STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING JUDGE DANIEL J. HEALY	DECISION AND ORDER IMPOSING PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Daniel J. Healy, a judge of the Solano County Superior Court since 2011. His current term began in 2023. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, Judge Healy and his attorney, Christopher R. Ulrich, appeared before the commission on May 15, 2024, to contest the imposition of a tentative public admonishment issued on December 12, 2023. Judge Healy waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by Judge Healy and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the statement of facts and reasons set forth below.

As described below, the commission concluded that Judge Healy engaged in misconduct in two criminal matters. In the first matter, during a hearing regarding the admissibility of fingerprint evidence, and later before the jury when the fingerprint expert was testifying, Judge Healy usurped the role of the prosecutor, exhibited poor demeanor, engaged in conduct giving the appearance of bias, and interfered with the attorney-client relationship. In the second matter, during a jury trial, Judge Healy exhibited poor demeanor towards the attorneys, engaged in conduct giving the appearance of bias, and interfered with the attorney-client relationship.

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

STATEMENT OF FACTS AND REASONS

People v. Malik Williams

In November 2018, Judge Healy presided over a jury trial in *People v. Malik Williams* (No. VCR227914). Malik Williams, charged with felony residential burglary, was represented by Deputy Alternate Public Defender (DAPD) Sean Swartz. Deputy District Attorney (DDA) Mark Ornellas represented the People.

The prosecution's case hinged on latent fingerprint evidence found at the crime scene and later matched to Mr. Williams. No other evidence connected Mr. Williams to the burglary. (No witnesses identified Mr. Williams; Mr. Williams did not own a car like the get-away car; and the items stolen were never connected to Mr. Williams or found in his possession.) The testimony of the prosecutor's fingerprint analyst, Vivian Zhang, was crucial to the prosecution's case.

On November 6, 2018, Judge Healy presided over a hearing under section 402 of the Evidence Code, outside the presence of the jury, to determine the admissibility of Ms. Zhang's testimony. Mr. Swartz asserted that Ms. Zhang's testimony should be excluded on the basis that fingerprint analysis was not sufficiently accepted within the scientific community. Before Ms. Zhang testified, Judge Healy said to Mr. Swartz, "So, we are here on the morning of trial, you're asserting this, and you're not backing it up with the traditional means by which attorneys come in and present evidence on which the Court can make such findings[,] and that is expert testimony. [¶] So, what's going to happen later today when this expert testifies is you're going to attempt to cross examine, if and when you don't like the answers that she says, you're going to be stuck because you have no expert to counter it." (R.T. 94:22-95:2.) Judge Healy continued, "If she's going to offer bad science, that's why you bring in scientists to counter it. But apparently you're not doing that." (R.T. 96:27-97:1.)

After Ms. Zhang testified at the 402 hearing, Judge Healy denied the defense motion to limit or exclude her testimony at trial. Judge Healy said:

> Mr. Swartz, this is just not how you should operate here. I am struggling with whether or not -- I have complained in this courtroom several times over the last month whether or not defendants are getting fair trials or not because of a lack on the part of your office to adequately resource cases. I'm struggling here now because it seems to me that everything that you are trying to do here, if you are, is one of two things. [¶] One, either you're inadequately resourced and didn't spend the money to hire your own expert [to] flesh these things out. Or secondly is [*sic*] just smoke and mirrors on day two of trial.

(R.T. 123:13-23.)

Judge Healy recalled the jury, and Ms. Zhang subsequently testified at trial. During Mr. Swartz's cross-examination of Ms. Zhang, Judge Healy interrupted him more than a dozen times with his own questions and sua sponte objections (see, e.g., "That's argumentative and speculative. She didn't document it" (R.T. 185:8-9); "That was argumentative" (R.T. 207:11); and "That was asked and answered," though the question had not actually been asked and answered (R.T. 182:2)). When Mr. Swartz asked Ms. Zhang if she had compared any of the other 99 results from a database search of potential fingerprint matches besides those of the defendant, Ms. Zhang did not have the chance to answer before Judge Healy said, "She has said a couple different ways now she thought they got a positive finding on the first one and she stopped looking at the other images after that." (R.T. 183:12-14.)

