

## **PUBLIC ADMONISHMENT OF JUDGE TIMOTHY S. HEALY**

The Commission on Judicial Performance ordered Honorable Timothy S. Healy publicly admonished, pursuant to article VI, section 18(d) of the California Constitution and commission rule 113, as set forth in the following statement of facts and reasons found by the commission:

### **STATEMENT OF FACTS AND REASONS**

Judge Timothy S. Healy has been a judge of the Calaveras County Superior Court since 2015. His current term began in January 2021.

1. Between 2017 and 2023, Judge Healy engaged in numerous instances of poor demeanor, as specified below.

A. While presiding over the afternoon calendar on December 11, 2023, Judge Healy made discourteous, improper, and gratuitous remarks, at length, to the defendants, attorneys, and/or members of the public assembled in the courtroom regarding the judge's perception of an odor of marijuana. Judge Healy addressed everyone in the courtroom and said, "Whichever one of you reeks, you need a shower," or words to that effect. Court staff later determined that the source of the odor was a skunk in the court parking lot.

The commission found that Judge Healy's conduct constituted a failure to be patient, dignified, and courteous to litigants and others with whom the judge deals in an official capacity, in violation of canon 3B(4); a failure to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of canon 2A; and a failure to avoid impropriety and the appearance of impropriety in all of the judge's activities, in violation of canon 2.

B. On November 1, 2023, Judge Healy presided over a hearing in *People v. Carlos Ivan Osuna, et al.* (Nos. 23F8827A-D), a felony action in which four co-defendants were charged with grand theft, conspiracy, and bringing controlled substances into jail or prison. Shimshon Hasson, the alleged victim and owner of a cannabis farm, attended the hearing.

Earlier that morning, at the request of sheriff's deputies, Mr. Hasson had searched through cannabis plants on his farm for evidence related to the alleged crime. After arraigning the defendants, Judge Healy indicated he wanted to speak with counsel at the bench. Judge Healy made a comment, off the record, about what he perceived to be the smell of marijuana or cannabis in the courtroom. Deputy District Attorney (DDA) Jason Manning attempted to advise Judge Healy that Mr. Hasson may have smelled like cannabis because he was recently

searching through plants at his farm, at the sheriff's behest. Judge Healy said words to the effect of: that if Mr. Hasson smelled like marijuana, he could not return to court; that the smell Judge Healy perceived was unacceptable; and that Mr. Manning needed to work with the victim or have victim services work with the victim regarding the smell Judge Healy perceived.

After Judge Healy made his remarks to Mr. Manning, the judge went back on the record, stated that the alleged victim was present, and asked whether Mr. Hasson wanted to say anything "[b]ecause of what was going on." (R.T. 16:16-17.)

Mr. Hasson apologized for the smell, which he said he, himself, could not smell. Judge Healy said Mr. Hasson (as the alleged victim) had the right to speak under Marsy's Law. Mr. Hasson began to talk about the damage he asserted the defendants caused him.

Judge Healy briefly addressed Mr. Hasson's remark about damage, then pivoted to the issue of the smell. The following colloquy ensued.

THE COURT: Something you have to understand, within the context of the smell. My room smells bad now. I mean it smells[,] you have to understand, this isn't meant to be a conversation. I am making sure we put this on the record so that it's there. You smell of marijuana. I walked in to [*sic*] this room which is not a small room[,] and the marijuana caught my eye as I walked in, it became more and more overwhelming. The problem that most people who I think are growing marijuana don't understand is they don't smell it any more [*sic*]. So what they do is they go places thinking that everybody else is just, is used to it. And the problem is I know for a fact there are people in this society who are as allergic to that as they are to peanut butter. And frankly I am glad the one person I know who is really badly allergic to that isn't here. Because it would be a problem for them. And the fact of the matter is, this is our work space [*sic*]. And we don't have the pleasure of walking in and out and my staff doesn't, I had a little bit more control over what goes on in the room so I can take that break and I can step out, but it's really frustrating because frankly the smell is overwhelming and the hope is that I don't have to clean my clothes to get the smell out. I don't think I will. But I hope I don't. And the people who are sitting closer to you they might very well have to. And frankly it's not a smell

that every one [*sic*] likes. It's like perfume in that way. In the work place [*sic*] when one person wears too much perfume frankly they can be written up. They can get in trouble for that. Because it assaults the other person. I have -- it doesn't matter, it's not about me, but there are people like me who have very bad allergies and had to get shots so they can actually live[,] let alone breath [*sic*]. Right. Hundred years ago I wouldn't have made it in this facility. There's no way I would have. Because my allergies were horrible and I had to get modern technology to put me in a position where I could work and live within society, it was not, it was not fun --

