

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE SUSAN L. GREENBERG

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Susan L. Greenberg, a judge of the San Mateo County Superior Court since 2014. Her current term began in 2021. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, Judge Greenberg and her attorney, David S. McMonigle, appeared before the commission on August 28, 2024, to contest the imposition of a tentative public admonishment issued on April 2, 2024. Judge Greenberg waived her 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 Greenberg and her 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.

Judge Greenberg abused her authority and disregarded a civil litigant's fundamental rights by denying the litigant the right to be heard at a civil harassment restraining order (CHRO) hearing even though the litigant was present and ready to proceed.

On June 14, 2022, Judge Greenberg presided over a CHRO hearing in *Andrea Lopez v. Henry Chicas*, No. 22-CIV-02096. Judge Leland S. Davis, III, who handled the June 14, 2022 master calendar, called the *Lopez* matter at 9:00 a.m. in Department 2H. Henry Chicas and his attorney, Diana Passadori, were not present when Judge Davis called the matter. Judge Davis transferred the matter to Judge Greenberg, in Department 2B, to handle the CHRO hearing.

When Judge Greenberg called the *Lopez* matter, Mr. Chicas and Ms. Passadori were present in the courtroom and prepared to participate in the hearing. The following exchange occurred.

MS. PASSADORI: Good morning, Your Honor. Diana Passadori appearing with Mr. Chicas. He is present in court.

THE COURT: Good morning, Ms. Passadori. [¶] And, unfortunately, I was informed that at nine o'clock when this case was called in front of the presiding judge, Judge Davis, the only party that was present was the petitioner, Ms. Villalta Lopez, and that you did not arrive until 9:32 this morning. [¶] So[,] your client will not be permitted to be part of the proceedings this morning as not having timely appeared. [¶] And, Ms. Villalta Lopez, would you please stand and raise your right hand to be sworn.

MS. PASSADORI: Your Honor, if I may be heard on that matter.

THE COURT: In just a moment.

(R.T. 4:21–5:10.)

After the clerk swore in Ms. Lopez, Judge Greenberg allowed Ms. Passadori to be heard. Ms. Passadori told Judge Greenberg that Mr. Chicas had been waiting outside Department 2H because he was not sure if he was permitted to enter the courtroom, due to COVID restrictions. Ms. Passadori said that she was not present in Department 2H at 9:00 a.m. because she had five pretrials that started at 8:30 a.m. before a different judicial officer. Ms. Passadori stated that she was late because she allowed a colleague, who had a 9:00 a.m. trial with Judge Davis, to go ahead of her. Judge Greenberg then stated, "I understand. Thank you so much." (R.T. 6:9.)

Judge Greenberg then conducted a “prove-up” hearing.¹ She asked Ms. Lopez for any changed or new information between May 24, 2022, and June 14, 2022. Ms. Lopez described a violation of the temporary restraining order (TRO) that occurred on June 8, 2022, and stated she had a police report. Following the colloquy with Ms. Lopez, the following exchange with Ms. Passadori occurred.

THE COURT: . . . Okay. So[,] as I stated earlier, Judge Davis was very clear that this is a prove-up; that there was no timely appearance by the respondent. [¶] So[,] based on the testimony of the petitioner today in court, I am going to make an order for a permanent restraining order. It will be identical --

MS. PASSADORI: Your Honor, if I could please interject.

THE COURT: You cannot. I’m sorry, Ms. Passadori. Judge Davis was very clear. I completely understand what you went through this morning. You did not call that department. You did not notify them that you were not going to be on time. That’s absolutely unacceptable.

MS. PASSADORI: Your Honor, I asked my colleague, Ms. Keith, who was going to the same department, Judge Davis’s department. [¶] Your Honor, there’s a lot of testimony that this Court needs to consider that completely contradicts and undermines the credibility of this petitioner.

THE COURT: I understand. That’s not going to happen this morning. [¶] So[,] I will continue with my orders that I am issuing.

MS. PASSADORI: Your Honor, may I ask for a continuance?

THE COURT: That request is denied.

(R.T. 7:12–8:10.)

¹ A “prove-up” hearing is a short hearing conducted in the respondent’s absence (after proper notice) in which the petitioner must present evidence to show that their petition has factual support.

