

## **PUBLIC ADMONISHMENT OF JUDGE ROBERT S. BOWERS (Ret.)**

The Commission on Judicial Performance ordered retired Judge Robert S. Bowers 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 Bowers was a judge of the Solano County Superior Court from 2003 to November 2024. His last term began in 2023.

The commission found that Judge Bowers (1) improperly solicited a *Marsden* motion, which interfered with the attorney-client relationship; (2) made disparaging remarks about a defense attorney, which conveyed the appearance of bias and embroilment, and which could reasonably interfere with the attorney-client relationship and convey the appearance of retaliation for the attorney's motion to disqualify Judge Bowers; (3) discussed substitution of attorneys with another attorney, which conveyed the appearance of embroilment, bias, prejudgment, and abuse of authority; and (4) improperly handled a statement of disqualification.

In 2024, Judge Bowers presided over *People v. Damian Jones*, No. VCR239963, a homicide case. Deputy Public Defender (DPD) Matthew Adler represented Mr. Jones. A trial was scheduled to begin on August 21, 2024. On Friday, August 16, 2024, Mr. Adler filed a written motion to continue the *Jones* trial, because he had another trial (*People v. David Johansen*, No. F23-01172, a domestic violence kidnapping case) scheduled to begin on August 19, 2024, before Judge Janice M. Williams. Mr. Adler filed the written motion to continue at least two court days before the hearing to be continued, as required by section 1050(b) of the Penal Code.

Judge Bowers became aware of the *Jones* motion to continue on Sunday, August 18, 2024. On Monday, August 19, at 8:00 a.m., Judge Bowers contacted Judge Williams by telephone. He asked her to reschedule the *Johansen* trial, so that the *Jones* trial could proceed on August 21. Judge Bowers and Judge Williams determined that the *Johansen* trial had been set before the *Jones* trial. Judge Bowers asked Judge Williams to inform Mr. Adler (when he appeared in her courtroom that morning in the *Johansen* case) that his motion to continue in *Jones* was untimely. Judge Bowers asked Judge Williams to confirm the *Jones* trial date of August 21, with Mr. Adler, and to tell Mr. Adler that, because there

were time waivers in both cases, a homicide trial would “trump” a domestic violence case.

On August 19, 2024, at 9:27 a.m., Judge Bowers presided over a trial management conference in the *Jones* matter. Deputy District Attorney (DDA) Mark Ornellas represented the People. DPD Oscar Bobrow appeared for Mr. Adler and represented Mr. Jones, who was present and in custody. While discussing the motion to continue, the following exchange occurred.

MR. BOBROW: Mr. Adler filed a written 1050 [m]otion to [c]ontinue due to the fact that he is beginning this morning a serious trial[,] up in Fairfield and won't be available for this trial.

THE COURT: People object?

MR. ORNELLAS: Well . . .

THE COURT: I've already -- well, *Mr. Adler's untimely [m]otion, that came in Friday very late, said a number of very disturbing things.*

MR. ORNELLAS: Right.

THE COURT: One, that we were ready for trial on April 26th. *Over the People's objection, strenuous objection I might add, I had to continue the matter.* The parties, on a time waiver basis, both picked the day of the 21st. Now, in his late [m]otion, *he claimed* that the *Johansen* [c]ase set in Fairfield was set before this one, at any rate, that's not a murder case. [¶]

When I saw notice of this [m]otion on Sunday[,] I reached out to Department 25 and I believe they agreed to continue that [m]otion there so he could be available[.]

(R.T. 2:26-3:16, italics added.)

Judge Bowers stated that a homicide case takes precedence over other matters and denied the motion to continue. Judge Bowers set a case management conference for the next day, August 20, 2024.

On August 20, at 9:34 a.m., Judge Bowers presided over a case management conference in the *Jones* matter. Mr. Ornellas represented the People and Mr. Adler represented Mr. Jones, who was present and in custody.

At the beginning of the hearing, Mr. Adler filed a statement of disqualification, pursuant to section 170.1 of the Code of Civil Procedure, which alleged that Judge Bowers engaged in an improper ex parte communication with Judge Williams, denied the *Jones* motion to continue for an improper basis, prejudged the case against Mr. Jones, and conveyed the appearance of bias. In response, Judge Bowers stated the following.

