

**STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**

**IN THE MATTER CONCERNING
JUDGE EMILY J. COLE**

**DECISION AND ORDER IMPOSING
SEVERE PUBLIC CENSURE
PURSUANT TO STIPULATION
(Commission Rule 116.5)**

This disciplinary matter concerns Judge Emily J. Cole, a judge of the Los Angeles County Superior Court. Judge Cole and her counsel, Paul S. Meyer, have entered into a stipulation with Director-Chief Counsel Gregory Dresser of the Commission on Judicial Performance, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Cole by imposition of a severe public censure. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on May 15, 2024, pursuant to the following terms and conditions and stipulated facts and legal conclusions. A copy of the Stipulation is attached.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Cole.
2. The commission shall issue a severe public censure based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing a severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, the Stipulation and the commission's decision and order shall be made public.
5. Judge Cole waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118, et

seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60). Judge Cole agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate in light of those facts.

6. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted or conceded by either party.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a severe public censure on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions.

STIPULATED FACTS AND LEGAL CONCLUSIONS

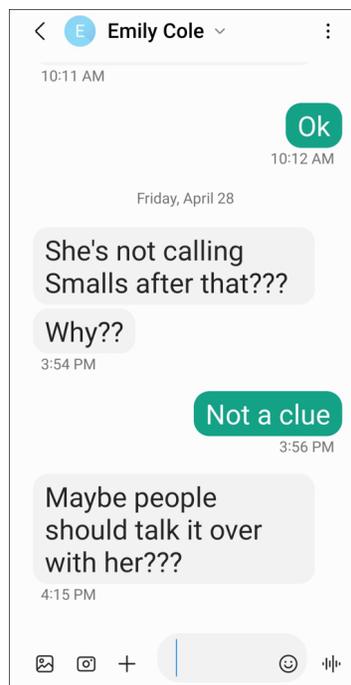
This disciplinary matter concerns Judge Emily Cole, a judge of the Los Angeles County Superior Court since 2021. Her current term began in January 2021.

During the pendency of a murder retrial, Judge Cole improperly initiated an ex parte communication with a prosecutor in order to influence the trial prosecutor's decision to call a rebuttal witness. Judge Cole also made a misleading disclosure to the parties and a misleading report to the commission.

Judge Cole presided over the murder retrial of *People v. Travis Rockhill*, No. MA079537, on Friday, April 28, 2023. Deputy District Attorney (DDA) Yujin Yi represented the People, and Alternate Public Defender (APD) Peter Garner represented Mr. Rockhill. During the first trial, over which Judge Cole also presided, Mr. Rockhill made an allegedly incriminating statement in the presence of the judge's bailiff, Deputy Randy Smalls. Deputy Smalls was reassigned to another courtroom during the second trial, in order to allow either party to call him as a witness.

On Friday, April 28, 2023, Mr. Rockhill testified in his own defense. Judge Cole's former colleague, DDA Kevin Sexton, was present in the courtroom to observe Mr. Rockhill's testimony. Following Mr. Rockhill's testimony, Judge Cole excused the jury and ordered the jurors to return on Monday, May 1, 2023. Judge Cole then conducted a conversation with the attorneys off the record. Both attorneys indicated that they did not intend to call any additional witnesses. On the record, APD Garner rested but DDA Yi did not. (Prior to the defense case-in-chief, DDA Yi had rested the People's case-in-chief.) Proceedings concluded at 3:53:35 p.m.

Judge Cole initiated the following text message exchange with DDA Sexton, beginning at 3:54 p.m.:



Judge Cole inquired why DDA Yi was not calling Deputy Smalls to testify as a rebuttal witness and suggested that someone should talk to DDA Yi about it. Judge Cole's text implied that DDA Yi should call Deputy Smalls to testify and that someone in the district attorney's office should convey the message to DDA Yi.

Although DDA Yi had rested the People's case-in-chief prior to the defense case, and had indicated off the record that she did not intend to call any rebuttal witnesses, she had not rested the rebuttal phase. DDA Yi elected not to call Deputy Smalls as a rebuttal witness. On Monday, May 1, 2023, DDA Yi made a record that she was not calling any rebuttal witnesses and rested the People's case.