THE WITNESS: -- I believe --

THE COURT: I know you understand, I know you are hearing me, I know you weren't trying to cause trouble when you came in, I know that. But the problem is you have to be more aware. And I would really appreciate it if you choose to come back[,] which you are welcome to do so, that you take care of that issue by frankly[,] and I am not trying to be rude[,] at least washing your clothes and changing, wearing clothes that do not have that smell because I have a feeling it would then be less overwhelming for the rest of us. Because I don't want to exclude you[;] that's the last thing I want to see done. You should have every right to be here for every minute of this case. And I want to ensure that but frankly it's an awful lot like COVID in the sense it becomes a health and safety issue for some people. And I can tell you I am not the only one being overwhelmed by that smell. [¶] So with that I appreciate your apology[,] I accept it, I don't want to speak for other people but I think everybody here appreciates the fact that that wasn't your goal to cause trouble[;] you want to be here because it's your right to attend this. And for everybody [*sic*]. [¶] So, while I can tell you I am not happy with the smell[,] I appreciate your apology again[,] I accept it, it's just it's overwhelming and it's tough. It just is. So thank you for allowing me that. Okay.

(R.T. 17:8-19:22.)

The commission determined that Judge Healy's conduct, in commenting, on the record and in open court, about his perception of an odor emanating from the

alleged victim in a criminal action, was discourteous and disparaging and conveyed the appearance of bias. Moreover, Judge Healy's comments, made on the record and in open court, were gratuitous, given that the judge had already conveyed his concerns to the deputy district attorney off the record. Judge Healy's remarks, including that he "had to get modern technology to put [him] in a position where [he] could work and live within society," gratuitously injected the judge's personal experience into the proceedings. The commission concluded that Judge Healy's conduct constituted a failure to perform his duties without bias or the appearance of bias, in violation of canon 3B(5), as well as a violation of canons 3B(4), 2A, and 2.

C. On February 10, 2020, Judge Healy presided over an arraignment in *People v. John Ueda* (No. 20F7850). DDA Milt Matchak appeared for the People. Judge Healy told the defendant, John Ueda, that the court would impose terms and conditions, including requiring the defendant to submit to random drug and alcohol testing, prohibiting him from consuming alcohol, and prohibiting him from being in any place where he knew alcohol was the primary item for sale. The judge then told Mr. Ueda, "Also, you must submit your person, your vehicle, your place of residence as to any area that you have under your control: backpack, car, storage unit, that sort of thing, that's to search anytime, day or night, with or without probable cause, a warrant, or your permission, and that's by a peace officer or probation officer, and that's going to be for alcohol. You're not to drive without a valid license and insurance. [¶] Is there any other term that the People are seeking?"

Mr. Matchak answered, "A search waiver for alcohol. We'd ask that since this is a felony and he does have a prior that there be a test waiver for alcohol. I'm sorry --"

Judge Healy interjected:

With all due respect, apparently you weren't listening. And I think maybe, just maybe you're not listening, because that's exactly what I said. I'm sorry, I just -- it's getting frustrated -- or getting frustrating for me to have to repeat every day multiple times the things that I tell everybody in this courtroom. I am not talking too fast, I am going just fine with speed, and I'm not talking so low that you can't hear me. I'm sorry, this is frustrating, but at the same time it's getting old.

So if everybody would please -- and this is for everyone, this isn't just one person, because

now it went way beyond that. It's getting old. I need for it to end. We need to move on. I don't ever want to have to say it again. I get it when there's times when we have problems hearing. Believe me, I get it. But we need to pay attention, because I literally said every single thing that you asked, I said it, and I said it loud enough that everybody in this room heard. So with that as far as I'm concerned we're done with that issue. So I'm done with it.

(R.T. 5:12-6:22.)

The commission determined that the judge's admonishment of Mr. Matchak was discourteous, and his remark that it was "getting frustrating for me to have to repeat every day multiple times the things that I tell everybody in this courtroom" was gratuitous and discourteous. Judge Healy's conduct constituted a violation of canons 3B(4), 3B(5), and 2A.

D. On October 19, 2018, Judge Healy presided over a hearing in *People v. Ernest Lee Provencio* (Nos. 18C18651, 18C18653, 18C18665). Attorney April Scott represented Mr. Provencio. DDA Milt Matchak appeared for the People. Christina Price, reportedly the victim of domestic violence perpetrated by Mr. Provencio, also attended the hearing. Judge Healy arraigned Mr. Provencio on his alleged probation violation, which entailed returning to Ms. Price's residence in violation of a restraining order. Judge Healy held an unreported conference at the bench at Ms. Scott's request, then asked Ms. Scott to put a statement on the record regarding the probation violation. Ms. Scott said, "As I expressed at bench that the victim in this case has been challenging in terms of either setting up a civil stand-by or even allowing a third party to pick up some belongings for Mr. Provencio so that he may not feel the need to return to the home without the police for that civil stand-by." This was Ms. Scott's only statement on the record regarding Ms. Price's actions, and there was no offer of proof or testimony about Ms. Price's alleged actions that made her "challenging."