During defense counsel's cross-examination, Judge Healy paused and excused the jury for a recess. Judge Healy told Mr. Swartz that he was "repeatedly [] violating the Rules of Evidence in an effort to publish information to the jury that you otherwise may not have the ability to do so [*sic*]." (R.T. 200:13-15.) Judge Healy said he was "going to start being even brisker in stomping you when you do that" and warned, "If you keep throwing certain pitches, I'm going to

start calling them in a way that is not going to be to the benefit of you or your client." (R.T. 200:22-23, 201:19-21.)

The jury returned. After re-direct was concluded, and with no questions having been submitted by the jury, Judge Healy asked Ms. Zhang the following questions.

> THE COURT: Let me ask you, ma'am, is there anything about the process of testing fingerprints that degrades them?
>
> THE WITNESS: Can you rephrase?
>
> THE COURT: You took these two prints and you evaluated them.
>
> THE WITNESS: Yes, under a glass.
>
> THE COURT: Is there anything about that that destroyed or degraded the image?
>
> THE WITNESS: No.
>
> THE COURT: So, if I wanted to do the same thing, if I wanted to take these two fingerprints and compare them myself, if I wanted to hire someone to do it, they could -- they can review the very same thing that you reviewed, correct?
>
> THE WITNESS: Yes.

(R.T. 216:19-217:4.)

Mr. Swartz promptly moved for a mistrial based on the judge's questions, arguing that Judge Healy was implying that the defense had an obligation to hire their own fingerprint analyst. Judge Healy responded, "I didn't say by whom. I said it could have been." (R.T. 219:23-24.) The judge continued, "So you don't think Mr. Ornellas could get up in his closing argument tomorrow and say something to the effect of, you know we didn't hear but there may be hundreds or thousands of fingerprint experts who could have looked at this and would come in and say there's something wrong about this identification and you didn't hear

from one of them." (R.T. 220:3-8.) After a brief exchange with Mr. Swartz, Judge Healy said, "I think you ought to be prepared for that argument." (R.T. 221:5.)

Judge Healy denied the motion for a mistrial without prejudice, indicating to defense counsel that he would revisit the motion the next morning if counsel could find a case that showed it is prejudicial to ask whether an item could have been retested.

Court reconvened on November 7, 2018. Before calling in the jury, Mr. Swartz said he could not find a case where the court interjected the idea that the defense could have called, but did not call, a witness and suggested to the prosecution that they make that argument. Judge Healy replied, "I didn't suggest to them. I said what are you going to do if they make that argument." (R.T. 233:4-6.)

Mr. Swartz argued that Judge Healy's initial question to Ms. Zhang (about whether putting a magnifying glass over the fingerprint degraded the print) was improper. Judge Healy responded, "First of all, I did not know that because neither of you asked those questions very clearly. But anyway, Mr. Swartz, I was a defense lawyer for 20-something years. A, you're free to come at me anyway [*sic*] that you like to, but I understand the practice of defense. I understand working the re[f] like you're working right now. I understand all of these things. As to this particular issue, the record was incredibly unclear about the state of that exhibit and this probably inures to the benefit of your client, not that it occurred as a result of your searing cross exam…." (R.T. 239:3-12.)

Mr. Swartz then argued that the judge's follow-up question to the expert implied the defense had an obligation to call a fingerprint witness, though the judge knew the defense had no plans to do so, and thus appeared to impugn the defense's preparation of the case.

Judge Healy responded that there was "some truth" to that issue. He said:

> I made comments early about a lack of resources of your office. That's what I said. I said your office was

> not resourced. Your former boss, Mr. Najara [*sic*] left about a month ago. We could have a detailed discussion as to that, as to why the main Public Defender is now leaving now. As to why multiple grand juries are investigating your office. We could have a discussion about all of those things. But it's a side show to what my comment was. My comment was about resources that you had not resourced these things. It didn't come up in the context of you executing a strategy to not hire a witness. It came up in the context, when I specifically asked you what were you going to do when you tried to impeach this witness with articles and she told you that she didn't remember them, what were you going to do about that. I specifically warned you in advance that there was a risk of that happening because you had not hired an expert to put that expert on the stand to have them explain to the jury the risks and nature associated with fingerprint things you decided to do it, not hire investigating resources on this thing ask [*sic*] taking a gamble that you were going to be able to fully impeach the witness with your cross-examination of the those [*sic*] articles.