The jury began deliberating on May 2, 2023, and returned a guilty verdict on May 8, 2023. DDA Sexton communicated the information contained in the judge's texts to DDA Yi after the jury returned its verdict.

The district attorney's office disclosed the above text exchange to APD Garner and Supervising Judge Denise McLaughlin-Bennett on May 9, 2023. On May 12, 2023, Judge McLaughlin-Bennett contacted Judge Cole regarding the text messages that she sent to DDA Sexton. Judge Cole agreed to disclose the communication on the record, and recuse herself, on her first day back at court, on May 15, 2023.

On May 15, 2023, in chambers, Judge Cole disclosed the above ex parte communication to the attorneys in *Rockhill* and then recused herself, pursuant to Code of Civil Procedure section 170.1. The May 15, 2023 minute order (italics added) states:

The Court disclosed that *after each side rested, after hours*, the Court made inexcusable ex parte communications with another district attorney.

The Court does not try to justify inappropriate actions and admits wrongdoing.

Further, the Court states that she has reflected on the rulings made during the trial and believes that the rulings were fair and impartial.

On May 17, 2023, Judge McLaughlin-Bennett met with Judge Cole to discuss the May 15, 2023 minute order. Judge McLaughlin-Bennett criticized the minute order and instructed Judge Cole to "objectively state what

happened in chronological order without trying to minimize, explain or distort facts.” Judge McLaughlin-Bennett advised Judge Cole to correct the minute order.

On May 26, 2023, Judge Cole modified the May 15, 2023 minute order (italics added) to read:

The Court discloses that *after both side [sic] rested their case[-]in[-]chief*, trial had ended for the day, the Court made inexcusable ex parte communications with another district attorney that had been watching the trial. A text message was sent at approximately at 3:45 p.m. [sic] and concluded before 4:30 p.m.

On May 26, 2023, Judge Cole also reported her misconduct to the commission and stated that she had sent the text after “both sides had rested their case[s]-in[-]chief,” after the trial had “ended for the day,” and that the “text messages concluded approximately before 4:30PM [sic].”

It is a basic requirement of judicial office to be a neutral and impartial arbiter of the facts and law. “A fair trial in a fair tribunal is a basic requirement of due process.” (*In re Murchison* (1955) 349 U.S. 133, 136.) “The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.” (*Mistretta v. United States* (1989) 488 U.S. 361, 407.) “The judicial robe is a mantle of responsibility that entrusts an individual with the most sacred obligations that our society can impose -- the protection of each citizen’s rights in a neutral forum. The acceptance of the judicial function does not confer greater wisdom upon the individual but only greater responsibility.” (*People v. Hernandez* (1984) 160 Cal.App.3d 725, 750-751.)

Canon 3B(7) of the California Code of Judicial Ethics prohibits a judge from initiating, permitting, or considering ex parte communications, “that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding.” The prosecution had not

rested its case when Judge Cole engaged in an ex parte communication with DDA Sexton. On Friday, April 28, 2023, Judge Cole sent the text (“She’s not calling Smalls after that??? Why??”) to DDA Sexton 20 seconds after the court reporter recorded that proceedings were concluded. Both parties had rested their cases-in-chief and indicated that they did not intend to call additional witnesses, but DDA Yi did not rest the prosecution’s rebuttal phase until the following Monday. Thus, the prosecution still had an opportunity to call rebuttal witnesses on Monday.

Canon 3B(5) requires a judge to perform judicial duties without bias or prejudice and not to engage in speech or other conduct that would reasonably be perceived as bias or prejudice. Canon 2 requires a judge to avoid impropriety and the appearance of impropriety in all of a judge’s activities. Canon 2A requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Finally, canon 1 requires a judge to participate in establishing, maintaining, and enforcing high standards of conduct, and personally observe those standards so that the integrity and independence of the judiciary is preserved. Judge Cole’s texts to DDA Sexton, in which she suggested “someone” talk to DDA Yi about calling Deputy Smalls as a rebuttal witness, conveyed bias for the prosecution, constituted improper ex parte coaching, and gave the appearance of usurping the prosecutorial role, in violation of canons 3B(5), 2, 2A, and 1.

