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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE ROBERT S. DRAPER, No. 212	**DECISION AND ORDER REMOVING JUDGE ROBERT S. DRAPER FROM OFFICE**

I. INTRODUCTION

This disciplinary matter concerns Los Angeles County Superior Court Judge Robert S. Draper. The commission commenced this inquiry with the filing of its Notice of Formal Proceedings (Notice) on January 14, 2026.

Judge Draper is charged with seven counts of misconduct, which, with subparts, include 22 allegations of misconduct. The charges allege that Judge Draper made inappropriate racial comments during a civil trial; engaged in speech and conduct that could reasonably be perceived as gender bias; became embroiled during a hearing; engaged in improper ex parte communications; made inappropriate comments to a female colleague and female court personnel; improperly disclosed confidential juvenile records; made demeaning comments during a hearing; engaged in conduct that created court security concerns; failed to cooperate with court administration during both a voluntary and an involuntary medical leave of absence; and failed to cooperate with the commission when it initiated an investigation of his conduct.

The California Supreme Court appointed Hon. James M. Humes, Associate Justice of the Court of Appeal, First Appellate District, Division One; Hon. Matthew P. Guasco, Judge of the Ventura County Superior Court; and

Hon. Michael A. Knish, Judge of the San Bernardino County Superior Court, as special masters to conduct an evidentiary hearing.

The 6-day hearing took place between April 27 and May 1, and May 4, 2026. The masters filed a report containing their findings of fact and conclusions of law on July 24, 2026. The commission heard oral argument on October 7, 2026.

The special masters concluded that Judge Draper committed willful misconduct as to Counts One, Two (in part), Three (in part), Four (in part), Five (in part), and Seven (in part). They found that Judge Draper committed prejudicial misconduct as to Counts Two (in part), Three (in part), and Seven (in part). They concluded Judge Draper engaged in improper action as to Count Four (in part). They concluded that the allegations in Counts Two (in part), Three (in part), Four (in part), Five (in part), Six, and Seven (in part) were not proven.

The masters concluded that Judge Draper engaged in eight instances of willful misconduct, seven instances of prejudicial misconduct, and one instance of improper action.

We conclude, based on our independent review of the record, that the masters' factual findings as to all counts are supported by clear and convincing evidence, and we adopt them in their entirety. In this decision, we summarize the masters' factual findings. The masters also found that Judge Draper sometimes lacked candor in his communications with the commission and in his testimony before them. We agree with and adopt the masters' credibility findings.

We adopt the masters' legal conclusions as to most, but not all, of the allegations. In some instances, we respectfully reach our own independent legal conclusions as to certain allegations. We conclude that Judge Draper engaged in nine instances of willful misconduct, eight instances of prejudicial misconduct, and one instance of improper action.

In their report, the masters recognized the positive aspects of Judge Draper's service as a judge, including his long, successful, and impressive career and his dedication to his judicial position. The special masters concluded, however, that "the record as a whole leaves no doubt that [Judge Draper] persistently violated the standards governing judicial behavior." We agree with the masters' assessment and conclude that Judge Draper engaged in a course of willful and prejudicial misconduct reflecting either a concerning lack of familiarity with basic ethical precepts, or an unwillingness to conform to those precepts. In particular, Judge Draper's comments relating to race and his comments reflecting gender bias were offensive, insensitive, and reflect a lack of appreciation for acceptable judicial conduct. Judge Draper, throughout these proceedings, including during his appearance before this commission, refused to accept responsibility for his behavior and showed little insight into, or remorse for, his conduct and its effect on others. Taken together with Judge Draper's lack of candor as to some of the charges, we conclude that removal from the bench is the appropriate discipline. Consequently, in order to fulfill our mandate of protecting the public, enforcing high standards of judicial conduct, and preserving public respect for the judiciary, we remove Judge Draper from office.

During the hearing before the special masters, Judge Draper was represented by Ashley D. Posner of Encino, California and Paige L. Adamczyk of Oxnard, California. On August 20, 2026, Judge Draper substituted himself as counsel in place of Mr. Posner. The examiners for the commission are commission trial counsel Mark A. Lizarraga, Esq. and commission assistant trial counsel Gregory J. Cleaver, Esq.

II. LEGAL STANDARDS

A. Levels of Misconduct

There are three types of judicial misconduct: willful misconduct, prejudicial misconduct, and improper action.

1. Willful Misconduct

Willful misconduct is the most serious type of misconduct. Its elements are (1) unjudicial conduct, (2) committed in bad faith, (3) by a judge acting in a judicial capacity. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1091.) Unjudicial conduct occurs when a judge fails to comply with the canons of judicial ethics. (*Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 662.) A judge acts in bad faith "by (1) performing a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority." (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

2. Prejudicial Misconduct

Prejudicial misconduct is "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) It occurs when an objective observer would conclude that the judge's improper conduct was prejudicial to public esteem for the judicial office, regardless of the judge's motivation or intent. (*Broadman*, *supra*, 18 Cal.4th at pp. 1092-1093.) Prejudicial misconduct "may be committed by a judge either while acting in a judicial capacity, or in other than a judicial capacity." (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 878 (*Adams II*).) It does not require bad faith, and the subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial conduct has occurred. (*Ibid.*)

3. Improper Action

Improper action occurs when the judge's conduct violates the canons, but does not have an adverse effect on the reputation of the judiciary. (*Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89, citing *Adams II, supra,*

10 Cal.4th at pp. 897-899.) A judge may be removed from office or censured based on willful misconduct or prejudicial misconduct, but not improper action. (Cal. Const., art. VI, § 18, subd. (d).)

B. Burden of Proof

The examiner has the burden of proving the charges by clear and convincing evidence. (*Broadman*, *supra*, 18 Cal.4th at p. 1090.) "Evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. [Citations.]" (*Ibid.*) Clear and convincing evidence is so clear as to leave no substantial doubt. It is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Ibid*.)

C. Standards Regarding Masters' Findings and Conclusions

The factual findings of the masters are given special weight because the masters have "the advantage of observing the demeanor of the witnesses." (*Broadman*, *supra*, 18 Cal.4th at p. 1090.) Although the masters' legal conclusions are accorded respect, great weight is given to the commission's conclusions of law because of its expertise in evaluating judicial misconduct. (*Ibid.*) The commission may determine, however, that it is appropriate to disregard the factual findings and the legal conclusions of the special masters and make its own determinations based on its own independent review of the record. (See *Inquiry Concerning Clarke* (2016) 1 Cal.5th CJP Supp. 1, 7.)

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III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Count Two[1] – Misconduct During *Odom v. Los Angeles Community College District, et al.* (*Odom*)

In 2022, Judge Draper presided over *Odom*, a civil jury trial which resulted in a $10 million verdict for the plaintiff (Dr. Sabrena Odom), a professor in the Los Angeles Community College District (LACCD), who sued a colleague (Dr. Howard Irvin) for sexual harassment and the LACCD for failure to protect her from the harassment. Count Two charged Judge Draper with engaging in six different types of misconduct while presiding over *Odom*.

1. 2A – Race-Based Remarks

a. Findings of Fact

After the jury's verdict, the *Odom* defendants filed motions for a new trial and judgment notwithstanding the verdict. The motions were heard at a February 2023 hearing. Attorney Janice Brown, who is Black, was retained to handle post-trial proceedings and appeared for the first time before Judge Draper to argue for the defendants at the February hearing. There were no race-related issues in the case.

At the outset of her argument, Brown referred to Dr. Odom's testimony about "lov[ing] her job so much because she could help kids in the neighborhood." Judge Draper interrupted Brown to ask whether she had "seen the video of [Dr.] Odom encouraging and dancing with all of those young [B]lack men who a lot of them were people society had just sort of thrown away?" Brown said she had, and the following exchange occurred:

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[1] Count One of the Notice charged Judge Draper with failing to adequately respond to multiple preliminary investigation letters from the commission, and making improper and sarcastic statements to the commission staff attorney who signed the letters. Because most of the charges discussed herein preceded the conduct charged in Count One, and were the subject of the preliminary investigation letters described in Count One, we discuss Count One, *infra*, at the conclusion of this section.

THE COURT: And I use the term that my wife says is not politically acceptable. I think they are politically acceptable, because I use terms like coal black and light brown because I don't think those are bad terms.

Have you read the Robert Caro books about Lyndon Johnson?

MS. BROWN: I don't know if I have.

THE COURT: This is not part of my decision at all. I'm just telling you. The reason that the South was able to stop civil rights for so long was the Southern senators who were against miscegenation, they called it. You know what 'miscegenation' is?

MS. BROWN: I'm fully aware of that, your Honor.

THE COURT: Of course you are. That's my point. Both of the—when I went to Cal—and I'm sorry if I'm boring you, but when I went to Cal, my wife and I, we had seven really good [B]lack players all lined up at split end. And the idea of one [of] them playing quarterback would have been crazy. Doug Williams—

MS. BROWN: I remember. I was at that game.

THE COURT: The Doug Williams game?

MS. BROWN: Uh-huh.

THE COURT: You're that old?

MS. BROWN: I'm that old. Just, you know, good skin.

THE COURT: Both of the quarterbacks, who were spectacular quarterbacks, were the product of miscegenation. And the South would have had a lot better football team if the Southern Senators had not—

MS. BROWN: Look, I am here. And you obviously see who I am.

THE COURT: I know who you are.

Later in the hearing, Brown asked Judge Draper why he thought "Doug Williams was relevant to this case." Judge Draper responded, "Well, actually, it wasn't. It was the two . . . quarterbacks in the Superbowl. [¶] . . . [¶] And it has nothing to do with the case really. It has to do with what I feel society has come to, and it's a good thing." The following exchange then occurred:

MS. BROWN: And what has society come to that—I mean, is there any relation to the case? I mean, you mentioned society has come to—what—having mixed Black men, I mean, the football players were mixed race?

THE COURT: Yeah.

MS. BROWN: I guess I'm curious why . . . that has some meaning for this case.

THE COURT: You know, it doesn't have meaning for this case except that we're all a part of the world. We're all a part of our United States. And I'm very proud of our country. I'm very proud of how—75 percent of everybody [was] in favor of Black Lives Matter right after Floyd was . . . done. Okay? Went back to the normal political but . . . it doesn't have anything to do with our case.

We have two [parties] who couldn't say there was a racial issue in this case because they were both very Black people. Beautiful people, successful people, people I'm proud of. . . . So, no. To answer your first question is I can't do any better than that.

MS. BROWN: Okay. And so—

THE COURT: It's not biased me one way or the other in this case.

Brown then asked whether the South and the racial attitudes there that Judge Draper mentioned "have any impact on this case," and the judge said:

> No, same thing. . . . I thought maybe you had read . . . who was it who got the Civil Rights . . . Act through? Lyndon Johnson who had fought it for years.
>
> Kennedy could not have gotten that . . . through. The reason Lyndon Johnson could get it through was he knew how to not get it through. He knew how the Southern senators used to talk in all those years, and . . . by the way, my son-in-law is from Tennessee. I asked him, why do people in the South hate Lyndon Johnson? He was . . . from Texas. That exact reason. He was our . . . guy, and he got it through.
>
> I'm just sharing a little history with you. When you get older, you like to share history. It had absolutely nothing to do with my decision. There was no racial issue in this case.

Judge Draper testified before the masters that his comments were appropriate in context, about social progress, meant to encourage settlement of the case, and that, although race "was not an issue at trial" in *Odom*, it was nonetheless an issue and "relevant to what [he] was trying to get [the parties] to do."

The masters concluded that the comments were gratuitous, rambling, and irrelevant. They further concluded that Judge Draper's proffered explanation that his comments were made to facilitate a settlement was not credible, and that he would not have made the remarks if none of the attorneys at the hearing was Black. The masters noted that the comments began almost immediately after the hearing started, right after Brown entered her appearance, and Judge Draper never convincingly explained how his comments related to Black people would have encouraged settlement of a case that involved sexual, not racial, harassment and discrimination.

Neither party objected to the masters' factual findings, and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper's comments violated canons 1 (a judge shall observe high standards of conduct so that the integrity of the judiciary is preserved), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), 3B(4) (a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity), and 3B(5) (a judge shall perform judicial duties without bias or prejudice and shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias). The masters did not find clear and convincing evidence that Judge Draper made the comments in bad faith, and did not find that the comments were "necessarily overtly hostile." The masters therefore concluded that the comments constituted prejudicial conduct.

Judge Draper objected and argued the conduct constitutes only improper action. The examiners objected and argued that the conduct constitutes willful misconduct.

Judge Draper argued that Brown was a "nationally recognized civil-rights litigator" and the "pioneering founder of a woman- and minority-owned litigation firm" whom he sought to engage "on a subject of genuine and mutual significance." He asserted his remarks were not unethical because he harbored no "animus" towards Brown and he did not "target" her because of her race.

The subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial conduct has occurred. (*Adams II*, *supra*, 10 Cal.4th at p.878.) Rather, prejudicial misconduct occurs when an objective observer would conclude that the judge's unjudicial conduct was prejudicial to

public esteem for the judicial office, regardless of the judge's motivation or intent. (*Broadman*, *supra*, 18 Cal.4th at p. 1092.) We conclude that an objective observer would find Judge Draper's irrelevant, insensitive, and inappropriate comments about race to be prejudicial to public esteem for the judicial office.

The closer question is whether the comments constitute willful misconduct. Judge Draper was acting in a judicial capacity because he was on the bench, presiding over post-trial motions. (See *Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163, 172 ["when a judge is on the bench, he is presumptively acting in a judicial capacity"].) His comments were unjudicial because they violated the canons as set forth above. As such, the pivotal question is whether Judge Draper made the comments in bad faith.

The commission has previously determined that a judge acts in bad faith by performing a judicial act for a corrupt purpose[2] (which is any purpose other than the faithful discharge of judicial duties). (*Broadman*, *supra*, 18 Cal.4th at p. 1092.) In support of their argument that Judge Draper's comments constitute willful misconduct, the examiners asserted that *any* gratuitous discussion of a judge's personal views is not part of the faithful discharge of judicial duties and thus constitutes acting in bad faith. The examiners asserted that, because Judge Draper's race-based comments had nothing to do with the *Odom* case, the "most charitable view" of such comments is that they reflected Judge Draper's personal views on race and the history of race relations in the United States, constituted gratuitous comments in a case pending before him, and were made for a purpose other than the faithful discharge of his judicial duties.

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[2] The commission has previously found that comments made for a corrupt purpose include comments made for the purpose of venting anger or frustration (see *Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 275 ["Judge Van Voorhis lost his temper and made comments for the corrupt purpose of venting his anger or frustration"]), and comments made to discourage a court employee from cooperating with a commission investigation (see *Inquiry Concerning Mallery* (2024) 15 Cal.5th CJP Supp. 1, 28).

The examiners argued that the commission's decision in *Inquiry Concerning Laettner* supports this position. In that matter, Judge John T. Laettner asked a deputy public defender to speak with him in private. (*Inquiry Concerning Laettner* (2019) 8 Cal.5th CJP Supp. 1, 24-25.) The judge and the deputy public defender then had a conversation in chambers, during which the judge initiated a discussion about a case which he believed the deputy public defender was upset with him about. The commission agreed with the masters that Judge Laettner's conversation constituted an improper ex parte communication, but stated:

> We respectfully disagree with the masters, however, that Judge Laettner's ex parte communication . . . was prejudicial misconduct and find that, because he initiated the conversation for a purpose not related to the faithful discharge of his judicial duties, his actions constituted willful misconduct . . . Judge Laettner made the improper comments to [the deputy public defender] because he cared excessively about how [the deputy public defender] perceived him, a motive that was personal rather than a part of his judicial duties, and created the appearance of partiality.

(*Id.* at pp. 26-27.)

We do not find our conclusion in *Laettner* to be dispositive here. Judge Laettner had a clear ulterior, and clearly improper, motive for making the comments to the deputy public defender, because he cared "excessively" about her perception of him and wanted to assure himself that she was not angry with him. Here, it is not clear that Judge Draper had any clear ulterior, or obviously improper, motive for making the comments.

Further, the commission has previously addressed improper comments related to race and/or national origin, with a different conclusion. In *Inquiry Concerning Kreep*, Judge Gary G. Kreep made improper comments to a deputy public defender of Mexican origin, including telling her that he loved her accent, asking her whether she was a Mexican citizen, and telling her he was not

planning on having her deported. (*Inquiring Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1, 27.) The commission determined that drawing attention to a person's ethnicity or origin and questioning a person's citizenship when these are not issues in the matter before the judge, can reasonably be perceived as offensive and reflecting bias. (*Ibid*.) The commission agreed with the masters that the comments would appear to an objective observer to be prejudicial to public esteem for the judiciary and constituted prejudicial misconduct. (*Id*. at p. 28.)