Later in the hearing, the following exchange occurred:

THE COURT: Is Christina Price here? And Ms. Price okay so I want you to understand something. I have no jurisdiction over you. Okay? I ordered that he be given an opportunity to have a civil stand-by the first time. Okay. Then on the 16th I ordered that he have a civil stand-by so that he could [go]

back and get his toothbrush, so that he could go back and get his vehicle, so that he could go back and get some underwear. You have been less than cooperative. I would suggest that you change your attitude. And change your perspective on that. Okay. I get that you are afraid of him. I get that. I get that you are concerned. Because there have been some problems. No question. But that does not give you the right to take and keep his things, his items[,] his toothbrush, his clothes. Listen to me. Don't answer. Because right now that is what I am hearing. That he tried to have a civil stand-by and you refused. **That he tried through his attorney to try to get some of his things. And don't you dare tell me that she didn't. Because there is one person in this courtroom I trust more than anybody else whose [sic] an attorney. Ms. Scott. I will take her word over almost anybody's in this room. Period.**

That's the first time I have ever said that. Nobody has heard that. I believe her. [¶] She tried to reach you and talk with you. You told her something. And that turned out not to be true. Okay? So that you understand. There is a civil stand-by order in place. [Further explanation of civil stand-by omitted.]

Do you understand that?

MS. PRICE: Yes[,] I understand that.

(R.T. 6:5-7:18, emphasis added.)

Judge Healy's voice began to increase in volume when he said, "You have been less than cooperative . . . change your attitude," causing Ms. Price to look like she was about to cry. Ms. Price attempted to raise her hand and shook her head "no," causing the judge to instruct her, "Listen to me. Don't answer." Judge Healy's voice continued to increase in volume, and he began pointing at Ms. Price, giving the appearance he was angry with Ms. Price.

Mr. Matchak twice asked if Ms. Price could make a statement, and Judge Healy let her speak. She told Judge Healy that she was not trying to prevent Mr. Provencio from getting his things, but that she wanted a civil stand-by and for Mr. Provencio to be there so there would be no issue of something missing. Ms. Price said, "However, with his attorney going through this third party thing of him going and leaving his belongings at The Pantry on the 17th and telling me to pick them up and drop them off at a neighbor's is not going to happen." Ms. Price then said she could show on her phone that Ms. Scott had called her at 7:00 p.m. and asked her to "go pick these things up for him at said location at The Pantry in Valley Springs."

Ms. Scott interjected, "And I misunderstood. I thought he meant the pantry at the house. I didn't know there was a place called 'The Pantry.'" Judge Healy responded, "No. That's fine. And that happens. Misunderstandings happen all the time." Mr. Matchak then stated, "Your Honor[,] just in Ms. Price's defense, can it just be acknowledged that there was a mistake and she said, I mean she was asked to go to The Pantry and pick up stuff --," but Ms. Scott interrupted, and the judge did not respond to Mr. Matchak's request. Instead, the judge said that Ms. Scott was lawfully trying to help, and there was a "misunderstanding."

On October 23, 2018, Judge Healy presided over another hearing in the *Provencio* matter. He began the hearing by saying he made "some comments on the record" that "came out in a way that [he] did not intend to say" during the hearing the week before. The judge apologized for the "misunderstanding," and later apologized directly to Mr. Matchak and Ms. Price for doing "a horrible job of expressing" himself. The People subsequently filed a disqualification motion against Judge Healy for cause.

On November 7, 2018, the District Attorney filed a motion to disqualify Judge Healy for cause in an unrelated matter (*People v. Allen Dean Williams*) on the basis that he demonstrated bias in favor of Ms. Scott during the *Provencio* proceeding cited above. On November 14, 2018, Judge Healy filed a verified answer to the statement of disqualification in *People v. Williams*, in which, in reference to the October 19, 2018 *Provencio* hearing, he wrote:

Immediately after the hearing I realized that the statements made by me with regard to accepting the representation of defense attorney April Scott did not reflect what I had intended to say. Therefore, on October 23, 2018 when these cases were back on calendar I asked Ms. Scott and Deputy District Attorney Milt Matchak (along with all other attorneys present in the courtroom), into chambers. I

apologized to them and explained that I misspoke and did not mean to say I trusted the representation of April Scott over all other attorneys including Milt Matchak, I expressed I thought highly of Mr. Matchak and all of the attorneys in the District Attorney's Office, as well as all attorneys who appear before me.

The commission found the plain language of Judge Healy's statement that he trusted attorney April Scott "more than anybody else" in the courtroom gave the appearance of bias and favoritism. Additionally, the judge's remarks were discourteous toward the victim of a crime, and gave the appearance of bias against the victim. The commission determined that Judge Healy's conduct constituted allowing family, social, political, or other relationships to influence the judge's judicial conduct or judgment, or conveying or permitting others to convey the impression that any individual is in a special position to influence the judge, in violation of canon 2B(1); and a violation of canons 3B(4), 3B(5), and 2A.

