettner explained to the DPD his reason for the ex parte communication: "You want me to tell you why I—why I only brought in [the prosecutor]? I was mad at you. I was mad at you about the [] case. I was still mad at you that day." Judge Laettner's contention that his communication with the prosecutor was permitted by an exception to the prohibition on ex parte communications was rejected, as that exception requires prompt disclosure to the attorney who was not present for the communication, and Judge Laettner's petulant response did not constitute the required prompt disclosure. On another occasion, Judge Laettner asked to speak with the DPD in chambers about the same cases. During that conversation, Judge Laettner told her that she was a "hard one" and also told her, "[Y]our parents hadn't spanked you enough."

Judge Laettner presided over a separate matter, which involved a mentally ill juvenile, who was represented by a DPD. Several days after a hearing in the juvenile matter, Judge Laettner approached the DPD in a courthouse hallway among, what Judge Laettner described as, “basically a sea of jurors.” Judge Laettner testified that he spoke to the DPD because he “wanted to make sure everything was okay” and “wanted to say in general terms that [he] was not insensitive to people who are mentally ill[,]” but denied that he discussed the juvenile case. The DPD testified that Judge Laettner did mention the juvenile case and told her that she should not be upset with him about the case. Judge Laettner was found to have specifically referenced the juvenile case and that, under the circumstances, “any reasonable trial lawyer” would have understood Judge Laettner to be addressing that case. [*Inquiry Concerning Judge John T. Laettner* (2019) 8 Cal.5th CJP Supp 1.]

The judge engaged in improper ex parte communications with a criminal defendant and with a criminal defendant’s attorney. The judge also spoke with a criminal defendant outside the presence of the defendant’s counsel. In aggravation, the judge was previously disciplined for similar misconduct. [Com. on Jud. Performance, Ann. Rept. (2019), Private Admonishment 4, p. 34.]

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 the judge 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 Mills was disciplined for engaging in and acting upon a series of improper ex parte communications regarding a criminal case. After the defendant entered a plea of no contest on the day set for trial, Judge Mills discussed with the defendant – in the absence of prosecutors who had been present when the plea was entered and the defendant’s attorney – the possibility of diversion. When the defendant’s attorney returned, the judge discussed the case with the attorney; the judge then summoned a probation officer and discussed the case with the probation officer and defense counsel. The judge then allowed the defendant to withdraw her plea and granted diversion. When the district attorney’s office learned what had occurred, an attorney in that office contacted the judge and discussed the case with him. As a result, Judge Mills terminated diversion and reinstated criminal proceedings against the defendant, who by then had fulfilled many of the conditions of diversion. There was additional misconduct. [*Public Admonishment of Judge Bruce Clayton Mills (2006).*]

A judge was irritated at an attorney’s insistence on setting separately a minor case that the judge thought should trail a more serious case and dismissed or threatened to dismiss the minor case. When the attorney appealed, the judge contacted the attorney ex parte to discuss the appeal. [Com. on Jud. Performance, Ann. Rept. (2006), Private Admonishment 3, p. 31.]

A judge initiated a conversation in court with a victim – outside the attorneys’ hearing – on the day before trial. In another case, 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. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 28, p. 24.]

Judge Trammell was censured and barred for engaging in willful misconduct by carrying on, and actively concealing, a sexual relationship with a probationer under his supervision, while continuing to preside over criminal cases of the probationer’s two co-defendants. The judge also engaged in ex parte communications with the probationer and her attorney, which were found to be willful misconduct, as they were made in a judicial capacity and made in bad faith for a corrupt purpose. The judge also engaged in ex parte communications with a co-defendant and the co-defendant’s attorney that were found to be prejudicial conduct. [*Inquiry Concerning Judge George W. Trammell III (1999)* 48 Cal.4th CJP Supp. 56.]

Judge Maciel presided over the arraignment of the defendant in a capital murder case and appointed an attorney to represent the defendant. Judge Maciel, who was then the presiding judge, subsequently assigned the case to another judge.

