

PUBLIC ADMONISHMENT OF FORMER COMMISSIONER BRADLEY W. SULLIVAN

The Commission on Judicial Performance ordered Former Commissioner Bradley W. Sullivan 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

From June 5, 2023, to May 30, 2024, Bradley W. Sullivan served as a commissioner of Calaveras County Superior Court.

1. March 6, 2024 – Ex Parte Communications at the Self-Help Center

On March 6, 2024, after his 2:00 p.m. calendar, Commissioner Sullivan walked into the courthouse's self-help center through the public access doors while wearing his judicial robe. Sitting inside the self-help center, completing forms, were two litigants from two separate matters who had appeared before him that afternoon. Commissioner Sullivan stated to one of the litigants, loudly enough to be overheard by all present, "I messed up and got confused between you and another case." Commissioner Sullivan was blocking the public entrance to the self-help center at the time, causing a third litigant, who had also just been in his courtroom and who was trying to access the self-help center, to become confused. Commissioner Sullivan moved to the side to allow the litigant to enter, and a court employee asked Commissioner Sullivan whether "court is in session." In response, Commissioner Sullivan removed his robe, rolled it up, and sat down to converse with two of the litigants who had just appeared before him. Commissioner Sullivan discussed a different, unrelated case with them. The third litigant who had just entered the self-help center reportedly could not hear the court employee over the discussion between Commissioner Sullivan and the other litigants. As described by other court employees who were present, Commissioner Sullivan's presence created an "uncomfortable" and "very inappropriate" situation.

After this occurred, Presiding Judge Timothy Healy and Assistant Presiding Judge David Sanders met with and counseled Commissioner Sullivan regarding refraining from engaging, or appearing to engage, in ex parte communications. They also counseled Commissioner Sullivan to direct litigants to the self-help center but not offer any other information, as it could be seen as practicing law. Last, they counseled Commissioner Sullivan that it was inappropriate to wear his judicial robe outside of the courtroom.

The commission determined that, on March 6, 2024, when Commissioner Sullivan spoke with litigants in the self-help center about their cases, and about another party's case, he violated canon 3, requiring judicial officers to perform the duties of judicial office impartially, competently, and diligently; canon 3B(7), requiring judicial officers to refrain from ex parte communications; canon 1, requiring judicial officers to participate in establishing and maintaining high standards of conduct and to observe those standards to preserve the integrity and impartiality of the judiciary; canon 2, requiring judicial officers to avoid impropriety and the appearance of impropriety; and canon 2A, requiring judicial officers to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

2. May 1, 2024 – Ex Parte Communication Via Text

On May 1, 2024, at 3:33 p.m., shortly after concluding his calendar, Commissioner Sullivan sent unsolicited text messages to a litigant who had just appeared before him, instructing her about which judgment form to complete, how to complete the form, and where to file the form. Commissioner Sullivan also texted, "send me your first try if you can."

Judge Healy and Court Executive Officer Margaret Smith met with Commissioner Sullivan to discuss the texts. At this meeting, Presiding Judge Healy presented Commissioner Sullivan with a written memo regarding this unsolicited ex parte communication and its inappropriateness. Initially, Commissioner Sullivan stated that he did not remember texting a litigant. Once Commissioner Sullivan was presented with a copy of the text messages, he acknowledged texting the litigant but stated that it was a procedural exchange. When it was explained that the exchange could be read as providing legal advice, Commissioner Sullivan acknowledged the concern and apologized, additionally acknowledging that Judges Healy and Sanders had previously counseled him regarding improper ex parte communications in connection with the March 6 incident, discussed above.

The commission determined that, on May 1, 2024, when Commissioner Sullivan texted a litigant to provide legal instructions or advice, he engaged in improper ex parte communications. The commission determined Commissioner Sullivan's conduct constituted a violation of canon 3B(7), requiring judicial officers to refrain from ex parte communications; canon 3B(8), requiring judicial officers to provide all litigants the opportunity to have their matters fairly adjudicated; canon 3B(5), requiring judicial officers to perform their duties without bias or prejudice, or the appearance of bias or prejudice; canon 1, requiring judicial officers to participate in establishing and maintaining high standards of conduct and to observe those standards to preserve the integrity and impartiality

of the judiciary; canon 2, requiring judicial officers to avoid impropriety and the appearance of impropriety; and canon 2A, requiring judicial officers to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

3. May 8, 2024 – Contempt Hearing

On May 8, 2024, Commissioner Sullivan held an improper contempt hearing in *Petersen-Johnson v. Johnson*, No. 22FL45986. The parties were before the commissioner for a settlement conference in divorce proceedings. Respondent Kevin Johnson was self-represented; petitioner Erika Petersen-Johnson was represented by attorney Diane Anderson. At that time, Mr. Johnson was also the defendant in a criminal case, in which Ms. Petersen-Johnson was the alleged victim; there was a related criminal protective order restraining Mr. Johnson.