E. On October 15, 2018, before the 1:30 p.m. family law calendar began, attorney April Scott told court staff in Judge David M. Sanders's courtroom that she would be appearing on matters in both Courtroom 1 (Judge Healy's courtroom) and Courtroom 2 (Judge Sanders's courtroom) and requested that staff in Courtroom 2 notify her when she was needed there. At approximately 2:00 p.m., at Judge Sanders's request, court clerk Janet Rader emailed Judge Healy's clerk, Charles Frye, to request Ms. Scott's presence in Courtroom 2. Ms. Rader did not receive a response. Judge Sanders asked Ms. Rader to send another email around 2:15 p.m., which she did. Judge Healy became angry because Ms. Rader, at the direction of Judge Sanders, emailed his clerk to request Ms. Scott's presence. Judge Healy made a sarcastic remark, in front of other court staff, to the effect that his courtroom was not Ms. Rader's to dictate.

The commission concluded that Judge Healy's sarcastic remark regarding a clerk, made in the presence of other court staff, constituted a failure to diligently discharge his administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary, in violation of canon 3C(1); a failure to maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business, in violation of canon 3C(2); and a violation of canons 2 and 2A.

F. On March 23, 2018, Judge Healy presided over a trial readiness conference in *People v. Dane Lee Tonies* (No. 17F7141). During the proceedings, Judge Healy said, "Just a moment, please. Who is making that noise? Who's popping their mouth? That's a noise that is very distinctive[,] and it's also very, very

annoying to the court. If I hear it again, I'm going to ask the person who made it be excluded from the court and not be allowed back in. [¶] I don't know who -- who's making that noise. My kids might have done that, an adult should be ashamed of themselves for doing that sort of thing in a courtroom. [¶] If I hear it again, there's going to be a problem." (R.T. 7:6-16.)

The commission found that Judge Healy's admonishment was undignified and gratuitous, and constituted a violation of canons 2A and 3B(4).

G. Later in the day on March 23, 2018, Judge Healy presided over a pretrial conference in *People v. Sean Alexander Jusa* (No. 17C18146). Part way through the proceedings, the judge said:

THE COURT: (Addressing an unidentified person in the audience) Is that expected to happen again? Is that expected to happen again? Sir?

AN UNIDENTIFIED VOICE IN THE AUDIENCE: I was sitting there.

THE COURT: Is that expected to happen again?

AN UNIDENTIFIED VOICE IN THE AUDIENCE: No.

THE COURT: All right. Do you recognize how rude that was?

AN UNIDENTIFIED VOICE IN THE AUDIENCE: I didn't know, I was praying.

THE COURT: Okay. I've never seen anybody pray like that. This is not a house of worship, not a place where anyone would be expected to pray. You aren't on your knees. I'm doing that for the record, so the record understands, that I'm sitting in the courtroom, you had your head down. I accept that, but that noise that you made.

AN UNIDENTIFIED VOICE IN THE AUDIENCE: I didn't mean to.

THE COURT: Was that you making the noise?

AN UNIDENTIFIED VOICE IN THE AUDIENCE: Yes.

THE COURT: That noise was not associated in any way, shape or form with any type of religion that I'm aware of that asks or suggests or has a tradition of prayer, and so I thought it was rude and inappropriate, and if it happens again, I'll be asking you to leave the room.

AN UNIDENTIFIED VOICE IN THE AUDIENCE: Okay.

THE COURT: The reason why that's so rude is because it really puts me in a position to completely get out of where I was and now I have to -- really, it's disturbing in that it really interferes with what goes on in the courtroom.

(R.T. 9:1-10:9.)

The commission determined that Judge Healy's remarks were discourteous and gratuitous, and constituted a violation of canons 3B(4) and 2A.

H. On January 18, 2018, Judge Healy presided over a court trial/change of plea hearing in *People v. Edward Oliver* (No. 17F7047). At 9:02 a.m., Judge Healy went on the record to inquire as to the location of the then-prosecutor, Traci Witry. The bailiff determined that Ms. Witry was in a conference room near the courtroom, and Ms. Witry then entered the courtroom. In front of witnesses in the courtroom, Judge Healy said, in a raised voice, "9 o'clock means 9 o'clock. We're here for trial. If you're not in the courtroom -- if you're not in the courtroom, you're not here. 9 o'clock means 9 o'clock, thank you. That will be the last time I say that." Ms. Witry responded, "I'm sorry, Your Honor, we were outside in the room, I apologize." Judge Healy replied, "Fair enough, but nobody knew where you were. So, what needs to happen is, Ms. Witry, let us know, we'll get you, but I had him call to see if you were in the building because nobody told us where you were." Ms. Witry again apologized. Judge Healy continued, "Like I said, 9 o'clock is 9 o'clock. I'm done, we don't need to talk about it anymore, I said it."

(R.T. 2:4-3:3.)