On May 15, 2023, Judge Cole disclosed, orally in chambers and by minute order, “that *after each side rested, after hours*, the Court made inexcusable ex parte communications with another district attorney.” While Judge Cole admitted the ex parte communication and characterized it as “inexcusable,” the statements were false. The texts were sent during working hours and the evidence portion of the trial had not concluded. Judge Cole’s

disclosure implied that the ex parte communications occurred after the close of evidence; however, the prosecutor had not rested her rebuttal case.

On May 26, 2023, after being counseled by her supervising judge, Judge Cole modified the May 15 minute order to rephrase “after both sides rested” to “both sides had rested their case[-]in[-]chief.” Although factually accurate, this modification was misleading because it still implied that the trial had concluded when it had not.

Judge Cole also modified the May 15 minute order to rephrase “after hours” to “the trial had ended for the day,” which was similarly misleading because it implied that the texts were sent after the workday had ended. It was not apparent from the new wording that the prosecutor still had an opportunity to call rebuttal witnesses.

Judge Cole made the same modified representations to the commission in her May 26, 2023 self-report. Judge Cole’s self-report indicates that she revised the May 15 minute order in order to correct an “error” regarding the “timing” of the text messages that was caused by her faulty memory. The initial May 15 minute order was not just factually incorrect as to the time of the text. The judge’s two statements (after hours, when the parties rested) together implied that the texts were sent later than they actually were. Although Judge Cole disclosed the ex parte communications at the next opportunity, the phrasing of the disclosure conveyed the appearance that she was attempting to minimize her misconduct. Judge Cole’s false and misleading statements in the May 15 and May 26, 2023 minute orders and her May 26, 2023 letter to the commission violated canons 2, 2A, and 1.

“The Supreme Court has stated unequivocally that honesty is a minimum qualification for every judge. If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental.” (*Inquiry Concerning Ross* (2005) 49 Cal.4th

CJP Supp. 79, at p. 89 [citing *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 865].)

Judge Cole's conduct was, at a minimum, improper action within the meaning of California Constitution, article VI, section 18(d).

DISCIPLINE

Judge Cole's misconduct is serious and undermined the integrity of, and respect for, the judiciary. (See policy declarations 7.1(1)(b) [the nature and seriousness of the misconduct] and 7.1(1)(h) [whether the misconduct undermines the integrity of the judiciary, respect for the judiciary or the administration of justice].) It is a basic requirement of judicial office to be a neutral and impartial arbiter of the facts and law. Judge Cole's conduct in sending text messages to her former colleague during a murder trial was antithetical to her role as a judge. She attempted to put a thumb on the scales of justice, crossed the line from an impartial judicial officer to an advocate, and displayed neither neutrality nor wisdom. Her subsequent conduct, attempting to shade her initial misconduct in a more positive light in the court minutes and in her self-report to the commission, further reflects an initial reluctance to accept full responsibility for her misconduct, and an effort to minimize the gravity of her misconduct.

In mitigation, Judge Cole's misconduct all relates to one event. (See Policy Declarations of Com. on Jud. Performance, policy declaration 7.1(1)(a) [the number of acts of misconduct].) Judge Cole has no prior discipline. (See Policy Declarations of Com. on Jud. Performance, policy declaration 7.1(2)(e) [whether there has been prior disciplinary action concerning the judge].) She also acted to disclose her misconduct to the parties at the next court opportunity, accepted responsibility in person to her supervising judge and in writing to the commission, and admitted her misconduct. (See Policy Declarations of Com. on Jud. Performance, policy declaration 7.1(2)(a) [whether the judge has acknowledged the acts occurred and has shown an appreciation of

the impropriety of the acts].) In further mitigation, Judge Cole stipulated to this resolution, thereby bringing the matter to conclusion and saving the commission the expenditure of further staff resources in investigating and resolving this matter.