(R.T. 240:6-27.)

Judge Healy continued, "As to my comments about the lack of resourcing of your office and your strategy to go forward, the record perfectly reflects, in advance, I warned you that there was a risk of it happening. It did happen exactly as I predicted and exactly as I warned you and that's what le[d] to things yesterday. [¶] Those comments had nothing to do with any efforts to undermine your choice of calling experts. That was an observation about the risks posed when you don't invest the resources or take the time to present these issues on your own." (R.T. 241:8-17.) Judge Healy denied the motion for mistrial.

Mr. Williams was convicted of felony burglary. On January 26, 2021, the First District Court of Appeal reversed the conviction, finding that Judge Healy improperly aligned himself with the prosecutor in the minds of the jury by the manner and content of his questioning of the fingerprint witness, and that the

questioning constituted prejudicial judicial misconduct. (*People v. Williams* (2021) 60 Cal.App.5th 191.)

In his response to the commission, Judge Healy admitted that his questioning of Ms. Zhang created the appearance of bias and alignment with the prosecution. Judge Healy disputed that his conduct in *Williams* demonstrated embroilment or constituted usurping the prosecutorial role. He represented that his complaint about the alleged lack of resources and preparation from the public defender's office was "not necessarily directed at Mr. Swartz, but at the office itself." In his objections and at his appearance before the commission, Judge Healy asserted that Mr. Swartz was inadequately prepared, asked repetitive questions, and improperly attempted to introduce evidence without a foundation.

The commission determined that, in questioning the prosecution's fingerprint expert, Judge Healy conveyed to the jury the appearance that he believed the defense was inadequate for not calling a rebuttal expert witness, and that he was aligned with the prosecution. Though a trial court may ask clarifying questions of witnesses without abandoning its role as a neutral arbiter, a judge may not engage in questioning of witnesses that is "clearly to support [one party's] position." (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 533.) The commission further determined that Judge Healy's conduct and remarks in front of Mr. Swartz's client, that Mr. Swartz was either "inadequately resourced" or using "smoke and mirrors," and that Judge Healy would "stomp[]" him, gave the appearance of bias against the public defender's office and Mr. Swartz personally, were gratuitous and discourteous, and interfered with the attorney-client relationship.

While a judge may have concerns regarding an attorney's performance or strategy decisions during a trial, a judge's role is not to chastise attorneys, or become embroiled. As Rothman states:

> Judges sometimes become impatient with incompetent and unprepared lawyers and are concerned for the

> harm they do to their clients and the problems they cause to the administration of justice. A judge needs to shift focus to the question of whether and to what extent there is anything that can be done, and to recognize that the ability to become involved in undoing the harm or correcting the problem … may be limited.

(Rothman et al., Cal. Jud. Conduct Handbook (4th ed. 2017) § 2:26 at p. 94.)

The commission found that Judge Healy usurped the prosecutorial role and engaged in conduct that constituted poor demeanor, in violation of canons 3B(4) (a judge shall be patient, dignified, and courteous to all those with whom the judge deals in an official capacity), 3B(5) (a judge shall refrain from engaging in speech or other conduct that would reasonably be perceived as bias), 3B(8) (a judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law), and 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

People v. Kumeka Quanetta Davis and Gregory Wilson, Jr.

In 2019, Judge Healy presided over a criminal trial in *People v. Kumeka Quanetta Davis and Gregory Wilson, Jr.* (Nos. VCR223008/VCR223009). Gregory Wilson was charged with torturing and abusing co-defendant Kumeka Davis's young son. The child, then two years old, had reportedly suffered numerous injuries including a skull fracture, burns from a lighter on his forearms, and testicular swelling and bruising. (Ms. Davis, who lived with Mr. Wilson, was charged with child endangerment based on her failure to protect her son from Mr. Wilson's abuse.) At trial, DAPD Sean Swartz represented Mr. Wilson; Deputy Public Defender (DPD) Tracy Krause represented Ms. Davis; and DDA Helenaz Moteabbed represented the People.