In another matter, the Supreme Court held that "[r]egardless of [a judge's] personal feelings on racial harmony or the propriety of ethnic humor . . . ethnic slurs uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as willful misconduct." (*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 376.) In that matter, Judge Mario P. Gonzalez told a male defendant of Mexican origin convicted of domestic violence that "although such behavior might be tolerated in Africa or Mexico, it would not be tolerated in America"; during jury voir dire questioned a male potential juror of Japanese origin about inflation and then commented that he did not know why he was speaking to the potential juror about inflation, because "what do fish heads and rice cost?"; and during another jury voir dire asked a Black woman on the panel who had said she worked as a grocery clerk if she knew the price of watermelon. Judge Gonzalez argued that his comments were made "in jest" and he had "never treated ethnic or minority groups unfairly." (*Ibid*.)

Here, although Judge Draper's comments on skin tone, miscegenation, Black football quarterbacks, and Lyndon Johnson's successful efforts to enact the Civil Rights Act were irrelevant and gratuitous, we do not conclude that there is clear and convincing evidence that Judge Draper made them for a corrupt purpose. While insensitive and irrelevant, they were not "slurs" like those made by Judge Gonzalez, but more akin (although substantially more extensive) to the

comments made by Judge Kreep. While there may be situations in which a judge's gratuitous discussion of personal views could rise to the level of acting in bad faith, we do not find, on the record before us, there is clear and convincing evidence here of a corrupt purpose. We therefore agree with and adopt the masters' conclusion that the conduct constituted prejudicial misconduct.

2. 2B – Gender-Based or Sexist Remarks

a. Findings of Fact

During a hearing in *Odom* in October 2022, and referring to a witness who had testified, Judge Draper said, "I made some rulings earlier in the case about Me Too evidence and other possible witnesses. You know, that last line of inquiry of this young lady, [who] was quite attractive. And I mean that in a global way, not physically necessarily."

During the February 2023 hearing discussed, *supra*, Judge Draper twice referred to women as "little girls." First, while discussing LACCD's duties in hiring, Judge Draper said, "Let's say [LACCD] can't deny employment [to a job applicant]. You think it might be something that a reasonable employer trying to protect the little girls there that are going to be under somebody's care . . . ." Second, referring to Raquel Gonzalez, a student at the community college who testified about sexual harassment she experienced from Dr. Irvin and others, Judge Draper said, "[T]his poor little girl, I saw her there. . . . [¶] . . . [¶] Poor little—Ms. Gonzalez. She looked like—except that she was Hispanic, she could be my granddaughter." At another point during the hearing, which lasted over both a morning and afternoon session, Brown looked at her watch. Judge Draper then said, "I'm sorry. You got a date or something, Ms. Brown?"

After denying the *Odom* defendants' motions at the end of the February 2023 hearing, Judge Draper met in chambers with the four female attorneys who had appeared—Brown, Maribel Medina, Maryann Gallagher, and Viridiana Aceves. According to both Brown and Medina, during this meeting Judge Draper stated that "at his prior law firm many male attorneys slept with

female secretaries and that the secretaries were told, 'You better be able to fuck better than you can type.' "

Judge Draper did not deny making the statement but testified before the masters that he invited counsel into chambers with the intent to "convince the college that it would be a good idea to engage in some further negotiations to settle the case because it just made no sense to [him]." Explaining why he made the comment, Judge Draper stated, "The point I was making . . . was that this type of behavior was acceptable in some firms in my early years of practice, . . . and I felt it a mark of substantial progress that it was now widely and correctly recognized as totally unacceptable." He further testified, "I thought that, by expressing my pride in what we had accomplished in the United States, it was a segue to saying, 'This is just not what happened here.' [¶] And the college, I thought, had a tremendous responsibility, which they totally abdicated. And I thought that, with a couple million dollars—[Dr.] Odom just wanted safety and vindication . . . ."

The masters specifically rejected Judge Draper's assertion that his comment to the female attorneys in chambers was intended to encourage the parties to settle, and noted that, if Judge Draper wanted to use the idea of women's social progress to encourage a settlement, he could have done so in a far less offensive way.

Neither party objected to the masters' factual findings, and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper's comments about "little girls" were paternalistic and gender-based, and that his use of a sexual obscenity when telling the story about the vulgar behavior of some of his former colleagues toward their secretaries was even more gratuitous and inappropriate. The masters further concluded that a reasonable judge would be aware that the comments would likely be considered offensive and cause discomfort. The masters noted that sharing such a crude example of sexist behavior was

unnecessary, inappropriate, and reflected extremely poor judgment. The masters concluded that Judge Draper's comments violated canons 1, 2, 2A, 3, 3B(4), and 3B(5), and constituted prejudicial misconduct.[3]

The examiners objected that the conduct constitutes willful misconduct, while Judge Draper objected and argued that the conduct constitutes improper action. Echoing their argument regarding race-based remarks, *supra*, the examiners asserted that Judge Draper's comments constitute conduct that is not part of the faithful discharge of judicial duties and he therefore acted in bad faith. Judge Draper argues that his comments would not appear to an objective observer to be prejudicial to public esteem for the judiciary, in particular because he made the comment " 'You better be able to fuck better than you can type' " in order to condemn what used to be acceptable language used in the workplace.

The commission has consistently found that gender-based comments, regardless of a judge's subjective intent, constitute prejudicial misconduct. (See, e.g., *Laettner*, *supra*, 8 Cal.5th CJP Supp. at pp. 19-20, 38 [prejudicial misconduct where judge stated to a female attorney: "Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want"; and stated in open court "On a lighter note, I can take judicial notice that women can drive you crazy"]; and *Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552, 556-557 [prejudicial misconduct where judge told offensive and crude jokes to or in the presence of female court employees and attorneys].) Further, as the California Judicial Conduct Handbook states: "the use of the word 'girl' to refer to adult females, or the use of other terms that define and stereotype women, constitutes gender bias. (See Rothman, et al., Cal. Judicial Handbook (4th ed. 2017) § 2:11, p. 76.)

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[3] The masters also concluded that the comment "You got a date or something?" did not, without more, violate the canons. Neither party objected to this conclusion, and we adopt it.

For the foregoing reasons, and the reasons set forth, *supra*, regarding Judge Draper's comments regarding race, we agree with the masters and adopt their conclusion that Judge Draper's comments constitute prejudicial misconduct.

3. 2C – Touching Attorney's Hair

a. Findings of Fact

Brown and Medina testified that, at the February 2023 hearing, Judge Draper touched Medina's hair. The masters found that Judge Draper did touch Medina's hair, and further found Medina credible when she testified that she both felt and saw the touching, and found Brown's testimony that she observed the touching credible. The masters determined that the examiners failed to prove by clear and convincing evidence that the touching was intentional and non-accidental.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that because the examiners did not prove by clear and convincing evidence that Judge Draper's touching of Medina's hair was intentional and non-accidental, it did not constitute a violation of the canons. Neither party objected to this legal conclusion, and we adopt it. We dismiss count 2C.

4. 2D – Embroilment and Bias

a. Findings of Fact

During the trial, Judge Draper made a number of comments exhibiting emotion, embroilment, and bias, including:

> Judges like jurors come with life experiences. And when Ms. Gonzalez[,] I believe was talking, I have a . . . 17-year-old granddaughter who's now looking at colleges. And I've got to be honest with you, that has not affected anything I've done in the case. Hopefully, be fair. I will be . . . fair. I'm not making a decision in the case.

> If I had [a] . . . 17-year-old granddaughter who's now looking at colleges and actually is on the road as the case was going on, and the question was asked, and then down the road, turned out that there was some molestation and the college had known about that, when they got the complaint and didn't do anything about it, I would be upset as a grandfather. Okay.
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> So I'm not talking about expungement. I'm not talking about whether it happened in [the] 1990s or not. I'm talking about if the college got a complaint from another girl and they just ignored this information because it had been expunged and then my . . . granddaughter was molested, I think I would be fairly, fairly—not unfairly—fairly upset.
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> Now I'm saying that only because I want to be honest with you. That is my life situation right now. I have four grandkids. One's back east. But actually her mother is going through the same situation. So I think it's fair, I think the jury instruction as I asked it to be written is fair in the context of this case . . . . I just wanted to explain to you why that ruling.

At another hearing, the judge stated that his "biggest problem with the case" was not Dr. Irvin but:

> . . . the people that are spending my money not settling this case and are putting the video depositions on and on as their main case.
>
> And, you know, I really had a hard time understanding why there wasn't a conflict of interest . . . between the school district and [Dr.] Irvin. And he was not the main culprit. He did bad things. Had the school district done anything like I would expect them to do to protect my children and your children and their children, I think this would have been different.

Later, the judge stated that aside from "one poor young woman [who] was kind of in the middle of it," LACCD's witnesses:

. . . didn't care. They didn't care about anything except protocol . . . . I can't tell you how much impact that had on me as a grandfather. If I'm the 13th juror, I shouldn't—there's a lot of voir dire that you should have asked me about. Not because I'm biased, but because some things hit you. You have a daughter. You might. I don't know. Some things might hit you really hard if you actually saw them rather than read the record.

And:

I said during the trial, my oldest granddaughter, who actually is going to be 18 next Saturday—which is the same day I'm going to be older than 18. She was born on my birthday. And . . . she's considering community colleges. And I think they are a wonderful asset for people who need it the most. So I'm not doubting community college at all, but they have a responsibility to the kids.

At that point in time [during trial], my granddaughter and my daughter were out roaming the state looking at colleges. . . .

And I'm just saying, you know, would I want my granddaughter to go to that school if that was happening by someone, not Dr. Irvin, but someone, can—I said I wanted to tell you that during, truthfully. And, you know, you talk about [the] 13th juror, . . . if I would've been . . . the 12th, you would have been saying to me, well, do you have any kids like this age and what are they doing? Are they looking at colleges? What colleges? Oh, they're looking at [redacted] Community College. You probably would have kicked me off. That's the problem here, you know. By the time you get to the 13th juror, it's over.

Maybe you were better with the first 12.

[¶] . . . [¶]

Anyway, I'm not prejudice[d]. I'm just telling you I'm a human being governed by my emotions and my life experience.

> . . . Emotions in the sense of, if that happened, that would be terrible. I don't want my child or anybody to be going to the school if that was the standard. And you know something, everybody wasn't talking about Dr. Irvin. I was talking about the community college.
>
> I was more appalled by almost every witness that the community college put forth. . . . I'm not saying they're bad people, but they just have no idea what they're supposed to be doing in terms of protecting our kids.

While Gallagher was arguing on behalf of Dr. Odom, she alluded to her client's "betray[al]" by LACCD and Judge Draper responded, "You know, one of the things [Dr.] Odom said—and I doubt anybody here remembers it other than me and her. She was sitting, standing, sitting here between questions, and she looked off in the distance and she said, 'I feel so alone.' She wasn't alone, but she said, 'I felt so alone.' " Judge Draper "was tearing up" while recalling what Dr. Odom said. Because he appeared to be crying, Brown asked him, "Your Honor, are you feeling emotional? Like, are you—I mean, when you say you feel so alone, are you feeling that now?" Judge Draper responded that he did not "feel alone," continuing, "I'm with the people I love, and I have the respect. And you're a new friend, but I'm with people I love. And I love what I do. And I take it very seriously, but no. I—that touched me. Just like if you saw somebody that was run down by a railroad train, I wasn't run down by a railroad train, but yeah, I was emotional about that. Anyway."

Judge Draper also expressed concern about taxpayer money and LACCD's failure to settle the case, and that, since it was "[his] money defending the lawsuit, [his] money, your money, everybody's money,["] LACCD "should have taken [Dr. Irvin] aside and said, this is not good." After expressing sympathy for Dr. Irvin, Judge Draper said, "I think this case should have been settled. And it's just like funny money kind of. It's not the district's money. It's

my money and your money, everybody's money, so take a shot. This case never should have been tried, in my view."

Judge Draper ultimately recused himself from *Odom*, and in his written recusal order he returned to the theme of LACCD's failure to settle, writing that he "was delighted" when Brown "[took] over the representation of LACCD and [Dr.] Irvin" because he thought it was "clear that someone running the show at [the district] . . . must have been brain-dead to allow the case to continue even after the showing of the first deposition."

Comparing LACCD to companies he represented in private practice, he continued, "The difference . . . , solely referring to how LACC[D] administrative personnel have acted in this case, seems to be that a major disaster like this case which would result in serious questions from either shareholders or senior managers in those organizations, in the case of [the district] . . . do not, apparently because any ultimate loss will only be borne by people like me and everyone else in the courtroom, the taxpayers."

In his testimony before the masters, Judge Draper denied becoming emotional during the February 2023 hearing. The masters found that Judge Draper did become emotional and found his testimony to the contrary to be not credible.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper's comments about his granddaughter, his emotional response to the *Odom* plaintiff's testimony, his disapproving quips about the LACCD administration, and his remarks about the burden the case imposed on taxpayers, including himself, showed a lack of professional distance from the case, and could have caused a reasonable person to question his impartiality. They concluded that the conduct violated canons 2, 2A, 3, 3B(4), and 3B(5), and constituted prejudicial misconduct.

The examiners did not object to these legal conclusions. Judge Draper objected and argued that the conduct constitutes only improper action because his comments were "candid remarks" about the human stakes of litigation. He further argued that the masters determined only that his comments created the appearance of partiality, and therefore cannot constitute prejudicial misconduct.

The United States Supreme Court has stated that judges are to represent the "impersonal authority of law" and provide "that atmosphere of austerity . . . indispensable for an appropriate sense of responsibility on the part of court, counsel and jury." (*Offutt v. United States* (1954) 348 U.S. 11, 17, quoted in Rothman, *supra*, § 2:1, pp. 58–59.) While presiding over *Odom*, Judge Draper repeatedly referenced personal stories about his granddaughter; characterized the case as one involving protecting "our kids"; displayed a strong emotional connection to Dr. Odom; and made multiple comments criticizing LACCD for wasting "my money" by not settling the case and proceeding to trial. His repeated comment that "I'm with the people I love" created the appearance that he was improperly solicitous of the attorneys and litigants before him. Judge Draper's comments and display of emotion created, at the very least, the appearance that he had lost the necessary professional distance between himself and the case and had become embroiled, and the appearance of bias such that an objective observer would conclude that the conduct in question was prejudicial to public esteem for the judicial office.

We therefore agree with and adopt the masters' conclusion that the conduct constituted prejudicial misconduct.

5. 2E – Ex Parte Communication with Attorney

a. Findings of Fact

On March 3, 2023, Judge Draper made a telephone call to Richard Morton, the *Odom* defendants' counsel at trial. After Morton did not answer the call, Judge Draper left the following voicemail message for him:

> Hi, this is Judge Draper, from the *Odom* case. Um, every once in a while, the Commission on Judicial Performance asks for uh, reviews, um, by counsel who have appeared before the judges, and they've asked for a review in the *Odom* case—a review in the sense of just getting the information. Um, so I wondered if you could send me whatever you'd like to say about the judge in the *Odom* case, uh, one way or the other. And, um, obviously, I'm not—I've made all my decisions in the *Odom* case, so I'm not going to be changing anything. Um, but if you could send that to me, I'd appreciate it. It is [Judge Draper's court email address], and uh, if you'd like to ask me or talk about why I'm doing this, uh . . . [telephone number] is my cell, and I hope you're doing well. Thanks.

In his testimony before the masters, Judge Draper admitted that he left the voicemail message and that he knew Morton was still an attorney of record in the case. He explained that, after he received an investigation letter from the commission, his attorneys "were pressuring [him] to get reports from the people who had recently tried their cases in front of [him]—both sides, not just one—to submit to the CJP." Judge Draper testified he gave his clerk a list of attorneys from *Odom* to contact, but after finding out that Morton had not been contacted, the judge reached out to him directly. The masters noted that, at the time Judge Draper left the voicemail message for Morton, *Odom* was still pending before the judge, Morton was still an attorney of record in the case, and, although the commission had initiated its investigation of Judge Draper, it had not yet raised any concerns about his conduct in *Odom*.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that, in leaving the ex parte voicemail message, Judge Draper violated canons 1, 2, 2A, 3, and 3B(7) (a judge shall not initiate, permit, or consider ex parte communications), and the conduct constituted willful misconduct because Judge Draper knew or should have known that such an ex

parte communication violated the canons, yet he proceeded to engage in the communication anyway. They concluded that the conduct did not violate canon 3B(2) (a judge shall be faithful to the law and maintain professional competence in the law) as charged, because they did not believe the conduct charged implicated that canon.

The examiners objected that the conduct does constitute a violation of canon 3B(2). We agree with the examiners and conclude that the conduct also violated canon 3B(2), which requires that a judge "be faithful to the law regardless of partisan interests, public clamor, or fear of criticism" and "maintain professional competence in the law." In initiating an ex parte communication with counsel of record in a case pending before him, Judge Draper either failed to be faithful to the law if he knew that the call was an improper ex parte communication in violation of canon 3B(7), or failed to maintain professional competence in the law, if he did not know, but should have known, that the call was an improper ex parte communication.

Judge Draper objected on the ground that his conduct constitutes only improper action. Judge Draper pointed to the masters' conclusion that "Judge Draper knew or should have known that such an ex parte communication violated the canons." He argued that the "should have known" falls short of the bad faith necessary for a finding of willful misconduct.