The commission determined that Judge Healy's remarks were disparaging, demeaning, gratuitous, and disproportionate to the two-minute delay in proceedings. The judge's conduct constituted a violation of canons 3B(4), 3B(5), and 2A.

I. On December 15, 2017, Judge Healy presided over a confidential juvenile detention hearing in *In re N.R.* (case number omitted). The father appeared; the mother did not. After deputy county counsel expressed concerns regarding the parents' alleged substance abuse, Judge Healy directed the following remarks to the father:

...[The Child Welfare Agency] believe[s] there is a threat because apparently [NR] was born premature, also born if I remember reading what I read correctly he was born needing a blood transfusion because of the [h]eroin and all the different drugs that were in his system and please don't shake your head no, because I don't want to hear that. [¶] You have to understand children, unborn babies should never be subject to what this child is subject to okay. Never. [¶] And I don't want to -- I don't want to pretend, I don't want to get angry either because it is frustrating for me as a father to see this. And as a former prosecutor I saw it all the time as well....

(R.T. 5:15-6:2.)

The father attempted to clarify that he had not been drug tested. Judge Healy replied that the mother had tested positive for "[h]eroin, methadone, opiates those sorts of things." The judge continued, "I think at some point in time since [the mother] has been having methamphetamine in her system[,] and she is trying to breastfeed that child. You have to understand. That is something that any person who knows what is going on would stop. That means you." The father responded, "I am not happy about that either." Judge Healy said:

It's not about being happy or not being happy. Because quite frankly what did you do. Did you call the police and have her arrested for child endangerment and the answer is no. So therefore, therefore, you have to understand, therefore, the way people look at that, is that you are not doing your job, you are allowing

your child to be exposed to that danger and that in and of itself is reason for us to be here. You have to understand that. And since you are not listening[,] that is a problem.

(R.T. 11:20-12:4.)

The father said he was not a drug user. Judge Healy replied, “[W]hat I am reading is that [the mother] is trying to breastfeed the child and she is testing positive for methamphetamine, and for [h]eroin or and [sic] methadone and further opiates. I am sorry. But that’s just crazy. You know, that -- there are so many better ways to treat a child then [sic] to present the child in life and try to start it out with the inability to ever reach its full potential because you decided you couldn’t control yourself. And I am not talking you. I am talking anybody in general.”

(R.T. 13:17-14:1.)

The commission determined that Judge Healy’s remarks, such as admonishing a father, “You are not doing your job,” “Since you are not listening that’s a problem,” and “You decided you couldn’t control yourself,” and referring to the mother’s alleged conduct as “just crazy,” were discourteous and gave the appearance of bias and prejudgment. Judge Healy’s conduct constituted a violation of canons 2A, 3B(4), and 3B(5).

J. On December 14, 2017, Judge Healy presided over a confidential juvenile detention hearing in *In re B.M.* (case number omitted). After Judge Healy called the matter, David Singer, the attorney for the father, noted the father was not present. Judge Healy said, “And do we know where he is?” Mr. Singer responded that he had not had contact with his client since the last court date. The mother said, “He’s at home.” Judge Healy replied, “All right. So ma’am, I didn’t ask you, I don’t want to hear from you. I apologize I am not in a good mood today, it’s not your fault but I’m just not in a really good mood, so when you are not spoken to, don’t answer for somebody else. It’s that simple.” (R.T. 3:21-4:4.)

Later in the hearing, the mother’s attorney suggested that the judge would want to hear directly from the mother regarding her understanding of a proposed drug treatment plan. Judge Healy said, “Right. I apologize earlier I was a little short but at the same time I tried to offer my explanation.” The mother apologized. Judge Healy said, “I should not bring it in here.” (R.T. 7:19-7:23.)

The commission determined that the judge’s remarks were discourteous and gave the appearance of bias, in violation of canons 2A, 3B(4), and 3B(5).

K. On November 30, 2017, Judge Healy presided over a hearing in the confidential juvenile delinquency matter of *In re D.R.* (case number omitted). After

requesting biographical information from the minor, the judge asked DR about his favorite class. DR replied, "Science." Upon learning DR had studied biology, the following colloquy occurred.

THE COURT: Did you guys cut up any animals?

THE MINOR: Exactly, no.

THE COURT: Did you opt out of that?

THE MINOR: No. It's not a normal, like, biology class.

THE COURT: Oh, it isn't. Okay. Because when I was in high school we had to do biology, and I got in trouble because I couldn't stand looking at those dead frogs. Sorry, but, yeah, I couldn't do that. And then the sharks -- this was an advanced class -- the sharks, they had little sharks that we cut up. And I couldn't handle formaldehyde, so I just took the grade I got and went on.

But, anyway, okay. Well in science what was your favorite -- what were some of the things you learned last that you really liked that really kind of made you think?

THE MINOR: Probably how the way the human body works within the anatomy.

