

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE JULIAN W. BAILEY

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge Julian W. Bailey, a judge of the Orange County Superior Court since 2012. His current term began in 2021. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, Judge Bailey and his attorney, Paul S. Meyer, appeared before the commission on January 29, 2025, to contest the imposition of a tentative public admonishment issued on October 31, 2024. Judge Bailey 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 Bailey 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.

STATEMENT OF FACTS AND REASONS

In 2014, and again in 2022 and 2023, Judge Bailey engaged in a pattern of discourteous, undignified, and impatient behavior with female and/or inexperienced attorneys, in 10 separate matters, as illustrated below. In some instances, the judge also conveyed the appearance of embroilment and bias on the basis of gender, race, national origin, or ethnicity.

1. On September 21, 2022, Judge Bailey presided over a chambers conference in *People v. Vanessa Cowley*, No. 22WM07340. Deputy District Attorney (DDA) Nikki Chambers represented the People and Deputy Public Defender (DPD) Jane Win-Thu represented Ms. Cowley. Also present in chambers were DPD Amber Poston and a probation officer.

DPD Win-Thu requested the chambers conference in order to discuss a competency hearing. Judge Bailey stated the matter should be discussed on the record – not in chambers. During the interaction, Judge Bailey believed DPD Win-Thu made an offensive facial expression. Judge Bailey then said to DPD Win-Thu, “Counsel, the way you’re looking at me right now, it’s like you’re saying, ‘Fuck you, Judge.’ ” Judge Bailey also said words to the effect of, “You need to watch your facial expressions or nonverbal communications. If this is how you’re communicating with me, ultimately, it’s not going to be beneficial to your client.” DPD Win-Thu responded, “I’m sorry. I did not know I was making any sort of face.” DPD Win-Thu then left chambers and entered the judge’s courtroom.

When Judge Bailey entered the courtroom, he called DPD Win-Thu up to the bench and said, “I’m sorry about that. I hope you accept my apology.”

The commission found Judge Bailey’s use of profanity and admonishment of DPD Win-Thu to be discourteous. Even if DPD Win-Thu rolled her eyes, it would not justify the judge’s use of profanity and discourteous conduct. The commission also found that Judge Bailey’s comment that “it’s not going to be beneficial to your client” also created the appearance of embroilment and bias against DPD Win-Thu. Judge Bailey’s conduct, described above, violated his duties to be patient, dignified, and courteous to lawyers (canon 3B(4)); to perform judicial duties without bias or prejudice, and not to, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon sex or gender, or sexual harassment (canon 3B(5)); to avoid impropriety and the appearance of impropriety in all of

the judge's activities (canon 2); to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A); and to uphold the integrity and independence of the judiciary and to participate in establishing, maintaining, and enforcing high standards of conduct, and personally observe those standards so that the integrity and independence of the judiciary is preserved (canon 1).

2. On March 1, 2023, Judge Bailey presided over the matter of *People v. Timothy L.*, No. 22NM07526. There were many people seated in the gallery, including lawyers and members of the public. DPD Win-Thu represented Timothy L. and DDA Chambers represented the People. DPD Win-Thu requested that Judge Bailey dismiss the case, based on an email from the San Diego Regional Center, which indicated that Timothy L. was participating successfully in their program. DPD Win-Thu had forwarded the regional center email to DDA Chambers and provided a copy to Judge Bailey. When Judge Bailey called the case, DDA Chambers stated that she had not read the email, so Judge Bailey passed the case to the "second call."