We agree with and adopt the masters' conclusion that Judge Draper's conduct constituted willful misconduct. Judge Draper engaged in an improper ex parte communication during which he falsely stated that the commission had asked for a review of the *Odom* case, when the commission had not. As such, he engaged in an improper ex parte communication for a corrupt purpose. (See *Laettner*, *supra*, 8 Cal.5th CJP Supp. at p.18.) By making deliberately dishonest statements as part of an improper ex parte communication, Judge Draper was also acting with "reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge's prescribed power," which is "a state

of mind properly characterized as bad faith." (*Broadman*, *supra*, 18 Cal.4th 1079, 1092.)

6. 2F – Failure to Disqualify and Acting While Disqualified

a. Findings of Fact

The *Odom* defendants moved to disqualify Judge Draper from hearing the case, primarily based on his conduct described above, and also sought an order "void[ing]" his rulings on their post-trial motions and requiring a different judge to rehear those motions. Judge Draper entered a written order concluding that he was not subject to "disqualification for cause" but that his recusal would further the interest of justice under Code of Civil Procedure section 170.1, subdivision (a)(6)(A)(i). The *Odom* defendants filed a petition for a writ of mandate in the Second District Court of Appeal. The Second District requested letter briefs on issues related to the defendants' disqualification motion, and, in response, the Los Angeles Superior Court (LASC) filed a brief, written by court counsel, that conceded Judge Draper lacked the power to decide the disqualification motion, and that a different judge should rule on that motion and decide whether Judge Draper's other post-trial rulings were void.

The Second District then issued an alternative writ ordering the LASC either to (1) vacate the recusal order and issue a new order referring the defendants' disqualification motion to a new judge, who would also decide whether any disqualification was retroactive, or (2) show cause why a peremptory writ requiring as much should not issue. In response, Judge Michelle Williams Court (Judge Draper's supervising judge) scheduled a hearing in her own courtroom for August 15, 2023.

Even though the August 15 hearing was scheduled in Judge Court's courtroom, Judge Draper presided over it, indicating he was the proper judge to hear the matter, since the writ addressed his conduct and court counsel had "no authority" to submit the letter brief stating he did not have the power to decide the disqualification motion. Judge Draper then vacated his earlier recusal order and

referred the defendants' disqualification motion to a new judge. He also stated that he intended "to bring the matter to the State Bar with respect to Ms. Brown and Ms. Medina." Judge Draper testified that he believed Brown and Medina "had lied under oath" in claiming that he touched Medina's hair and he thus "had a responsibility to report them" to the State Bar.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that, in continuing to preside over *Odom* after entering the recusal order in March 2023, and in rejecting the LASC's position that he was not the proper judge to hear the matter, Judge Draper committed willful misconduct. They further found that his impropriety was aggravated by his commenting on the case and his threat to report Brown and Medina to the State Bar, which was inappropriate, appeared to be retaliatory, and also constituted willful misconduct. The masters concluded that Judge Draper violated canons 2, 2A, 3, 3B(1) (a judge shall hear and decide all matters assigned to the judge except those in which they are disqualified), 3B(2), 3C(2) (a judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business), 3D(5) (a judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer), and 3E(1) (a judge has a duty to disqualify in any proceeding in which disqualification is required by law).

The examiners did not object to these legal conclusions. Judge Draper objected that his conduct constituted only improper action because he believed he was doing what the appellate court had ordered him to do by vacating his recusal order and referring the disqualification motion to a new judge. He argued that it is not willful misconduct if a judge believes in good faith that he was acting appropriately, and that his threat to report Brown and Medina cannot constitute

willful misconduct because he believed he had an obligation to report them to the State Bar.

We concur with the masters and conclude that Judge Draper committed willful misconduct. Judge Draper acted in bad faith because he had previously recused himself from the case and he knew he had no power to make further rulings. His argument that he believed he was doing what the appellate court had ordered him to do is unsupported. Once a judge has recused from a case, the recusal is irrevocable and the judge has no power to take any action in the matter. (See, Code of Civ. Proc., §§ 170.4(d) and 170.3(a)(1); Rothman, *supra*, § 7:27, pp. 420-423.) As such, when he presided over the August 15, 2023 hearing, Judge Draper took action in a case in which he was legally disqualified, knew he was legally disqualified, and made substantive comments on the record. In doing so, Judge Draper acted with, at a minimum, "reckless or utter indifference to whether judicial acts being performed exceed[ed] the bounds of [his] prescribed power," which was "a state of mind properly characterized as bad faith." (*Broadman*, *supra*, 18 Cal.4th at p. 1092.) In threatening to report Brown and Medina to the State Bar, Judge Draper also acted in bad faith because he performed a judicial act for a purpose other than the faithful discharge of judicial duties: to retaliate against Brown and Medina for filing a disqualification motion against him and (allegedly) submitting a complaint about him to the commission.

B. Count Three – Improper Interactions with Presiding Judge, Colleagues, and Court Personnel

Count Three charged Judge Draper with interacting with his female presiding judge and female court personnel in a demeaning manner, and sending a group email to colleagues, retired judges, and commission staff that attached confidential juvenile dependency records with photographs of naked minors, and attached another email which included a photograph of the judge, taken from behind, without clothing.

1. 3A – Presiding Judge Samantha Jessner

a. Findings of Fact

On two occasions Judge Draper told Presiding Judge Jessner she was "cute when [she was] mad." During a meeting on March 23, 2023, Judge Jessner counseled him on "how inappropriate that comment was." Instead of apologizing and promising not to repeat the remark, Judge Draper "doubled down by saying, 'No, but you are really cute when you're mad.' " Judge Draper admitted before the masters that he made such comments to Judge Jessner, although he could remember only one time that he did so. He affirmed that Judge Jessner "[is] cute when she's mad," and he testified that the remark was "a thing [he] would say to a friend" and not intended in any sexual or disrespectful way.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper's comments were disrespectful, dismissive, demeaning, constituted gender bias, violated canons 1, 2, 2A, 3B(4), 3C(1) (a judge shall diligently discharge the judge's administrative responsibilities in a manner that promotes public confidence in the integrity of the judiciary), and 3C(2), and constituted prejudicial misconduct. The masters found it aggravating that Judge Draper repeated the remark to Judge Jessner and reiterated it in his testimony before them at the evidentiary hearing, even after he was counseled that it was inappropriate and he should refrain from using it. The masters found it mitigating that Judge Draper had what he believed was a friendly relationship with Judge Jessner that might make such comments less objectionable.

The examiners objected and argued that the conduct constitutes willful misconduct because making demeaning, gender-biased comments is inconsistent with a good faith discharge of judicial duties. Judge Draper objected on the ground that the conduct constitutes improper action because an objective

observer would not view the comments as prejudicial to public esteem for the judicial office in that Judge Draper's relationship with Judge Jessner was friendly.

The commission has consistently found comments reflecting gender bias to constitute prejudicial misconduct. (See, e.g., *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 324-325 [prejudicial misconduct where judge used "sweetie," "sweetheart," "honey," or "dear" to address female attorneys].) We conclude that a reasonable person would find, even between friendly judicial colleagues, that repeating a comment reflecting gender bias, after having been counseled by the presiding judge that it was inappropriate, is prejudicial to public esteem for the judicial office. We do not find clear and convincing evidence the comments were made for a corrupt purpose. We agree with and adopt the masters' conclusion that the conduct constitutes prejudicial misconduct

2. 3B – Court Administrator Lindsey McFarlane

a. Findings of Fact

While Judge Draper was at the courthouse working on his response to an investigation letter from the commission, McFarlane visited his office to encourage him to let her walk him to the parking lot because she was concerned the judge might fall if he stayed late. Judge Draper testified before the masters that he told McFarlane—whom he described as "darling"—" 'It's cute that you care enough about me,' not—I don't mean personally,—'but you care enough to come here after your hours.' Because everyone at [the courthouse] goes home at 5:00. I thought it was cute that she would do that. And she smiled."

Later, Judge Draper sent an email, copying several other judges and court employees, referring to McFarlane and her administrative colleagues. He wrote, "[P]lease tell Linds[e]y . . . and the rest of the wonderful women in 109 how much I appreciate their help on the [commission] response until they were withdrawn on March 23. And tell Linds[e]y that I still think she is cute, as I told her on the last day I saw her . . . ." Later, while on leave, Judge Draper went to McFarlane's

office to check on a computer screen he wanted for his courtroom. After McFarlane indicated she had not yet been able to procure it, he said, "[Y]ou're cute, but not as cute without that TV screen." McFarlane testified that she was not personally offended by anything Judge Draper did or said.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that, while McFarlane was not personally offended by the remarks, Judge Draper's comments to her and about her being cute were inappropriate and reflected gender bias, violated canons 1, 2, 2A, 3B(4), 3C(1), and 3C(2), and constituted prejudicial misconduct. The masters concluded in aggravation that Judge Draper's use of the word "cute" in describing McFarlane occurred after he had been specifically told that using the word in the workplace was inappropriate. In mitigation, the masters noted that McFarlane testified that she did not have the impression that Judge Draper was sexually harassing her, and she testified that he did nothing that personally offended her.

The examiners did not object to these legal conclusions. Judge Draper objected that his conduct constituted only improper action because McFarlane was not personally offended by the conduct and the comments were made in the context of a friendly relationship.

We agree with and adopt the masters' conclusion that the conduct constitutes prejudicial misconduct. As discussed, *supra*, a reasonable person would find, even between colleagues, that repeated comments, including using the word "cute" to a female colleague after being counselled that the word was inappropriate in that context, and referring to the "wonderful women" at the court, reflected gender bias and a stereotypical attitude about the nature and role of women that is prejudicial to public esteem for the judicial office. (See, Rothman, *supra*, § 2:11, p. 74, 76.)

3. 3C – Court Counsel Phu Nguyen

a. Findings of Fact

Nguyen, who is just under five feet tall, encountered Judge Draper in a hallway and they stopped to greet each other. During their interaction Judge Draper "patted [Nguyen] on the head several times." Nguyen testified that she did not welcome or invite the head patting and was embarrassed by it. Judge Draper testified that he did not "recall patting [Nguyen] on the head, but it [was] possible [he] did . . . ." He recounted an incident when he was "rushing up to our . . . tunnel . . . I do remember a young woman rushing up to me, saying something, and I . . . put my hand on her, and . . . it was cold, so I think I may have put my hand on her head, part of the hat, and saying, 'I've got to turn back to get my phone.' " Judge Draper testified before the masters that he did not intend to harass Nguyen and, since he had never met her in person, did not recognize her as the woman who approached him. Nguyen reported the incident the morning after it happened, had a clear memory of it, and the masters found her testimony to be credible. In contrast, the masters noted that Judge Draper had no clear recollection of the incident or what occurred during it.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper's patting Nguyen on the head was inappropriate, demeaning, constituted gender bias, violated canons 1, 2, 2A, 3B(4), and 3C(1), and constituted prejudicial misconduct. In mitigation, the masters noted Nguyen's testimony that Judge Draper was always courteous, although not always professional, toward her.

The examiners did not object to these legal conclusions. Judge Draper objected that his conduct constituted only improper action because "an inadvertent or ambiguous gesture during a brief passing encounter does not establish gender bias by clear and convincing evidence."

We agree with the masters and conclude the conduct constitutes prejudicial misconduct. Judge Draper's subjective intent aside, the conduct reflects outdated views of appropriate behavior, in that it is highly improbable that Judge Draper would ever pat a male colleague's head. As discussed, *supra*, a reasonable person would find that patting a female colleague's head reflected gender bias which is prejudicial to public esteem for the judicial office.

4. 3D – Disclosure of Confidential Juvenile Dependency Records

a. Findings of Fact

In June, 2023, Judge Draper sent an email to several colleagues, retired Judge Lance Ito, and commission staff attorney, Anne M. Hunter.[4] An attachment to the email was a 2017 statement of decision and accompanying exhibits issued in a dependency case over which he presided. The decision addressed allegations of sexual abuse of the children that the mother, who was a celebrity, made against the father. Among the attachments were several pictures of the children, who were under 10 years old, naked in a bathtub. The email did not refer to the dependency materials or explain why Judge Draper believed they were relevant. At the hearing before the masters, Judge Draper testified that he included these materials to demonstrate to his colleagues that he "had made a significant contribution" through his work in dependency, in response to his perceived "ambush[]" by Judge Jessner at the March 23 meeting. He also believed she and Judge Eric Taylor "were perverting our mission," in that "the dependency laws in some cases . . . were being used, really, to destroy families rather than to help them." According to Judge Draper, he wanted to begin a "discuss[ion] with people in the court about how we could do better."

When asked to address why he sent the dependency materials to the people he did, Judge Draper replied that he "distributed [them] to people [he] was

[4] By this point, Judge Draper had been contacted by the commission and asked to respond to a number of allegations.

authorized [to disclose them to] by statute." He did not, however, identify the specific authority for the materials' disclosure, and he admitted that he did not consult Welfare and Institutions Code section 827—which lists the parties to whom dependency case files may be lawfully disclosed—before sending the email. He testified that he "didn't think" about whether Hunter was an appropriate recipient for the materials because all the emails he received from her indicated they were confidential and he "trusted her." As to the other active judges, Judge Draper testified, "The law allows me to consult with other . . . judges on that subject, okay, as to dependency. [¶] This is my opinion. I was attaching it to make the point of contributions that I believe I had made to . . . the dependency system." Judge Draper admitted, however, that not all of the other judges he sent the email to were assigned to dependency, and that his primary purpose was to address how to improve handling of those cases, not get advice about a years-old case.

When asked why he included retired Judge Ito as a recipient, Judge Draper noted Judge Ito's role in leading the Judicial College for new judges that Judge Draper had attended, and based on that experience, Judge Draper thought Judge Ito was "a leader in terms of what the court should be," had a "serious, important interest in the efficiency and integrity of the court," and "wanted him involved in the conversation" about improving it.

The masters credited Judge Draper's testimony that he distributed the materials because he wanted his colleagues to know that he had handled important cases and made substantial contributions as a judge, but concluded that he lacked candor in testifying that he sent the email to initiate a conversation about improving the court system because nothing in the email or the attachments indicated that the materials were meant to prompt discussion about how to improve the court system. Rather, they found that the email related to Judge Draper's perception that he was being persecuted, not his desire to improve the court more generally.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper lacked justification for attaching and distributing the dependency documents, including pictures of naked children, which had nothing to do with the concerns raised in the investigation letters, and a reasonable judge in Judge Draper's position would have understood that their sensitivity outweighed any interest in disclosure, especially if that interest was to show merely that Judge Draper handled important cases. They rejected Judge Draper's defense that he was relying on Welfare and Institutions Code section 827, because none of the exemptions in that section allow a judge to distribute a confidential dependency file, years after the case was concluded, to judicial colleagues and outside parties who were never involved in the case. The masters concluded Judge Draper violated canons 1, 2, 2A, and 3B(2), and committed willful misconduct.

The examiners did not object to these legal conclusions. Judge Draper objected on the ground that his conduct constituted only improper action because section 827 exempts "court personnel" from the confidentiality bar and the recipients of the email "fall within the categories of persons authorized to receive such records." He further argued that the disclosure was, at most, legal error.

We agree with the masters and conclude the conduct constitutes willful misconduct. Section 827 indicates that a judge may only access and review a juvenile file if the judge is "actively participating" in proceedings involving the minor. (See Welf. & Inst. Code, § 827(a)(1), subd. (E).) As such, Judge Draper had no legitimate or authorized reason to send the records, rather, he was attempting to impress and/or ingratiate himself with other judges in connection with the commission's investigation. Further, even if Judge Draper simply did not stop to analyze whether he was authorized to send such sensitive records, such conduct constitutes acting with "reckless or utter indifference" to whether his actions exceeded "the bounds of the judge's prescribed power," which is "a state

of mind properly characterized as bad faith" and constitutes willful misconduct. (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

5. 3E – Sending Graphic Personal Photographs

a. Findings of Fact

Judge Draper sent an email to court employee Matt Garcia and attached graphic photographs of certain injuries to his body. He later included that email and its attachments as an attachment to a June 12 email to Hunter, copying 11 other active or retired judges.

The photographs of Judge Draper's injuries were graphic – all in color and each a full-page size. The first photograph showed a bruise and scratch near Judge Draper's right eye; the second showed a laceration on his right shoulder; the third showed his right eye bandaged; the fourth showed him with his head down, on a chair apparently designed for people recovering from eye surgery, engaged on a smart phone; the fifth showed him with facial lacerations and three bandages on his head; the sixth was another picture of the same injuries from a different perspective; and the seventh photograph showed bruises on his buttocks. This last photograph showed Judge Draper's backside from the waist down, and he was unclothed except for wearing socks.

Judge Draper testified to the masters that he sent the photographs "to show, in fact, to [the recipients] that I had suffered those injuries, contrary to what . . . Judge Jessner was telling them." He thought it was advisable to provide this "additional information, proof," to people he wanted to help him to address "the quagmire in leadership, restructure so that we could have a dependency—have a court that fulfilled its purpose, which was to help people, rather than to gather upon oneself power and . . . victory." Judge Draper also testified that when he emailed the photographs, he saw himself as "engaged in a, unfortunately, combat with [Judge] Eric Taylor, in particular, and [Judge] David Cowan, about how the court was being managed and what they were doing," and he "was responding . . . to their claims."