After discussion of the financial issues, as the parties were about to go on a break, Mr. Johnson turned towards the center aisle and said something unintelligible that allegedly included the word “bitch.” When Commissioner Sullivan questioned him, Mr. Johnson apologized and claimed that he had said, “this is a bitch,” referring to the spousal support negotiations. Reportedly, Commissioner Sullivan responded by reminding him to stay away from Ms. Petersen-Johnson during the recess, as required by the protective order.

When the parties came back from break, Ms. Petersen-Johnson alleged that Mr. Johnson had threatened her, flipped her off, and called her a “bitch.” Mr. Johnson denied the allegations. Attorney Anderson stated that her client wanted to continue the settlement conference to another date, and also wanted Mr. Johnson’s “bitch” statement to be punished as contempt of the criminal protective order, or wanted the statement to be brought to the attention of the district attorney’s office.

After some back and forth regarding whether to continue with the settlement conference, both parties eventually stated that they wanted to proceed. Ms. Petersen-Johnson and attorney Anderson continued to request court action to address Mr. Johnson’s alleged conduct. Commissioner Sullivan informed Mr. Johnson that he should have an attorney present if the court were to hold a contempt hearing, which Mr. Johnson declined, stating that he understood the possible penalties.

According to the minutes, at 10:06 a.m., Commissioner Sullivan commenced a contempt hearing. Commissioner Sullivan proceeded to take testimony regarding the contempt allegation. Under oath, Ms. Petersen-Johnson stated that Mr. Johnson threatened her and called her a “bitch,” but she also

stated that he had not said anything or made any gestures outside of the courtroom during the recess. Commissioner Sullivan asked Mr. Johnson if he wanted to testify and advised him that he had the right to remain silent. Mr. Johnson asked a friend who was with him to testify. The witness testified that he did not hear the alleged threat and that the parties had no contact during the recess.

According to the minutes, from 10:29 a.m. to 10:37 a.m., Commissioner Sullivan reviewed video footage (relevant to the contempt issue) presented by court personnel. At 10:37 a.m., Commissioner Sullivan re-commenced the settlement conference. The parties entered the settlement into the record verbally. Thereafter, Commissioner Sullivan held Mr. Johnson in contempt and issued, but stayed, a \$1,000 fine, the maximum monetary fine for contempt of court, and set the matter over for review by the assigned judge. Commissioner Sullivan did not set forth the specific contempt allegations against Mr. Johnson and did not make a record regarding the grounds for his finding that Mr. Johnson was in contempt of a court order.

After the matter concluded, Commissioner Sullivan met with Judges Healy and Sanders regarding the contempt hearing. They counseled Commissioner Sullivan regarding the “efficacy of conducting contempt proceedings in general and specifically under these circumstances.”

Direct contempt, which takes place in the immediate view and presence of the court, requires the court to immediately cite and adjudicate contemptuous behavior. (Rothman, Cal. Judicial Conduct Handbook (4th ed. 2017) § 4:32, at pp. 235-236.) The court must advise the alleged contemnor of the allegedly contemptuous conduct, on the record, and with precision and in detail. This must include a recitation of the order allegedly violated or the facts concerning the alleged contempt. (*Id.* at p. 236.) The alleged contemnor must be given an opportunity to be heard and provide an excuse, explanation, or apology. (*Id.* at p. 244.) The judicial officer must conduct a full adjudication of the contempt, and the burden of proof is beyond a reasonable doubt. (*Id.* at p. 245.) To adjudicate indirect contempt, which is any contempt that takes place outside the immediate view and presence of the court, the court must additionally file a statement of facts regarding the alleged contempt and must issue an order to show cause to establish jurisdiction over the alleged contemnor. (Code Civ. Proc., §§ 1211, 1212.)

The minutes of the proceedings state: “Court finds Respondent was in contempt of court and will prepare written judgment of contempt. This judgment was orally pronounced in court and will order payment of \$1,000 and is suspended conditionally on successful resolution of 22FL459 and Respondent’s

improved behavior and contrition[.]” None of the criteria for either direct or indirect contempt were discussed or fulfilled.

The next day, Judge Healy issued a Supplemental Minute Order which vacated the contempt finding and ordered any evidence presented during the hearing to be stricken.