THE COURT: It's crazy. It's crazy how our bodies work. I say that, and I don't mean to be silly, but you are absolutely right in the sense that there's so much going on and things change for so little reason. Does that make sense? It's like we're a big old bag of chemicals [*sic*] reactions right, and if you introduce new chemicals or food, or lack of food or chemicals, it's crazy how our body works. My wife had leukemia.

THE MINOR: I'm sorry.

THE COURT: And her form of leukemia was such that it was very difficult, very rapid. She was able to get a bone marrow transplant. And so what they did is they gave her the stem cells. They don't go into your bone now and hip and take the bone marrow out like they used to when I was young. They are able to give you drugs that cause your bone marrow to start producing extra bone marrow and then they would go in and they would take that out. And then as an adult -- this would be an adult. Let's do this off the record.

(Discussion held off the record.)

THE COURT: Back on the record. What else do we need to do? I apologize for--

PROBATION OFFICER: Set dispo.

(R.T. 5:18-7:10.)

The commission determined that Judge Healy improperly interjected his personal experience into DR's case, which gave the appearance of a lack of impartiality. The judge's conduct constituted a failure to dispose of all judicial matters fairly, promptly, and efficiently, in violation of canon 3B(8), and a violation of canon 2A.

2. Judge Healy visited, at juvenile hall, a represented minor who had a matter pending before him. Judge Healy presided over confidential juvenile delinquency proceedings in *In re M.H.* (case number omitted). Attorney Tony Salazar represented the minor. At a hearing on November 16, 2017, MH and his brother sought temporary release to attend another brother's funeral services outside of the area. While contemplating MH's request, Judge Healy remarked, "Is this really the time I want you out exposed or being able to get out and go and find somebody who can just you know make you feel better by giving you just a little bit of crack, a little bit of meth[,] a little bit of marijuana to make you feel better right, because it is self medication, right[?]" The judge continued by saying that the probation department "[d]oesn't have anybody to go with you the whole time and sit by your side and quite frankly for lack of a better term babysit you."

(R.T. 14:17-15:4.)

After indicating he intended to allow MH to go to the funeral services, Judge Healy said:

There are going to be some restrictions. Okay? You will lose any chance of any kind of trust with me forever. For ever [sic]. If you use while you are out because when you are -- when you get back you are going to be tested. You have to understand this is not ramifications just for you. The consequences are extensive. Consequences are going to go beyond what you think they are. First, this is something between me and you forever. Okay. Now that may or may not mean anything to you. But it means something to me. A lot. Because the consequences are going to extend to your whole family. Okay. Anybody under age [sic], any minor that is living in your house this is probably going to effect [sic] them. Okay. Because if you use or get your brother to use while you are out, either one of you use because you are both going to be tested. Okay. How do you think this is going to effect [sic] what they have going on at CPS. Okay. It effects [sic] your brother. It effects [sic] every minor in the household.

(R.T. 25:18-26:11.)

The parties returned to court for a jurisdictional setting hearing on December 7, 2017. At the outset of the hearing, the judge advised the parties, on the record, that he recently visited with MH at juvenile hall. Judge Healy said:

I got to see [MH] yesterday. I was out at the facility. I took a look at the place. That's one of the responsibilities that we have, and I hadn't frankly been able to since I've been here. And yesterday just worked out that it was a good day for me to be able to do that.

And I did get to see [MH] and talk to him. And I told him nothing about the case. We don't talk about the case. But I told him how proud I was of him and how grateful and thankful I was that he -- he really did something that I think ultimately was for future purposes not just right

now. But there's a right now, but there's also -- really it helped, because I really knew, and I wanted to impress upon [MH] before, that this was -- could be a make-or-break moment for him with me.

It could have been -- if it had gone the other way, it would have been very difficult for [MH] to have bridged that level of trust or reached that level of trust. Now we're both working towards the other side, you know, more trust and frankly and more [*sic*]. So anyway I just wanted to say that. So thank you, [MH].

(R.T. 2:17-3:14.)

MH replied, "You're welcome." Judge Healy responded, "I appreciate it." As proceedings progressed, Judge Healy reiterated that he was proud of how it worked out. Judge Healy subsequently accepted MH's plea and set a disposition hearing.

Canon 3B(7) mandates that judges shall not "initiate, permit or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications." An ex parte communication violates canon 3B(7) even if it is not prejudicial. (Rothman, et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 5.1, p. 257.)

In his response to the commission, Judge Healy conceded discussing with MH, at juvenile hall, that he was proud of the minor for "making it back from" his trip "without any issues" and "follow[ing]" the court's "prescri[ption]." The commission concluded that, since the hearing that preceded this ex parte discussion was directly related to MH's request for temporary release, and no intervening proceedings had been held or reports from probation presented to the court prior to that discussion, Judge Healy engaged in impermissible ex parte communication. Moreover, Judge Healy's visit with MH at juvenile hall gave the appearance of impropriety, as the judge, who had yet to hold sentencing or dispositional hearings, initiated a conversation about matters related to the pending juvenile case. The commission found that Judge Healy's visit violated MH's fundamental right to counsel and, further, gave the appearance of embroilment. The commission concluded that Judge Healy's extended remarks (such as telling MH "You will lose any chance of any kind of trust with me forever," "This is something between me and you forever," and that MH's actions would affect "every minor in the household") also gave the appearance of embroilment.