On February 11, 2019, Judge Healy began scheduling panels for voir dire. Mr. Swartz objected to proceeding with jury selection because he was concurrently engaged in a competency trial in another courtroom and requested

a continuance. Judge Healy told Mr. Swartz, "What I'm asking you to do is hardships. You're a 5. A first year law student could do hardships. You're in mid-trial in the other case. If you do not have your map charging in your other case at this point, I don't know what to tell you." (R.T. 90:15-19.) The judge continued, "This idea while in trial you don't have the mental capacity to address the needs of your other clients who are not currently facing trial, that's not a reasonable or accurate reflection of the mental and professional act [*sic*] given an attorney who has tried such serious cases such as homicide. So[,] this idea of I can only focus on one thing at once, if that is the case, you need to take that up with your management." (R.T. 90:22-28.) After engaging in further colloquy with Mr. Swartz, Judge Healy said, "My request is that you stretch a little and do hardships. You're killing me." (R.T. 92:18-19.)

While handling motions in limine, Judge Healy said to Mr. Swartz, "This is a court of law. I'm not in an old ladies[']] sewing circle, which is what this feels like. This feels like gossip. This is not about character. It's gossip." (R.T. 190:9-12.)

When court reconvened on February 13, 2019, Mr. Swartz made another motion to continue based on his trial schedule. Judge Healy said, "I indicated before, Mr. Swartz, you're a five, you're denoted as a top trial lawyer in your office, which at a minimum denotes an ability to, based on experience and the like, to be able to focus on more than one thing at once. This idea that you are proffering that one only spend the entirety of their waking time from the moment of [*sic*] trial starts until the time that a trial completes only thinking about that case and any other [*sic*], that's not the nature of representation. That is not the nature of adequate representation." (R.T. 256:14-23.)

On February 19, 2019, outside the presence of the prospective jurors, Ms. Moteabbed advised Judge Healy that she recently found possible audio recordings, not previously disclosed to the defense. Judge Healy said:

> [T]his probably should have been handed over earlier. I don't have a crueler way of saying it. When people come in and talk about the continuing [abuse] that people suffer as a result of the criminal justice system, this is what they're talking about. For someone to get up and sanctimoniously talk about how they care about this child but then approach the case involving the child with this cavalierness is pathetic. This is your team, Ms. Moteabbed, it's not, it's not VPD's fault. This is your team. You are responsible. Your office is responsible and to be taking something as important as this and to be so haphazard and cavalier about it is a reflection and an insult of the very people you purport to be trying to protect here.

(R.T. 312:6-18.)

The discussion with counsel turned to the admissibility of evidence related to the two-year-old victim's testicular injury. Judge Healy said, "I don't know. I'm not a scrotumologist[.]" (R.T. 326:28.)

The jury was subsequently impaneled, and the prosecution began to present its case. On February 25, 2019, outside the presence of the jury, Mr. Swartz sought a mistrial based on the People's delay in providing discovery. Judge Healy said:

> I'm denying the motion for mistrial. Disingenuous, I think, is a strong word. I do find it amazingly ironic, however, which may be a better word, that if I were sitting in a meeting in front of the Board of Supervisors in Solano County right now listening to your office explain the universe, I would not hear a whisper of concern about any of these things. I would not hear a whisper of concern about a lack of resource that is [*sic*] renders you unable to adequately prepare for major cases. I would not hear a whisper of under-staffing that places people in a position that they cannot be ready. Because I did hear a whisper when any legal ethesist [*sic*] would say, is therefore it's your office's obligation to decline to accept the cases. To declare conflicts and to seek other representation. So, I don't know what your [*sic*] all doing here. Somewhere in the universe of irony

> and hypocrisy, you believe that you can walk into a courtroom and voice outrage and have those ironies and that hypocrisy be ignored. I [declined] this had [*sic*] morning to entertain your complaints as valid, because I don't see at this point that they are. [¶] Having said that, I voiced considerable issues before about whether or not your offices are adequately resoursing [*sic*] these cases and whether or not attorneys lacking [*sic*] should be walking in and undertaking representation of serious cases if you lack the wherewithal and the experience to do so.