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters questioned whether Judge Draper had a need to send the photographs as there was no evidence that anyone questioned Judge Draper's injuries or their seriousness. They did not see any justification for sending the photographs to further Judge Draper's belief that it would help a faction of the court that was displeased with court leadership. The masters concluded, however, that it was Judge Draper's own privacy interests which were affected by his disclosures, the disclosures were not publicly disseminated, and his injuries—including the bruising on his buttocks—were relevant to his absences and his ability to respond to the investigation letters. The masters concluded that, while a reasonable judge would understand that sending a picture of his naked backside would make recipients uncomfortable and be unwelcome, and reflected poor judgment, Judge Draper did not violate the canons.

Judge Draper did not object to these legal conclusions. The examiners objected that Judge Draper's conduct did, in fact, violate the canons, and constituted prejudicial misconduct. They argued a reasonable judge would have understood that sending a picture of his naked backside would make the recipients uncomfortable and be unwelcome and that "common sense suggests that most reasonable individuals who have operated in *any* type of professional work environment would understand that sending photographs of oneself in a state of undress to subordinates and colleagues is almost never necessary or appropriate."

We agree with the examiners and respectfully decline to adopt the masters legal conclusions as to this charge. Sending unnecessary and graphic photographs depicting a person's naked backside to colleagues, a member of court staff, and a commission staff attorney reflects, at a minimum, a lack of common sense, decorum, and decency, and the effect on the recipients who

received such unwelcome images is significant. We conclude the conduct violated canons 1, 2, 2A, and 3B(4), and constituted prejudicial misconduct.

C. Count Four – Improper Ex Parte Communications

Count Four alleged that Judge Draper engaged in a number of improper ex parte communications, including discussing with other judges pending litigation with a doctor who treated Judge Draper's wife, and attempting to persuade the judges to testify on the doctor's behalf; meeting with a father with a pending dependency proceeding; and attempting to discuss another pending case with the commissioner presiding over it.

1. 4A – Dr. Jonathan Nissanoff

a. Findings of Fact

Dr. Nissanoff, a surgeon, treated Judge Draper's wife. At the time, Dr. Nissanoff was a defendant in two civil cases pending in the LASC and an interested party in a third pending case. Judge Draper admitted that he spoke with Dr. Nissanoff about his pending cases, and that Dr. Nissanoff ultimately asked the judge to testify on his behalf.

In May 2023, Judge Draper attended the LASC's annual civil bench seminar—Judges Ronald Frank and Lisa Sepe-Wiesenfeld were also present. Judge Draper approached Judges Frank and Sepe-Wiesenfeld at the seminar because they both had presided over numerous small claims cases filed by Dr. Nissanoff. Both judges testified before the masters that Judge Draper asked them if they would be willing to testify on Dr. Nissanoff's behalf.

Judge Frank testified that during their exchange Judge Draper said he was planning on testifying in support of Dr. Nissanoff at an upcoming proceeding. Judge Frank was "concerned because of the ethics of the situation, and [he] was particularly concerned that a fellow bench officer would be asking [him] to testify, essentially, as to the character of a party whose only relationship [he] had was as someone who had appeared before [him] as a . . . bench officer." He conveyed those concerns to Judge Draper, who was "dismissive" of them.

Later, Judge Draper followed up in an email to Judges Frank and Sepe-Wiesenfeld, copying another judge, Michael Levanas (who did not testify before the masters but also had experience with Dr. Nissanoff). In the email, Judge Draper acknowledged that he and Dr. Nissanoff discussed Dr. Nissanoff's litigation while the judge's wife was being treated and the two men "had extensive discussions of [the litigation] since then." In the email, Judge Draper also stated, "I intend to testify at the trial as to [Dr. Nissanoff's] services and billing and he has asked me to ask you if you would also be willing to testify given that you are the people allegedly being fooled by [Dr. Nissanoff] after he has fooled the small claims court judge. What [the plaintiff] is trying to do is drive [Dr. Nissanoff] out of the business of filing small claims cases and I feel very badly for him."

Judge Frank replied to the email by indicating he did not think serving as a character witness for or against a litigant who has appeared before him was appropriate and advised Judge Draper to review guidance on judicial ethics. Judge Sepe-Wiesenfeld replied that she agreed with Judge Frank and "would not be able to assist." Nonetheless, Judge Draper asked them to participate in a conference call on the subject. When Judge Frank said he would be "willing to try to talk [Judge Draper] off the ledge next week," Judge Draper responded, "Love it! [Judge Levanas] knows that the ledge is where I live," and proposed specific dates for a call.

Judge Draper testified he had not made up his mind to testify on Dr. Nissanoff's behalf when he approached Judges Frank and Sepe-Wiesenfeld and claimed that, when Dr. Nissanoff asked him to testify, he told Dr. Nissanoff he would be willing to do so "but [he] wanted to check with people." Once Judges Frank and Sepe-Wiesenfeld advised him it would be unethical to testify on Dr. Nissanoff's behalf, he told Dr. Nissanoff that neither he nor the other judges could do so, and he did not testify on Dr. Nissanoff's behalf.

The masters found that Judge Draper's email and the testimony of Judges Frank and Sepe-Wiesenfeld contradicted this contention. Further, in the series of emails Judge Draper sent to Judges Frank, Sepe-Wiesenfeld, and Levanas after the seminar, Judge Draper continued to state that he intended to testify on behalf of Dr. Nissanoff even after he was counseled that doing so would be ethically problematic.

The masters concluded that Judge Draper "extensively" discussed Dr. Nissanoff's pending litigation with Dr. Nissanoff and that his account of his interactions with his judicial colleagues was inaccurate in some respects. They credited the testimony of Judges Frank and Sepe-Wiesenfeld that, when Judge Draper approached them at the seminar, he was not seeking their advice on whether he should testify on Dr. Nissanoff's behalf. Rather, the masters concluded, the evidence clearly and convincingly demonstrated that Judge Draper had decided to testify and approached the two other judges to recruit them to testify. They also found that Judge Draper initially resisted the other judges' counsel that he should not testify on Dr. Nissanoff's behalf.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper violated canons 2, 2A, 2B(1), 2B(2), 4 (a judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations), 4A(2), and 4A(3) (a judge shall conduct all of the judge's extrajudicial activities so that they do not demean the judicial office or interfere with the proper performance of judicial duties) and committed willful misconduct. They concluded, however, that Judge Draper's conduct did not violate canon 3B(7), because they determined canon 3B(7) pertains only to proceedings over which a judge is personally presiding, and Dr. Nissanoff was not a litigant in a case before Judge Draper. The masters also noted that Judge Draper's ethical lapses were mitigated by his

ultimate acceptance of his colleagues' advice not to testify on Dr. Nissanoff's behalf.

The examiners objected and argued that the conduct constitutes a violation of 3B(7); Judge Draper objected that the misconduct only amounts to improper action.

We agree with the examiners that canon 3B(7) prohibits ex parte communications not only in cases over which the judge is personally presiding, but ex parte communications with other judges regarding their pending or impending cases. (See, e.g., *Censure and Bar of Former Judge Block* (2002) pp. 5-6 [judge's contact with the judge overseeing the traffic violation of a friend's daughter to seek preferential treatment violated canon 3B(7)]; *Censure of Judge Sarmiento* (2012) p. 6 [judge's communication with a commissioner assigned to judge's wife's traffic violation violated canon 3B(7)].) Judge Draper argued, however, that his communications with Judges Frank and Sepe-Wiesenfeld were nevertheless permissible because they fell within subsection (a) of canon 3B(7), which carves out an exception allowing a judge to consult with other judges. He asserted he was consulting with Judges Frank and Sepe-Wiesenfeld about the possibility of testifying in Dr. Nissanoff's pending matter and his communications were therefore not improper.

Subdivision (a) of canon 3B(7), however, requires that, "In any discussion with judges or court personnel, a judge shall make reasonable efforts to avoid receiving factual information that is not part of the record or an evaluation of that factual information." A judge is thus likewise required to avoid providing *other* judges with factual information that is not part of the record or an evaluation of that factual information in cases which may come before them. (See, *Public Admonishment of Judge Novak* (2018) pp. 7–8 [judge's remarks to other judges during a judges' meeting regarding her adverse credibility finding against a sheriff's department sergeant were not made for the purpose of seeking advice from, or consulting with, her judicial colleagues—rather, the judge was informing

them of her evaluation of the evidence in a pending case, and her actions potentially interfered with the duty of other judges to avoid receiving information outside the record if they ultimately presided over the case].)

Here, Judge Draper had extensively discussed Dr. Nissanoff's litigation with Dr. Nissanoff, and had strong opinions about Dr. Nissanoff's character and his ongoing litigation efforts. Judge Draper made numerous comments to Judges Frank and Sepe-Wiesenfeld about his assessment of Dr. Nissanoff's character and litigation, knowing that Judges Frank and Sepe-Wiesenfeld had previously presided over many of the doctor's cases and that either could preside over Dr. Nissanoff's pending or future litigation. We thus conclude that Judge Draper's conduct also violated canon 3B(7).

Judge Draper objected and argued that the conduct constituted only improper action because he was not acting in a judicial capacity at the time he decided to testify on behalf of Dr. Nissanoff and approached Judges Frank and Sepe-Wiesenfeld to recruit them to testify. Judge Draper was acting in a judicial capacity because, as a judicial officer, he was using his special access to Judges Frank and Sepe-Wiesenfeld when he engaged in the conduct described. "A judge is acting in a judicial capacity . . . when the judge uses or attempts to use the authority of the judicial office for an improper purpose." (*Broadman*, *supra*, 18 Cal.4th p. 1104; see also *Dodds*, *supra*, 12 Cal.4th 163, 172 ["if a judge uses, or attempts to use, his authority as a judge for improper ends, regardless of location, we consider the judge to be acting in his judicial capacity"].) We agree with the masters, and adopt their conclusion, that Judge Draper's conduct constituted willful misconduct.

2. 4B – Meeting with Father in Pending Dependency Case

a. Findings of Fact

The Notice charged Judge Draper with an improper ex parte communication with a father in an ongoing dependency proceeding over which the judge previously presided. Both Judge Draper and his judicial assistant,

Patricia Salcido, testified about the father's meetings with Judge Draper, and the father's request that Judge Draper help him reunite with two of his children who were now adults. The masters found that the evidence was undisputed that Judge Draper met several times with the father and agreed to meet with his adult children, but that Judge Draper did not attempt to intervene in or influence the pending dependency court proceeding.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that the examiners failed to prove by clear and convincing evidence that Judge Draper violated any canons. Neither party objected to this legal conclusion, and we adopt it. We dismiss count 4B.

3. 4C – Commissioner Laura Cohen

a. Findings of Fact

In March 2023, Commissioner Laura Cohen was assigned to Department 94. Judge Draper walked into the Department 94 courtroom from the public entrance and stood behind Commissioner Cohen's judicial assistant. Commissioner Cohen testified to the masters that she was in the middle of a hearing, but it seemed like Judge Draper wanted to talk to her, so she took a short recess after finishing the hearing and stepped off the bench to speak to Judge Draper. She asked Judge Draper if he wanted to discuss a case involving a party he knew, and he indicated that someone he talked to "in the hallway" was involved in one of her restraining order cases and needed to be heard. Before Judge Draper could identify the party or case he wanted to discuss, Commissioner Cohen stopped him from explaining further, telling him, "I give everybody the opportunity to be heard here, and, you know, thank you." Commissioner Cohen then returned to the bench to complete her calendar.

Judge Draper testified that earlier in the day he was in the hallway outside Department 94 when a woman told him that her daughter's boyfriend was violating a domestic violence restraining order. The woman said they were trying

to have the matter heard in Department 94 but had not reserved a hearing date. According to Judge Draper, court was not in session when he went into Department 94's courtroom, so he asked the bailiff if he could see Commissioner Cohen in chambers. Once admitted to see her, Judge Draper told Commissioner Cohen what the woman had told him and asked her if she could hear the case. Judge Draper testified that Commissioner Cohen agreed to do so.

The masters found Commissioner Cohen's account of this incident to be more credible, but also found that Judge Draper's incorrect narrative was likely due to faulty memory rather than an intentional lack of candor. They found that Judge Draper came into the Department 94 courtroom while court was in session, interrupted Commissioner Cohen to speak to her, and began to discuss one of her cases before she stopped him from providing specific information about it. Judge Draper did not actually identify the party to whom he spoke or discuss the case details with Commissioner Cohen.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper attempted to initiate an improper ex parte communication with Commissioner Cohen, but she stopped the conversation before he conveyed any information about the parties or case. They found that the "credible evidence is that Judge Draper made a misguided and ill-advised, but nonetheless compassionately motivated, attempt to help a litigant get her matter heard." They concluded that Judge Draper violated canons 2, 2A, 2B(1) (a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge), 2B(2), 4, and 4A, but that this was improper action only, and that the examiners failed to prove that Judge Draper violated canon 3B(7), as the attempted communication was not in connection with one of his own

cases. They also found, in mitigation, Judge Draper "relented immediately" when Commissioner Cohen told him she could not discuss the matter with him.

The examiners objected and argued that the conduct did in fact violate canon 3B(7). For the same reasons discussed, *supra*, we conclude that, by attempting to provide Commissioner Cohen with information he had received from a party in the courthouse hallway, Judge Draper directly violated canon 3B(7)'s prohibition on initiating ex parte communications, as well as subdivision (a)'s instruction that judges make reasonable efforts to avoid receiving (or giving) factual information that is not part of the record.

The examiners also objected on the ground that the conduct constituted willful misconduct, not improper action. Judge Draper objected and argued that the conduct does not amount to misconduct. We respectfully disagree with the masters and conclude that the conduct constituted willful misconduct. Judge Draper engaged in what, to any reasonable, competent judge, would be textbook misconduct, and the fact that Commissioner Cohen (a subordinate judicial officer) properly prevented Judge Draper from discussing the details of the case does not negate his attempt to do so. Using the judicial office to provide special access to a party or parties in a case and engaging (or attempting to engage) another judicial officer in an improper ex parte communication are clear violations of the canons, inconsistent with the faithful discharge of judicial duties, and constitute bad faith. (*Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 273 [" 'bad faith' is not limited to matters involving corruption or moral turpitude, but includes intentionally committed acts, which the judge knew, or should have known, were beyond his or her lawful power"], citing *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 340 [discussing cases where judge was removed for acting in bad faith but there was no finding of "moral turpitude, dishonesty, or corruption"].) At the very least, Judge Draper acted with "reckless or utter indifference to whether judicial acts being performed

exceed[ed] the bounds of [his] prescribed power," which was "a state of mind properly characterized as bad faith." (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

D. Count Five – Inappropriate Comments

Count Five charged Judge Draper with making rude or inappropriate comments in two matters over which he was presiding.

1. 5A – *Blum Collins, LLP v. Acuity Consulting Services, et al.*

a. Findings of Fact

A June 2022 hearing in *Collins* concerned a motion by a litigant, Erik Cooper, to quash service of a petition to confirm an arbitration award. Cooper appeared remotely from Tennessee. Cooper testified that at the beginning of the hearing, Judge Draper asked him where Gatlinburg (Cooper's domicile) was, whether it was near Nashville, and if he was familiar with a television series called "Nashville." Cooper said he was not, and Judge Draper mentioned an episode of the show involving "two women who wrote a song about men being liars and cheats" and told Cooper, "And you, sir, are a liar and a cheat." According to Cooper, Judge Draper did not give him a chance to present argument at the hearing.

Gary Ho, an attorney for the opposing party, testified that after Judge Draper referred to a country song about " 'Cheaters and Liars,' or something like that," the judge told Cooper, "Well, you are a cheater and a liar because you are not telling the truth in your motion to quash service and in your declaration supporting that motion." Ho testified that, in response, Cooper "got agitated," and Judge Draper said "he would refer Mr. Cooper . . . for prosecution for perjury" and "hold him in contempt." Sky Hahn, Judge Draper's courtroom assistant, and Patricia Salcido, his judicial assistant, testified that they could not recall the "liar and cheat" comment but confirmed that Cooper became rude and verbally abusive at the hearing.

The minute order of the hearing reflects that Judge Draper found Cooper in contempt of court because of his "unruly conduct during the hearing." At a

subsequent hearing, Cooper apologized for his behavior, and Judge Draper discharged the contempt without further action or penalty.

Judge Draper admitted before the masters that he called Cooper "a liar and a cheat" and testified that he wanted to convey to Cooper that his declaration lacked credibility and Cooper was acting in bad faith in denying that he was properly served. Although Judge Draper acknowledged that he "probably shouldn't" have said what he did, he described Cooper's behavior as "extreme." The masters concluded that Judge Draper's "liar and cheat" comment was neither patient nor respectful, and his decision to hold Cooper in contempt and threat to report Cooper for prosecution further demonstrated the judge's improper demeanor.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper violated canons 1, 2, 2A, 3B(4), and 3B(5), and his conduct constituted willful misconduct. They found, in mitigation, that Judge Draper ultimately accepted Cooper's apology and discharged the contempt against Cooper.