The last I heard from you was Friday afternoon on this [m]otion to [c]ontinue. [¶] And I, of course, heard that you, one -- and for the record, let's be clear, we had been here I believe April 24th or so to go to trial on this matter and you had asked for a [m]otion to [c]ontinue and the People objected. But I agreed to an *in camera* hearing and granted your [m]otion to [c]ontinue over the objection of the People. [¶] We then sat here in open court to pick dates for our new trial, and both the People and the [d]efense agreed to August 21st as our court date. I had not heard about this case or anything until your [m]otion was filed Friday, filed -- certainly after 3:00 as we were here on a homicide prelim until 3:00 -- that alleged that you had a trial in another department that had previously been set prior to setting the one in here and, therefore, you could not be here. [¶] I contacted Judge Williams to ask her about that trial and she agreed to continue it, as it was not a homicide and we all agreed that the policy here in Solano is that homicides took precedence. So[,] after discussing that with her I had Mr. Bobrow here on the [m]otion, obviously, if that trial was not going then this one could go and I confirmed, so that's kind of where we are. [¶] And now, this morning, there is a 170.1, so . . . Well, it wasn't over the weekend. It was Monday morning but close enough. I -- because I had warrant duty I had access to my computer and I only saw your [m]otion Sunday because, as I said, it had not been filed until, perhaps, 4:00 on Friday which, by the way, is not timely but I considered nonetheless. [¶] At any rate, I will review this. We'll pass this. I'll figure out what the next steps are.

(R.T. 4:7-5:9.)

Judge Bowers then took a break. After the break, Judge Bowers recalled the *Jones* matter. He said he would be filing a verified answer denying the challenge for cause, and sending the matter to the presiding judge or a judge to which both parties stipulated. The public defender would not stipulate to a judge. Judge Bowers then stated, "I will tell you, again, I'll file an answer that my

communications with other judges on scheduling is not ex parte, and you are correct that I am wanting to get this trial out.” (R.T. 6:18-21.)

On August 20, 2024, Judge Bowers filed a “Motion to Strike Challenge as Legally Insufficient Law CCP 170.4(b) and Verified Answer Law CCP 170.3(c)(3).” In his filing, Judge Bowers described the procedural history of the *Jones* and *Johansen* cases, the *Jones* motion to continue, his conversation with Judge Williams, and the circumstances of Mr. Adler filing the statement of disqualification. Judge Bowers asserted that the motion to continue was untimely, but ultimately moot, because Judge Williams vacated the *Johansen* trial. Judge Bowers denied that his conversation with Judge Williams constituted an improper ex parte communication. Judge Bowers stated:

Although the issue of continuance was moot, I still question why Mr. Adler, on 4/26/2024, would agree to schedule Jones’ jury trial the same week he had previously scheduled Johansen on 4/19/2024, only a week earlier. *It would seem to the untrained eye that the defense motion to continue in Jones was set in motion as early as 4/26/2024 when Mr. Adler agreed to a trial date in Jones that he knew he already had a conflict with Johansen.*

(8/20/24 Motion to Strike Challenge, p. 3, italics added.)

Judge Bowers’s “Motion to Strike Challenge as Legally Insufficient Law CCP 170.4(b) and Verified Answer Law CCP 170.3(c)(3)” did not order the statement of disqualification stricken. After sending the matter to the acting presiding judge (Judge William J. Pendergast), the acting presiding judge sent the matter back to Judge Bowers.

On August 23, 2024, Judge Bowers presided over a trial readiness conference in the *Jones* matter. Prior to calling the case, and without defense counsel present, Judge Bowers asked defense attorney David Nelson if he would be available for appointment to a time-waived homicide case. Judge Bowers conducted this conversation in an open courtroom, with others present. Mr. Nelson stated that he would be available. At that time, Mr. Jones had not requested new counsel.

Judge Bowers called the *Jones* matter, at 9:34 a.m. Mr. Ornellas represented the People, and Mr. Adler, Mr. Bobrow, and Chief Public Defender Dan Messner represented Mr. Jones, who refused to come to court. Judge Bowers described the history of the *Jones* case as follows.

On August 20th, Mr. Adler, you, appeared and filed what is commonly known as a 170.1 [c]hallenge for [c]ause. I believe we had a busy Tuesday morning[,] so *I sort of took it under submission, perhaps*, until later in the morning; *agreed to assign it to the Presiding Judge*, acting Presiding Judge at the time, this is this week, Judge Pendergast. [¶] The afternoon of the 20th I drafted a [m]otion to [s]trike the -- having then had an opportunity to review your 170.1 I filed a [m]otion to [s]trike it as legally insufficient. [¶] *I think I caused some confusion by then adding also what would be called a verified answer under 170.3.* There are two methods, procedurally, in dealing with 170.1 challenges. One is to accept it; file an answer and then have a third party judge decide it. Or, two, the other method is to strike it, and then the due process remedies for [t]he [d]efendant would be the [a]ppellate [c]ourt. [¶] So I wanted to, this morning, to at least clarify -- and for the record, again, the law allows the Court 10 days to respond and I think we're all in agreement that we're within the time period. *And that it is this Court's position to strike the 170.1.* [¶] And, again, and the reasons being that everything -- well, not everything -- but the issues of substance, Mr. Adler, in your motion are agreed upon by this Court. Yes, I reviewed your [m]otion. Yes, I contacted another judge for scheduling purposes. Yes, [I] made -- resolved the scheduling issue and had you come in here. [¶] So[,] I am firm in my belief that this is appropriately struck. And if for some reason I am incorrect the remedy, as I understand it, is a writ to the [a]ppellate [c]ourt. So[,] I just want to be clear on that because I know Mr. Messner, rightfully so, in looking at what was filed in Department 11 argued for, no, this is just an answer. Ignore the strike part and let's just send it to the Judicial Coun[cil] and get a third independent judge and follow that procedural route, is how I understand it more or less.

