



## **JUDICIAL MISCONDUCT INVOLVING SELF-REPRESENTED LITIGANTS**

**(Commission on Judicial Performance & Supreme Court Cases)**

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### **Abuse of Authority**

In addition to other misconduct, at the outset of a hearing on a temporary restraining order and without providing the petitioner an adequate opportunity to be heard, the judge ordered on the judge's own motion that the restrained parent would be allowed visitation as a condition of granting the restraining order. No notice had been given to the pro per petitioner that the visitation issue, which was previously set for hearing at a later date, would be addressed at the TRO hearing. The commission concluded that the judge abused the judge's authority and disregarded the litigant's fundamental right to due process. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 19, p. 22.]

In addition to other misconduct, a judge routinely locked the courtroom door during arraignments and told a defense attorney that the judge "preferred" that the attorney not be present in the courtroom during pro per arraignments. [Com. on Jud. Performance, Ann. Rept. (2012), Private Admonishment 5, p. 24.]

After granting a criminal defendant's motion to proceed in pro per and relieving his court-appointed counsel, Judge Comparet-Cassani presided at a pretrial hearing at which the defendant submitted two motions. After receiving one of the motions, the judge stated that she did not believe the defendant had prepared the motion himself and repeatedly restated this opinion while questioning the defendant about the motion. She concluded that the defendant was lying to the court about not having received legal assistance in preparing the motion, and on that basis revoked his pro per status and appointed an attorney to represent him.

The defendant petitioned the Court of Appeal for a writ of mandate to restore his pro per status, and the prosecution filed a preliminary response conceding that Judge Comparet-Cassani had improperly revoked his pro per status. The judge ordered the defendant's pro per status reinstated after the Court of Appeal issued a notice of intention to grant the writ.

The commission found that Judge Comparet-Cassani's revocation of the defendant's pro per status was based upon her belief that the defendant had received legal assistance in preparing a motion and her belief that he was lying about whether he had received such assistance. The commission found that neither of these factors, if true, provided a legal basis for the judge's action, and that her conduct constituted abuse of authority, disregard of the defendant's Sixth Amendment rights, and intentional disregard for the law. [*Public Admonishment of Judge Joan Comparet-Cassani* (2011).]

A judge relieved the defendant's attorney and remanded the defendant for failing to obey the judge's order to be quiet, without following any of the procedures for contempt. Before new counsel appeared, on the judge's own motion and off the record, the judge increased the defendant's bail significantly, which gave the appearance that the judge was acting out of pique and trying to coerce a guilty plea from the defendant. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 3, p. 23.]

In addition to other misconduct, when a pro per litigant continued to express concern about a judge's ruling, the judge threatened to make an adverse ruling and used unduly harsh language. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 26, p. 26.]

Judge O'Flaherty was censured for willful misconduct for his treatment of a small claims litigant. The judge presided over a small claims case in which an independent car dealer alleged that an employee of a credit union made derogatory remarks about independent car dealers that caused a woman to break a contract with him for the sale of the car. When the plaintiff presented his case, the judge interrupted numerous times with questions and comments generally critical of his defamation claim. The prospective buyer, by contrast, was allowed to give a lengthy narrative without interruption. The judge also heard from the employee and her supervisor. After the judge said the plaintiff's case was not "even close to libel," the plaintiff said that he knew he was right, but had not been allowed to prove his case and that the judge could dismiss the case. The judge dismissed the case and the plaintiff left the courtroom.

Judge O'Flaherty overheard the three women who had testified for the defense conversing among themselves about the plaintiff, expressing concern that he would come after them and stating that they were afraid. The judge ordered the bailiff to return the plaintiff to the courtroom. When the plaintiff returned, the judge told him that he thought he had been abusing the women and that all three of them were afraid of him. The judge then said that he was not going to issue a formal restraining order, which he had "the right to do," but if there was any contact between the plaintiff and the three women in the next few months he would "issue a formal restraining order on the spot," and the plaintiff would have to pay the fees and then face criminal charges if he violated the restraining order. The judge then repeatedly told the plaintiff that he was to have "no contact" with the women and instructed him to stay away from the credit union. When the plaintiff mentioned that he was a customer of the credit union, the judge said that he could go to other branches, and that he was not to have any contact with the branch in question for at least 90 days. The commission found that the judge issued a no contact order that he knew he did not have authority to issue and that the judge became embroiled in the matter to the extent that he issued orders that were neither requested nor legally proper. [*Inquiry Concerning Judge Joseph W. O'Flaherty* (2010) 50 Cal.4th CJP Supp. 1.]

At the conclusion of a small claims hearing, a judge engaged in an abuse of authority by ordering one party to stay away from the other party and ordering a party to receive counseling. The advisory was strong. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 21, p. 26.]

In addition to other misconduct, while on the bench, the judge directed the bailiff to take the car keys of pro per defendants who were charged with, but had not been convicted of, driving without a valid license if they stated they had driven themselves to court. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 30, p. 27.]

Judge Velasquez was removed from office for conduct that included prejudicial misconduct in criminal cases. When defendants questioned a sentence or otherwise commented, the judge threatened to increase the defendant's sentence and in some instances did increase the sentence. This occurred with both represented and unrepresented defendants. [*Inquiry Concerning Judge Jose A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

Judge Ross was removed from office for conduct that included his treatment of an unrepresented traffic litigant. While Judge Ross was presiding over a traffic calendar, a woman appeared on two old outstanding traffic citations, and the description of her differed on each citation. She presented a “Wrong Defendant” declaration and identification. The judge told the defendant that he believed she was lying, unilaterally added a misdemeanor count to the charges in both cases and summarily sentenced her to jail for 30 days. The judge entered a not-guilty plea for the defendant but did not arraign her or otherwise advise her of any rights. She was taken into custody immediately and she remained in jail for two and one-half days. The judge’s actions were determined to be willful misconduct. [*Inquiry Concerning Judge Kevin A. Ross* (2005) 49 Cal.4th CJP Supp. 79.]