The commission determined that Judge Healy's conduct constituted a failure to avoid initiating, permitting, or considering ex parte communications, in violation of canon 3B(7); and a violation of canons 3B(5), 2A, and 2.

3. During calendar sessions, Judge Healy engaged in extended sidebars with attorneys to discuss personal matters. Around December 2019, for example, Judge Healy engaged in a 20- to 25-minute conversation with attorney Brian Ochoa Chavez regarding youth baseball, during a calendar session when staff and members of the public were in the courtroom.

The commission concluded that Judge Healy's conduct constituted a failure to give precedence to judicial duties prescribed by law over all other activities, in violation of canon 3A; and a violation of canons 3B(2), 3B(4), 3B(5), and 2A.

4. Judge Healy improperly discussed politics on the bench. On the morning of February 8, 2018, before the calendar began, Judge Healy, in street clothes, engaged in a discussion, from the bench, with DDA Brad Jones, DDA Jonna Speelman, and defense attorney April Scott about partisan politics. The judge said it was difficult to be a Republican in California and voiced his dislike for then-Governor Jerry Brown. Judge Healy continued talking about his personal political views after the defendant entered the courtroom, and stopped when he received a call on his cell phone.

In his response to the commission, Judge Healy stated that he had believed it was not inappropriate to have casual conversations with counsel before proceedings commenced, and that he had believed those conversations were private. The commission determined that Judge Healy's conduct constituted a violation of canons 2 and 2A.

5. On December 12, 2017, while presiding over an afternoon juvenile dependency calendar with detention hearings, disposition hearings, review hearings, and/or readiness conferences scheduled in 20 cases, Judge Healy left the courtroom, and the courthouse, for almost 25 minutes to attend to a personal obligation, before returning to conclude hearing the remaining matters on his calendar.

In his response to the commission, Judge Healy indicated he had likely left the courthouse to pick up one of his children from school because he had been unable to arrange for alternative transportation. The commission determined that Judge Healy's conduct constituted a failure to conduct all extrajudicial activities so that they do not interfere with the proper performance of judicial duties, in violation of canon 4A(3); and a violation of canons 3A, 3B(4), 3B(8), and 2.

6. On May 4, 2021, Commissioner Traci Witry presided over a sentencing hearing in *People v. Roman Coronado Lopez* (No. 19F7802). Defendant Roman Lopez, who was in custody at the time, required the assistance of a Spanish interpreter. A local interpreter was not available, so an interpreter had traveled from another county for Mr. Lopez’s court date. Defense counsel declined to stipulate to a commissioner presiding over the matter. Commissioner Witry paused the proceedings, then left the courtroom to speak with Judge Healy and request that Judge Healy step in to preside. Judge Healy declined to do so because he was attending a voluntary remote training, though the commissioner approached him during a break in the training. Commissioner Witry then returned to the courtroom and continued the matter to June 15, 2021.

The commission recognized the importance of judicial training, but noted that, in a court with only two judges, prioritizing judicial duties over voluntary commitments is of particular importance. The commission found that, by declining to preside over proceedings, Judge Healy violated canons 3C(1), 3C(2), and 2A.

7. Judge Healy prevented the proper exercise of, and erroneously denied, peremptory challenges filed under section 170.6 of the Code of Civil Procedure, reflecting an abuse of authority and a lack of competence in the law, as follows.

At a hearing on January 29, 2018, in *People v. Brandon Louis Shoffner* (No. 18F7248), Judge Healy accepted an oral peremptory challenge filed by defense counsel, but nonetheless set a pre-preliminary hearing to be heard by himself on February 5, 2018. At the hearing on February 5, 2018, Judge Healy stated that he could preside over the preliminary hearing even though a peremptory challenge was filed.

On May 22, 2018, defense counsel filed a peremptory challenge against Judge Healy in another matter involving Brandon Shoffner, *People v. Shoffner* (No. 18F7314). Judge Healy nonetheless set and subsequently presided over continued arraignment/preliminary hearing settings on May 25 and May 29, 2018, before continuing the matter to be heard by another judge.

On February 23, 2018, in *People v. Jarrod Adam Witcher* (No. 18F7250), Judge Healy accepted a peremptory challenge and nonetheless set the matter for a pre-preliminary hearing on February 26, 2018, to be heard by him.