(R.T. 4:5-5:12, italics added.)

Mr. Messner argued (1) when Judge Bowers sent the matter to Judge Pendergast, he accepted an interim disqualification, and lost jurisdiction, (2) because Judge Bowers filed a motion and not an order, Judge Pendergast lacked jurisdiction to send the matter back to Judge Bowers, and (3) the matter should be assigned to a judge outside of Solano County.

Judge Bowers stated he was "withdrawing or redesignating [his] sworn statement as supporting evidence for the strike" and entering an order striking

the statement of disqualification. (R.T. 6:22-23.) After striking the statement of disqualification, the following exchange occurred.

THE COURT: *For the record, Mr. Adler, you, as I understand it, are what we commonly refer to as a "line deputy" in Department 25 in Fairfield?*

MR. ADLER: I think that's a fair description. I mean, a line deputy, yeah, Deputy Public Defender.

THE COURT: Deputy Public Defender that essentially handles -- regularly handles cases in one department?

MR. ADLER: For the most part.

THE COURT: For the most part?

MR. ADLER: Yes.

THE COURT: And that's in Fairfield?

MR. ADLER: Correct.

THE COURT: *Okay. And in this case, the Jones case, has been assigned to Department 15 since I believe July of 2022, and Department 15 is down here in Vallejo.*

MR. ADLER: Are you asking me?

THE COURT: *I'm just trying to make a record. Is that -- is that a fair understanding from your perspective?*

MR. ADLER: That Department 15 is in Vallejo?

THE COURT: Yeah.

MR. ADLER: Yes.

THE COURT: *So[,] again, just like today, for instance, you're appearing at, I don't know, 9:45 for a 9:00 hearing is that probably logistically a challenge in light of your duties in Fairfield. Is that fair? Sorry for the use of the word "fair." Does that sound --*

(Brief pause in proceedings.)

MR. ADLER: Um, you know, I'm not sure exactly where the Court is going with this line of questioning.

THE COURT: *I'll tell you, I'm making a record, and I'm trying to make things very clear for the [a]ppellate [c]ourt as we move forward. Because, again, my understanding of -- sir, for instance, I must inquire, have you tried a homicide case in front of a jury yet as your time as [c]ounsel?*

MR. ADLER: Your Honor, I'm not sure -- are we --

THE COURT: *I'm asking you a question. If you don't want to answer it it's up to you. [¶] My concerns, quite frankly, are the administration of justice, okay. I'm concerned about both sides being competent, being ready, being prepared to try cases. And because of our history in this case and how things have gone I -- I have concern, so hence my inquiry. [¶] You don't have to answer my questions, but from the Court's perspective, again, for instance, this Court does felony trials of all types to include homicides which are considered the most serious cases. [¶] The gentleman behind you, Mr. Bobrow for instance, tried a homicide here. Got a manslaughter verdict. It was an important case. It was a serious case. And so[,] justice, in my opinion, was done. [¶] I am concerned that based on you're being appointed to my [c]ourt in Vallejo, on a homicide, okay, that I then don't see you regularly because you're, I think, assigned in -- and I'm going to say "busy" doing what I would consider the week-to-week, month-to-month type of cases that line deputies do; that we have had a preliminary hearing with immunized witnesses; that the [d]efendant, Mr. Jones, again, a young -- young man charged with a very serious crime, a homicide, then having set it for trial and having to go in camera and having on the record saying that you would be ineffective assistance of [c]ounsel if you were forced to go to trial. [¶] And, again, I -- not because it's reversible error, but every defendant deserves competent, you know, ready -- ready to go to trial. So I -- I -- I am ready to. Time is waived, right? Apparently, department -- you're going out to trial next week in Department 25 on this Johansen matter which, again, you double set in April. Never noticed 25 or this [d]epartment for the whole four months that you had a double set felony, and then filed what I -- which anyone will tell you is an untimely [m]otion, and then you filed a*