After handling several other cases, Judge Bailey turned to DPD Win-Thu and asked if she was ready to call the *Timothy L.* case. DPD Win-Thu looked at DDA Chambers, who said, "No, I'm not ready." DPD Win-Thu, who was standing at counsel table, rolled her eyes at DDA Chambers. Judge Bailey stated, "Counsel, I saw you roll your eyes. It's unprofessional, unacceptable. You know it's not just verbal communication. It's what you do with your face and nonverbal communication. You're way out of line." Judge Bailey pointed his finger at DPD Win-Thu and raised his voice during this exchange. The entire courtroom went silent. Judge Bailey stated, in a raised voice, "Don't you dare do this in my courtroom. Ma'am, do you understand? Do you understand?" DPD Win-Thu responded, "Yeah." Judge Bailey said, "Ok, go sit down," and pointed to the jury box. Judge Bailey then said, "Go sit down. You're getting in the way of other attorneys trying to call their case." Judge Bailey then repeated the statements

above about sitting down. He twice said, “You either go sit down or get out of my courtroom.” DPD Win-Thu said, “I’m going to step out,” and then left the courtroom. Judge Bailey raised his voice during the entire exchange.

DPD Win-Thu returned to the courtroom later with her supervisor to finish the *Timothy L.* matter. Judge Bailey dismissed the case, in the furtherance of justice, pursuant to Penal Code section 1385.

The commission found that Judge Bailey’s public beratement of DPD Win-Thu was discourteous, humiliating, and unwarranted; and conveyed the appearance of embroilment and bias against DPD Win-Thu. Judge Bailey’s conduct, described above, violated canons 3B(4), 3B(5), 1, 2, and 2A.

3. On July 20, 2022, Judge Bailey presided over *People v. Jason Creager*, No. 22HF0779. DDA Danica Drotman represented the People and DPD Tammy Nguyen represented Mr. Creager. Two appointed psychiatrists had differing opinions on Mr. Creager’s competency. Judge Bailey asked DPD Nguyen to set the matter for trial or appoint a third doctor to evaluate Mr. Creager.

Mr. Creager’s mother was in the audience and was requesting a modification to a protective order, so she could visit her son. Judge Bailey addressed DPD Nguyen’s request for a protective order modification in the following exchange:

THE COURT: *You’re going to need to file the petition. I’ve got all these other cases and I can’t just, you can’t just drop that on the court today. Okay? I’ll hear it tomorrow if you get it filed. I mean, I understand a mother should be able to contact their son, but I’m not going to modify a protective order. [¶] People, how do you feel about that?*

MS. DROTMAN: We are objecting, Your Honor.

THE COURT: *So[,] we’re going to have a hearing and we’re not going to have the hearing now because there’s been no notice; that’s part and parcel to due process. [¶] So[,] let’s move along with the next indicated step which*

would be to pick a date for Dr. Greenzang to get his report to us and then we can consider that issue. Okay?

MS. NGUYEN: I understand, Your Honor. However, my concern at this point is that I just learned that his mother has been able to visit him while he's been in custody and so at this point --

THE COURT: It doesn't change what I just said.

MS. NGUYEN: I understand, Your Honor.

THE COURT: *It's important. The words I choose, just like you, I mean them. And, so, like I said, I'll be happy to address this tomorrow, but I can't address it today.* [¶] Do you want to put it on tomorrow for modification hearing, ma'am?

UNIDENTIFIED SPEAKER:¹ I would like to submit this -

THE COURT: *I'm sorry. I'm not going to hear it today. My question is simple. Would you like me to address this tomorrow?*

UNIDENTIFIED SPEAKER: Yeah.

THE COURT: Can we do that?

MS. NGUYEN: Yes, please.

THE COURT: Okay. I think that's the best way to do it. [¶] When would you like to come back for Dr. Greenzang?

MS. NGUYEN: I would ask for a two-week date.

THE COURT: Okay. I'll see if that works. Two weeks from today being August the 3rd.

(DISCUSSION OFF THE RECORD.)

THE COURT: So[,] for hearing on competency, August 3rd, 9:30 in this department. For hearing on

¹ The unidentified speaker appears to be Mr. Creager's mother.

modification of protective order tomorrow, which is the 21st, at 9:30 in this department. Okay?

UNIDENTIFIED SPEAKER: Can I say something? I have a client at 11:00 tomorrow.