The following month, Judge Maciel initiated three ex parte telephone conversations with defense counsel, during which he offered advice regarding the defense of the case, including the option of filing a peremptory challenge against the assigned judge. Shortly thereafter, defense counsel filed a peremptory challenge against the assigned judge and the case was reassigned to Judge Maciel. After the district attorney's office learned of the undisclosed ex parte communications, it filed a motion to disqualify Judge Maciel for cause. The case was reassigned when Judge Maciel consented to the disqualification. [*Public Admonishment of Judge Ronald Maciel* (1997).]

Judge Kennick was censured (in addition to being removed from office) for meeting privately with the defense counsel whom he favored in appointments when they were appearing on appointed cases. Even though it was not established that the judge and counsel engaged in ex parte communication about cases, the Supreme Court found that the practice of meeting alone in chambers with an attorney representing one side of a case pending before him in the absence of circumstances that would make ex parte communication proper gave rise to an appearance of impropriety and constituted prejudicial misconduct. [*Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297.]

### **Favoritism**

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.]

Former Judge Luis Cardenas received a public admonishment for engaging in prejudicial conduct by making himself available to two attorneys – a father and daughter – with whom he had special friendships, and granting their requests in a way that suggested they were in a special position to influence him. The commission cited six incidents in which the judge ordered defendants released on their own recognizance, reduced bail, or modified probation. In one incident, the judge failed to follow the procedures required by statute and misrepresented the source of certain information when he ordered a bail reduction. [*Inquiry Concerning Former Judge Luis A. Cardenas* (2000) 48 Cal.4th CJP Supp. 167.]

Judge Gonzalez was removed from office for conduct including refusing to hear an own recognizance release motion on the merits in a criminal case, but offering to grant the requested release as a special or personal favor to the public defender. Because he was acting in his judicial capacity and knew or should

have known that such conduct was beyond his lawful power, the judge acted in bad faith and his action constituted willful misconduct. [*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359.]

### **Dereliction of Duty**

A judge contributed to excessive delay in a habeas matter by ordering 16 extensions of time for filing the return, over a three-year period. Extensions were requested informally by petitioner's assigned counsel; the judge's orders contained no statement of good cause as required. The judge also failed to take action regarding petitioner's claim that petitioner had been abandoned by counsel. [Com. on Jud. Performance, Ann. Rept. (2006), Advisory Letter 6, p. 32.]

### **Improprieties in Appointment of Counsel**

A judge repeatedly abused the judge's authority with respect to the appointment of counsel in criminal cases. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 21, p. 23.]

In addition to other misconduct, the judge improperly handled appointment of counsel in some criminal matters. [Com. on Jud. Performance, Ann. Rept. (1996), Advisory Letter 21, p. 25.]

### **Impropriety in Proceedings Regarding Public Defender's Fees**

A judge imposed attorney's fees on a defendant represented by the public defender's office without holding a hearing or inquiring regarding ability to pay as required by law. [Com. on Jud. Performance, Ann. Rept. (2000), Advisory Letter 4, p. 21.]

Judge Kloepfer was removed from office for conduct including improprieties in orders for reimbursement of public defender fees. A defendant was represented by a deputy public defender at a five-day DUI trial after which he was convicted and found to have suffered two prior convictions. At sentencing, without advising the defendant of his right to a hearing, and without taking any evidence on the cost of the services or the ability of the defendant to pay, the judge ordered the defendant to reimburse the county \$2,000 for the services of the public defender. When the public defender protested that the amount was excessive and asked for a hearing, the judge responded that "you've had it" and chastised counsel for misuse of county funds in making inquiry on behalf of the defendant. The judge told the defendant that if he did not pay the attorney fees, he would remain in jail,

and later told counsel that the defendant could sell his car to pay for the fees since he was to lose his right to drive for three years. A declaration subsequently filed by the public defender calculated the cost of representing the defendant as \$715. The defendant's 10-year-old car was owned by his parents and the defendant had no money of his own. At a modification hearing, the judge reduced the fee award to \$750, but told the public defender that his expenditure of time in connection with the modification hearing was an abuse of county funds. The judge's conduct was determined to be in bad faith and willful misconduct.