170.1 which I struck as pretty borderline frivolous in my opinion. [¶] Now, obviously, Court of Appeal will look at it. *But then when I step back from all of that and I'm, like, looking at Mr. Jones, who's not here today, I'm -- I'm concerned about his representation. And I say that to you -- I have no -- you're probably doing a great job up in 25 and all that, perhaps, this step up to homicide is maybe a little bit too soon and the logistics of it being in a different place, but I don't see the -- it's a serious case and I'm wondering, you know, if this is just not a good fit.* [¶] At any rate, I'm letting you know my thoughts, okay, because I'm trying to understand as we're going through all of this, Mr. Adler, I mean, and I need -- and, obviously, *I need to speak to Mr. Jones because if he is content with the representation that he's getting then absolutely it's his right, but I -- I am concerned.* [¶] So[,] *you don't have -- you don't have to answer my questions. You don't have to do any of that.* We have some stuff that's going up on appeal. I think we made a good record. Mr. Messner, his coming in and making a good record. We'll see where the strike, you know, what the remedy is. [¶] Because I -- they'll either say the strike is good or Judicial Coun[cil] take it. Either way I'm pretty confident that it's coming back. *I probably won't even be here so it's not an issue, really, for me. It's more of an issue of the representation of the [c]lient as I see it, so I'm giving you the heads-up on that.* [¶] And, obviously, *I'll talk to Mr. Jones about it. I think I -- it would be my intent to give him a private attorney at no expense that's experienced like a Bobrow, but a private attorney that's done some homicides, that can at least hopefully give him a good defense.* [¶] Again, *I understand there's the Franklin stuff, but he's looking at 50 to life and I don't think he's hit his 21st birthday yet, so those are my thoughts.*

(R.T. 8:26-12:18, italics added.)

After discussing the trial schedule, the following exchange occurred.

MR. ADLER: Well, just, procedurally, I'll just reiterate our position that right now the Court doesn't have jurisdiction to set the dates right now --

THE COURT: You're going to take it up -- take it up --

MR. ADLER: That's our position, right.



THE COURT: Take it up. That's all a part of the process. *The irony to me is the one thing you writted [sic] was the -- I don't know -- it was -- didn't seem -- well, we've done it once and that went quickly.*<sup>1</sup> [¶] *My experience, my time, my doing this, I don't see this, at this point, being much of anything.* So[,] I intend on moving forward and, of course, that's what the [a]ppellate [c]ourt is there for is to look at these things and decide[,] so by all means you -- you do that. [¶] In the meantime, we'll get ready for trial. *But there's that additional layer of me wanting to talk to Mr. Jones which creates a whole other issue, right, about his representation, but I'm quite frankly concerned.*

(R.T. 13:24-14:13, italics added.)

Mr. Bobrow stated that his office was "totally confident" in Mr. Adler's ability to represent Mr. Jones, when the following exchange occurred. (R.T. 15:7.)

THE COURT: *I've never had anything like this with you. You never -- I've never seen you come in here on a case that you had for two years and say you're not ready and you'd be ineffective.* That's not my experience.

MR. BOBROW: But that wasn't the issue in the last go-around. The last go-around was Mr. Adler had another case. It has -- according to what we've been able to determine legislative priority because it had an accusations [sic] of 273(a) which involve children. He thought the case was going to resolve --

THE COURT: *You -- you would never -- you would never have, one, double set it; and, two, if you had, you would have calendared it months ago and said to me, "Hey, I'm double set. I need a new date."*

MR. BOBROW: Well. . .

THE COURT: *You would not -- you would not have -- you would not have been completely silent on it. Confirmed in another department and then sent -- sent a late, you know -- again, and I get it. If you confirm on a Thursday, obviously, you know, based --*

---

<sup>1</sup> Judge Bowers was referencing an April 2, 2024 petition for writ of mandate and prohibition concerning his denial of a motion to suppress evidence in the *Jones* case. (*Jones v. Solano County Superior Court* (April 2, 2024, A170080) [writ den.].) On April 4, 2024, the Court of Appeal summarily denied the petition.

MR. BOBROW: As quickly as he could he filed a [m]otion to [c]ontinue after confirming. I don't think Mr. Adler expected -- or anybody expected the case to confirm. I think everybody expected that case to resolve, and then it didn't and so he's stuck and -- and --

THE COURT: *And so[,] I un-stuck him and -- and then he thought that was inappropriate, so that's where we are --*

MR. BOBROW: Well, he had spent the entire weekend on -- working on a case that he had confirmed --

THE COURT: I know. But that's a work-around. That's -- that's, hey, let's take our time picking a jury. We'll pass an extra week, you know, you let people get ready and when they are not ready, when they are honestly not ready, right, and you fall on your sword, which on occasion happens, *this would have been the second time for that in this case and, again, it just raises some concerns for me. I don't want to -- I don't want this to be personal --*

MR. BOBROW: Right. With regard --

THE COURT: -- with the PD not having it or not. *I just want the [d]efendant to have [c]ounsel that can be ready, and that can give me a date, and that we can go. Things happen. [¶] I mean, we get no time waivers that come and pop up on your way. Let's say you set a trial six months out and two months before trial, appropriately assigned a case, it's time not waived, that's -- that's life. That's understandable.*

MR. BOBROW: Right.

THE COURT: *But when you come in here and literally pick a date for trial where just the week before you picked the same week and you don't notify anybody, that's -- that's sort of troubling. And I'm chalking that up to inexperience. I'm not chalking it up to evil intent, okay. I'm just saying -- and then being in Fairfield and not being down here, being caught up in the day-to-day stuff that you have to do up there, right, as a line deputy. I get that everybody is busy, right, so I -- that's my inquiry, that's all.*

MR. BOBROW: Okay. I mean, I think in regards to the inquiry regarding Mr. Adler's professionalism I can say,

as a supervisor in this office and as Chief Deputy of this [o]ffice, he's totally competent to represent --

THE COURT: *He's appeared before me when I was in Fairfield and he was a line deputy for me for a period of time.*

MR. BOBROW: Right.