After a criminal defendant requested representation by the public defender, the judge directed the bailiff to search the defendant’s wallet. [Com. on Jud. Performance, Ann. Rept. (1998), Advisory Letter 7, p. 27.]

A judge allowed an attorney to participate in a small claims matter under circumstances in which attorney participation was prohibited by law. [Com. on Jud. Performance, Ann. Rept. (1997), Advisory Letter 9, p. 21.]

The judge had refused to exercise his discretion to consider traffic school as a possible disposition in traffic matters. He told traffic litigants requesting traffic school that he did not give traffic school because it was “a joke,” and that he would not give traffic school until the traffic school system, which the judge characterized as “corrupt,” was cleaned up. [*Public Reproval of Judge Kenneth E. Vassie* (1995).]

A defendant who was representing himself in a felony criminal proceeding appeared before Judge Friedman for sentencing. The defendant told the judge he had been unable to read the probation report in part because he had observed and smelled a snake outside his cell. He told the judge that fear of snakes outside his prison cell had kept him awake at night. For the purpose of playing a joke on the defendant, the judge caused the head of a rattlesnake, enclosed in a plastic ball, to be displayed to the defendant when he was locked in a holding cell, causing an emotional outburst. There was additional misconduct. [*Public Reproval of Judge Gary T. Friedman* (1993).]

In addition to other misconduct, the judge ordered a plaintiff not to appear again pro per on any civil matter. When the plaintiff complained to the presiding judge about the order banning him from appearing pro per, the judge wrote a memo to the presiding judge suggesting that the ruling be maintained in other cases and opining that the plaintiff was trying to manipulate the system. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 4, p. 14.]

A judge sentenced a traffic defendant for speeding based on the judge's unfounded "diagnosis" that the defendant was "addicted to something." The "diagnosis" was entered onto the court docket, which is a public document. [Com. on Jud. Performance, Ann. Rept. (1991), Private Admonishment G, p. 10.]

A traffic defendant refused to enter a plea. Instead of entering a not guilty plea and moving on, the judge made the defendant wait in the courtroom all day before entering the plea. This appeared to be a vindictive use of judicial power. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 34, p. 25.]

A judge had a sentencing "policy" that expressly contradicted State policy set forth by statute: the judge refused even to consider sending traffic defendants to traffic school (Veh. Code, § 42500). When a defendant protested, the judge told the defendant to shut up. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 31, p. 25.]

In one case, a judge hinted to a pro per defendant that there would be a light sentence after a guilty plea. In fact, the judge imposed a harsh one. There was other misconduct. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 33, p. 15.]

Judge McCartney was censured for conduct that included holding benchside conferences with one of his bailiffs in sentencing pro per defendants in traffic and misdemeanor cases. The court actually imposed some of the sentences which the bailiff fashioned. [*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512.]

### **Failure to Ensure Rights**

A judge with administrative responsibilities adopted procedures for filings by pro per litigants that raised an appearance that the litigants received unequal treatment based on their indigency or lack of counsel. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 18, p. 26.]

A judge excused a represented party from the stand without offering the opposing party, a pro per litigant, an opportunity for cross-examination; the judge had offered the represented party's counsel the opportunity to cross-examine the pro per litigant. [Com. on Jud. Performance, Ann. Rept. (2009), Advisory Letter 11, p. 19.]

Judge Velasquez was removed from office for conduct that included his handling of eight criminal cases in which unrepresented defendants appeared before him to request a modification of probation. Without notifying the defendants that a probation violation hearing would be conducted and without advising them of their rights, the judge determined that the defendants were in violation of probation and immediately remanded them into custody. In one case, the time for completing the terms of probation had not yet expired. The judge's actions were determined to be willful misconduct.

In seven cases, at arraignment on misdemeanor charges, Judge Velasquez gave the defendants the choice between diversion and jail time, and did not tell them of the option of pleading guilty and having a trial. The judge also told defendants if they failed to complete diversion they would

go to jail, although the consequence of failing to complete diversion is resumption of the proceedings. The judge's actions were determined to be prejudicial misconduct. [*Inquiry Concerning Judge José A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

The defendant in a domestic violence case who had been put on probation failed to appear and provide proof of enrollment in a substance abuse program. Judge Iles ordered his probation revoked and a bench warrant issued. Two days later, the defendant appeared voluntarily without counsel to request a payment schedule for the money he owed. The bench warrant was recalled and the judge set a date for hearing concerning the defendant's medical condition and ability to enroll in a substance abuse program. The judge then sent the defendant to her judicial assistant to discuss payment of the funds he owed. Later, the judicial assistant came to the judge's courtroom, slammed the defendant's file down on the sidebar, and told the judge that the defendant was not cooperating and that she could not work with him. The judge told the defendant that since he was not willing to cooperate with the assistant, he would be taken into custody, and she instructed her bailiff to do so. The defendant repeatedly asked the judge why he was being put in custody. The judge told him that he was going into custody because he was not cooperating with her judicial assistant. She later told him that he was in custody for a probation violation. The defendant's petition for writ of habeas corpus was granted based on Judge Iles's de facto revocation of the defendant's probation without affording him due process. The commission's discipline was predicated upon the judge's disregard of the defendant's fundamental rights. [*Public Admonishment of Judge Pamela L. Iles* (2006).]