THE COURT: If you don't want to do it tomorrow, when would you like to do it?

UNIDENTIFIED SPEAKER: Friday or Monday, but not tomorrow.

THE COURT: Monday is the 25th of July for hearing on modification of protective order. [¶] *You're [sic] body language is really telling. If you sigh and you roll your eyes at the court when the person who is protected asks for that date, you're not playing well with me, Ms. Nguyen. And, you know, we can communicate in ways other than with words and nonverbal communication can be very telling. And I'm just sharing with you my response to your sigh and rolling of the eyes. Okay?*

MS. NGUYEN: Your Honor, just for the record, I didn't mean to roll my eyes at the court.

THE COURT: *I'm just telling you what I saw and that's on the record. Thank you. [¶] If you didn't mean it then it doesn't mean anything to me.*

(R.T. 7:11-9:22, italics added.)

DPD Nguyen denied rolling her eyes at Judge Bailey. In his September 3, 2024 response to the commission, Judge Bailey stated that he “reacted directly to the gestures and attitude that [he] perceived by counsel,” but did not state that DPD Nguyen rolled her eyes.

The commission found that Judge Bailey's exchange with DPD Nguyen, in open court, was discourteous, impatient, and condescending, and conveyed the appearance of embroilment and bias against DPD Nguyen. Judge Bailey's conduct, described above, violated canons 3B(4), 3B(5), 1, 2, and 2A.

4. On September 7 and 28, 2022, Judge Bailey presided over *People v. Victor S.*, No. 22CM00994.

On September 7, 2022, DDA Chambers appeared for the People and DPD Nguyen appeared for Victor S. DPD Nguyen asked that the case be dismissed and DDA Chambers objected. DDA Chambers asked for a continuance, in order to comply with Marsy's Law, when the following exchange occurred.

THE COURT: What date would you like?

MS. NGUYEN: Your Honor --

THE COURT: *Please don't interrupt me.*

MS. NGUYEN: -- I --

THE COURT: *Ms. Nguyen, please do not interrupt me. We'll get to you. You'll have the chance to be heard, everything you want to say, but do not interrupt me. [¶] Understood?*

MS. NGUYEN: I understand.

THE COURT: *Thank you. That's the way it should be.* Now, you're requesting a new date for Marsy's Law. What date are you requesting in that regard?

MS. CHAMBERS: I would request a new date of 9/28.

THE COURT: Now, Ms. Nguyen, would you like to be heard?

(R.T. 3:6-20, italics added.)

After setting a new date, Judge Bailey stated, "And I'll allow 977 appearance that day so you can tell you're [*sic*] client if he doesn't want to be here that you can appear on his behalf." (R.T. 4:14-16.)

On September 28, 2022, DDA Chambers appeared for the People and DPD Win-Thu appeared for Victor S. While DPD Win-Thu stated her appearance, the following exchange occurred.

MS. WIN-THU: Jane Win-Thu, deputy public defender, making a special appearance for Tammy Nguyen from my office and appearing 977 on behalf of [Victor S.]

THE COURT: We're going to have to stop there. In mental health cases, I don't accept 977 appearances. This person is out on his own recognizance and because of his mental health issues there's sometimes difficulty in communicating the court's orders; just so you're on board with that. [¶] I'll let you continue with what you were saying.

MS. WIN-THU: Ms. Nguyen indicated that you had indicated it would be okay for 977 appearance for today's purposes. I don't know if that's you're [sic] understanding.

THE COURT: *Well, move along with whatever else you're going to say.*

(R.T. 1:9-23, italics added.)

DPD Win-Thu requested that Judge Bailey dismiss the case, but he stated that he would not do anything without the defendant's presence. Judge Bailey issued a bench warrant for the defendant's failure to appear, in the amount of \$5,000 and held it until October 12, 2022.