THE COURT: *These are not -- I literally did not accuse him of lying. It's not that. So that's -- that was my concern. That's why I want to bring it up. Glad you're here. Glad Dan Messner is here, too, because you all have been around for a long time and this -- these mistaken notions that somehow the lawyers pick the trials, not the Court, I think is incorrect. [¶] And so, again, we'll -- we're making a good record. This second issue is an issue that I wanted to bring up. I'm glad you're here. You all -- I don't run your office. You all decide, like you said, how these things are distributed. You know, I got a young kid who's under 21 looking at 50 to life and he's got a young attorney who's competent but, based on what we've done so far, has caused me concern. That's all. He's waived time so I'm not under the gun or anything like that.*

MR. BOBROW: Okay.

THE COURT: *Now, he's not here today and I don't know if his frustration is with the Court, with Mr. Adler, I don't know what's going on. [¶] I think if he were here I would say to him, hey, I'm considering giving you a private lawyer who's experienced in doing homicides who just has a lot more experience than the Public Defender, and up until now you've been in custody two years, if you don't want that, sir, you feel comfortable with how things are going then, by all means, keep your lawyer. I don't think it's a mandatory thing at all but it's something that concerns me.*

MR. BOBROW: I --

THE COURT: I don't want to step on anybody's toes. I just --

MR. BOBROW: Yeah. I think that concern is unfounded.

THE COURT: Okay. All right. *I think the record speaks for itself, but fair enough.*

(R.T. 15:12-18:23, italics added.)

Judge Bowers discussed scheduling again and then set a future hearing on August 29, 2024.

On August 26, 2024, Mr. Adler filed a second statement of disqualification, which included Judge Bowers's conduct on August 23. The statement of disqualification was based on Judge Bowers's ex parte communication with Mr. Nelson and his negative comments about "the quality of defense counsel." (Second Statement of Disqualification, p. 4.)

On August 29, 2024, Judge Bowers presided over another trial setting conference in *Jones*. Mr. Ornellas represented the People, and Mr. Adler, Mr. Bobrow, and Mr. Messner represented Mr. Jones, who was present and in custody.

Mr. Adler stated that he had filed a second statement of disqualification. Judge Bowers accepted service and said, "It is my intent to strike it just like I struck the first one because it was completely and utterly legally insufficient, and I will state those reasons why in open court." (R.T. 3:20-23.) The following exchange then occurred.

THE COURT: And, again, it is my intent to strike it, pursuant to 170.4(b), as it basically is legally insufficient and I will do that in writing. I have 10 days to do that, and so I will get that on file forthwith. [¶] And I believe the remedy then -- because there's already a 170.1 which I've already struck and we've had some discussions whether it's an answer or not, and that's going to go up -- you have the right to writ it, as it were, and to take it up, right. [¶] So[,] you can do that, and I would say that this is a little bit of a different issue, but it's what -- what did you call it, an additional challenge, so it has other -- it's another issue and so you certainly can writ that. [¶] I personally -- I don't see, time has been waived, right? We are not up on a trial date. *You know, we all know that I am retiring, so I really am not embroiled in this. I don't have a dog in this fight, so to speak, and my concerns as I sit here on my way out which I voiced at the last court hearing which you were not here, Mr. Jones, is I was concerned about the representation that you were receiving.* [¶] And so I had several questions about that to your lawyer; most of which he didn't wish to answer. And I inquired about

the dynamics of the process, this record, where we've been over the two years, what's happened, what hasn't happened, and my concerns. [¶] *One of the things -- the reason I think that this new paper has been filed is, again, the logistics of Mr. Adler working in Fairfield and your case being in Vallejo sort of led to this delay on our last court date of the lawyers being here.* [¶] *And I was in open court and a private lawyer, and one experienced in doing homicides, came, stopped by, and I asked him if he was available to take a serious case like this if it becomes an issue. Did not tell him the name of the case; didn't have him look at any file; didn't do any of that.* [¶] *Just because I, honestly, have serious doubts based on the last two years, based on everything that's happened in here about the representation, and I was concerned because you weren't here and refused to come.* [¶] *I -- I don't know why. What happened. I don't know if you're upset with -- I don't know why, right, so I can't and -- and will not replace a lawyer and get involved in the attorney-client relationship without your approval.* [¶] *So[,] it was my intent -- and I told your lawyer this, all of this is on the record -- I said, I'm concerned based on everything that I've seen so far about how this is going on.* [¶] *Now, if Mr. Jones and Mr. Adler are all in agreement, and this is the plan, and this is the strategy, and this is how you want to proceed then I will stay out of your attorney-client relationship. But as an independent [j]udge sitting here who, oh, by the way, is retiring and leaving, what I see, caused me concern and I felt the need to then when you and I had an opportunity to, in open court, to address those issues if that was a concern.* [¶] *So[,] I would have said this if you were here last time, and I'd say it today, this new challenge doesn't change any of that. I have concerns based on, again, this attorney having been appointed to represent you over two years ago that -- and, again, I'm just saying "attorney". I don't want to -- it's not about being a private attorney or public -- it's an attorney, right.* [¶] *You have been in custody. You're charged with a serious offense that carries a life top exposure. You have had this same attorney and you've gone through something called a preliminary examination in 2023. You were held to answer. We picked a trial date months out. We all confirmed it and so we're, you know, the DA is ready to prosecute you. And we come to that trial date in April and your lawyer says, on the record, you know, I'm not ready and if you make me go to trial I will be ineffective assistance of [c]ounsel.* [¶] *And I don't -- I don't want that, right, it's tough enough*