A judge went forward with a brief hearing in the absence of the pro per defendant. [Com. on Jud. Performance, Ann. Rept. (2005), Advisory Letter 1, p. 26.]

At arraignment on a failure to appear, the judge proceeded without appointed counsel despite the defendant's statements that he wanted counsel. The judge made comments that disparaged the defendant's version of the case and fostered the appearance that the judge was attempting to pressure the defendant into pleading guilty. [Com. on Jud. Performance, Ann. Rept. (2001), Private Admonishment 5, p. 19.]

Judge Heene was disciplined for nine incidents of failing to respect the rights of unrepresented individuals, including the following incidents:

A pro per traffic defendant asked to cross-examine the police officer after the officer testified. Judge Heene would not allow the defendant to question the officer.

A pro per traffic defendant charged with driving with expired registration appeared in court two weeks before the scheduled trial date because he was unable to post bail. Judge Heene ordered the defendant to get rid of his car and threatened the defendant with jail if the car was not disposed of by the trial date.

An unrepresented defendant on a traffic misdemeanor and related infractions had not completed community service by the due date and came to court two weeks after the due date to seek an extension. Judge Heene asked her if she had

completed the community service or paid the fine. When the defendant said she had not, the judge sentenced her to 44 days in county jail and had her remanded into custody. The judge failed to advise the defendant that he was conducting a probation violation hearing and did not advise her of her rights in connection with the hearing.

A pro per defendant appeared for arraignment on speeding and misdemeanor failure to attend traffic school charges. Without a guilty or no contest plea ever having been entered or a conviction at trial, Judge Heene sentenced the defendant to 20 days in jail and remanded him into custody.

An unrepresented defendant appeared before the judge at a probation revocation hearing in a misdemeanor case. Without advising the defendant of his rights with respect to the hearing, Judge Heene reinstated and modified the defendant's probation by adding 30 days to his jail sentence, and then remanded the defendant.

After Judge Heene declined to appoint counsel for an unemployed defendant charged with a misdemeanor and urged him to get a job, the judge suggested to the defendant that he "go back and talk to the D.A. in earnest about the case."

An unrepresented defendant appeared before Judge Heene at a probation revocation hearing. Without advising him of his rights, the judge reinstated the defendant's probation and modified the terms by imposing community service in lieu of a fine.

[*Censure of Judge Fred L. Heene, Jr.* (1999).]

In addition to other misconduct, on a number of occasions, the judge's advisement about a defendant's right to appointed counsel and obligation to pay for appointed counsel was misleading. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 28, p. 24.]

A judge failed to advise unrepresented defendants of their right to counsel at arraignment. In two matters, the judge engaged unrepresented defendants in discussions of the facts of their cases during arraignment; in one of those cases, the judge also read police reports without consent. [Com. on Jud. Performance, Ann. Rept. (1997), Private Admonishment 2, p. 20.]

Judge Whitney was censured for conduct that included his practices at arraignment. While conducting his court's in-custody misdemeanor arraignment calendar, Judge Whitney abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects. As a matter of routine practice, the judge failed to exercise his judicial discretion to consider release of defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He also refused to appoint counsel to assist defendants at arraignment, and failed to inform defendants entering pleas of guilty or no contest of the negative immigration consequences a conviction could have for a non-citizen. [*In re Claude Whitney* (1996) 14 Cal.4th 1.]

Judge Ormsby told a defendant that the services of the public defender's office were for trials and that if he wanted drug diversion he could not have a deputy public defender. [*Censure of Judge William M. Ormsby* (1996).]

Judge Drew was disciplined when he denied a defendant his right to appointed counsel after using improper criteria for determining whether he was indigent. The judge had refused to appoint counsel for an unemployed construction worker who indicated that he was not working and was living with another person who was supporting him, on the ground that the defendant was potentially employable. Rather than appoint counsel, Judge Drew ordered the defendant to apply for work so that he might be able to retain private counsel. When the defendant later failed to appear in court for a scheduled pretrial conference, Judge Drew issued a bench warrant, and the defendant was remanded to custody. After the defendant was taken into custody, Judge Drew again improperly refused to appoint counsel for him. There was additional misconduct. [*Public Admonishment of Judge Stephen Drew* (1996).]

A judge denied a legally valid application for a waiver of court fees and costs in a small claims case on the ground that the applicant had been able to pay for the goods which were the subject of the lawsuit. The judge indicated he did not know the law concerning eligibility of indigent litigants for fee waivers. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 23, p. 26.]

A judge found an unrepresented defendant in violation of probation without affording the defendant a hearing or advising of the right to a hearing and counsel. In mitigation, the judge did appoint counsel and set a hearing when the public defender called the judge's attention to the matter. [Com. on Jud. Performance, Ann. Rept. (1993), Advisory Letter 15, p. 18.]

On several occasions, a judge seemed to act in disregard of the rights of criminal defendants. For instance, the judge sometimes questioned defendants during arraignments in what appeared to be an effort to elicit admissions; the judge appeared to force a defendant to choose between the right to counsel and the right to a speedy trial. The commission determined that private admonishment was appropriate because of the judge's exceptionally constructive attitude toward the problem and the concrete steps the judge took to prevent further problems. [Com. on Jud. Performance, Ann. Rept. (1990), Private Admonishment G, p. 20.]

A judge refused to let attorneys represent parties in small claims appeals. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 19, p. 23.]

Judge Kloepfer was removed from office for conduct that included his treatment of a pro per defendant who appeared before the judge with proof that the criminal case underlying a charge of probation violation had been dismissed. The judge insisted that the probation violation proceed to hearing immediately, although the defendant had never waived his right to counsel and repeatedly asked for counsel. After listening to hearsay testimony from a police officer, the judge found the defendant in violation of probation and sentenced him to six months in jail. [*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.]