The commission determined that, on May 8, 2024, Commissioner Sullivan improperly held Mr. Johnson in contempt of court without following the proper procedures. The commission determined Commissioner Sullivan’s conduct constituted a violation of canon 3B(2), requiring judicial officers to be faithful to and maintain competence in the law; canon 3B(8), requiring judicial officers to provide all litigants the opportunity to have their matters fairly adjudicated; canon 3B(7), requiring judicial officers to accord all those who are entitled a full opportunity to be heard; canon 3B(4), requiring judicial officers to treat all those who appear before them in a patient, dignified, and courteous manner; canon 1, requiring judicial officers to participate in establishing and maintaining high standards of conduct and to observe those standards to preserve the integrity and impartiality of the judiciary; canon 2, requiring judicial officers to avoid impropriety and the appearance of impropriety; and canon 2A, requiring judicial officers to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The commission further determined that, by initiating contempt proceedings in the middle of a settlement conference, declining to make a decision on the alleged contempt, and then resuming the settlement conference, Commissioner Sullivan, at a minimum, created the appearance of coercion to settle. Commissioner Sullivan’s statement conditioning the suspension of the contempt fine on “the on successful resolution of 22FL459 and Respondent’s improved behavior and contrition,” also gave an appearance of coercion. The commission determined that Commissioner Sullivan’s conduct violated canon 3B(12), requiring judicial officers who conduct settlement conferences to remain impartial and not engage in coercive conduct; canon 3B(4); canon 1; canon 2; and canon 2A.

In determining to issue this Notice of Tentative Public Admonishment, the commission considered as an aggravating factor former Commissioner Sullivan’s failure to cooperate with the investigation and the fact that the May 1 ex parte communication occurred after the presiding judge counseled Commissioner Sullivan regarding the impropriety of his March 6 ex parte communications.

The commission’s preliminary investigation letter, dated August 2, 2024, alleged that former Commissioner Sullivan: (1) engaged in ex parte

communications at the Self-Help Center of the Calaveras County Superior Court courthouse on March 6, 2024; (2) engaged in ex parte communication with a litigant via text on May 1, 2024; and (3) improperly held a litigant in contempt on May 8, 2024. The preliminary investigation letter was delivered via certified mail to the address former Commissioner Sullivan maintains with the State Bar and signed for on August 5, 2024. Pursuant to the Rules of the Commission on Judicial Performance, rule 104(b), the commission requested that former Commissioner Sullivan respond to the allegations. In accordance with rule 111(a), his response was due on August 22, 2024.

On August 28, after the August 22 due date passed with no response or other communication from former Commissioner Sullivan, the commission sent a letter, via U.S. mail, requesting a response to the preliminary investigation letter by September 23, 2024. The commission received no response.

The commission issued a supplemental preliminary investigation letter (which enclosed a copy of the original preliminary investigation letter and the August 28, 2024 letter) that alleged former Commissioner Sullivan failed to cooperate with the commission's preliminary investigation by failing to respond. The supplemental preliminary investigation letter also stated that if former Commissioner Sullivan did not retain counsel to represent him, and if he had any procedural questions regarding his response or other options, he could contact the commission's staff counsel.

On November 13, 18, 19, and 20, 2024, a process server made several unsuccessful attempts to personally serve former Commissioner Sullivan at his home. On November 19, the process server spoke with Mrs. Geralyn Sullivan, who confirmed that her husband resided at the address, was not at home, and was expected to return the next day. On November 20, the process server left a copy of the supplemental preliminary investigation letter at the residence when no one answered the door.

On November 21, 2024, the commission sent another copy of the supplemental preliminary investigation letter via certified mail. The letter informed former Commissioner Sullivan that if he did not respond on or before December 11, 2024, then the commission would proceed to a disposition in this matter without his participation. On November 23, 2024, Geralyn M. Sullivan signed the receipt for the letter.

Former Commissioner Sullivan did not respond to any communication sent to him by the commission.

Former Commissioner Sullivan's conduct, described above, constitutes, at a minimum, improper action within the meaning of article VI, section 18, subd. (d)(3) of the California Constitution.

Commission members Mani Sheik, Esq.; Mr. Alton L. Garrett, Jr.; Honorable Julia C. Kelety; Mr. Richard A. Long; Dr. Michael A. Moodian; Mr. Gerald C. Shelton; and Ms. Beatriz E. Tapia voted for the Notice of Tentative Public Admonishment. Honorable Lisa B. Lench would have voted for a Notice of Tentative Public Admonishment that did not include former Commissioner Sullivan's failure to cooperate as an aggravating factor. Ms. Kay Cooperman Jue and Honorable Kimberly Merrifield voted for a Notice of Tentative Private Admonishment. Commission member Rickey Ivie, Esq. did not participate.

Date: May 9, 2025