as it is. So[,] over the objection of the [p]rosecution[,] I agreed to continue your case. Okay. We pick another court date in open court[,] which the lawyers agree upon. Mr. Adler goes back to Fairfield and it turns out that the date that he picked he double set your trial for a date of another case that he had only just set the previous week. And when you review his trial calendar you could see there wasn't a whole lot since, so it looks like he, perhaps, double set your case for when we were going to go out in August. [¶] So[,] he then didn't reach out and contact the Court or the other Court, or there wasn't any sort of coordination to move it around or anything like that. Okay. Filed an untimely motion. I came in here. I called -- as I said in open court -- the other [j]udge and we were going to get your case out. [¶] And then we were dealing with a [c]hallenge for [c]ause to then remove me because I'm doing my job managing cases, so I struck that. And the remedy is this [a]ppellate [c]ourt gets to decide if that's true or not. [¶] So[,] when I look at all of that I -- and, again, knowing that, okay, this -- this case, you know, time is waived. Is this what Mr. Jones wants? He wants to go down this road? Or should I appoint him a private lawyer who's more experienced and done all these types of cases to represent him. And that was a question that I put out at the last court date, so that's kind of where I am.

MR. ORNELLAS: If we're going to hear from the [d]efendant on that issue I don't know if the Court is going to close the courtroom.

THE COURT: I may. I mean, he may give me a short answer saying, "No. I want Mr. Adler and I want to stay with my team" and then that ends this conversation. But if he says, "Well, I'm interested in what you're talking about" then I would do it in closed session. Because then the [d]efense would have an opportunity to, perhaps, to say things about the where, what, when, why, and that wouldn't be something I think the People should be privy to --

MR. ORNELLAS: Right. That's why I --

THE COURT: So[,] that's kind of where where I am. So[,] again, we are -- time is waived. Mr. Adler is in another trial. I don't see this, you know, going out next week or anything like that and that's why I bring this up. [¶] So[,] the ball is in your court, Mr. Jones.

MR. ADLER: Well, actually, Your Honor, I object to the Court addressing my [c]lient on the record --

THE COURT: Overruled.

MR. ADLER: -- and the only appropriate way to do that is through a *Marsden*<sup>2</sup> hearing --

THE COURT: Listen to me --

MR. ADLER: -- and that's not what we're here for.

THE COURT: *Right. Listen to me. Listen to me. This is a young man, okay, you want to go by the rules. The only thing, Judge, you can't talk to my [c]lient unless there's a Marsden [m]otion. Well, maybe he doesn't know what that is, right, maybe he's not been in trouble, right --*

MR. BOBROW: Okay. No, so this is --

THE COURT: -- excuse me, sir, maybe all these things -- excuse me, sir --

MR. BOBROW: No. No. This is over the top, Judge. You can't interfere with the relationship like this --

THE COURT: *I am not interfering with it.*

MR. BOBROW: Yes, you are.

THE COURT: *I'm questioning it. I believe I have a right --*

MR. BOBROW: You're violating --

THE COURT: -- and a duty --

MR. BOBROW: No, you don't. We have a right and a duty to protect his interests.

THE COURT: Right.

MR. BOBROW: And if he has a concern[,] we have an obligation to tell you. If he hasn't expressed that

---

<sup>2</sup> A *Marsden* hearing is held in a closed courtroom, without the presence of the prosecutor, to determine a defendant's request to substitute appointed counsel, on the basis that the attorney is not "adequately representing the accused." (*People v. Marsden* (1970) 2 Cal.3d 118, 123.)

concern[,] we don't have an obligation to tell you and you're soliciting --

THE COURT: *I don't have an obligation to inquire?*

MR. BOBROW: No, you don't.

THE COURT: Okay.

MR. BOBROW: I think you're violating judicial [c]anons and ethics interfering with the attorney-client relationship --

THE COURT: All right.