A judge did not adequately inform a traffic defendant of the defendant's constitutional rights. The judge found defendant guilty of an alleged failure to appear, supposedly on a plea of guilty, although defendant did not in fact plead guilty or waive any constitutional or statutory right. The commission imposed a severe private admonishment. [Com. on Jud. Performance, Ann. Rept. (1989), Private Admonishment I, p. 22.]

A judge had the practice of taking some guilty pleas with no advisement of rights, taking other guilty pleas with no waiver of rights, and giving inadequate advice to defendants on their right to counsel. In response to the commission's investigation, the judge's attitude was extraordinarily cooperative. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 21, p. 24.]

A judge imposed obstacles to defendants' exercise of right to counsel. For instance, although the judge would give a mass advisement of rights informing defendants of their right to counsel or appointed counsel, the judge did not give any information on how to exercise that right, or an opportunity to do so. After being contacted by the commission, the judge's attitude was exceptionally constructive; and the judge took the necessary steps to correct the problem. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 22, pp. 24-25.]

Judge Ryan was removed from office for conduct that included in three instances failing to provide a court reporter in a criminal proceeding. The judge knew that a court reporter had to be provided on request; but he failed to inform pro per defendants of their right to make the request, thereby "effectively den[ying] those defendants their constitutional right to have a reporter present." [*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518.]

Judge Furey was removed from office for conduct that included denying the unrepresented defendant's rights during a traffic trial. After telling a group of traffic defendants that if there was a discrepancy between their version of the facts and that of a police officer, he would always believe the police officer, the judge heard a traffic matter. An officer testified for the prosecution. During his defense, the unrepresented defendant began reading from a Vehicle Code section. The judge cut him short and found him guilty. The appellate department of the superior court later reversed the judgment because the defendant had been denied the opportunity to cross-examine the police officer and to make a closing argument. The Supreme Court found both the judge's announcement to the defendants and his denial of the defendant's right to be heard to be willful misconduct. [*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297.]

A judge altered court records to resolve an apparent inconsistency in the record, with results adverse to a pro per litigant. [Com. on Jud. Performance, Ann. Rept. (1986), Advisory Letter, p. 5.]

A judge created a perception of unfairness by ordering a new trial in a small claims case after receiving a letter from the losing party. [Com. on Jud. Performance, Ann. Rept. (1986), Educational Letter, p. 4.]

## **Bias/Lack of Impartiality**

In addition to other misconduct, a judge made remarks about a pro per criminal defendant – impugning the defendant’s character, referring to the defendant as a fraud, and accusing the defendant of being willing to make false statements to the court – in an attempt to persuade the defendant to waive the right to self-representation. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 26, p. 24.]

In addition to other misconduct, a judge’s treatment of a pro per family law litigant was discourteous and gave rise to an appearance of embroilment. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 24, p. 24.]

In pretrial and jury trial proceedings in a criminal case involving a pro per defendant, the judge made comments disparaging the defendant and the defendant’s defense, made a statement reflecting bias against pro per defendants, and sometimes appeared to assume a prosecutorial role in questioning the defendant. There was additional misconduct. [Com. on Jud. Performance, Ann. Rept. (2014), Private Admonishment 1, p. 21.]

In numerous cases, mostly involving pro per litigants, the judge injected the judge’s personal views or made remarks that were discourteous or created the appearance that the judge was acting as an advocate or lacked impartiality. There were mitigating factors, including corrective measures taken by the judge to change the judge’s behavior. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 4, p. 21.]

During a jury trial with a difficult pro per criminal defendant, the judge made a number of statements in the presence of the jury to the effect that the defendant was misrepresenting the facts and was attempting to manipulate the proceedings; this created an appearance of a lack of impartiality. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 4, p. 24.]

During a traffic calendar, the judge announced that the judge wanted to meet with the police officers privately. When one of the traffic defendants expressed concern about the meeting, the judge called the defendant a demeaning name. The judge previously had met with law enforcement supervisors about their ticketing practices and presentation of evidence, which gave the appearance of alignment with law enforcement. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 5, pp. 24-25.]

During a telephonic appearance, a pro per inmate plaintiff was able to hear the judge and the opposing counsel, but they could not hear the inmate and believed the inmate was not on the line. The judge made remarks that created the appearance the judge was coaching counsel about responding to the inmate’s legal position. The judge also made a remark about the inmate’s case being no different from other inmate cases, suggesting stereotyping of inmates’ cases. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 6, p. 25.]

During the lengthy criminal trial of an obstreperous pro per defendant, a judge made disparaging and demeaning comments to the defendant and made numerous improper threats, sometimes in the presence of the jury, in an attempt to control the defendant. At one point, the judge ordered

the out-of-custody defendant placed in a holding cell without following proper procedures. The judge engaged in conduct suggesting assumption of a prosecutorial role rather than that of an impartial arbiter. The advisory was strong. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 2, pp. 24-25.]

A judge exhibited a lack of impartiality towards a pro per criminal defendant and also displayed inappropriate demeanor, including telling the defendant at the end of the proceeding, “Shut up and get out of here, please.” [Com. on Jud. Performance, Ann. Rept. (2007), Private Admonishment 1, p. 30.]