(R.T. 384:20-385:16.)

The discussion then turned to evidence related to Mr. Wilson's prior conviction. In response to Ms. Krause, Judge Healy said, "This idea that you are all fully entitled to know every little permutation and possible contingency, it's like you're asking me to serve you cookies and give you warm slippers to make your experience completely comfortable as you go forward. That is not major league litigating. That is not even minor league litigating." (R.T. 394:26-395:3.)

Ms. Krause expressed her concern that opening statements might include mention of things that were prejudicial to her client. Judge Healy replied, "I have no idea what you all are doing here. [¶] So, until this trial is over, I will be in a perennial state of concern that someone's going to blow it. So let's be clear, I share that concern. I've told you before, I'm not feeling confident in what any of you are doing." (R.T. 397:9-14.)

Mr. Swartz then brought up concerns regarding potential juror misconduct, which counsel and the judge had discussed the previous afternoon. Judge Healy said, "I heard you, Mr. Swartz. I need you to stop repeating yourself over and over. I need to you stop speaking. Stop repeating yourself. I don't know where you decided that just repeating things over and over again somehow made it more effective because it's driving me up the wall right now. Just stop it." (R.T. 401:16-21.)

Judge Healy indicated he intended to recall the jurors. Ms. Krause attempted to interject. Judge Healy said, "Ms. Krause, I just told you I don't need you to speak." (R.T. 401:26-27.) Ms. Krause explained that she needed to use the restroom.

Before recessing for lunch, outside the presence of the jurors, Judge Healy addressed Ms. Moteabbed's question regarding the admissibility of certain evidence. Judge Healy said, "I am -- there is -- you are begging for a mistrial. I had just shared with some people in the back the odds of this case not being -- the book in Vegas is that because you guys are not listening, because you are obfuscating and repeating and doing all of this things [*sic*], the odds of this plane not crashing --" (R.T. 413:12-18.)

On February 26, 2019, in the presence of the jury, Judge Healy interposed his own objections during Ms. Moteabbed's cross-examination of the prosecution's social worker witness, saying, "She doesn't recall. Some of this maybe double hearsay. I don't know what it is" and "Isn't all that hearsay?" (R.T. 600:23-25, 601:18.)

On February 27, 2019, Judge Healy twice interrupted Ms. Moteabbed's cross-examination of a witness to impose his own objections. (R.T. 737:13-16, 775:3-10.) Later that afternoon, outside the presence of the jury, Judge Healy apprised observers and counsel that he had just learned there was a security issue. He said:

> I'll make it obvious to at least people who are here in the room. As someone who is a defense lawyer for 20 years, if I had a member of my client's family doing anything, raising their voice, looking at anyone sideways, I would kick you out of the courthouse for the balance of thing [*sic*] because nothing will get your loved one convicted quicker than engaging in any sort of hostile or inappropriate behavior that a jury sees. [¶] Not only is it just completely uncalled for, it's incredibly stupid[,] and there has never been a person in the history of this country who was freed, who was

> acquitted, who otherwise might not have been acquitted because he had friends and family in the audience being aggressive.

(R.T. 784:8-20.)

Ms. Krause said she was aware there was some commotion between family members. Judge Healy said, "Okay. Unless family -- unless folks just want everyone to be convicted right now, we can just cut to the chase." (R.T. 785:4-6.)

On February 28, 2019, outside the presence of the jury, Judge Healy said to counsel, "I'm mindful that all of you are going to Herculean efforts to undermine the smooth operation of this place. I'm mindful of differences between problems that arise because you guys are not professional and problems that arise that are [*sic*] reflection of evidence against them." (R.T. 852:14-18.)