MR. BOBROW: -- in a way that is detrimental to that relationship, and -- and I'm asking you to stop. You should not be having an open courtroom discussion with our [c]lient --

THE COURT: I --

MR. BOBROW: He's represented by competent [c]ounsel. I supervise him. Mr. Messner supervises him. We make sure that everything is being done correctly. If Mr. Jones is unhappy with that and will tell us that[,] then we would put it on for a *Marsden* hearing. It's not before you for a *Marsden* hearing --

THE COURT: It's not.

MR. BOBROW: -- and you are -- and I believe your comments are soliciting a *Marsden* hearing on this unnecessarily. I believe your actions of reaching out to private counsel to say that he would be appointed is contrary to the [s]tatute in regards to appointment of counsel. And I -- I'm asking the Court to just stop discussing this representation in front of this [c]lient at this time.

THE COURT: And that's why we have a record and that's why we do all of this. [¶] Again, Mr. Jones what would you like to do?

THE DEFENDANT: I'd like to, um, get a private attorney.



THE COURT: Okay. Well, then we're going to have a private conversation.

(R.T. 4:24-10:26, italics added.)

Judge Bowers then cleared the courtroom and conducted a *Marsden* hearing with Mr. Jones. After the hearing, Judge Bowers stated that he was taking the matter under submission.<sup>3</sup>

On September 4, 2024, Judge Bowers filed a “Second Motion to Strike Additional Challenge as Legally Insufficient Law CCP 170.4(b).” In the filing, Judge Bowers described his conversation with Mr. Nelson. He stated that Mr. Jones had requested new counsel. Judge Bowers wrote that, on August 29, 2024, he gave a tentative ruling that he would be relieving the public defender and appointing private counsel. He wrote, “Moreover, the Court’s concern is with the representation being provided by Mr. Adler to Mr. Jones. As all parties know, I will be retiring and will not hear this jury trial. I have not expressed an opinion about the facts, but I do have concerns about the defendant’s representation by Mr. Adler.” (Second Motion to Strike, p. 2.) Judge Bowers struck the second statement of disqualification as legally insufficient.

On behalf of Mr. Jones, the public defender filed a petition for writ of mandate to vacate Judge Bowers’s September 3, 2024 “Second Motion to Strike Additional Challenge as Legally Insufficient Law CCP 170.4(b).” (*Jones v. Solano County Superior Court* (Oct. 14, 2024, A171238) [nonpub. opn.].) Mr. Jones argued that Judge Bowers “exhibited bias against defense counsel when he expressed in open court ‘his opinion about the quality of defense counsel in a negative manner and suggested the possibility and option of removing and replacing defense counsel.’” (*Id.* at p. 3.) Mr. Jones further alleged that Judge Bowers “expressed [his] negative opinion of defense counsel’s representation despite Petitioner himself not complaining about, or expressing a desire to replace, defense counsel.” (*Ibid.*) Based on these grounds, the Court of Appeal issued a peremptory writ of mandate and found that the allegations in the second challenge disclosed grounds to disqualify Judge Bowers pursuant to section 170.1(a)(6)(A)(iii) of the Code of Civil Procedure.<sup>4</sup>

---

<sup>3</sup> After Judge Bowers was recused, the matter was assigned to Judge Wendy G. Getty, who held another *Marsden* hearing on October 24, 2024. She relieved the public defender as counsel and appointed attorney Tamani Taylor to represent Mr. Jones.

<sup>4</sup> A judge shall be disqualified if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” (Civ. Proc. Code, § 170.1(a)(6)(A)(iii).)

In *Jones*, Judge Bowers questioned Mr. Adler's competence because he had not previously tried a homicide case. He asked Mr. Adler if he had ever tried a homicide, stated Mr. Adler's "step up to homicide" may have been too soon, and three times stated that he was considering appointing an attorney who had homicide trial experience. Judges are limited in their ability to remove counsel on the basis of "incompetence," because it implicates a defendant's right to counsel and is a threat to the independence of the bar. In *Smith v. Superior Court of Los Angeles County* (1968) 68 Cal.2d 547, the California Supreme Court held that it was beyond the statutory and inherent powers of a trial court to remove a court-appointed defense attorney, over the objections of both the attorney and petitioner, on the ground of the judge's subjective opinion that the attorney was incompetent. The Supreme Court also noted that if attorneys were not permitted to try murder cases unless they had previously tried such a case, "the number of attorneys 'competent' to do so would be fixed, and indeed would steadily diminish through the inevitable process of attrition." (*Id.* at fn. 1.)

The commission found that, by talking to Mr. Jones about Mr. Adler and his representation, over the objections of his attorneys, Judge Bowers improperly solicited a *Marsden* motion and interfered with the attorney-client relationship, in violation of canons 3 (duty to perform the duties of judicial office impartially, competently, and diligently), 3B(2) (duty to be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and to maintain professional competence in the law), 3B(5) (duty 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 or prejudice), 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 (duty to respect and comply with the law), 2A (to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 1 (duty to uphold the integrity and independence of the judiciary).