Judge Hyde was removed for conduct that included becoming embroiled in a pro per litigant’s marital dissolution and acting as the litigant’s advocate. In 2001, the judge was presiding over a domestic violence case. After arraigning the defendant, the judge spoke with the defendant’s spouse in the court hallway. She told the judge that she wanted to serve marital dissolution papers on the defendant before he was transported back to jail. The judge accompanied the wife to the clerk’s office, advised her about the need for a fee waiver, obtained a fee waiver application for her and may have assisted her in filling it out. Later, the judge went to the chambers of the commissioner handling fee waiver applications. The judge asked if the commissioner had reviewed the application yet and explained that the wife wanted the husband served before he returned to jail. The commissioner pulled the application from the file, reviewed it and signed it. The judge volunteered to return the paperwork to the clerk’s office. The judge filed the fee waiver order and the dissolution paperwork with the clerk’s office. The judge’s conduct was determined to be prejudicial misconduct.

The decision noted Judge Hyde’s receipt of an advisory letter in 1998 for assisting a pro per litigant. The advisory letter expressed disapproval of the judge’s “involvement in a pro per defendant’s case including reading an inmate’s letter addressed to [him] at the courthouse regarding her receipt of a complaint and summons in an unlawful detainer case, [the judge’s] direction to the clerk’s office to send her an ‘answer’ packet so she could respond to the unlawful detainer complaint and summons and [the judge’s] direction to a clerk to prepare a fee waiver order, which the judge signed.” The inmate/defendant was given additional time in which to respond, without notice to the other side. The commission viewed the judge’s actions “as providing legal and judicial assistance not available to other pro per litigants,” and cited canons 2B (use of the prestige of judicial office) and 3B(7) (ex parte communications). [*Inquiry Concerning Judge D. Ronald Hyde* (2003) 48 Cal.4th CJP Supp. 329.]

A judge appeared to provide legal assistance outside of court to a pro per litigant in a case pending in another department of the judge’s court. [Com. on Jud. Performance, Ann. Rept. (1998), Advisory Letter 31, p. 28.]

In addition to other misconduct, in a small claims matter, the judge, without sufficient cause, threatened one of the litigants with perjury charges. [Com. on Jud. Performance, Ann. Rept. (1996) Advisory Letter 21, p. 25.]

A small claims litigant refused to stipulate to a temporary judge. The judge to whom the case was then assigned interrogated the parties as to which of them had refused to stipulate, giving the appearance that the judge would retaliate against that party. The judge also made remarks disparaging small claims litigation. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 36, p. 17.]

Judge Furey was removed from office for conduct that included telling a group of traffic defendants that if there was a discrepancy between their version of the facts and that of a police officer, he would always believe the police officer because perjury was a felony and a police officer would not jeopardize his career over such an insignificant matter. The Supreme Court found the judge's announcement to the defendants to be willful misconduct. [*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297.]

A judge appeared to treat the parties to an action unevenly by excusing an instance of tardiness by defense counsel while sanctioning the in pro per plaintiff for the same act. [Com. on Jud. Performance, Ann. Rept., Ann. Rept. (1986), Educational Letter, p. 4.]

Judge McCartney was censured for conduct that included, in a welfare fraud case, angrily telling a pro per defendant's wife to "shut up" or be held in contempt when she persisted in making a series of boisterous outbursts which interrupted the proceedings. In the same case, the judge strongly criticized the pro per defendant, alleging that he had previously perpetrated frauds and stating that in an attempt to evoke the court's sympathy, he had brought his children to court. For an apparent misrepresentation to the court, petitioner called the defendant a "liar," "cheat," and "deadbeat." The judge also responded to the defendant's boisterous interruptions at the sentencing by angrily threatening to triple the jail sentence.

Judge McCartney told another pro per defendant, who had previously appeared before him to plead guilty to a drunk driving charge, to "get in [the] courtroom or I'll have you arrested," when the defendant approached him in the courthouse hallway during the noon recess to casually inquire about the availability of a blood-alcohol test.

In another case, where a pro per defendant sought transfer of his case to another court because the judge seemed emotionally upset, Judge McCartney engaged in a verbal attack upon the defendant with respect to his experience as a paramedic in a deliberate effort to embarrass the defendant or provoke him into a contemptuous response. [*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512.]

## **Demeanor**

In multiple proceedings in 2012 and 2013, Judge Healy made denigrating and undignified remarks to family law litigants, most of whom were unrepresented by counsel. The judge told parents in one case that they were "rotten" and then suggested that he should have had their child taken from them, told the mother that she was "a train wreck" and a "liar" who deserved to have a cell door closing behind her, and referred to the mother as a "total human disaster." In another case, the judge threatened to put both parents in jail, although he later told them that he could not do this without citing them for contempt and conducting a hearing. In a third case, the judge

remarked that if the mother “had been smart enough,” her son would not have had to go through the process of changing schools, and said, “[n]ow your son is screwed.” In a fourth case, the judge expressed concern that the children might “do something stupid and thuggish because their father is stupid and thuggish[,]” threatened to jail the parents and take away their children, told them that they could be in jail until their children were adults if he was “in the wrong mood” the next time he saw them, and told them that life was too short to let children “be tortured by rotten parents like you two.” In a fifth case, the judge described a father’s claim that he would get a job as “pie in the sky,” and said that the father was making this claim even though he admittedly was “morbidly obese and at risk of dying at any time....” In a sixth case, the judge told parents that if they were exposing their daughter to “one-fifth of the attitude” they were showing the judge, they “might as well have her start walking the streets as a hooker.” The commission disagreed with the judge’s position that blunt and evocative language was sometimes necessary to compel litigants to gain awareness of their circumstances, the harm that they are causing their children and the importance of respect and cooperating, noting that many of the judge’s comments were “the antithesis of imparting the importance of respect” and that the judge’s goals “can and must be accomplished in a manner that comports with the Code of Judicial Ethics. [*Public Admonishment of Judge Daniel J. Healy* (2014).]