In another matter, at the close of a preliminary hearing, Judge Kloepfer conducted a hearing in which he assessed attorney fees of \$1,500 to be paid by the defendant and ordered that it be taken out of the bail the defendant had posted. The judge had given the defendant no notice that the hearing was to be held, or of his rights, and made the order without regard to the defendant's ability to pay for legal services. No evidence was presented on the cost of public defender services. Judge Kloepfer's improper withholding order with respect to fees being taken out of bail and the summary manner in which the hearing was announced and conducted constituted prejudicial misconduct. The court held that the judge's attempt to justify the procedure on the grounds that neither the attorney nor the defendant objected, requested a continuance, or offered any evidence suggesting the defendant was unable to pay was unavailing. "It is manifest that petitioner made no effort to accord basic procedural fairness to the defendant." Even if the judge was unaware of the Penal Code section concerning ability to pay, the manner in which the proceeding was conducted alone supported the finding of prejudicial misconduct. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]

A judge's form letter, sent to defendants who had been assessed attorneys' fees for the services of the public defender, appeared as inappropriate judicial involvement in the county's efforts to collect fees. [Com. on Jud. Performance, Ann. Rept. (1987), Advisory Letter, p. 10.]

Judge Gubler was censured for conduct that included engaging in various improper efforts to enforce orders for payment to the county for costs of the public defender's legal services. In cases where both a fine was levied and an attorney fee order was imposed, the judge's usual practice was to make the fee payable before the fine. The order of payment was not set at the request or with the consent of the defendants and applying the payments first to fees left the defendants subject to further proceedings with respect to fines. The court found that orders which otherwise would have been within the judge's statutory discretion became an abuse of that discretion when used to prolong the



availability of sanctions for nonpayment of fines and create the impression that such sanctions could also be used for nonpayment of fees.

Judge Gubler also had a practice of unlawfully ordering repeated appearances for the sole purpose of collection of fee orders which the court held was unlawful. The judge also issued bench warrants to compel appearances for interrogation on why the defendants had not paid, which the court found amounted to using the threat of incarceration for collection purposes.

On one occasion, a defendant's public defender advised the client to write "fine only" on the check and advised the clerk that the check should be accepted, after the clerk initially refused to accept the check in payment of the fine only. Judge Gubler believed that the public defender was interfering with enforcement of fee orders. He spoke with the public defender and told him that the \$25 fee order, entered by another judge, was wholly inadequate and if the defendant did not pay the fees by the next hearing date, a bench warrant would be issued for his arrest and he would be assessed fees of \$200 or \$250. There were additional instances in which the judge appeared to have reacted to unwelcome actions of the public defender by threatening or attempting to increase the amount of attorney fees without regard to redetermination of ability to pay. The judge also recorded fee orders on the probation order without a notation that it was not a condition of probation, thereby creating the impression that it *was* a condition. Only if a public defender objected did the judge make exceptions such as writing "not a condition of probation" on the form. The judge also maintained a practice of extracting from a defendant's posted bail the amount of money needed to satisfy the assessed attorney's fees, whether or not the defendant requested or consented to same. On some occasions, he ordered attorney fees paid out of bail deposited by persons other than the defendant, in violation of statute.

Judge Gubler's fee collection practices were determined to be conduct prejudicial. In one case in which the public defender objected to having the fee order being made an apparent condition of probation, the judge doubled the fee. The court held that the judge's doubling of the fees because of irritation at the deputy public defender's objections was willful misconduct. [*Gubler v. Commission on Judicial Performance* (1984) 37 Cal.3d 27.]