Judge Greenberg issued a permanent CHRO that was substantively identical to the TRO issued on May 24, 2022, which prevented Mr. Chicas from having any contact with Ms. Lopez. The CHRO also included a 100-yard stay-away order, with an exception for Mr. Chicas's residence, which was three to four blocks away from Ms. Lopez's residence.

Although Mr. Chicas was present in the courtroom, Judge Greenberg did not allow him to present any evidence or participate in the hearing.

Ms. Passadori objected in the following exchange.

MS. PASSADORI: Your Honor, this is a grave injustice to make Mr. Chicas come to court --

THE COURT: Our hearing is over, Ms. Passadori. You're welcome to take this up with the presiding judge --

MS. PASSADORI: I will do that, Your Honor.

THE COURT: -- or whoever else you want to.

(R.T. 10:19–24.)

The law concerning CHRO hearings is clear. “At the hearing, the judge *shall* receive any testimony that is relevant, and may make an independent inquiry.” (Code Civ. Proc., § 527.6, subd. (i), italics added.)² The court may not deny a party the opportunity to present oral testimony. (See *Schraer v. Berkeley Prop. Owners' Ass'n* (1989) 207 Cal.App.3d 719, 730–733.) “Both sides may offer evidence by deposition, affidavit, or oral testimony, and the court must receive this evidence, subject only to reasonable limitations necessary to preserve the expeditious nature of the harassment procedure.” (California Judges Benchguides, Benchguide 20, Orders Prohibiting Civil Harassment and Workplace/Postsecondary School Violence, § 20.13, pp. 20–12.)

² All future statutory references are to the Code of Civil Procedure, unless otherwise indicated.

Mr. Chicas appealed Judge Greenberg's order granting Ms. Lopez a CHRO against him. The Court of Appeal found that Judge Greenberg erred by denying Mr. Chicas the ability to present relevant testimony as required by section 527.6. (*Lopez v. Chicas* (May 11, 2023, A165476) [nonpub. opn.].) The Court of Appeal concluded that Judge Greenberg had abused her discretion and reversed the permanent restraining order, stating:

Contrary to the express requirements of section 527.6, the trial court expressly refused to allow Chicas to participate in the hearing as he was not allowed to proffer relevant testimony and not allowed to cross-examine Lopez. Chicas and his attorney were both present in the courtroom at the time of the hearing, and counsel implored the court that there was significant and salient testimony the court needed to consider that she averred contradicted and undermined Lopez's credibility. In allowing Lopez to testify as to the veracity of her petition while depriving Chicas of his right to defend, the court neglected the statutory safeguards the Legislature built into the statute.

(*Id.* at pp. 7–8.)

Judge Greenberg erred in denying Mr. Chicas the opportunity to testify or present any evidence at the hearing. In *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, the California Supreme Court held that discipline may be based on perceived legal error if it clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty. (*Id.* at p. 398, citing *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 849–54 and *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 695–698, respectively.)

The commission concluded that this was not a matter of mere erroneous determination of legal issues, but that Judge Greenberg abused her authority and discretion in a manner that went beyond mere legal error and resulted in a

disregard of fundamental rights. As Rothman states: “A judge is expected to know the law and follow it, particularly with respect to an individual’s fundamental rights. A judge cannot act with ‘reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge’s prescribed power.’ ” (Rothman, et al., Cal. Judicial Handbook (4th ed. 2017) at § 3:48, p. 198, citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1092.) The commission concluded that denying Mr. Chicas an opportunity to defend himself disregarded his right to due process and rendered the CHRO hearing fundamentally unfair. Judge Greenberg, particularly given the clear language of section 527.6, should have known that denying a litigant who is present and ready to present testimony the opportunity to be heard implicates due process concerns and that “[n]o reasonable or reasonably competent judge would assume or conclude that he or she could” issue a restraining order under those circumstances. (*Public Admonishment of Judge Iles* (2006) p. 4.) Judge Greenberg’s conduct also gave the appearance of bias and retaliation against Mr. Chicas for his attorney’s actions in being late to court, which was a purpose other than the faithful discharge of her judicial duty.