In his September 3, 2024 response to the commission, Judge Bailey stated that he was required to issue a bench warrant in order to retain jurisdiction. On September 28, 2022, Judge Bailey said the defendant's presence was required because it was a mental health case, not that he needed the defendant's presence to retain jurisdiction. Moreover, Penal Code section 977 permits counsel to appear without a defendant's physical presence.

The commission found that Judge Bailey's treatment of DPD Nguyen was discourteous, impatient, and condescending. The commission also found that Judge Bailey's issuance of a bench warrant, after stating that the defendant did

not need to appear on September 28, 2022, was an abuse of authority. Judge Bailey's conduct, described above, violated canons 3B(4), 2, 2A, and 1.

5. Judge Bailey presided over *People v. Rayan Hamoalyonis*, Nos. 22HM11435, 22HM09743, 22HM09113, 22HM04599, and 22HM02608. On October 20, 2022, while Ms. Hamoalyonis was in custody, Judge Bailey had ordered a 72-hour treatment evaluation and, pursuant to Penal Code section 4011.6, ordered a report to be prepared by October 24, 2022. Ms. Hamoalyonis posted bail and was released from custody prior to October 24. On December 27, 2022, Judge Bailey declared a doubt as to Ms. Hamoalyonis's mental competency, pursuant to Penal Code section 1368, and suspended criminal proceedings.

On January 25, 2023, Judge Bailey presided over a hearing in *Hamoalyonis* for the appointment of doctors. DDA Chambers represented the People and retained attorney Adnan Alattiyat represented Ms. Hamoalyonis. Mr. Alattiyat spoke with an Arabic accent. Ms. Hamoalyonis was present in court and was being assisted by an Arabic interpreter. After the attorneys stated their appearances, the following exchange occurred.

THE COURT: Thank you. [¶] We're here for appointment of doctors. Have counsel agreed on doctors?

MR. ALATTIYAT: Well, Your Honor, I'm a little bit confused here. I just took over the case and I'm trying to figure out first the procedures and --

THE COURT: Well, why don't have you [sic] a seat, figure out the procedures, and we'll get back to you because today I'm going to appoint doctors as required by law. [¶] So[,] you can have a seat and when you're ready I will call your case.

MR. ALATTIYAT: Your Honor, that's not the procedure that I'm referring to as I'm not competent in the procedure today. What I'm trying --

THE COURT: *What I asked you, and I would like a response to, is have counsel agreed on doctors; yes or no?*

MR. ALATTIYAT: No, Your Honor.

THE COURT: So[,] there's a list of doctors. The defense is going to pick one and the people are going to pick one. I'm going to make those appointments and then order your client to meet with the doctors and the doctors are to provide us with reports at some date in the future. [¶] *If you're not ready to follow through on that right now, please have a seat. We'll get you a copy of the list and we'll then call the case again. I've got 106 cases in front of me. If I seem to be kind of trying to get you to move along, that's the reason.* [¶] Is there a case that I can call for counsel that's ready?

MR. ALATTIYAT: Well, Your Honor --

THE COURT: *Sir, have a seat. You're going to have to pick some doctors and I'm going to call some other cases while you have the chance to do that.* [¶] Thank you. We're off the record on this case.

(R.T. 6:1-7:8, italics added.)

After handling other cases, Judge Bailey recalled *Hamoalyonis* and the following exchange occurred.

MR. ALATTIYAT: Your Honor, what we are trying to do at this point, if we can continue this hearing to March 1st.

THE REPORTER: I can't hear.

THE COURT: *I don't understand what's going on.*

MR. ALATTIYAT: Your Honor, we tried to explain, but the Court shut us down. So[,] at this point I think it will be beneficial to continue the hearing to March 1st.

THE COURT: *Well, I'm going to appoint counsel today because criminal proceedings have been suspended,*

and I don't understand what I just heard from the public defender about this case.

MR. ALATTIYAT: Your Honor, we substitute so I represent her on this matter and I think she just wanted on the record that there's a substitution.

THE COURT: *Help me out. I don't get it.*

MS. CHANG: Our office was appointed initially to represent this client. Private counsel is substituting in today and I'm asking to be relieved.