During a hearing on May 1, 2018, the judge said a disqualification motion filed against him in *People v. Michael Stevens Ribeira* (No. 18F7301) was untimely because it was not filed within five days of the hearing, and cited the “10/5-day rule” as one of two bases for denying the pretrial peremptory challenge, in violation of the statute. Judge Healy also incorrectly applied the 10/5-day rule, in denying a

peremptory challenge, at a pre-preliminary hearing in *People v. Stephen Thomas Belt* (No. 18F7292) on or around May 7, 2018.

Litigants have a statutory right to file a peremptory challenge of a judge, so long as the challenge is timely, and the judge has not made a determination of contested fact issues relating to the merits. (Code Civ. Proc., § 170.6, subd. (a)(2).) The “10/5-day rule” provides that, if the identity of the judge is known at least 10 days prior to the date of the hearing or trial, the peremptory challenge must be made at least five days before the trial or hearing date. (*Ibid.*) Upon the timely filing of a peremptory challenge, the court is divested of jurisdiction, and the judge must immediately transfer the case to the supervising master calendar for reassignment. (Code Civ. Proc., § 170.6, subd. (a)(4).)

In his response to the commission, Judge Healy stated that it was his understanding that, after peremptory challenges were filed against him, he could preside over arraignments, preliminary hearing settings/pre-preliminary hearings, and preliminary hearings, so long as he was not ruling on anything that would be the law of the case or ultimate issues related to guilt or innocence. The judge recognized that he was incorrect in his analysis under the 10/5-day rule.

The commission determined that Judge Healy improperly set further proceedings to be heard by himself after being disqualified, improperly remarked that he could preside over a preliminary hearing after being disqualified, and incorrectly applied the 10/5-day rule. The commission concluded that the judge’s conduct reflected an abuse of authority, and did not constitute mere legal error. Judge Healy’s conduct constituted a failure to uphold the integrity and independence of the judiciary, in violation of canon 1; a failure to be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and failure to maintain professional competence in the law, in violation of canon 3B(2); and a violation of canons 2A and 2.

8. Judge Healy made improper comments about peremptory challenges that gave the appearance he intended to dissuade attorneys from exercising their statutory right to file those challenges in the following cases:

- On April 26, 2019, Judge Healy presided over a hearing in *People v. Jeremy Vernon David Costa* (No. 16C17789). Defense attorney April Scott represented Mr. Costa, and DDA Brad Jones represented the People. The defendant had been arrested on a warrant and was in custody. Ms. Scott requested the defendant be released on his own recognizance, and said she guessed the parties would not be back in court until July or August 2019 because a disqualification challenge had been filed. Mr. Jones requested bail between \$5,000-10,000, citing the

defendant's prior failures to appear, criminal history, and number of offenses. Judge Healy replied that the People had made clear their objection to the court releasing Mr. Costa and that he was not going to keep Mr. Costa in custody for three months until the matter was heard again. Judge Healy said, "I understand but I don't know how I am supposed to do that, we have conflict dates that are set, and I understand from the People's perspective, I will refrain from saying the next thing because I'm not in control of that, somebody else is so because of that I'm simply reacting and doing what I can to make sure the court moves forward."

- At an arraignment on April 9, 2019, in *People v. Savannah Sue Schneider* (Nos. 19C18846, 16T2110), Judge Healy said, "Not that I'm requesting 170.6s, because I think it's a waste."
- On April 11, 2019, a disqualification challenge was filed against Judge Healy in *People v. Enrique Toribio Ponce* (No. 18C18567). On or around June 21, 2019, Judge Healy presided over a trial readiness conference in the matter, though the peremptory challenge had been filed and accepted two months before. In an off-the-record exchange, Judge Healy — while repeatedly noting his disqualification — told the parties the court may not be able to find a judge to hear the matter.
- At an arraignment on April 25, 2019, in *People v. Jessica England* (No. 18C18731), Judge Healy said, "We're not gonna take a plea, which is too bad, but they have the right to DQ me . . . We are not going to keep her in custody until July 9, that's for sure."
- At a hearing on or around May 6, 2019, in *People v. Amos Leroy Kladt* (Nos. 13F6045, 16T21012), Judge Healy said, "On the 16T matter a disqualification subsequent to our conversation about when we could put this case on was filed, which is a little disappointing but at the same time that's the right of the People to file 170.6s regardless of the discussion we have in court about cases and when we can and cannot hear them."

In his response to the commission, Judge Healy acknowledged commenting on disqualification challenges, out of frustration. He stated that, at that time, he was dealing with a high volume of peremptory challenges against him, which caused significant logistical issues. The commission determined that Judge Healy's conduct constituted a violation of canons 3B(2), 2A, 2, and 1.

\* \* \*

Judge Healy's conduct, as set forth in numbers one through eight, above, constituted, at a minimum, improper action.

In determining to issue this public admonishment, the commission considered in aggravation that some of the judge's misconduct occurred while he was participating in the commission's mentoring program to address demeanor issues.

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 Tapia voted for the Notice of Tentative Public Admonishment. Commission member Mr. Eduardo De la Riva did not participate. One public member position was vacant.

Date: July 16, 2024