The jury returned. Shortly after Ms. Krause began questioning her first witness, the judge paused proceedings and asked the jury to step outside. Judge Healy addressed Mr. Swartz and said:

> I think there's a gap between what you ought to be presenting to this jury and what you are presenting. And the gap stuns me. Why you would be impugning the character of a person who is fundamentally accused of trusting your client. It's not unlike yesterday when everyone's talking about whether or not Mr. Cohen is a chronic liar and all this stuff ultimately comes down to the guy who hired him for 10 years, it's a reflection of that guy. And, so, anyway I am not going to telling [*sic*] you how to try your case. The logic of it baffles me completely.

(R.T. 860:7-17.)

Judge Healy recalled the jury, and Mr. Swartz began examining the witness. The judge interjected his own objection, then undertook his own questioning of the witness and overruled counsel's objections to his questions. (See R.T. 868:19-20, 869:21-871:9.) When Ms. Moteabbed cross-examined the

witness, Judge Healy again interjected his own objections. (See R.T. 878:23, 878:25-879:1, 879:10-11.)

Judge Healy dismissed the jury for the day and said he had been advised that something arose regarding witnesses and jurors. Mr. Swartz explained he was told that someone saw an alternate juror conversing in the parking lot with a witness. After questioning the woman who allegedly witnessed the interaction, Judge Healy seized her phone (as it had video of the alleged interaction) and ordered her not to return to the courthouse for two weeks because the judge determined that she created the appearance of an effort to intimidate jurors.

On March 4, 2019, Mr. Swartz asked to have an inquiry made of the alternate juror. Judge Healy recalled the jury, questioned them, and sent them out again. Judge Healy and Mr. Swartz discussed the cell phone video seized the previous court day. The judge said to Mr. Swartz, "This records [*sic*] reflects what, in fact, is going on here. I will make the phone -- if you want to make arrangements, we've got the exhibit here, to prepare evidence that causes me to accept as something more than completely manufactured this allegation that these jurors acted improperly, I will do so. At this point we are somewhere between hypervigilance, including a healthy dose of visual impairment on various people's parts, or something more nefarious here, it seems to me." (R.T. 957:12-20.)

Mr. Swartz later revisited his concerns about witness intimidation and said the court should be concerned with threats made to witnesses in the courthouse. Judge Healy replied, "That's ironic, given what you've put me through for trying to maintain court security over the last 48 hours. You're making a mockery of all of this." (R.T. 1080:2-4.)

On March 5, 2019, Judge Healy returned to the discussion regarding juror misconduct and witness intimidation. Mr. Swartz said he did not ask the witness to film jurors. The judge said, "I can't tell what is going on here. I know in 20 years as a lawyer I never tolerated an iota of that of [*sic*] misbehavior on the part

of anyone connected to the sixth degree to my client. And you appear to have, on the best day, failed to rein in the universe of folks in association with your client. And that enures [*sic*] to the detriment of your client." (R.T. 1091:22-28.) Judge Healy continued, "[A]t this point in time I've got concerns that there's some undertaking someone, I don't know if it's Mr. Swartz, I'm not accusing you of anything at this point, but I'm indicating it does appear to me that there are forces out there attempting to undermine this trial." (R.T. 1092:11-16.)

Mr. Swartz reiterated that he was approached by someone and asked to present evidence to the court about the interaction allegedly witnessed. Judge Healy replied, "By someone who was not your client. So don't do that. Now you're just --" (R.T. 1093:19-20.) Mr. Swartz interrupted, and Judge Healy continued, "Now you're just like a snake oil, [*sic*] to suggest you were being a good citizen in recording this, not attempting to utilize these facts for the benefit of your -- what you perceive to be, I think erroneously, the benefit to your client is just an insult to everyone in the room. I would encourage you to not engage in such spurious arguments." (R.T. 1093:22-27.)