The examiners did not object to these legal conclusions. Judge Draper objected on the grounds that the conduct amounts to only improper action, or prejudicial misconduct, because the remark was made in the course of a valid exercise of the court's adjudicative function, directed at the credibility of a litigant, and accompanied a ruling that has since been affirmed on appeal. He further argued that the remark was provoked and promptly corrected by the discharge of the contempt after Cooper apologized, and reflects a judge correcting course and not acting with a corrupt purpose. He argued that prompt corrective action is the type of circumstance that reduces willful misconduct to prejudicial misconduct. Judge Draper cited the Supreme Court's decision in *Broadman* for this proposition, but the *Broadman* court *reversed* the commission's determination that the judge's conduct was only prejudicial misconduct because the judge

"acted promptly to correct his actions," and found that the judge engaged in willful misconduct despite his prompt corrective action. (See *Broadman, supra*, 18 Cal.4th at pp. 1095-1096.)

Disrespectful and undignified comments, particularly when focused on a litigant's character (as opposed to a litigant's conduct), are inconsistent with the faithful discharge of judicial duties and constitute bad faith. When Judge Draper called Cooper "a liar and a cheat," he acted with a corrupt purpose – to insult and demean Cooper, a litigant about whom the judge wished to make an adverse credibility finding, and to vent his displeasure with Cooper. (See *Van Voorhis*, *supra*, 48 Cal.4th CJP Supp. at p. 275 ["Judge Van Voorhis lost his temper and made comments for the corrupt purpose of venting his anger or frustration"].)

We agree with the masters and conclude the conduct constitutes willful misconduct.

2. 5B – *Vargas et al. v. Ringold et al.*

a. Findings of Fact

A final status conference before a jury trial in *Vargas* was scheduled for July 27, 2022. The day before the conference, plaintiff's counsel, Patrick Santos, submitted a disability accommodation request. In the request, he disclosed that he had Lou Gehrig's disease, stating that it was "fatal and there is no cure." He requested a one-week continuance of the final status conference because, due to his disease's progression, he had not "been able to complete all the [Final Status Conference] documents." Upon learning of Santos's request, Judge Draper continued the final status conference to August 1 to give himself more time to review the request. Santos appeared at the August 1 conference remotely from his home.

Santos's wife, Niki Ghazian, testified before the masters she was also home at the time of the conference and could hear the exchange between Santos and Judge Draper. According to Ghazian, Santos told Judge Draper, "If you continue this trial again, I'm going to die. I'm not going to be able to try this

case. I just need a week to put the binders together, and we could proceed to trial." Ghazian heard Judge Draper respond, "Well, are you going to be dying next week?" Judge Draper denied Santos's request for an accommodation on the basis that a "[one-]week continuance does not meet the court's schedule."

While Ghazian was adamant that she was present in her home during the August 1 conference and clearly heard Santos's and Judge Draper's exchange, Hunter, who interviewed Ghazian by telephone as part of the commission's investigation testified that, as her investigative notes and witness interview report ultimately reflected, Ghazian said that she was not present for the hearing but that Santos called her immediately after the hearing and told her what had happened.

Judge Draper denied to the masters that he asked Santos whether he was "going to be dying next week" and testified that he told Santos he was "very sorry to hear" that Santos had Lou Gehrig's disease.

The masters found that Ghazian did not overhear the relevant exchange between Santos and Judge Draper, despite her testimony to the contrary, and her testimony was effectively impeached by Hunter.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that the examiners failed to prove by clear and convincing evidence that Judge Draper violated the canons in his interactions with Santos. Neither party objected to this legal conclusion, and we adopt it. We dismiss count 5B.

E. Count Six – Failure to Maintain Security of the Courthouse

Count Six charged Judge Draper with instructing his judicial assistant to allow a man he had met on the street into his chambers, and instructing her to help the man find a place to stay for the night.

1. Findings of Fact

At some point around February 2023, Judge Draper randomly encountered a man named Christian Bendey either on the streets or in the court hallway. Bendey expressed a need for housing and financial assistance, and Judge Draper agreed to help Bendey and escorted him to the judge's courtroom hoping that Salcido could find Bendey a place to stay for the night. Judge Draper testified that he asked Salcido "to find [Bendey] a place," and Salcido took Bendey back into the hall outside the courtroom while she went to make a call. Judge Draper left at that point, and he specifically denied that he ever brought Bendey into chambers.

Salcido testified somewhat differently, indicating that Bendey showed up one day in the empty courtroom and told her that he was there to see Judge Draper, who was his friend and was expecting him. After she told Judge Draper that Bendey was there, the judge directed her to escort Bendey into his chambers and he asked if Bendey needed a place to stay. Bendey indicated he did and Judge Draper instructed Salcido "to call the L.A. Rescue Mission to let them know that Judge Draper was sending someone over to them." Judge Draper then left, Salcido escorted Bendey from chambers into the courtroom, printed out a map to the Rescue Mission, and gave it to Bendey.

Salcido testified that she had security concerns during this incident, since she did not know who Bendey was, and was uncomfortable with Judge Draper's request. She felt the situation was dangerous even though she acknowledged that everyone is subject to a security screening before entering the courthouse. In response to her concerns about security risks, Judge Draper responded, "You are my security."

Salcido reported the situation to her supervisors, McFarlane and court counsel Ivette Peña, who separately interviewed Salcido about the incident. McFarlane's notes, which she prepared soon after the meeting, indicated that Salcido reported (1) Judge Draper said he met Bendey "on the street"; (2) Judge

Draper brought Bendey into his chambers, after which he told Salcido to call the L.A. Rescue Mission and tell them "he was sending them someone"; and (3) Judge Draper joked that he had Salcido "to protect [him]" when she raised her security concerns about the incident. Similarly, Peña testified that Salcido also told her that Judge Draper brought Bendey into chambers and asked Salcido to call the L.A. Rescue Mission and "tell them that Judge Draper was sending someone over."

The masters found Salcido's testimony generally more credible, as it was consistent with her reports to her superiors around the same time, and concluded that Judge Draper did bring Bendey into his chambers after Bendey entered the courtroom on his own. They also found that Judge Draper testified credibly, however, that his actions were intended only to help Bendey, and that although there was no security staff present in the courtroom during the incident, Bendey was screened by security upon entering the courthouse and did not exhibit any dangerous or inappropriate behavior at any time.

Neither party objected to these factual findings and we adopt them.

2. Conclusions of Law

The masters concluded that there was not clear and convincing evidence that Judge Draper engaged in judicial misconduct as to this count because Bendey presented no security risk, the interaction with him was extremely brief, and the request to Salcido to call the L.A. Rescue Mission and reference the judge's name, was de minimis and not acted upon. They specifically concluded that Judge Draper's actions neither impacted public confidence in the judiciary, in violation of canon 2A, nor conflicted with his judicial obligations, in violation of canon 4, and did not violate canons 2B(1) or 2B(2) (a judge shall not lend the prestige of judicial office or use the judicial title in any manner to advance the pecuniary or personal interests of the judge or others) because there was no evidence that Bendey affected Judge Draper's judicial conduct and Judge Draper's name was never actually used to help Bendey.

Judge Draper did not object to these legal conclusions. The examiners objected and argued that Judge Draper violated canons 4, 2A, 2B(1), and 2B(2) and engaged in prejudicial misconduct by attempting to use his judicial title for Bendey's personal benefit, and by bringing an unknown individual into a secure area of the courthouse and then leaving his judicial assistant alone in chambers with the unknown man.

Judge Draper's conduct on behalf of Bendey implicates canon 4, which requires judges to conduct their quasi-judicial and extrajudicial activities in a manner that minimizes the risk of conflict with their judicial obligations, and potentially canon 2B(1), which prohibits a judge from allowing family, social, political, or other relationships to influence the judge's conduct or judgment. By bringing Bendey into chambers and leaving Salcido alone with him there, Judge Draper placed Salcido in a potentially dangerous situation based on his personal desire to help an individual. Judge Draper thus prioritized his personal wishes (albeit rooted in compassion) above his judicial duties and responsibility to maintain courthouse security and to foster and maintain a safe working environment for Salcido. Judge Draper's conduct also violated canon 2A and 2B(2) because he instructed Salcido to call the L.A. Rescue Mission and reference his name. The fact that Salcido did not do what the judge instructed her to do does not absolve the misconduct.

We conclude, however, that Judge Draper's misconduct, in that it appears to have been motivated only by charity, would not appear to an objective observer to be prejudicial to public esteem for the judicial office, and thus conclude that it constitutes only improper action, and not prejudicial misconduct as argued by the examiners.

F. Count Seven – Failure to Cooperate with Colleagues and Court Personnel During Leaves of Absence

Count Seven charged Judge Draper with sending his judicial colleagues and staff numerous emails containing profanity, unfounded accusations,

incoherent statements, and personal medical details; improperly vacating another judge's order; improperly instructing court staff; and violating instructions during his involuntary leave to not access chambers, contact staff, or work on cases.

1. 7A – Misconduct During Voluntary Medical Leave of Absence

a. 7A-1 2022 Emails to Colleagues and Court Personnel

i. Findings of Fact

From March 16 to June 3, 2022, Judge Draper was on a voluntary leave of absence. Then-Presiding Judge Taylor testified that he proposed the leave of absence and Judge Draper agreed to take it: Judge Douglas Stern covered Department 78 while Judge Draper was out. Judge Draper soon began sending a barrage of emails on various subjects to Judge Taylor and then-Assistant Presiding Judge Jessner. On Friday, March 18, 2022, Judge Draper forwarded to Judges Taylor and Jessner an email he sent to Salcido and Hahn earlier that day that contained language for a minute order to be entered in one of his cases. As to the minute order, which was rambling and unfocused, Judge Draper directed Salcido, "Email and file and serve as is, don't go crying on me again."

Judge Draper's message forwarding this email to Judges Taylor and Jessner read as follows: "You will get a message from Matt that makes no sense but I really need you both to call me jointly or one of you if you will at [redacted phone number] and say only: Is the plan working? Or have someone call and say you need to talk to me usually. . . . And I will explain. I can also talk [to] you over the weekend but you will help me if you do that."

Two days later, on Sunday, March 20, Judge Draper sent a long and rambling email to Judges Taylor, Jessner, and Cowan. After referring to "documents I thought you and Sam [Jessner] and I were discussing our telephone conversation late Friday," Judge Draper continued:

> The telephone conversation was actually 'part of a plan,' but part of a . . . plan I had created all on my own which . . . included having my wife [redacted name] listening in (and I will tell you why we shouldn't prosecute her). I

> am going to talk to her, [Salcido], and [Hahn] about what I am about to tell you. While I actually haven't seen [Hahn] cry, she is gimping around with a motor scooter as a substitute at work for her right leg because she recently had [an] operation on her foot. Friday she offered to drive out to my house to deliver some stuff I needed despite that. [Wife's name] and [Salcido], she is the 'don't go crying on me again' JA, have been crying a lot, [Salcido] particularly after I authorized her to send an email to [wife's name] about how I have been acting, she asked if [she] could call [wife's name] instead, I agreed, and she told me they had spoken, now they're both very concerned, as is [Hahn]. They are concerned, as I know you must be after our Friday conversation, that I am losing it.
>
> I am not, but to document that for you, I have to get my home scanner working, which I will.

Judge Draper then discussed at length communications between him and Jesse Choper, who was one of his law professors, including a note Choper sent him in 2022:

> The note . . . referr[ed] to a conversation he and I had, I guess in class, in 1967, it reads (and I'm looking at it, and can send it to you as soon as I get my scanner working, maybe by phoning user support in the morning): 'To Bob Draper, The 1st student to agree with this idea (in 1967). With affection and admiration, JC.' I have talked to Jesse, who is retired and is 86, and he remembers what the 'idea' was, all these years later. The funny thing is, so do I, because in a basic way, it relates to what I've tried to do as a Judge, which is related to the subjects we were discussing on Friday, including the will [to] take the rear. I will be ready to talk in depth and explain by 10 o'clock a.m. tomorrow. There is actually no rush because the 'plan' was always that neither you nor I could make any comments on the minute order, or the case, since it is still pending subject to appeal. And I actually think it is important that we never make a comment for reasons I will talk to you about. Let me know if there is a time that works.

Judge Taylor testified before the masters that he had no idea what Judge Draper meant by "the plan" or "the will to take the rear" and he was not asked about the phone conversation to which Judge Draper alluded. Neither Judge Jessner nor Judge Draper testified before the masters about these emails.

On April 26, 2022, Judge Draper forwarded to Judges Taylor and Jessner some emails between him and his medical providers. Judge Draper told the other judges that he was being poisoned and asked that they keep this fact secret:

> I know this is going to sound incredible but this is the last link. I have discovered that the psychiatrist supposedly helping me overcome my Parkinson's symptoms has instead been poisoning me with medicine designed in my case only to cause confusion. I have written proof which establishes this without any question. Remember your reaction to this email. I have fired him and am working with [another doctor] who is a true expert. I'm working with my clerk on the cases I have between now and the end of two weeks and hope to be in by then if this new medicine does in fact create the antidote to what the psychiatrist has been giving me. Can you keep this a secret for a little? This is a true test of your faith in me. Tomorrow morning if you want to call me at home [redacted phone number] I can read the drug prescriptions he gave me and the articles describing their effect. Ordinarily I could simply scan them and send them to you but for some reason my scanner isn't working.

Later that evening, Judge Taylor responded that he would obtain coverage for Judge Draper for another 30 days to give him more time to heal.

The following morning, on April 27, Judge Draper responded: "I do not need 30 days and 30 days would be a violation of your duty and my duty to properly dispose of cases assigned to us." Ten minutes later, Judge Draper added in a separate email:

> [W]hat are you going to do after another 30 days to justify paying me for not doing my job? Don't you have

> an obligation to explain that to the Judicial Council? Unless I can convince you that WHAT YOU ARE PROPOSING [is] a totally wrong approach and there is another, better, approach that preserves the resources of [the] court while ensuring the competence of the judicial officer presiding in Department[]78 in disposing of the cases he is ethically required to accept and take responsibility for?

Later that morning, Judge Draper followed up with more emails again implying that he was being forced to take leave and stating that "[n]o one seems interested in talking to me." A final email indicated he intended to hire counsel and wanted an open hearing on the issue of his competence. He stated that he "formally reject[ed] any further 'leave' beyond Friday," April 29, and did not believe he could "ethically agree" to further leave. Judge Taylor responded that he was "concerned" about Judge Draper's statements and their tone, and the intent was always "to provide [Judge Draper] with support, not to order [him] away from [his] assignment."

Judge Draper remained on leave after these emails, despite his apparent resistance to doing so. On May 10, 2022, he sent an email to his court staff stating he was still on sick leave because of his "medicinal poisoning" but that his approval was nonetheless required before Department 78 issued any minute orders. On the same date, in response to a request from Judge Cowan to "give [his] immediate attention" to a matter that had been under submission for almost 90 days, Judge Draper wrote:

> [The case] had my immediate attention on 2/10/22 [w]hen I entered the full order after the parties 'submitted' it and I ruled in full and set a case management order[]which I will send you. I'm sorry but another example of how fucked up it is when someone tells me I'm not on leave of absence but then tells my clerk I am. Same fucked up situation in the issue raised by court counsel today at your request which . . . I will deal with tomorrow because now I have to go back to

> recovering from the poisoning no one seems to care about enough to ask.

Around the same time, Judge Draper sent a separate email to Judge Cowan, copying Salcido and Judge Stern, in which he asked, "But do we not have some, one, responsible adult in upper management of the Court that can read a file?" After stating that he expected to be "over the poisoning" in a couple weeks, Judge Draper continued, "[B]ut this repeated incompetence, creating 'messes' which I have to repeatedly spend time 'cleaning up,' is debilitating."

The following day Judge Draper sent another email to Judge Cowan, copying Judge Stern and Judge Draper's court staff, criticizing Judge Cowan's "somewhat curt" order to rule on the matter under submission, and noting his belief that there was no 90-day issue because he had already issued a tentative ruling the plaintiff was supposed to memorialize in a formal order. Judge Draper then purported to issue "the following standing order for Department 78":

> NO ORDER ON ANY MATTER NOT BEING ACTIVELY AND CURRENTLY HEARD BY ANOTHER JUDICIAL OFFICER IN DEPARTMENT 78 ('ACTIVELY' BEING CURRENT HEARINGS INCLUDING BUT NOT LIMITED TO IDCs, MOTIONS, SETTLEMENT CONFERENCES AND ACTIVE TRIALS) MAY BE IS[S]UED WITH RESPECT TO ANY MAT[T]ER PENDING IN DEPARTM[E]NT 78 WITHOUT PRIOR REVIEW AND APPROVAL BY JUDGE ROBERT S. DRAPER, PRESIDING JUDGE, DEPARTMENT 78.