THE COURT: Public defender is relieved.

MS. CHANG: Thank you.

THE COURT: *There we go. [¶] Why don't you want to appoint doctors today?*

MR. ALATTIYAT: Well, Your Honor, first, the court order refer [sic] to 4011.6 and that's in case of the defendant in custody. So[,] I'm not sure. Are we here to --

THE COURT: *I understand you're not sure about a lot of things, but I'd ask you to please answer my question. Why should I not appoint doctors today?*

MR. ALATTIYAT: Because we don't agree with the court order that there is a need to refer her to mental evaluation to start with.

THE COURT: Okay.

MR. ALATTIYAT: So[,] this is the issue, Your Honor.

THE COURT: Sir, a doubt was declared in 22HM04599 on December 27th before Judge Wagner in Harbor Court. I believe that's the case with, it is with 22HM02608, 22HM09113, same date, 22HM09743 on the same date, and 22HM11435 on the same date. [¶] The law requires once that doubt has been declared that criminal proceedings be suspended. You're disagreeing with that finding -- *don't interrupt me, sir, or I'll get back to you later. I am making what's appropriately to be in*

the record and I'm hoping to kind of bring you up to speed on an area of law about which you don't seem to be well informed. [¶] Now, once criminal proceedings have been suspended there is a statutory structure in place and I can't change that. The law requires that doctors be appointed to evaluate your client; to render expert opinions on whether or not she's competent to stand trial as defined in section 1367 of the penal code. That section says that a person is incompetent if she's unable to understand the nature of the proceedings or she's unable to meaningfully assist her attorney. [¶] I can't reinstate criminal proceedings until that process is carried through. *And I'm going to ask you one more time to choose a doctor for the defense.* The people will choose a doctor as well. I will appoint them, order them to prepare reports, and return to court on a date certain. [¶] *And, with that, I'm going to let you kind of catch your breath and do what I've directed you to do;* pick a doctor, pick a date, and then I'm going to have your client remain on bail on the condition that she make and keep the appointments with the doctors. [¶] She's going to need your help in setting those appointments and your collaborating with the doctors so that you can get her there so the evaluations can be conducted. [¶] Having said that, I'll get back to you as soon as you have a date and doctors.

(R.T. 7:25-10:13, italics added.)

After handling other cases, Judge Bailey recalled *Hamoalyonis* and the following exchange occurred.

THE COURT: *Sir, what have you not understood about what I've been saying?*

MR. ALATTIYAT: Your Honor, if the court issued an order based on 1369 it would be in line with what's going on.

THE COURT: I'm not understanding you. If you would please use the microphone.

MR. ALATTIYAT: Yes. Had the court issued the order based on the P.C. 1369 we would understand the process. It would have been in line with what's going on. [¶] The court issued order based on 4011.6 which is that's in case of defendant in custody. So[,] what we [sic] trying to explain to the court that either we get in line or we vacate and have a hearing. If we agree to the clerk or make the reasonable doubt that she's incompetent[,] then we move forward; that's the entire defense approach. It's just the wrong court order. That's it.

THE COURT: Okay.

MR. ALATTIYAT: So[,] I'm asking to continue to March 1st and address --

THE COURT: No. [¶] Sir, I appoint Drs. Flores de Apodaca and Nekoranec to examine the defendant pursuant to 1368. The defendant's bail will remain, but it's a condition of her bail that she make and keep appointments. It's a court order that she do that. [¶] And you want to come back on March 1st?

MR. ALATTIYAT: Well, if we have to see the doctor first then we need more time, Your Honor.

THE COURT: Why?

MR. ALATTIYAT: We suggested March 1st because of the confusion over the court order based on which Penal Code. However, we can agree to that. I don't have issue with that. I just wish that the Court heard what I have to say for a minute. [¶] However, Your Honor, if we can go to April and the reason because we, I do have other commitments to other cases and I need to be present with my client during the examination. So[,] we need to find a date that will work for both schedule.