## **Favoritism in Appointments**

A judge appointed an attorney with whom the judge had a social relationship; the judge appointed that attorney far more frequently than the judge appointed other attorneys, giving rise to an appearance of favoritism in appointments. On at least one occasion, the judge failed to disclose the judge's relationship with the attorney. [Com. on Jud. Performance, Ann. Rept. (2000), Advisory Letter 15, p. 22.]

From approximately January 1989 through February 1996, Judge Shook appointed an attorney to represent criminal defendants in approximately 50 cases. During that time, the judge had a financial relationship with the attorney; the attorney was renting office space in a building owned by the judge and his wife. From 1989 through May 1993, the judge appointed the attorney in approximately 28 cases for which attorney's fees were paid through a countywide appointment system. When the attorney appeared before the judge, the judge did not disclose the landlord-tenant relationship or disqualify himself because of that relationship. Judge Shook approved the attorney's fees in the appointed cases. In mid-1993, Judge Shook recommended the attorney's membership in a regional attorney-appointment panel. From about November 1993 through September 1995, Judge Shook appointed the attorney to approximately 22 cases in which attorney's fees were paid through this panel. Approximately 15 of these appointments by Judge Shook were not made according to the panel's rotation list. These appointments were known as "collars." The attorney received more "collars" from all judges combined than did any other panel attorney, and all but one of the attorney's "collars" were made by Judge Shook. The judge made more "collars" to the attorney than he did to any other attorney.

Judge Shook also appointed another attorney to represent criminal defendants in over 30 cases from approximately 1989 through February 1996. During that time, the judge had a social relationship with the attorney; he had gone on cruises with the attorney and had attended several small group dinners with him. The judge also allowed the attorney to pay for two lunches for the judge and his staff. The judge did not disclose the social relationship or disqualify himself when the attorney appeared before the judge. In some appointed cases, the judge allowed the attorney to bring his bills for attorney's fees directly to the judge in chambers for approval, in disregard of the appointment panel's policy.

In 1994, a third attorney was a prospective tenant in the office building owned by Judge Shook and his wife. The attorney had a telephone conversation with the judge in which the attorney expressed doubt that he could afford the rent. Judge Shook ascertained that the attorney's application to become a member of the

appointment panel had been denied. The judge told the attorney that if he rented office space in the Shook building, the judge would recommend him to the appointment panel. The attorney would then receive criminal appointments from the judge which would cover the rent.

From approximately mid-1985 through 1988, the judge appointed a fourth attorney to represent criminal defendants in cases before him. On two occasions, the judge allowed the attorney to pay for lunch for the judge and his staff. On one of those occasions, the attorney used a limousine, in which champagne was available, to take the judge and the judge's staff to lunch. [*Public Admonishment of Judge John P. Shook* (1998).]

Judge Kennick was censured (in addition to being removed from office) for conduct including exercising his power of appointment on behalf of two attorneys in an extremely high number of cases over a three-year period when the public defender's office declared a conflict. The judge owned property in Hawaii with one of the attorneys, which the judge did not disclose in cases in which the attorney appeared before him. The court concluded that the judge's favoritism in appointments of the two attorneys was prejudicial misconduct. [*Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297.]

Judge Spruance was removed from office for conduct including consistently appointing two attorneys in criminal cases in which the defendant was either not entitled to counsel at public expense or the public defender had not been requested to represent them. Appointments to these two attorneys, who were longstanding friends and campaign supporters of the judge, comprised almost half of the judge's appointments. The Supreme Court found the judge's appointments to be illegal and unjustified and in conflict with the prohibition in the Code of Judicial Conduct on appointments based on nepotism and favoritism. Because the court found that the judge acted in bad faith exceeding the bounds of his lawful powers for the purpose of benefitting his friends and political supporters, his conduct constituted willful misconduct. [*Spruance v. Commission on Judicial Qualifications* (1975) 11 Cal.3d 778.]

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