On May 14, Judge Taylor wrote an email to Judge Draper clarifying that until he returned full-time from his leave of absence, Judge Stern was "exclusively in charge of Department 78" and Judge Draper was not to communicate about pending matters except with Judge Cowan. Judge Taylor thanked Judge Draper for sharing information about his medical issues but expressed a desire for "some coherent medical assessment of [Judge Draper's]

physical and mental ability to perform [his] judicial duties." Judge Draper responded:

> To say this is insulting is such a soft way of characterizing what Judge Cowan has done to Department 78 that it is hard to say it in nice words. I do intend to make a full report on the 'support' I have received in this ordeal so do not worry about HIP[A]A. For now, the doctor who has taken over my care for my Parkinson's treatment and recovery from the effects of the medications the prior Doctor subjected me to is . . . a specialist in this field. I will send you her contact card and notify her that you will be calling. I met with her on Friday and will authorize her to give to you a full report on my mental condition, physical condition and when she anticipates I can safely return. At present our plan is that I will check in with her in two weeks and in fact I've already substantially improved my physical condition, my mental condition never being at issue as you could confirm if you just read the opinions I've written during this time. In the meantime I will be happy to work through Doug Stern because he is professional and knows what he is doing. You need to remember, or know if David [Cowan] has not told you, that there is a drop dead date of June 21 for ruling on a motion for new trial in the Bertone case I tried in December and only I can stop that from expiring, which would be a serious tragedy since I intend to substantially reduce the $8 million award for emotional distress damages and believe I can do it in a way that will minimize the chance of appeal. I will have Doug set the hearing date and I anticipate being back substantially before that, either May 31 or at least the first week of June. I will coordinate with Doug tomorrow morning on the orders I would like him to enter which I assume he can do without your approval. I'm sorry to say that I'm very disappointed in you.

Two days later, Judge Draper sent another email about arranging for his doctors to communicate with Judge Taylor and told Judge Taylor, "In the meantime I will

send you the material showing I have not been the malingering when I tell you I've been poisoned and impaired."

Judge Draper returned to work in early June 2022. On July 6, he sent an email to Judges Taylor and Jessner that began:

> Could someone help me? What I have discovered as a result of the poisoning is that a Psychiatrist or a person posing as . . . a psychiatrist was [p]rescribing and having my wife administer psychotropic drugs [that were] totally inappropriate for any 'symptoms' I had that might have killed me if I kept taking them a little longer. I need some help on a reverse trace of a telephone number the psychiatrist used. I also came down Sunday and worked all day gathering together the information that establishes these facts.

He then described a recent incident in which he was "totally exposed" to danger after his driver was unable to exit from the courthouse parking lot, concluding, "I get a lot of bureaucratic talk about who's in charge and who is responsible or not but I don't hear anything about dead judges."

A few weeks later Judge Draper sent an email to Judges Taylor and Jessner and 19 other judges with the subject line, "Implementation of the Trial Court Reduction Delay Act, of 1987." Judge Draper openly criticized the administration of civil justice in Los Angeles County, placed the blame for delays in resolving cases at least partly in the hands of the current administration, including Judge Cowan, and implied he knew how to fix everything and they did not. Judge Taylor replied with some statistics and other information about the LASC's accomplishments while recovering from "an unprecedented pandemic, and the resulting dire budget crisis and social unrest." He praised Judge Cowan in particular for his leadership and expressed disappointment in Judge Draper's tone and mode of communication, calling his "e-blasts" to numerous judges "odd and insensitive."

Judge Draper replied to Judge Taylor's email nearly three months later, on September 13, 2022. Judge Draper added several additional judges to the recipient list and changed the subject line of the group email to: "A PERSON [O]F NO COLOR LIKE ME AND COURAGE (formerly 'I[m]plementation [of the] [T]rial Court Reduction Delay Act')." The email began, "I have delayed in responding to this email, or even reading it, because so many people have told me that they read it as you suggesting that I would only 'treat you this way' because you are a person of color. I frankly could not believe that you would make such a suggestion, even by innuendo, but I have now read your email and here is some of my response."

The email continued with Judge Draper voicing several criticisms of Judge Cowan, who was then a candidate for Assistant Presiding Judge. The criticisms focused on Judge Cowan's conduct in a high-profile case, which Judge Draper called "ignorant and disgraceful" and "hardly 'courageous.' " Judge Draper remarked that a "shit storm" would "erupt" if the press learned that Judge Cowan was a candidate to lead the LASC. Switching his focus to his own health problems, Judge Draper concluded by stating that he thought HIPAA was "for sissies" and was "surprised" Judge Taylor had not acknowledged the "gratitude" Judge Draper expressed for Judge Taylor's help during "a relatively difficult time."

At the hearing, Judge Taylor testified that he had serious concerns about Judge Draper as a result of the above emails, which were variously full of errors and profanities, "combative," and "arrogant and entitled." Judge Taylor was quite offended by many of the aforementioned emails, and when he received the September 13 email referring to "a person of no color like me," his "heart dropped." Ultimately, Judge Taylor's concerns prompted him to send the commission a letter of complaint about Judge Draper in early October 2022.

In his testimony before the masters, Judge Draper attempted to explain the September 13 email's subject line. He stated that he had heard from other judges that Judge Taylor believed Judge Draper's original email criticizing court

operations was "racist because [Judge Taylor] was African-American." Judge Draper claimed that "a person of no color like me" referred to Judge Cowan, who is white like Judge Draper is, and he meant to make clear that his complaints were not "about race."

The masters rejected Judge Draper's explanation regarding the September 13 email, and noted that, even if Judge Draper's intent was to rebut any suggestion that his email to Judge Taylor about court operations was racist, the email's subject line was inappropriate and open to misinterpretation. The masters further found that, even if Judge Draper's criticisms of court operations and Judge Cowan's conduct had any merit, there was no valid excuse for airing them in the manner he did.

Neither party objected to these factual findings and we adopt them.

ii. Conclusions of Law

The masters concluded that Judge Draper's emails went far beyond the bounds of rationality, and instead of communicating helpfully about his need to take time off and his concerns about calendar coverage, Judge Draper used rude, disrespectful, and abusive language with the very people who were trying to help him. They further concluded that, far from attempting to comply with his duties or reform the court system, Judge Draper displayed an arrogant entitlement to do as he pleased and actually hampered the effective administration of the court. They also concluded, however, that Judge Draper's health issues played a significant role in his conduct and it was clear that Judge Draper's behavior and demeanor had changed, and Judge Draper himself claimed to be suffering ill effects from receiving the wrong medications. The masters concluded, however, that without medical expert testimony about Judge Draper's various conditions, which the parties stipulated to forgo, they could not find by clear and convincing evidence that Judge Draper acted in bad faith. They concluded that he violated canons 1, 3B(4), 3C(1), and 3C(2), and the conduct giving rise to the violations constituted prejudicial conduct. They also concluded

that Judge Draper did not violate canons 2 and 2A because none of the offending emails was public.

The examiners objected and argued that the conduct did violate canons 2 and 2A. We agree with the examiners that the conduct violated canons 2 and 2A. Canons 2 and 2A do not require that a judge's conduct be actually known to the public, rather, the standard is whether the judge's conduct, if known to an objective observer, would promote public confidence in the integrity and impartiality of the judiciary. (See *Doan*, *supra*, 11 Cal.4th at pp. 324–325 [disapproving of language in prior cases to the extent it is suggested that "actual observers" must view judicial misconduct]; *Adams II*, *supra*, 10 Cal.4th at p. 878, citing *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 284.) Here, Judge Draper's emails "went far beyond the bounds of rationality"; "used rude, disrespectful, and abusive language"; and "displayed an arrogant entitlement." Such conduct, if known to an objective observer, would likely undermine an objective observer's confidence in the integrity and impartiality of the judiciary.

Judge Draper objected and argued that the masters erred in excluding his proffered evidence about the genesis of his opposition to Judge Cowan and his concern that Judge Cowan was unfit to lead the court. He argued that their ruling prohibited him from introducing the reasons his emails were sent. Even if the masters had allowed Judge Draper to testify about the basis for his opposition to Judge Cowan, however, such evidence would not excuse using "rude, disrespectful, and abusive language" to voice such opposition.

Judge Draper also argued that, because the emails were not public, they could not impair public esteem for the judiciary and the conduct thus constituted only improper action. As discussed, *supra*, a finding of prejudicial misconduct does not require actual public knowledge of the misconduct. We agree with and adopt the masters' conclusion that the conduct constituted prejudicial misconduct.

b. 7A-2 *Niakan v. Ases Electrical Group, Inc. et al.*

i. Findings of Fact

While Judge Draper was on leave, the defendant in *Niakan* filed a peremptory challenge against him under Code of Civil Procedure section 170.6. At the direction of her manager, Salcido presented the challenge to Judge Stern, who found the challenge timely, granted it, and transferred the case to another department. The minute order showed that the peremptory challenge was granted but listed Judge Draper as the judge who ruled on it, not Judge Stern. Salcido, who prepared the minute order, testified before the masters that this was an error on her part and the order should have listed Judge Stern.

Salcido testified that Judge Draper became "upset" when he learned the minute order went out under his name, ordered her to vacate Judge Stern's order, deny the section 170.6 challenge as untimely, and recall *Niakan* to Department 78, which she did in a minute order issued on May 9, 2022. Judge Draper vacated Judge Stern's order even though Judge Cowan had told Judge Draper he did not believe a judge was permitted to vacate the order of another judge and suggested that Judge Draper confer with court counsel on the issue.

The masters found that "[c]onfusingly," Judge Draper denied that Judge Stern ruled on the peremptory challenge, and appeared to imply that Salcido was solely responsible for the April 25 minute order. Judge Draper admitted vacating the order, but he denied any intent "to affect in any way . . . an order of another judge" in doing so. Contrary to the May 9 order's statement that the peremptory challenge was untimely, Judge Draper testified that he vacated Judge Stern's order because the peremptory challenge was never served on him and thus "invalid."

The masters found Salcido's testimony about how the peremptory challenge was processed to be more credible than Judge Draper's. In particular, they did not find credible Judge Draper's claim that he did not believe that Judge Stern or any other judge issued the original minute order.

Neither party objected to these factual findings and we adopt them.

ii. Conclusions of Law

The masters concluded that Judge Draper's act in vacating Judge Stern's order was improper because it constituted an unlawful reversal of a valid order made by another superior court judge; it had the appearance of impropriety in that a judge who was successfully challenged reclaimed the case for his own; and Judge Draper was on leave and was not in charge of the calendar in Department 78. They concluded that Judge Draper violated canons 2, 2A, 3B(1), 3B(2), 3C(2), and 3E(1), and that the conduct constituted willful misconduct.

The examiners did not object to these legal conclusions. Judge Draper objected and argued that his conduct constituted only improper action because "[t]he [masters'] finding assumes two things the record does not establish: that Judge Stern made a valid ruling on the peremptory challenge, and that Judge Draper acted with a corrupt purpose to reverse a colleague's order." He also argued that he committed only legal error because he mistakenly believed he had the authority to reverse the order, and as such, he cannot have acted in bad faith.

We agree with and adopt the masters' conclusion that the conduct constituted willful misconduct. The masters made a specific finding that Judge Draper's claim that he did not believe that Judge Stern issued the original minute order was not credible. As such, in vacating Judge Stern's order granting a 170.6 peremptory challenge, Judge Draper's actions reflected bad faith because he violated the law, disregarded the fundamental rights of the parties, and abused his judicial authority. Further, Judge Draper vacated Judge Stern's order, despite the fact that then-Supervising Judge Cowan counseled Judge Draper to confer with court counsel because Judge Cowan believed Judge Draper's intended course of action to be unlawful.

Judge Draper thus either performed a judicial act that exceeded his lawful judicial power "with a conscious disregard for the limits of [his] authority"

(*Broadman*, *supra*, 18 Cal.4th 1079, 1092) or acted with "reckless or utter indifference to whether judicial acts being performed exceed[ed] the bounds of [his] prescribed power" which is "a state of mind properly characterized as bad faith." (*Ibid.*)

c. 7A-3 Improper Instructions to Court Staff

i. Findings of Fact

The masters found that very little evidence other than that already discussed in connection with the allegations in subcount 7A-1 was presented by the examiners as to subcount 7A-3. They found that the emails from and testimony about this period showed that Judge Draper continued to attempt to exert control over the cases on Department 78's docket despite being on leave.

Neither party objected to these factual findings and we adopt them.

ii. Conclusions of Law

The masters concluded that the examiners failed to prove by clear and convincing evidence that Judge Draper committed further violations of the canons as to this subcount. They noted that, although Judge Draper created some "havoc" about his calendar through his emails, the allegations charged in subcount 7A-1 mostly encompassed those issues, and, unlike the directives given during his later involuntary leave of absence, there was no clear prohibition on Judge Draper's access to his department or calendar until after he had taken most of the actions at issue.

Neither party objected to this legal conclusion, and we adopt it. We dismiss count 7A-3.

2. 7B – Misconduct During Involuntary Medical Leave of Absence

a. Findings of Fact

During a March 23, 2023 meeting between Judge Draper, then-Presiding Judge Jessner, then-Assistant Presiding Judge Sergio Tapia, and Judge Court, who, as the supervising judge in the civil division, was Judge Draper's

supervisor, and court counsel Peña, Judge Jessner placed Judge Draper on leave.[5] She directed him not to contact staff or access the court's computer systems, except that he could contact Judge Court for assistance in accessing those systems as necessary to respond to the commission. Five days later, she sent Judge Draper a letter memorializing the meeting. In his testimony before the masters, Judge Draper denied that any restrictions were placed on him during the meeting.

Following the March 23 meeting, Judge Draper continued to access Department 78 and communicate with court staff. At the hearing, he testified about his use of Department 78's jury deliberation room to work on his response to the commission's investigation. Salcido testified that, after March 23, Judge Draper continued to contact her to take action on pending cases, and various emails confirmed that Judge Draper communicated with court staff about active matters in Department 78 in the months after being placed on leave.

At the hearing, Judge Draper admitted that he continued to direct staff about some matters, denying that he was "instructed at any point to stop communicating with the staff in Department 78." He maintained this despite the fact that Judge Jessner's March 28 letter to him stated that his staff had "been directed to communicate only with the judge(s) who [would] be assigned to cover [his] courtroom." As for the balance of Judge Jessner's directives, Judge Draper testified that he thought her "order was mindless, offensive, and had no basis in any power that she had."

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[5] This meeting is discussed in more detail, *infra*. The meeting was held to address Judge Jessner's concerns about Judge Draper's ability to carry out his duties based upon his demeanor, behavior, and physical condition. Judge Jessner testified that she told Judge Draper that he would no longer have access to court email, would no longer be responsible for a department, was not to take action in any cases, and was not to contact staff or give any directions to his staff with regard to the handling of the docket.

Judge Draper also continued to use the LASC's email system, as evidenced by the emails to his staff referenced above and others, such as the mass email to Hunter and several other judges on June 12, 2023 (discussed, *supra*). That email prompted Judge Jessner to write Judge Draper a letter on June 14 notifying him that his access to the court's email and case management systems was terminated.

Judge Draper admitted that after being placed on leave on March 23, 2023, he continued to contact Department 78 staff about pending cases and to use the court's email service. He denied that Judge Jessner prohibited him from doing so at the March 23 meeting, and he specifically testified that he was never told not to contact his staff.

The masters found that Judge Draper's testimony lacked candor in that the evidence clearly indicated that, at the March 23 meeting, Judge Jessner did in fact inform him that he was to have no contact with Department 78 staff or access the court's computer systems, and she reiterated these directives in subsequent letters to Judge Draper. They found that Judge Draper was given clear directives and violated them on numerous occasions without a valid justification.

Neither party objected to these factual findings and we adopt them.

b. Conclusions of Law

The masters concluded that Judge Draper violated canons 2, 2A, 3C(1), and 3C(2), and that the conduct constituted willful misconduct. The masters concluded that the evidence showed that Judge Draper blatantly and repeatedly violated clear directives by his presiding judge, and his actions were not accidental or performed in good faith. They concluded: "[h]e received an order, and he proceeded to defy it because he felt it was mindless and offensive."

The examiners did not object to these legal conclusions. Judge Draper objected on the grounds that Judge Jessner's directives were not as clear as the

masters concluded, and that a good-faith, if mistaken, reading of an "ambiguous directive does not constitute bad faith."

We agree with and adopt the masters' conclusion that the conduct constitutes willful misconduct. The evidence reflects that Judge Jessner's directives were clear and unambiguous, but that, as the masters noted, Judge Draper believed her order to be "mindless and offensive" and so chose not to follow it. As such, Judge Draper's actions were not accidental or performed in good-faith but reflected deliberate defiance of his presiding judge's orders.

G. Count One – Failure to Cooperate with the Commission

Count One charged Judge Draper with failing to adequately respond to multiple preliminary investigation letters, and making improper and sarcastic statements to commission staff.

1. Findings of Fact

Judge Draper was informed by a preliminary investigation letter dated October 27, 2022, that the commission had initiated an investigation. The letter, signed by commission staff attorney Hunter, directed Judge Draper to respond by November 16, 2022.