THE COURT: *Sir, your credibility is waning. You had told me you wanted to come back on March 1st. The*

doctors don't need more time than March 1st. The matter's continued to March 1st.

(R.T. 10:21-12:12, italics added.)

Although Judge Bailey had appointed Doctors Flores de Apodaca and Nekoranec, he ordered Ms. Hamoalyonis to meet with Doctors Bosch and Nekoranec. Mr. Alattiyat asked to clarify that Ms. Hamoalyonis was to meet with Doctor Bosch before March 1. Judge Bailey stated, "Not before March 1st. She's to see Dr. Bosch forthwith. Make those appointments." (R.T. 12:23-24.) DDA Chambers told Judge Bailey that he had not appointed Dr. Bosch. Judge Bailey then told Mr. Alattiyat:

You are to see those doctors. Your client is to see those doctors. Since you've refused to participate in the selection of doctors, I'm making the appointment. [¶] And she needs to make those appointments in order to have the doctors have time to complete their evaluations which five and a half weeks is plenty of time. It's a condition of her bail that she do so and I think she should be able to rely on her lawyer to assist in making those appointments and making sure she's there.

(R.T. 13:2-11, italics added.)

Mr. Alattiyat did not refuse to submit in the selection process. Instead, he attempted to clarify the judge's order to appoint doctors pursuant to Penal Code section 4011.6 versus section 1369. Based, in part, on Judge Bailey's treatment of Mr. Alattiyat, a new attorney substituted into the case on March 1, 2023.

The commission found that Judge Bailey failed to provide Mr. Alattiyat an opportunity to be heard. The commission also found that Judge Bailey's questioning of Mr. Alattiyat's competence and credibility, implying he could not rely on him to assist Ms. Hamoalyonis with making appointments, and stating, "You're not sure about a lot of things," was discourteous and demeaning. Judge Bailey's treatment of Mr. Alattiyat, in open court and in the presence of

Ms. Hamoalyonis, could also reasonably interfere with the attorney-client relationship.

Judge Bailey's conduct, described above, violated canons 3B(4), 3B(5), 3B(7) (duty 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), 3B(8) (duty 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), 2, 2A, and 1.

6. On March 3, 2023, Judge Bailey met with Presiding Judge Maria Hernandez and Supervising Judge Cynthia Herrera in chambers. Judge Hernandez advised Judge Bailey of a complaint involving three incidents: two involving DPD Win-Thu (as described in incidents number 1 and 2, above) and one concerning Mr. Alattiyat (for asking, "Do you speak English?").

On March 8, 2023, Judge Bailey saw DDA Chambers in the hallway and asked to speak with her in his chambers. DDA Chambers met with Judge Bailey, in his chambers, that day. Judge Bailey told DDA Chambers that a complaint had been filed against him, and he wished to speak with her about three incidents in which DDA Chambers was present. Judge Bailey asked DDA Chambers whether she felt he was racist or displayed gender bias. DDA Chambers responded that she did not think he was racist or misogynistic.

Judge Bailey asked DDA Chambers if she recalled the time when a public defender (DPD Win-Thu) had rolled her eyes at Judge Bailey, and he told her it was like saying, "Fuck you, Judge Bailey." DDA Chambers stated that she did recall the incident. Judge Bailey told DDA Chambers that he had apologized to the public defender and that DDA Chambers was present for the apology. DDA Chambers stated that the public defender had a tone of annoyance with Judge Bailey, and, in fact, did roll her eyes at him in open court. DDA Chambers stated that Judge Bailey did say it was like saying, "Fuck you, Judge Bailey," to DPD

Win-Thu in chambers. DDA Chambers stated that Judge Bailey also apologized to DPD Win-Thu for saying it.