In a family law case, the judge made an undignified and discourteous remark about a pro per litigant’s weight during a hearing on the litigant’s motion to reduce support payments. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 13, p. 23.]

Commissioner Friedenthal was disciplined for conduct that included, when the unrepresented mother in a child custody dispute said that she did not want to “bag on” the commissioner (meaning insult or offend the commissioner), Commissioner Friedenthal remarked, “Bag on me? Is that a legal term?” The commission found that the remark, which appeared to be sarcastic, violated canon 3B(4). [*Public Admonishment of Commissioner Alan H. Friedenthal* (2012).]

Judge Comparet-Cassani was disciplined for abuse of authority, disregard of a pro per defendant’s Sixth Amendment rights and intentional disregard of the law when she revoked the defendant’s pro per status because she believed he had received legal assistance with a motion and had lied to the court about it. The commission further found that the judge’s demeanor toward the defendant during the hearing was improper. The judge spoke to the defendant in a harsh manner, repeatedly stated that she did not believe him, grilled him on cases cited in his motion, and stated three times that he was lying to the court, although the defendant remained respectful to the judge throughout the hearing. [*Public Admonishment of Judge Joan Comparet-Cassani* (2011).]

In addition to other misconduct, a judge made unduly harsh and disparaging remarks to a pro per criminal defendant during a pretrial hearing. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 25, p. 26.]

Judge Salcido was censured for conduct that included her treatment of an unrepresented defendant who appeared before the judge after apparently having failed to comply with a condition of probation. The judge advised her that she would allow her to serve 24 hours in custody, instead of the customary 48 hours, for the violation of probation. The judge advised her

that she had a right to be counseled by an attorney before admitting the violation and being sentenced, and informed her that she would have to come back another day if she wanted to speak with an attorney. At one point the judge told her, “But I might not be so gracious on Monday.” After further discussion, the defendant said that she wanted to “do the 24 hours.” When the defendant paused after the judge said that this meant she would waive her right to speak to an attorney, the judge asked, “You want to ask the lifeline? You need a lifeline?” The audience laughed at these remarks.

In another matter, an unrepresented defendant appeared for arraignment on an alleged probation violation. After asking the defendant about his relationship with the subject of a protective order issued in the case, Judge Salcido made the following comments:

Court: Are you guys together or not together?

Defendant: Nope. We haven’t been together for like over a year now. But she’s the whole reason why I have to keep coming back to court.

Court: She is, or the fact that you broke the law?

Defendant: No, she is. She’s ---

Court: Oh, you didn’t break the law? You’re an innocent man on probation?

Defendant: -- All’s I’ve been trying to influence ---

Court: You’re an innocent man on probation?

Defendant: Yes.

Court: Is that what you’re trying to tell me, you’re an innocent man? I’ve met my first innocent man on probation. He’s completely innocent, he’s on probation?

Defendant: Have, have you went over the case?

Court: Oh my gosh, you’re innocent.

[*Inquiry Concerning Judge DeAnn M. Salcido* (2010).]

In addition to other misconduct, a judge made a disparaging remark to a small claims litigant. [Com. on Jud. Performance, Ann. Rept. (2009), Advisory Letter 2, p. 18.]

In addition to other misconduct, a judge was disciplined for conduct that included using demeaning and unduly harsh language toward a pro per litigant seeking a protective order, and telling her that she should blame herself if she could not present her case and should hire a lawyer. [Com. on Jud. Performance, Ann. Rept. (2008), Private Admonishment 1, p. 25.]

Judge Velasquez was removed from office for conduct that included, in a number of cases, joking with unrepresented defendants about imposing jail time. For example, when one defendant asked if jail time would be imposed, the judge said: “If you want some, I’ll give you some.” When another defendant asked a question about his fine, the judge said: “Would you like some jail?” In another case, the judge *pretended* to find information that the defendant “owed” 35 days of jail time on a previous case. The defendant objected that he had already

served that time and the judge disagreed and referred to “35 new days.” Eventually, the judge told the defendant that he was “[j]ust kidding.” [*Inquiry Concerning Judge Jose A. Velasquez* (2007) 49 Cal.4th CJP Supp. 175.]

Judge Petrucelli was disciplined for his remarks while presiding over a hearing concerning spousal support in which the wife was represented by counsel and the husband was appearing in propria persona.

Near the outset of the hearing, after questioning the husband, Judge Petrucelli asked him to go ahead and say what he wanted to say. The husband responded, “Sir?” The judge then said, “Is there a language problem here?” in a loud and angry tone of voice.

Judge Petrucelli made gratuitous sarcastic remarks about the husband’s affair that had caused the divorce, (“It was cold and so you needed someone to stay warm with.”), belittling comments about the husband’s income as a car salesman, (“You’ve got to be the lowest car salesman ... maybe you should consider doing something else. I mean, I don’t know of anybody that makes \$40,000 selling cars.”) and sarcastic remarks about the husband’s new wife, (“You’ve got a new, young wife apparently. That’s wonderful. Is it the Mongolian lady I hope ... Did she make it back? ... Okay ... so she made it to America. I hope you’re happy. That’s wonderful. We should all be happy. So, anything else you want to tell me about the support issue?”). [*Public Admonishment of Judge James M. Petrucelli* (2007).]

A judge made sarcastic and demeaning remarks to a pro per litigant in family court, including mocking the litigant’s use of a legal term. [Com. on Jud. Performance, Ann. Rept. (2007), Advisory Letter 3, p. 31.]

A judge made a vulgar remark to a pro per respondent in a domestic violence matter. [Com. on Jud. Performance, Ann. Rept. (2007), Advisory Letter 6, p. 31.]