Through counsel, Judge Draper requested and was granted three extensions of time to submit his response. On February 17, 2023, when the response was due, a court judicial assistant emailed Hunter to report that Judge Draper had " '95% completed his response' " and promised the response would be submitted on February 21. On February 22, Judge Draper sent Hunter an email purporting to attach his " 'declaration along with exhibits 1 through 6.' " The email included the exhibits but no declaration. Judge Draper sent a declaration the next day. In his declaration, Judge Draper did not substantively respond to the letter's allegations other than to admit authoring the emails to colleagues which were identified in the letter, but to deny that they "in context, [were] anything other than . . . an attempt on [his] part to facilitate the smooth and fair administration of justice in the cases which have been entrusted to [him]."

Judge Draper also discussed his belief that the commission was being used "as a tool for revenge and coercion, not as an instrument for protecting the public . . . "; that if not for the purported widespread misuse of the commission to threaten judges, he "would have been happy to let this whole thing go" and that he could submit "a few emails" that would show how "duplicitous" and "baseless the 'implied claim' [was] . . . that [he was] a danger to the Court by sitting in Department 78." Judge Draper indicated in two follow-up emails to Hunter that he intended to submit further submissions to the commission. He did not do so.

On February 28, 2023, the commission sent a supplemental preliminary investigation letter to Judge Draper identifying two more potential charges. The commission granted Judge Draper's request for an extension to respond to the letter, to March 24, 2023. Judge Draper failed to meet this deadline, and neither requested nor obtained an additional extension.

On March 23, 2023, Judge Draper met with Peña, then-Presiding Judge Jessner, then-Assistant Presiding Judge Tapia, and Judge Court, as discussed, *supra*. Judge Jessner testified that the meeting was held to address Judge Jessner's concerns about Judge Draper's "ability to continue to carry out the duties and responsibilities of a judge sitting in an independent calendar courtroom based upon his demeanor, his behavior over time, [and] his physical condition." Judge Jessner testified that after she expressed her concerns, Judge Draper "talked virtually uninterrupted for a substantial period of time" and was "dismissive," "disrespectful," and "argumentative." At the end of the meeting, Judge Jessner placed Judge Draper on a leave of absence. She testified that she "told him that he would no longer have access to court email," would "no longer be responsible for Department 78," was not to take action in any cases, and "was not to contact staff or give any directions to his staff with regard to the handling of the docket." Judge Jessner also told Judge Draper that if he needed anything from the court's computer systems, he should contact Judge Court for assistance.

Also on May 23, 2023, the commission sent Judge Draper a second supplemental preliminary investigation letter notifying him of a possible charge related to his failure to cooperate with the commission because the commission still had not received adequate responses to its earlier investigation letters. The commission's letter additionally identified six other possible charges. The commission directed Judge Draper to respond by June 12, 2023.

On June 12, Judge Draper sent an email with numerous attachments to Hunter, copying 11 other active or retired judges. The attachments were either irrelevant to or did not directly address the specific concerns raised in the investigation letters. Included in the attachments were the photographs of various injuries (described in detail, *supra*, in connection with count 3E) which Judge Draper claimed he suffered "as a result of Judge Jessner's acts in trying to prevent me from responding to the allegations" in the commission's letter. Judge Draper then addressed his intent to respond to the commission's allegations, but indicated he was leaving on vacation June 17. Judge Draper then wrote:

> And then it is up to you, and the additional judges I add, and the good members of the CJP who have been badly misled by Ms. Hunter, to answer [the] question [of what kind of legacy they want to leave]. Don't call me, don't write. I will file a formal response to all of the allegations with the CJP on Friday[,] June 16, 2023[,] and then go on the summer vacation Judge Jessner has decided I deserve. First for a week at an undisclosed location . . . with my [family], then to begin planning for litigation and selecting a real lawyer.

On August 7, 2023, the commission sent the judge a third supplemental preliminary investigation letter identifying further potential charges. The commission directed Judge Draper to respond by August 28. On August 21 and September 27 Judge Draper, through new counsel, requested extensions of time to respond. On October 25 and October 30, Judge Draper and/or his counsel emailed Hunter indicating they would not meet the extended deadline of October

27 to submit the response for various reasons, including that the judge had had COVID in early October and the judge was leaving for vacation to Cabo San Lucas. On November 6, Judge Draper emailed Hunter that he was mailing a binder and stated:

> I am not sending it to anyone else, so if there is a leak, it will be clear that the leak was from you. I am on vacation and my assigned lawyer has not yet engaged for reasons you may know. When I return next Monday [November 13], I will begin the work of completing the submission and then continue my demand either for a public proceeding, open to all, or a conversation with an adult on how we can fix the problem of what the CJP has become.

The commission received Judge Draper's binder (exhibit 32) on November 7, with a table of contents appearing as follows:

TABLE OF CONTENTS

JUDGE ROBERT S. DRAPER NOVEMBER 2, 2023 SUBMISSION TO THE COMMISSION ON JUDICIAL PERFORMANCE

1. BIOGRAPHICAL DATA
2. EXCUSED ABSENCES—2022-2023
3. SUPPORTING PICTURES
4. INVESTIGATIVE PROCEDURES OF THE COMMISSION ON JUDICIAL PERFORMANCE (as represented to working Judges
5. OCTOBER 27, 2022—FEBRUARY 27, 2023: "NOTICE OF THE "FIRST NOTICE OF PRELIMINARY IVESTIGATION;" RELATED DOCUMENTS;
6. FEBRUARY 28, 2023—THE "NOTICE OF SUPPLEMENTAL INVESTIGATION" AND "THE MAN FROM TENNESSEE;" RELATED DOCUMENTS
7. MY "PSYCHIATRIC SICKNESS"
8. WHAT I LEARNED AND "THE LETTERS"
9. FEBRARY 28, 2023 —MARCH 27, 2023—SABOTAGED BY THE PRESIDING JUDGE I HAD VOWED TO PROTECT AND ORDERED TO SUBMIT TO PYCHIATRIC TESTING—THE SECOND PART GREAT BUT ONLY BY HIGHLY RESPECTED DOCTORS SUBJECT TO HIPPA AND MY FAMILY'S FUNDAMENTAL RIGHT TO PRIVACY--NOT ANNE HUNTER; FIRST PART VERY DEMORALIZING WITH PHYSICAL INJURY THE LEAST OF MY INJURIES
10. MAY 23, 2023—"NOTICE OFTHE SECOND PRELIMINARY INVESTIGATION," *ODOM V. LOS ANGELES COMMUNITY COLLEGE DISTRICT., LASC CASE NO. 724401, YVETTE PENA AND GARBAGE TIME*
11. AUGUST 8, 2023—CAN RELYING SOLELY ON YVETTE PENA AND CONTINUING TO CLAIM AS TRUE FACTS MS. HUNTER KNOWS ARE NOT TRUE REALLY BE FAIRLY BECHARACTERIZED AS A "THIRD PRELIMNARY INVESTIGATION" OR IS IT YVETTE PENA DÉJÀ VU ALL OVER AGAIN, NEW PRRESIDING JUDGE, SAME ROTLE?
12. WHAT DO YOU WANT TO BE? THE "BLACK DOT"AS IN TREASURE ISLAND OR A TREASURE FOR THE STATE OF CALIFORNIA—PROTECT ING THE PEOPLE AND RESPECTING THE DEDICATED JUDGES (like me?) WHO WORK HARD EVERY DAY TO SERVE THEM?
13. WHERE TO FROM HERE?

The binder had tabs containing documents for the first six enumerated categories, but it did not contain a declaration or any other form of response written by Judge Draper that addressed the specific charges. On November 7, 2023, Judge Draper sent an email to Hunter noting that the binder had "a lot more sections that will be completed" once he "g[o]t a Court to undo your agreement with Judge Jessner to cut me off from my records."

At the evidentiary hearing, Judge Draper testified that the binder he submitted was different and more expansive than the one described above. He first maintained that he sent a binder (exhibit M) that had a slightly different table of contents and contained eight tabs of documents. After the examiners confronted him with the fact that exhibit M contained an email from January 2024, two months after he submitted the binder to the commission, Judge Draper claimed that the binder he provided was actually a third, slightly different version. Hunter testified that the binder the commission received in November 2023 was exhibit 32.

The masters found that, while Judge Draper filed an initial response to the October 2022 investigation letter, the response did not substantively respond to the allegations in the letter. After issuing the February 2023 investigation letter, the commission granted Judge Draper's request for an extension to respond to March 2023, but Judge Draper failed to meet this deadline, and neither requested nor obtained an additional extension. Similarly, Judge Draper neither submitted a response to the May 2023 investigation letter by the deadline nor requested an extension to submit one. The masters noted that, although by this point Judge Draper's access to the court's computer system was restricted, he did not comply with the restrictions for some time, and he was repeatedly told that he could obtain assistance to access the system by working with Judge Court. The masters further noted that no evidence was presented that Judge Draper made, much less was denied, any request to access the court computer system to help him prepare a response to the investigation letters.

Lastly, the August 2023 investigation letter directed Judge Draper to respond to the letter by August 28, 2023. While the commission gave Judge Draper an extension to respond by October 27, Judge Draper did not submit a response by that date. Instead, on November 7, 2023, the commission received the binder, described above, which had a table of contents that listed 13 topics, but only contained six tabs of documents, most of which were unrelated to the specific concerns the investigation letters raised. The masters concluded that Judge Draper's testimony that he submitted a different binder was not credible, and found Hunter's testimony on the topic credible and persuasive. The masters concluded that Judge Draper never provided a response to the commission that addressed the multiple allegations in any of the commission's investigation letters.

The masters also concluded that Judge Draper sent discourteous and unprofessional emails to Hunter, including his June 12, 2023 email to her implying that she had not "done any investigation at all"; accusing her of "badly misle[ading]" the commission; claiming that the October 2022 investigation letter's allegations were "totally false in every important way"; and ordering her not to contact him or set any more "artificial deadlines." The masters also noted Judge Draper's email to Hunter on November 6, 2023, warning her that if there was "a leak" of his binder of materials, "it will be clear that the leak was from [her]" and expressing his wish for "a conversation with an adult on how we can fix the problem of what the CJP has become," implying that she was not such a person. The masters noted that, in contrast, no evidence was presented that Hunter's communications with Judge Draper were anything other than professional, courteous, and accommodating. The masters inferred from his conduct that Judge Draper believed he was above being asked to respond to a commission investigation, and believed he was justified in treating Hunter with discourtesy and disdain solely because she played a role in the investigation.

Neither party objected to the masters' factual findings, and we adopt them.

2. Conclusions of Law

The masters concluded that, in failing to timely or adequately respond to the commission, and in sending discourteous and inappropriate emails to Hunter, Judge Draper committed willful misconduct and violated commission rule 104, Government Code section 68725, and canons 1, 2, 3, 3A (all judicial duties prescribed by law shall take precedence over all other activities of every judge), 3B(4), 3C(2), and 3D(4) (a judge shall cooperate with judicial disciplinary agencies).

The masters concluded Judge Draper's conduct did not violate canons 2A or 3C(1) as charged in the Notice. The masters concluded that canon 2A addresses conduct that "promotes public confidence in the integrity and impartiality of the judiciary," but the investigation and Judge Draper's conduct during it were not public. The masters also determined that canon 3C(1) addresses biased, prejudiced, or harassing conduct in a judge's performance of administrative duties, and while Judge Draper treated Hunter poorly, there was not clear and convincing evidence that he did so out of any particular bias or prejudice against her.

The masters found, in mitigation, that Judge Draper faced numerous health issues during this time period but concluded that, while these circumstances may have made it more difficult for Judge Draper to respond to the investigation letters, they did not justify his delay, nor the "abject inadequacy and inaptness" of his eventual responses. In aggravation, the masters concluded that Judge Draper was able to send numerous emails with materials on a wide variety of subjects that were, at best, of marginal relevance to the investigation and Judge Draper never explained why he was unable to substantively respond to the investigation.

The examiners objected to the masters' legal conclusion that the judge's conduct did not violate canons 2A and 3C(1). We agree with the examiners that the conduct violates canons 2A and 3C(1). As discussed, *supra*, there is no

requirement that a judge's conduct be actually known to the general public before a violation of canon 2A may be found—rather, the touchstone is whether the judge's conduct, if known to an "objective observer," would promote confidence in the integrity and impartiality of the judiciary. Canon 3C(1) contains dual prohibitions and requires a judge to diligently discharge the judge's administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. Judge Draper failed to promote public confidence in the integrity of the judiciary both by failing to timely and adequately respond to the commission's investigation and in sending discourteous and inappropriate emails to Hunter. A finding of bias or prejudice against Hunter is not a prerequisite to a violation of 3C(1).

Judge Draper objected to the masters' legal conclusion that the conduct constituted willful misconduct and argued it constituted only improper action. He asserted that the conduct was not undertaken in a judicial capacity, and his failure to respond to the commission was not a "considered refusal" but the actions of an "octogenarian judge repeatedly overtaken by serious illness," who "ultimately assembled and delivered a substantial body of responsive material in the sincere belief that it was what the inquiry required."

We disagree. Judge Draper was acting in a judicial capacity when he failed to respond to the commission. "A judge's response to an inquiry by the [commission] is a judicial function . . . Any misconduct in the judge's dealings with the commission constitutes willful misconduct in office because such dealings are done in a judicial capacity." (Rothman, *supra*, § 12:28, p. 811; *Adams II*, *supra*, 10 Cal.4th at 910.) We agree with the masters that, while Judge Draper's health issues may be mitigating, they did not justify his delay, nor the "abject inadequacy and inaptness" of his eventual responses. We further agree with the masters that Judge Draper was perfectly able to send "numerous emails with materials on a wide variety of subjects that were, at best, of marginal

relevance to the investigation" but refused to substantively respond to the investigation, and with their conclusion that his emails reflected that "Judge Draper believed he was above being asked to respond to a commission investigation." We thus adopt the masters' conclusion that Judge Draper committed willful misconduct.

IV. DISCIPLINE

The purpose of commission proceedings is not punishment, but the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity of the judicial system. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 864-865; *Adams II*, *supra*, 10 Cal.4th at p. 912.) "The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office." (*Geiler*, *supra*, 10 Cal.3d at p. 281.)

The commission has identified several factors to consider in determining an appropriate sanction, including (1) the judge's honesty and integrity, (2) the number of acts and seriousness of the misconduct, (3) whether the judge appreciates the impropriety of the conduct, (4) the likelihood of future misconduct, (5) the impact of the misconduct on the judicial system, and (6) the existence of prior discipline. (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1, 50.)

The commission also considers any mitigating factors that a judge may advance. (*Van Voorhis*, *supra*, 48 Cal.4th CJP Supp. at p. 295.) The commission may also consider the effect of the misconduct on others and whether the judge has cooperated fully and honestly in the commission proceedings. (Policy Declarations of Com. on Jud. Performance, policies 7.1(1)(f) and 7.1(2)(b).)

A. Honesty and Integrity

The commission has stated that foremost in its consideration of factors relevant to discipline is honesty and integrity. (*Saucedo, supra*, 62 Cal.4th CJP Supp. at p. 50.) Honesty is a "minimum qualification[]" expected of every judge.

(*Kloepfer*, *supra*, 49 Cal.3d at p. 865.) "If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental." (*Ross*, *supra,* 49 Cal.4th CJP Supp. at p. 90.) "The public will not, and should not, respect a judicial officer who has been shown to have repeatedly lied for his own benefit." (*Inquiry Concerning Murphy* (2001) 48 Cal.4th CJP Supp. 179, 202.) "A judge who does not honor the oath to tell the truth cannot be entrusted with judging the credibility of others." (*Inquiry Concerning MacEachern* (2008) 49 Cal.4th CJP Supp. 289, 309; *Laettner*, *supra*, 8 Cal.5th CJP Supp. at p. 55.) In *Saucedo,* the commission noted that the Supreme Court has said there are few actions that "provide greater justification for removal from office than the action of a judge in deliberately providing false information to the [c]ommission in the course of its investigation . . . ." (citing *Adams II*, *supra*, 10 Cal.4th at p. 914). The commission added that it takes "particularly seriously a judge's willingness to lie under oath to the three special masters appointed by the Supreme Court to make factual findings critical to [its] decision." (*Saucedo*, *supra*, 62 Cal.4th CJP Supp. at p. 51.) "Lack of candor toward the commission is uniquely and exceptionally egregious." (*Ross*, *supra,* 49 Cal.4th CJP Supp. at p. 90.)

A judge's dishonesty has often been a factor when removing judges from the bench. For example, in *Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146, 173, Judge Hall was removed partly because she "dissembled before the masters and [the commission] with excuses to minimize fault, thereby demonstrating a lack of acceptance of, and accountability for, her wrongdoing." In *Ross*, *supra*, 49 Cal.4th CJP Supp. at pp. 87, 141-143*,* the commission also considered Judge Ross's dishonesty before the masters and the commission to be a significant factor in its decision to remove him from office.