In his response to the commission, Judge Bowers stated that he had a duty to inquire whether Mr. Jones desired new counsel, because he believed Mr. Adler was not providing effective assistance of counsel. The trial court, however, is not required to conduct a *Marsden* hearing on its own motion. The California Supreme Court has held that "the trial court's duty to conduct an inquiry into the reasons the defendant believes his or her attorney is incompetent arises *only* when the defendant (or in some instances counsel) provides 'at least some clear indication' that the defendant wishes to substitute counsel." (*People v. Martinez* (2009) 47 Cal.4th 399, 418-421, *italics added*. ["To the extent defendant claims the court is under an obligation to conduct a *Marsden* inquiry on its own motion, we are not persuaded."].) As to any "general duty" to

supervise appointed counsel, any obligation “is circumscribed and must be understood in light of the countervailing duty of the court to respect the inviolability of the attorney-client relationship and to permit the defendant to present his or her defense in the manner deemed appropriate by counsel in consultation with the defendant.” (*Ibid.*, citations omitted.)

The commission found that Judge Bowers’s comments about and to Mr. Adler, including that his motion to continue “said a number of very disturbing things,” that his first statement of disqualification was “borderline frivolous,” implying that he intentionally double-set the *Jones* and *Johansen* trials to avoid trying the *Jones* case, stating that Mr. Adler set the motion to continue “in motion as early as 4/26/24 when . . . he knew he already had a conflict,” repeated comments on his tardiness, questioning Mr. Adler about his duties and experience, and stating that he was not accusing him of “lying” were disparaging and discourteous, and conveyed the appearance of bias and embroilment, in violation of canons 3B(4) (duty to be patient, dignified, and courteous to lawyers), 3B(5), 3B(8), 3B(2), 3, 2, 2A, and 1. The commission further concluded that the judge’s comments questioning Mr. Adler’s competence, while in open court and in the presence of his client, could reasonably interfere with the attorney-client relationship and convey the appearance of retaliation for Mr. Adler’s statements in the statements of disqualification.

The commission also found that talking to Mr. Nelson about accepting appointment in *Jones*, even though Mr. Jones had not asked that the public defender be relieved as counsel constituted prejudgment, embroilment, abuse of authority, and bias against Mr. Adler, in violation of canons 3B(5), 2, and 2A.

A challenge for cause may be properly stricken under section 170.4(b) of the Code of Civil Procedure only if it is untimely filed or on its face discloses no legal grounds for disqualification. The petitioner’s statement of disqualification alleged, on its face, legal grounds for disqualification, pursuant to section 170.1(a)(6)(A)(iii) (a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial), and thus should have been assigned to another judge for decision, pursuant to section 170.3(c)(5). The commission observed that a judge who commits legal error which also 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 may be subject to discipline. (See *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371.) Judges are expected to know and follow the law and are not permitted to “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 Conduct Handbook (4th ed. 2017) § 3:48, p. 198 [citing *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1092].)

The commission found that Judge Bowers improperly passed upon his own disqualification or upon the sufficiency in law, fact, or otherwise, and improperly struck the second statement of disqualification, in violation of canons 3E(1) (duty to disqualify in any proceeding in which disqualification is required by law), 3B(1) (duty to hear and decide all matters assigned to the judge, except those in which the judge is disqualified), 3B(8), 3B(5), 2, 2A, and 1.

The judge's conduct, in the matter described above, at a minimum, constituted improper action. (Cal. Const., art. VI, section 18, subd. (d).)

The commission found Judge Bowers's misconduct was aggravated by prior discipline, for similar misconduct. The commission privately admonished Judge Bowers in 2012, for misconduct in two matters, and issued an advisory letter in 2007, for misconduct in one matter.

#### 2012 Private Admonishment

In 2011, Judge Bowers developed a close social relationship with an alternate juror in a case over which he presided, and did not disclose the relationship to the parties. The commission found that Judge Bowers's social relationship with an alternate juror while the case was pending before him created an appearance of impropriety, and was inconsistent with the canon 3E requirements of disclosure and disqualification.

In 2009, Judge Bowers improperly accused a deputy public defender of "gamesmanship." The commission found that the "gamesmanship" remark violated canon 3B(4), and reflected bias, or at a minimum, an appearance of bias.

#### 2007 Advisory Letter

In 2005, during a trial, Judge Bowers became frustrated with what he perceived to be a lack of preparation on the part of the prosecutor, and said, "This is bullshit," to the attorneys during a sidebar, while the jury and other individuals were present in the courtroom. The judge's remark was heard by others in the courtroom, including the bailiff. The commission found that Judge Bowers's remark violated canon 3B(4).

Commission members Hon. Lisa B. Lench; Mani Sheik, Esq.; Mr. Alton L. Garrett, Jr.; Rickey Ivie, Esq.; Ms. Kay Cooperman Jue; 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. Commission members Hon. Julia C. Kelety and Hon. Kimberly Merrifield would have voted for a Notice of Tentative Public Admonishment but would not have included the handling of the second statement of disqualification in discipline.

Date: July 8, 2025