Judge Bailey asked DDA Chambers if she recalled the second time DPD Win-Thu rolled her eyes regarding a document that she had provided to DDA Chambers on a case, and DDA Chambers told the court that she needed “second call” to review the document. DDA Chambers stated that she did remember the incident. She stated that DPD Win-Thu rolled her eyes in open court at her frustration with DDA Chambers not being ready to call a case during a busy calendar call when she had not had time to read it. DDA Chambers stated that she told DPD Win-Thu that “she could have emailed it to her ahead of time or could have answered any of my emails I sent to her that week for that matter, which she had not.”

Judge Bailey asked DDA Chambers if she recalled a private attorney (Mr. Alattiyat) that “both of us had a problem with.” DDA Chambers did not know who Judge Bailey was talking about. Judge Bailey stated that it was alleged that he asked the attorney, “Do you speak English?” Judge Bailey said the attorney had a thick accent. DDA Chambers then stated that she remembered the incident. She stated that she did not remember Judge Bailey asking the attorney if he spoke English.²

Judge Bailey knew it was inappropriate to contact DDA Chambers concerning allegations in the complaint. On March 17, 2014, Judge Bailey met with then Juvenile Presiding Judge Hernandez concerning a previous complaint concerning alleged inappropriate comments that he made to female public defenders. Judge Hernandez told Judge Bailey that it was very important that he not engage in any conversations or any way attempt to influence any particular individual about the circumstances of the incidents. Judge Hernandez told Judge

² The transcript does not reflect that Judge Bailey asked Mr. Alattiyat, “Do you speak English?”

Bailey how important it was not to approach the parties to discuss the circumstances of the encounter and to allow her time to investigate the matter. In his September 3, 2024 response to the commission, Judge Bailey stated that Judge Hernandez made it clear to him that his conduct in contacting DDA Chambers was inappropriate.

The commission found that Judge Bailey's meeting with DDA Chambers constituted an improper attempt to influence a witness and violated canons 2, 2A, and 1.

7. On or about January 2023, Judge Bailey presided over a chambers conference in which DPD Nguyen, DDA Breanna Piper, and a probation officer were present. DPD Nguyen asked Judge Bailey questions about the appointment of a doctor and approval of additional funds. Judge Bailey asked, "Where's the order?" DPD Nguyen said it was sealed. Judge Bailey called a clerk and ultimately hung up on the clerk. Judge Bailey stated, in a raised and angry voice, "What date do you want? It's a very simple question. What date do you want?" DPD Nguyen left the judge's chambers in tears, because of his conduct.

The commission found that Judge Bailey's conduct, described above, violated canons 3B(4), 2, 2A, and 1.

8. On March 14, 2014, Judge Bailey conducted a chambers conference with DPD Sara Hendrickson, DDA Sherin Larijani, and Probation Officer Daniel Barrington. DPD Neha Nagrath entered chambers to assist DPD Hendrickson, who waved her in. DPD Hendrickson had asked DPD Nagrath to help her with some plea forms. (Former DPD Hendrickson is Caucasian and has blonde hair. Former DPD Nagrath is of South Asian or Indian descent and has brunette hair.)

When DPD Nagrath entered Judge Bailey's chambers, she walked toward DPD Hendrickson and said, "Good morning, Your Honor," or "Excuse me, Your Honor." Judge Bailey became angry and stated, "Excuse me. You need to wait. We are in the middle of something." Judge Bailey stated that DPD Nagrath

should not have entered his chambers. Judge Bailey raised his voice and told DPD Nagrath that she was “out of line.” DPD Nagrath then left the judge’s chambers.

After DPD Nagrath left, Judge Bailey said, “She has no tact. She is so fucking rude. She has no clue.” After the chambers conference, Judge Bailey instructed his clerk to tell DPD Nagrath that she “was never allowed in chambers again.”

After the chambers conference, in the courtroom, DPD Hendrickson approached the bench and apologized for what occurred in chambers. She told Judge Bailey that she had made eye contact with DPD Nagrath, which is why she entered chambers. Judge Bailey stated that DPD Nagrath was rude. Judge Bailey also stated, “The difference between the two of you is night and day. There are two kinds of people in this world -- blondes and brunettes.”