In an angry outburst during court proceedings, a judge expressed frustration with the judicial system and made rude and undignified remarks to a pro per family law litigant. [Com. on Jud. Performance, Ann. Rept. (2006), Advisory Letter 3, p. 32.]

A judge made a gratuitous comment about sending a pro per litigant to jail that was likely to be perceived as a threat. [Com. on Jud. Performance, Ann. Rept. (2003), Advisory Letter 4, p. 26.]

A judge displayed sarcasm and derision in remarks toward a pro per litigant in a civil harassment matter. [Com. on Jud. Performance, Ann. Rept. (2001), Advisory Letter 6, p. 20.]

A judge made demeaning comments to a pro per defendant that impugned the defendant’s intelligence. [Com. on Jud. Performance, Ann. Rept. (2000), Advisory Letter 3, p. 21.]

During a court session, a judge made harsh and intimidating remarks to one pro per defendant and used inappropriate humor in the judge’s remarks to three other pro per defendants. [Com. on Jud. Performance, Ann. Rept. (1998), Advisory Letter 11, p. 27.]

Judge Ormsby was disciplined for conduct that included his treatment of an unrepresented defendant who appeared before the judge for arraignment on theft charges. The defendant told the judge that he was unemployed and attending school. The judge forced him into an unnecessary colloquy regarding what he was learning in school and questioned him in a manner which was demeaning, visibly embarrassing the defendant in open court. [*Censure of Judge William M. Ormsby* (1996).]

A judge made harsh and demeaning comments to an elderly pro per litigant. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 1, p. 24.]

A judge spoke in an excessively harsh tone to a pro per misdemeanor defendant. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 3, p. 24.]

A judge joked with court spectators about having persuaded a pro per litigant to pay a mediation fee in a family law proceeding involving child custody issues; the joke appeared to be at the litigant's expense. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 32, p. 26.]

When a pro per litigant said that she had been given certain information about court procedures, the judge said, "Your beautician tell you that?" The commission found the remark rude and demeaning. [Com. on Jud. Performance, Ann. Rept. (1993), Advisory Letter 26, p. 19.]

A judge yelled at a small claims litigant for not asking questions properly. When the litigant complained to the judge, the judge replied, "I can yell at you as much as I want to." [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 7, p. 23.]

A judge was rude to pro per traffic defendants, rushing them, cutting them off and intimidating them. There was other misconduct. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 10, p. 12.]

Addressing an obstreperous traffic court defendant, a judge made a remark which appeared to denigrate the defendant's national origin. [Com. on Jud. Performance, Ann. Rept. (1988), Advisory Letter 13, p. 12.]

A judge who dismissed a civil case was advised of the need for care and patience in dealing with pro per plaintiffs. [Com. on Jud. Performance, Ann. Rept. (1987), Advisory Letter, p. 10.]

### **Abuse of Contempt/Sanctions**

In addition to other misconduct, a judge failed to give a pro per litigant an opportunity to respond before holding the litigant in contempt. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 24, pp. 23-24.]

In addition to other misconduct, a judge imposed sanctions on a pro per litigant without providing an adequate opportunity to be heard. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 19, p. 22.]



A judge had a pro per litigant taken into custody without following proper contempt procedures. The judge claimed the litigant had failed to follow an order by the judge, but no clear order was disobeyed. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 8, p. 24.]

In addition to other misconduct, on the date a criminal case was set for trial, after relieving the defendant's attorney, the judge remanded the defendant for failing to obey the judge's order to be quiet, without following any of the procedures for contempt. [Com. on Jud. Performance, Ann. Rept. (2011), Private Admonishment 3, p. 23.]

In dealing with an alleged indirect contempt – for conduct not occurring in the court's presence – a judge failed to provide due process by not giving the contemnor proper notice of the contempt charge and appointing counsel as required under the circumstances. The judge immediately remanded the contemnor to serve a jail sentence. The commission took note that the contemnor was a difficult litigant. [Com. on Jud. Performance, Ann. Rept. (2004), Advisory Letter 8, p. 23.]

During a hearing on a petition for a restraining order, the respondent [who was not represented by counsel] began yelling and acting aggressively. Judge Guy-Schall ordered her out of the courtroom. The judge later asked her bailiff to see if the respondent could reappear in court and keep herself under control. The bailiff reported to the judge that the respondent had said that if the judge would not allow her to tell her story, she would probably "go off" again. In the respondent's absence, without citing her for contempt or returning her to the courtroom, the judge found the respondent in contempt and sentenced her to five days in jail. The order failed to state facts sufficient to constitute a contempt, as required by law. [*Public Admonishment of Judge Lisa Guy-Schall* (1999).]

A judge imposed sanctions on attorneys and pro per litigants without notice or hearing for violation of local delay reduction rules. [Com. on Jud. Performance, Ann. Rept. (1999), Advisory Letter 10, p. 22.]

In addition to other misconduct, a judge improperly jailed a traffic defendant for contempt. [Com. on Jud. Performance, Ann. Rept. (1989), Private Admonishment H, p. 21.]

Judge Furey was removed from office for conduct that included his treatment of an individual who appeared before the judge to request more time to pay a traffic fine. Another judge had previously imposed a sentence of \$300 or 10 days in prison. Judge Furey denied the request, telling him "it is \$300 or 10 days today." The litigant pointed out that others in the court were obtaining continuances, but the judge warned him to say nothing further and remanded him to serve the 10 days. As the litigant was being directed to the lockup, he muttered the word "tremendous" under his breath. The judge immediately adjudged him to be in contempt of court and sentenced him to five days in jail. The litigant then articulated a long voiceless palatal fricative ("shhh") that the judge believed was followed by "it"; he again held the litigant in contempt and imposed a sentence of another five days. Later that day, a deputy public defender

interceded on the litigant's behalf and persuaded the judge, on the litigant's apology, to purge the contempt and grant him a continuance to pay the balance of the fine. The Supreme Court found that the judge's abuse of the contempt power, as well as his impatience and hostility toward an unrepresented defendant, constituted prejudicial misconduct. [*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297.]