In her response to the commission’s preliminary investigation letter, Judge Greenberg asserted that it was “her understanding” that Judge Davis “had already conducted the [CHRO hearing] that morning and referred the matter to her to conduct a [prove-up hearing].” Thus, she “did not think it was appropriate to accept evidence under Section 527.6 and render Judge Davis’[s] orders that morning null and void.” The minute order and register of actions of the proceedings before Judge Davis, however, do not reflect that Judge Davis conducted a hearing or issued any orders, rather it appears from the minute orders that Judge Davis called the case and assigned the hearing to Judge Greenberg. No default had been entered.

At her appearance before the commission, Judge Greenberg—for the first time—indicated that Judge Davis had told her that the respondent had failed to

appear, it was therefore a default proceeding, and instructed her that, even if the respondent appeared in her courtroom, she was not to allow any testimony from the respondent. First, the commission does not consider new evidence at an appearance, absent certain circumstances not present here.³ Further, no matter what Judge Davis communicated to Judge Greenberg, when Mr. Chicas and his attorney appeared in her courtroom for the hearing, she had an independent duty to decide the facts and apply the law, which here required her to “receive any testimony that is relevant.” (Section 527.6(i).)

Canon 3B(7) requires judges to accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the full right to be heard according to law; and not to abrogate the responsibility personally to decide a matter. Canon 3B(8) requires judges to dispose of all judicial matters fairly, promptly, and efficiently, and to manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law. Judge Greenberg violated canons 3B(7) and 3B(8) by denying Mr. Chicas a full right to be heard and denying him an opportunity to have his matter fairly adjudicated in accordance with section 527.6. Judge Greenberg also violated canon 3B(7) by abrogating her responsibility to decide the matter.

Canon 3B(2) requires judges to be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and to maintain professional competence in the law. Canon 2A also requires judges to respect and comply with the law. By violating section 527.6 and Mr. Chicas’s due process rights,

³ Commission on Judicial Performance, rule 116(b) provides that factual representations not previously presented to the commission during the preliminary investigation will not be considered unless it is shown that the new factual information is either: (1) (a) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (b) could not have been discovered and presented to the commission with reasonable diligence during the preliminary investigation, (2) offered to correct an error of fact in the notice of tentative public admonishment, or (3) necessary to prevent a miscarriage of justice.

Judge Greenberg failed to be faithful to the law and to maintain professional competence in the law, in violation of canon 3B(2) and 2A.

Canon 3B(5) requires judges to perform judicial duties without bias or prejudice, and to not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice. Judge Greenberg's comments about not allowing Mr. Chicas to present evidence because his attorney was late, and had not notified the court that she would be late, reflected the appearance of bias and retaliation, in violation of canon 3B(5). Judge Greenberg's conduct also violated canons 2 (duty to avoid impropriety and the appearance of impropriety in all of the judge's activities), and 2A (duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

The judge's conduct, at a minimum, constituted improper action.

In determining to impose this public admonishment, the commission considered Judge Greenberg's prior discipline to be a significantly aggravating factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(e).) In 2017, the commission privately admonished Judge Greenberg for failing to disclose campaign contributions from two attorneys appearing before her, and in a family law matter, appointing a guardian ad litem (GAL)—one of the attorneys who contributed to the judge's campaign—without providing the litigant notice and an opportunity to review and object to a proposed order. In that matter, Judge Greenberg presided over a hearing in which a request had been made to change physical custody of the parties' child. The mother opposed the request and Judge Greenberg appointed a GAL for the mother despite the fact that there was no application pending for appointment of a GAL; Judge Greenberg had not given the mother notice that she was contemplating appointing a GAL; and Judge Greenberg did not provide the mother with an opportunity to be heard. Following a petition for writ of mandate, the Court of Appeal ordered that the GAL appointment order be vacated. The commission found that Judge Greenberg's

conduct reflected embroilment and constituted an abuse of authority, a violation of the litigant's due process rights and fundamental liberty interest, and denied the litigant a full right to be heard.

Commission members Dr. Michael A. Moodian; 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 Hon. Lisa B. Lench did not participate. Two public member positions were vacant.

Date: September 10, 2024



Dr. Michael A. Moodian
Chairperson