In *Inquiry Concerning Spitzer* (2007) 49 Cal.4th CJP Supp. 254, 286, the commission found that the judge was "deceptive in his testimony before the masters" and that his lack of candor during the proceedings was "incompatible

with the role of a judge." In *Saucedo*, *supra*, 62 Cal.4th CJP Supp. at p. 52, the commission found that Judge Saucedo continued to deny essential facts (e.g., regarding whether he wrote a false letter to his clerk in an effort to develop a "special" relationship with her), minimize the gravity of his misconduct, limit his remorse, and blame his clerk for his own actions. In *Laettner*, *supra*, 8 Cal.5th CJP Supp. at pp. 56-57, 63-64, the commission considered Judge Laettner's lack of credibility before the special masters in concluding that removing Judge Laettner from the bench was warranted.

Here, the masters found that Judge Draper "sometimes lacked candor" in his communications with the commission. With regard to count 2E (ex parte communication with attorney) the masters found in aggravation: "Judge Draper did not exhibit candor in the voicemail message he left with Morton because in it he said the [c]ommission had asked for a review of the *Odom* case. In fact, the [c]ommission had not asked for review of *Odom*, and it did not raise Judge Draper's conduct in *Odom* as an area of concern until its May 2023 investigation letter." Regarding count 3D, (disseminating unredacted confidential juvenile dependency materials), Judge Draper testified before the masters that "his primary purpose" for disseminating confidential juvenile dependency materials "was to address how to improve handling of those cases." The masters found that Judge Draper "lacked candor in testifying that he sent the email to initiate a conversation about improving the court system." With respect to count 7B (failure to cooperate with colleagues during involuntary leave of absence) Judge Draper denied that Judge Jessner placed any restrictions on his actions, specifically testified that he was never told not to contact his staff, and denied that Judge Jessner prohibited him from using the court computer systems. The masters explicitly stated: "We find that Judge Draper lacked candor in his testimony."

In other respects, the masters, while not explicitly finding a lack of candor, found Judge Draper's testimony to be "not credible." With respect to count 2A

(race-based comments during *Odom*), Judge Draper testified that his race-based comments "were about social progress and meant to encourage settlement of the case." The masters found Judge Draper's testimony that his race-based comments were made to facilitate a settlement "not credible." Regarding count 2B (comments during *Odom* reflecting gender bias), the masters "[did] not find credible Judge Draper's claim that his comment to the female attorneys in chambers was intended to encourage the parties to settle." Regarding count 2D (emotional embroilment during *Odom*), Judge Draper testified before the masters that he did not become emotional, but the masters concluded that "[Judge Draper] did become emotional . . . and [we] do not find credible his testimony to the contrary." With respect to count 7A-2 (vacating Judge Stern's order granting a peremptory challenge), the masters found Salcido's testimony about how the peremptory challenge was processed to be more credible than Judge Draper's, adding, "In particular, we find not credible Judge Draper's claim that he did not believe that Judge Stern or any other judge issued the April 25 minute order."

Judge Draper argued that the masters' findings on credibility do not demonstrate that he was deliberately deceitful, and that such a finding is necessary for a "dishonesty-based removal[]." Judge Draper's argument is not supported by commission precedent. While in some instances the commission has removed judges when the masters made a finding that the judge was deliberately deceitful (see, e.g., *Inquiry Concerning Johnson* (2020) 9 Cal.5th CJP Supp. 1, 77 [adopting masters' finding that the justice had made " 'intentional misrepresentations' " and an " 'intentional fabrication' "], such a finding is not required. In *Laettner*, *supra*, 8 Cal.5th CJP Supp. at pp. 56-57, 63-64, for example, the commission considered Judge Laettner's lack of credibility before the special masters in concluding that removing Judge Laettner from the bench was warranted. The masters did not determine that Judge Laettner was deliberately deceitful, but that Judge Laettner was "not credible" in six instances and that his testimony was " 'impeached' " in another. (*Id*. at p. 56.)

The masters concluded that Judge Draper engaged in multiple instances in which he lacked candor, and multiple other instances where they found his testimony was not credible, and we agree with their conclusions. We consider Judge Draper's false or misleading testimony and specious explanations for conduct in aggravation in determining the appropriate level of discipline.

B. Number of Acts and Seriousness of Misconduct

The number of acts of misconduct is relevant to the extent it shows isolated incidents or a pattern of misbehavior that demonstrates the judge lacks judicial temperament and the " ' "ability to perform judicial functions in an even-handed manner." ' " (*Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865.) "An isolated instance of misconduct may arise from a momentary ethical lapse, but a continuing pattern 'reflects poor judgment and lack of judicial temperament.' " (*Inquiry Concerning Platt* (2002) 48 Cal.4th CJP Supp. 227, 248.)

This matter involves nine instances of willful misconduct, eight instances of prejudicial misconduct, and one instance of improper action.[6] Judge Draper's misconduct is extensive and, as to some of the charges, serious. Further, some of the misconduct reflects a pattern that continued even during Judge Draper's testimony before the masters, and before the commission during oral argument. With respect to Judge Draper's comments regarding race, the masters noted in aggravation that, even while testifying before them, Judge Draper continued to make further inappropriate comments, including describing Dr. Irvin and Dr. Odom as "very black in terms of pigmentation" and describing Bendey as "black, way black. [¶] . . . [Y]ou know, people criticize me for saying 'charcoal black,' or

[6] Under the California Constitution, improper action is not a basis for censure or removal. (Cal. Const., art. VI, § 18(d).) We do not consider counts of improper action in removing or censuring a judge. (See, e.g., *Ross*, *supra*, 49 Cal.4th CJP Supp. at p. 138; *Inquiry Concerning McBrien* (2010) 49 Cal.4th CJP Supp. 315, 342.)

something. You know, they're people that have never seen—never had a mixture." With respect to Judge Draper's gender-based comments, the masters stated: "In aggravation, Judge Draper exhibited a pattern of using outdated and sexist language about or to women in several different settings related to the charges in this proceeding." Some of Judge Draper's misconduct also involved unprofessional, discourteous, and otherwise inappropriate comments across a diverse range of settings including the courtroom, chambers, in communications with the commission and commission staff, and in meetings and communications with judicial colleagues.

Judge Draper argued that removal should be reserved for a continuing, pervasive pattern of misconduct which is not present here. He stated:

> Here, the conduct is concentrated in a discrete 2022–2023 window that the [m]asters found was dominated by documented serious illness, including Parkinson's disease, a December 2022 detached-retina surgery, a torn rotator cuff, and COVID, illness[es] the Masters expressly credited as having "played a significant role in his conduct" and as having "hindered [his] ability to timely respond . . . A cluster of lapses substantially explained by a documented medical crisis is the paradigm of an episodic problem, not of the entrenched unfitness that removal addresses.

In fact, the masters found that, while Judge Draper faced numerous health issues, they did not justify his delay, nor the "abject inadequacy and inaptness" of his responses to the commission. They also found that, even accepting Judge Draper's health issues, "the record as a whole leaves no doubt that [Judge Draper] persistently violated the standards governing judicial behavior."

We consider the number of acts and seriousness of Judge Draper's misconduct in aggravation in determining the appropriate level of discipline.

C. Appreciation of the Misconduct

"A judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform." (*Johnson*, *supra*, 9 Cal.5th CJP Supp. at

p. 78, quoting *Platt*, *supra*, 48 Cal.4th CJP Supp. at p. 248; see also *Broadman*, *supra*, 18 Cal.4th at p. 1111 [commission properly based disciplinary recommendation partly on judge's "lack of remorse, as shown by his unwillingness to accept responsibility for clearly established misconduct"].)

The masters stated that Judge Draper has "exhibited an alarming lack of familiarity with basic ethical precepts" and "refused to accept responsibility for his puzzling behavior," and they found it "particularly concerning that during the course of these proceedings Judge Draper showed little insight into or remorse for his conduct and its effect on others." They further found that Judge Draper was "dismissive of the [c]ommission's concerns, many of which the examiners have now proven to be legitimate, and he largely refused to accept any responsibility for his misconduct."

We agree with the masters that, with respect to nearly all the charged conduct, Judge Draper has demonstrated very little appreciation for his misconduct, has consistently denied any wrongdoing, and failed to take responsibility for his actions and their consequences. Notably, during his oral argument before the commission, Judge Draper continued to deny that he had engaged in *any* wrongdoing.

D. <u>Impact on Judicial System and Others</u>

The impact of the misconduct on the judicial system and the nature and extent to which the misconduct has been injurious to others is also relevant in this matter. (Rothman, *supra*, § 12:91, p. 849; Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(f).)

Judge Draper's misconduct resulted in his reassignment to a courtroom where he would not regularly interact with court staff or the public, which, in turn, increased the relative workload for other judges and court staff. In the *Odom* case, Judge Draper's inflammatory comments were strongly and publicly criticized in the appellate opinion overturning the jury verdict, and the judge's improper remarks ultimately led to his disqualification from the case. The

masters also noted that Judge Draper's failure to "timely and fully respond" to the commission's concerns "prevented the [c]ommission from hearing his side of the story, left the examiners little choice but to bring numerous charges, and caused the scope of these [commission] proceedings to be needlessly enlarged."

Additionally, many of Judge Draper's inappropriate comments, both those charged in the Notice and those made while testifying before the special masters, would negatively impact public perception of the judiciary. The judge's remarks while testifying before the masters included comments about skin color and pigmentation; the purity or relative "mixture" of an individual's blood and ancestry; and references to adult women as "darling" and as "cute" when angry. An objective observer could conclude that, in Judge Draper's courtroom, certain individuals might be treated differently than other individuals relative to their race, ethnicity, national origin, sex, or gender, creating at least an appearance of unequal application of justice.

Judge Draper's misconduct also negatively impacted individuals. (See Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(f).) When asked about how Judge Draper's comments at the *Odom* hearing on February 15 impacted her, Brown stated:

> I've been around. I'm a grown woman. I've been practicing law for over 40 years.
>
> This is the first time in my career that I've ever had this experience. I know there's people that have -- you know, you can -- you might have assumptions about how people feel about you or assumptions about people, but I've never had this experience where, unsolicited by the facts of the case or by any other thing -- this is my first appearance before this judge, other than the Zoom call which was very nominal -- of having a judge make these kinds of comments for any reason other than what he perceived I looked like, because I was the only black attorney in this courtroom, and I was the only one arguing these issues.

> So -- and then I also felt responsibility to represent my client, so it was -- I mean, it's something that -- I'm appreciate you [*sic*] refreshing my recollection with respect to these documents, but I don't need my -- my recollection refreshed to remember how I felt at the time.
>
> [¶] . . . [¶]
>
> So it did impact me in the sense, as I said, I've never had this experience. And I've been all through the South, representing the government or representing clients. I've been -- I have had people say things to me that have been very inappropriate. I've never had a judge do it until this time.

With respect to Judge Draper's crude chambers comments (about secretaries at a law firm), Medina told the masters that, when Judge Draper made the comment, "At that point, I wanted to just leave." Brown also testified that she was "perplexed" and "aghast" by the judge's crude comments, which she found "demeaning." Brown explained the impact of the statement:

> I -- I just -- it impacted me in a way that it meant, to me, that there was, really a lack – I mean, aside from all the race -- racist comments and racial comments and kind of, you know, quips throughout the day, that caused me to believe that there was no respect for me as a woman attorney, despite my experience, despite my practice, to be in the court. . . .
>
> [I]t caused me to believe that his view of me was not one that was going to be beneficial for my client or beneficial for the -- for -- for justice.

Judge Draper's conduct eroded public confidence in the dignity, integrity, and impartiality of the judiciary, had an adverse impact on the judicial system in general, and caused harm to individuals, and we consider it a substantial aggravating factor.

E. Likelihood of Future Misconduct

"A judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform." (*Platt*, *supra*, 48 Cal.4th CJP Supp. at p. 248.) "Implicit in the lack of reform is the risk of yet further violations in the future." (*Ross*, *supra*, 49 Cal.4th CJP Supp. at p. 143.) "It is very difficult for a judge to avoid repeating an ethical violation unless he or she recognizes the act as misconduct." (*Van Voorhis*, *supra*, 48 Cal.4th CJP Supp. at p. 308.)

The absence of any attempts at reform, or appreciation for the impropriety of his misconduct was clear during Judge Draper's testimony before the masters, during which Judge Draper engaged in the same behaviors alleged in the Notice, including, as discussed, *supra*, his testimony about skin color, and use of "cute" and "darling" about women.

The likelihood of future misconduct, however, is somewhat less pertinent here, where Judge Draper was not reelected to a new term and will leave the bench January 2027. But for these facts, the commission would conclude that the likelihood of Judge Draper committing misconduct in the future is high.

F. Prior Discipline

Judge Draper has no prior discipline in his 14 years on the bench, which is usually mitigating. As the California Judicial Conduct Handbook states, however, because the aim of commission proceedings is protection of the public, rather than punishment, mitigating circumstances have only limited appeal in the more serious cases involving willful and prejudicial misconduct. (Rothman, *supra*, § 12:92, pp. 856-857.) This matter involves multiple instances of both willful and prejudicial misconduct, and thus falls within the "more serious cases" category. We therefore give only limited weight to Judge Draper's lack of prior discipline.

G. Mitigating Factors Advanced by Judge

Judge Draper argues that the masters made some general findings in mitigation. First, Judge Draper's physical health issues (discussed, *supra*). Second, that Judge Draper is liked and respected by colleagues, staff, and

attorneys who appear before him; he is dedicated to his role as a judge; and he often shows emotional sensitivity and compassion for others. We conclude that these findings are not substantially mitigating when compared to the proven misconduct in this matter.

Judge Draper also argued that he made "extensive efforts to assist the [c]ommission staff by volunteering to be interviewed, to provide and discuss all of the files in his possession, and to be observed in his courtroom." He asserted that commission staff ignored his offer to be interviewed, never met him in his chambers to review documents, nor attempted to review his "extensive electronic files." He argued that he should be given credit for his attempts to cooperate with the commission.[7]

Judge Draper's argument is not persuasive. As the California Judicial Conduct Handbook states:

> Judge[s] need[] to remember that the commission has an important role in the system of judicial accountability, that this accountability is part of the job of being a judge, and that he or she is under a duty to cooperate with and respond to the commission's inquiry in a manner that confirms the judge's objectivity, competence, judiciousness, and fitness for office. A judge must take any inquiry from the commission seriously; must not treat it as silly, a waste of time, or with contempt; [and] must not respond under the sway of such emotions . . .

(Rothman, *supra*, § 12:23, p. 806.) Rather than respond to the commission in the advised manner, however, Judge Draper sought to dictate the manner in which the commission conducted its investigation and refused to respond to the specific allegations as he was required to do. As the masters noted: "[w]e infer

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[7] Judge Draper also argued that he should be credited with cooperating with the commission's medical evaluations. Ultimately, the examiners and Judge Draper entered into a stipulation that neither party would present any medical evidence in the hearing before the masters. As such, no medical evidence was presented during these proceedings.

from his conduct that Judge Draper believed he was above being asked to respond to a [c]ommission investigation." Further, Judge Draper was explicitly warned by his then-attorney that he was required to "respond specifically to each allegation, with supporting evidence," and she cautioned him that if he failed to do so, "it [was] highly likely that the commission will charge you on this basis and attempt to remove you on this basis alone."

Finally, while protection of the public is one of the commission's foremost considerations, the commission is also tasked with enforcing rigorous standards of judicial conduct and maintaining public confidence in the integrity and independence of the judiciary. As the California Judicial Conduct Handbook notes, "In determining the appropriate level of discipline, the impact of the misconduct on the integrity of and respect for the judiciary must be considered." (Rothman, *supra*, § 12:91 at p. 849.) As such, even when a judge is no longer actively sitting and has not been re-elected to judicial office, public trust and confidence in the judiciary and the maintenance of high standards of judicial conduct are served by the appropriate discipline of errant judicial officers. Here, we conclude that public confidence in the judiciary would be greatly diminished if the commission imposed discipline short of removal for a judge who has committed the type of serious misconduct found here.

Having considered the relevant factors in determining an appropriate sanction, mitigating factors, the effect of the misconduct on others, the judge's lack of cooperation with commission proceedings, and the maintenance of high standards of judicial conduct, the commission determines that Judge Draper should be removed from office.

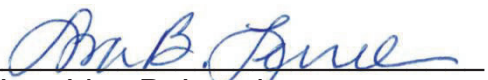
ORDER

Pursuant to the provisions of article VI, section 18 of the California Constitution, and rules 120(a) and 136 of the Rules of the Commission on Judicial Performance, we hereby remove Judge Robert S. Draper from office and disqualify him from acting as a judge.

Commission members Hon. Lisa B. Lench; Mani Sheik, Esq.; Mr. Alton L. Garrett, Jr.; Rickey Ivie, Esq.; Ms. Kay Cooperman Jue; Hon. Julia C. Kelety; Hon. Kimberly Merrifield; and Mr. Gerald C. Shelton voted in favor of all the findings and conclusions expressed herein and in this order of removal. Commission members Ms. Leisa Biggers and Ms. Beatriz E. Tapia were recused from this matter. Commission member Richard A. Long did not participate.

Date: November 10, 2026

On behalf of the
Commission on Judicial Performance,



Hon. Lisa B. Lench
Chairperson