The commission found that the judge’s demeanor in chambers, use of profanity, and order to ban DPD Nagrath from his chambers violated canons 3B(4), 2, 2A, and 1. The commission also found that, given the race and appearance of DPD Nagrath and DPD Hendrickson, the judge’s comment about blondes and brunettes conveyed the appearance of bias on the basis of race or ethnicity, as well as gender, in violation of canon 3B(5).

9. In March 2014, DPD Hendrickson was the assigned public defender in Judge Bailey’s courtroom. She had recently had a baby and informed Judge Bailey that she would need to take a break to express milk for her infant during a trial over which he was presiding. Judge Bailey told her to let him know when she needed to take a break.

In one instance, in March 2014, Judge Bailey said to DPD Hendrickson, “Do you need to --,” and then made a gesture with his hands against his chest. He held flat palms, with his fingers spread apart, against his chest and moved his hands up and down in opposing directions, about five times. While Judge Bailey made this gesture, he made the sound, “Ch, ch.”

The commission found that Judge Bailey's conduct, described above, was demeaning and undignified, and conveyed the appearance of bias, on the basis of gender, and violated canons 3B(4), 3B(5), 2, 2A, and 1.

10. Judge Bailey made undignified, discourteous, and offensive comments to and about female attorneys and a defendant, as follows. In early 2014, more than once, Judge Bailey stated, in the courtroom, words to the effect of, how "lucky" he was "to get to work with beautiful women." Judge Bailey was referring to DPD Hendrickson and DDA Larijani. Judge Bailey also stated words to the effect of, "My wife is beautiful, my daughter is beautiful, I am lucky."

Also in early 2014, Judge Bailey presided over a juvenile delinquency case in which the juvenile was female and Latina. Judge Bailey told the juvenile words to the effect of, "Oh, wow, what are you doing in custody? You're so beautiful." Judge Bailey said that she "could get a job in the movies playing a native American Indian."

The commission found that Judge Bailey's conduct, described above, was demeaning and undignified, and conveyed the appearance of bias, on the basis of gender, race, and ethnicity, and violated canons 3B(4), 3B(5), 2, 2A, and 1.

The judge's conduct, in the 10 matters described above, at a minimum, constituted improper action.

DISCIPLINE

In Judge Bailey's response to the commission's preliminary investigation letter and in his objections to the notice of tentative public admonishment, Judge Bailey asserted that certain underlying medical conditions may provide a partial explanation for some of his behavior, although he acknowledged that his misconduct conveying the appearance of bias, on the basis of gender, race, national origin, or ethnicity could not be mitigated by any medical condition. At his appearance before the commission, Judge Bailey further acknowledged that, beginning in 2022, he was aware that he was engaging in discourteous, angry, and impatient conduct. He also admitted that, medical conditions

notwithstanding, he should not have behaved as he did, and he accepted full responsibility for his misconduct.

The commission found that the judge's medical conditions did not excuse his misconduct. Judges are "public figure[s] and a symbol of justice of whom much is expected." (Rothman, Cal. Judicial Conduct Handbook (4th ed. 2017) § 8:18, p. 512.) If a medical condition contributes to a judge engaging in misconduct, they are obligated to take time away from their duties until such time as they can once again perform their duties ethically.

In imposing this public admonishment, the commission noted that the judge's misconduct was not confined to an isolated incident. Instead, Judge Bailey exhibited a pattern of discourteous, undignified, and impatient behavior that occurred over several years. (Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(a).)

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Ms. Kay Cooperman Jue; Mr. Richard A. Long; Mani Sheik, Esq.; Mr. Gerald C. Shelton; and Ms. Beatriz E. Tapia voted to impose the public admonishment. Commission member Rickey Ivie, Esq. did not participate. One public member position was vacant.

Date: February 13, 2025



Dr. Michael A. Moodian
Chairperson