The commission has determined to accept this Stipulation and impose this severe public censure, which is the strongest sanction that may be imposed on a judge short of removal from the bench, because it fulfills the commission's mandate of protecting the public, enforcing rigorous standards of judicial conduct, and maintaining public confidence in the integrity of the judicial system, and it resolves this matter without the delay and expense of further proceedings. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112; Cal. Const., art. VI, § 18, subd. (d).)

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Rickey Ivie, Esq; Ms. Kay Cooperman Jue; Mr. Richard A. Long; Mani Sheik, Esq.; and Ms. Beatriz E. Tapia voted to accept the Stipulation and to issue this severe public censure. Commission member Mr. Eduardo De La Riva did not participate. One public member position was vacant.

Date: 5/28/2024

On behalf of the
Commission on Judicial Performance,



Dr. Michael A. Moodian
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE EMILY COLE

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Emily Cole of the Los Angeles County Superior Court, represented by counsel, and commission counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letter, dated November 30, 2023. The parties request that the commission resolve this matter by imposition of a severe public censure. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Cole because, among other reasons, in light of the stipulated facts and legal conclusions, a severe public censure adequately protects the public and will avoid the delay and expense of further proceedings.

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6. Judge Cole agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate in light of those facts.

7. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted or conceded by either party.

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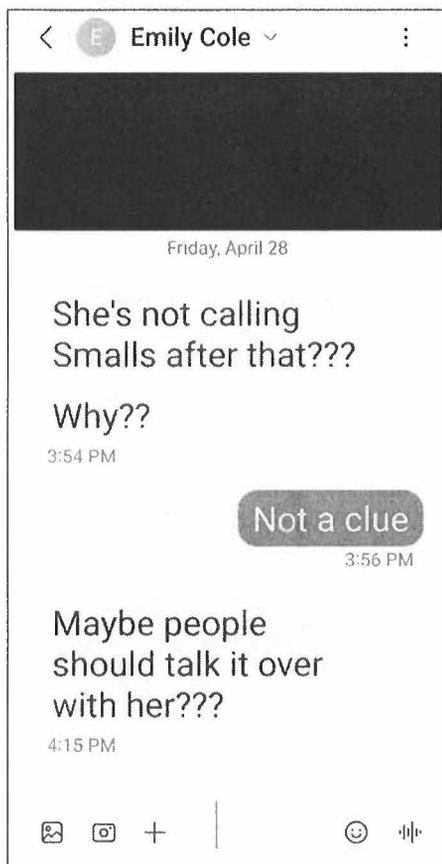
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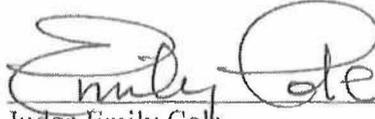
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Judge Cole's conduct was, at a minimum, improper action within the meaning of California Constitution, article VI, section 18(d).

Judge Cole's misconduct involved dishonesty and a lack of integrity, and undermined respect for the judiciary, which aggravated the discipline. In mitigation, Judge Cole has no prior discipline, acted to disclose her misconduct to the parties at the next court opportunity, accepted responsibility in person to her supervising judge and in writing to the commission, and here admitted her misconduct. In further mitigation, Judge Cole stipulated to this resolution, thereby bringing the matter to conclusion and saving the commission the expenditure of further staff resources in investigating and resolving this matter.

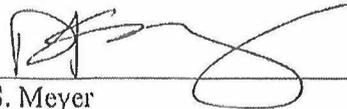
By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Cole expressly admits that the foregoing facts are true and that she agrees with the stated legal conclusions.

Dated: April 4, 2024.



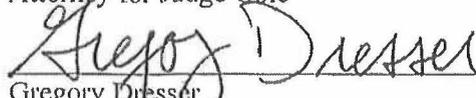
Judge Emily Cole

Dated: April 4, 2024.



Paul S. Meyer
Attorney for Judge Cole

Dated: April 4, 2024.



Gregory Dresser
Director-Chief Counsel