As the day progressed, Mr. Swartz called Dr. Steven Gabaeff as a witness for the defense. Ms. Krause cross-examined Dr. Gabaeff regarding the victim's injuries and affirmed that he concluded there was no evidence the child was intentionally burned. Judge Healy interjected and asked the expert, "How can you render such a medical opinion? You weren't there. How do you know if something is intentional as opposed to accidental?" After Dr. Gabaeff explained that he reached his conclusion based on the evidence he reviewed, Judge Healy said, "No one saw anything either way. No one saw how he got burned, no one sauce [*sic*] if was [*sic*] intentional or accidental. [¶] You're being asked to render an opinion based on medical expertise, right?" Dr. Gabaeff said that he reviewed "medical, police reports." Judge Healy continued, "You're not here as a police expert, you're a medical expert[,]" asked about the doctor's medical expertise,

and, after hearing the expert identify the evidence he relied on to reach his determination, said the witness was "not allowed to do that." (R.T. 1200:4-27.)

The jury subsequently convicted Mr. Wilson of one count of torture and two counts of child abuse, and acquitted him of two counts of child abuse. He was sentenced to life in prison with the possibility of parole and his convictions were confirmed on appeal. The jury acquitted Ms. Davis of all charges.

In his response to the commission, Judge Healy denied that his remarks were improper. In his objections and at his appearance before the commission, Judge Healy acknowledged only that his remarks were "clumsy," "too casual," or "too quick." The commission determined that Judge Healy's conduct toward counsel, witnesses, and the public was discourteous, undignified, and gratuitous. The commission noted that the judge's numerous discourteous remarks directed toward Mr. Swartz, including telling him that he was "like a snake oil," and the judge's discourteous remarks directed towards the public defender's office, were particularly problematic in their cumulative effect and conveyed the appearance of bias. Further, the judge's remark to the members of the public that "unless folks just want everyone to be convicted right now," he would just cut to the chase, was discourteous and gave the appearance of prejudgment. The commission found that Judge Healy's conduct constituted poor demeanor, gave the appearance of bias and that he was aligned with the prosecution, and interfered with the attorney-client relationship, in violation of canons 3B(4), 3B(5), 3B(8), and 2A.

DISCIPLINE

In determining to issue this public admonishment, the commission considered Judge Healy's prior discipline to be a significantly aggravating factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(e).) In 2014, Judge Healy was publicly admonished for making demeaning remarks in multiple family law cases; becoming embroiled; and attempting to influence another judicial officer's handling of an arrest warrant. In 2020, Judge Healy received an

advisory letter for making discourteous comments to an expert witness during her testimony at trial and improperly interjecting his own questioning of the witness. The commission observed that, regardless of whether Judge Healy believed the expert witness was deficient, he was "still required by the Code of Judicial Ethics to display appropriate demeanor in court. Making discourteous remarks in open court is not an acceptable method of dealing with judicial frustration."

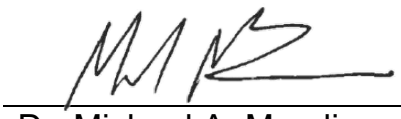
In that matter, the commission had deferred the imposition of discipline while Judge Healy participated in the commission's mentoring program. The judge's successful participation in the mentoring program significantly decreased the level of discipline.

In his objections and at his appearance before the commission, Judge Healy argued that the misconduct at issue here occurred in 2018 and 2019, he did not receive the advisory letter addressing his 2017 misconduct until 2020, and therefore the advisory letter could not be aggravating because it was issued after the misconduct at issue here occurred. The commission disagreed: at the time Judge Healy committed the misconduct at issue here, he had agreed to mentoring in order to improve his conduct. The commission concluded that the judge's misconduct was also significantly aggravated by the fact that it occurred while he was participating in the commission's mentoring program to address demeanor issues: the misconduct in *Williams* occurred eight months after Judge Healy began participating in the mentoring program, and the misconduct in *Davis* occurred after he had been in the mentoring program for almost one year.

The commission also considered Judge Healy's failure to fully appreciate his misconduct as an additional aggravating factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(a).) While Judge Healy admitted some of the misconduct here, the commission concluded that he continues to lack appreciation for the impropriety of his actions, even after being mentored and disciplined twice for similar misconduct.

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 impose the public admonishment. Commission member Mr. Eduardo De La Riva did not participate. One public member position was vacant.

Date: May 23, 2024



Dr. Michael A. Moodian
Chairperson