## **Delay**

In addition to other misconduct, in a criminal matter, the judge failed to rule over a period of nine months on a pro per defendant's motion for appointment of an expert. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 20, pp. 22-23.]

A pro per family law litigant brought a motion to modify child support which was heard the same day as the opposing party's motion to modify spousal support. The judge gave the parties two weeks for further briefing, after which the motions would be deemed submitted. Two months later, the judge decided only the spousal support motion. Two months thereafter, the pro per litigant began inquiring about the child support motion. The judge took no action until three months later, when the judge ordered a further hearing on child support issues. [Com. on Jud. Performance, Ann. Rept. (2010), Advisory Letter 23, p. 27.]

Judge Spitzer was removed from office for conduct that included delay in ruling on a submitted matter. The judge presided over a small claims trial de novo and took the matter under submission. The judge failed to decide the case for nearly six years despite numerous inquiries by the parties and members of the family of the plaintiff. The judge conducted a second trial de novo in order to resolve the matter.

The commission noted that Judge Spitzer's failure to act deprives litigants of resolution of their disputes and grievances through the court system. "Litigants who are not represented by counsel, as is the case in all small claims actions, are especially vulnerable when a judge fails to take prompt action in their cases. [*Inquiry Concerning Judge Robert G. Spitzer* (2007) 49 Cal.4th CJP Supp. 254.]

A judge inordinately delayed decisions in two related small claims matters. In mitigation, the judge implemented a tracking system for submitted cases. [Com. on Jud. Performance, Ann. Rept. (1996), Advisory Letter 34, p. 26.]

A judge failed to rule on a small claims matter for 10 months. [Com. on Jud. Performance, Ann. Rept. (1993), Advisory Letter 12, p. 18.]

In addition to other misconduct, a judge took 110 days to rule on a small claims case and signed a salary affidavit incorrectly stating there were no cases pending for more than 90 days. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 25, p. 13.]

A judge delayed six and one-half months in deciding a small claims case. [Com. on Jud. Performance, Ann. Rept. (1990), Advisory Letter 15, p. 22.]

A judge delayed 107 days in rendering a decision in a small claims case. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 14, p. 23.]

### **Disclosure/Disqualification**

A judge made remarks about a pro per criminal defendant – impugning the defendant’s character, referring to the defendant as a fraud, and accusing the defendant of being willing to make false statements to the court – in an attempt to persuade the defendant to waive the right to self-representation. When the defendant raised the judge’s accusations in a statement of disqualification, the judge improperly struck the challenge rather than allowing the motion to be decided by another judge as required by law. [Com. on Jud. Performance, Ann. Rept. (2014), Advisory Letter 26, p. 24.]

In addition to other misconduct, a judge denied the defendant’s motion to disqualify the judge for cause. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 25, p. 26.]

Judge Watson was disciplined for conduct that included failure to disclose information relevant to the question of disqualification. The judge presided over a bench trial in three consolidated unlawful detainer cases in which the defendant tenants were unrepresented. The judge had been a defendant in a lawsuit filed by tenants in a building owned by the judge, which the judge did not disclose to the litigants. The warranty of habitability was an issue in both cases. The judge’s failure to disclose the litigation was determined by the appellate panel of the superior court to be an irregularity that prevented the defendants from having a fair trial. [*Public Admonishment of Judge John M. Watson* (2008).]

While a motion to disqualify a judge was pending, a fellow judge ordered the pro per criminal defendant who had filed the motion to be transported to court daily despite the absence of any scheduled proceedings. The judge’s conduct appeared to be retaliatory. [Com. on Jud. Performance, Ann. Rept. (1996), Advisory Letter 8, p. 24.]

A litigant mentioned in open court that a certain attorney had helped the party with advice and information, prepared the judgment which the judge was being asked to sign, and had represented the party in previous cases. The attorney was the judge’s child. The judge made no disclosure of that fact. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 10, p. 14.]

### **Ex Parte Communications**

In addition to other misconduct, in a criminal matter, the judge engaged in an improper ex parte communication with the defendant’s investigator. [Com. on Jud. Performance, Ann. Rept. (2013), Advisory Letter 20, pp. 22-23.]

In addition to other misconduct, a judge engaged in ex parte communications with a witness. The judge improperly inferred the consent of the pro per parties from the fact that they did not object when the judge stated the intention to telephone the witness. [Com. on Jud. Performance, Ann. Rept. (2011), Advisory Letter 26, p. 26.]

A judge granted a defendant's motion to vacate the judgment in a small claims case based upon an ex parte contact. [Com. on Jud. Performance, Ann. Rept. (1995), Advisory Letter 28, p. 26.] A judge twice amended a small claims judgment dismissing two defendants after receiving information ex parte from one of the judgment debtors. [Com. on Jud. Performance, Ann. Rept. (1992), Advisory Letter 3, p. 14.]

In addition to other misconduct, a judge received ex parte communications in a small claims case. [Com. on Jud. Performance, Ann. Rept. (1991), Advisory Letter 25, p. 13.]

A defendant in a small claims matter requested a continuance by letter to the judge. The judge granted the continuance, informing the plaintiff only when the plaintiff appeared for trial. [Com. on Jud. Performance, Ann. Rept. (1989), Advisory Letter 19, p. 24.]

### **Non-Performance of Judicial Functions**

A judge handled the multiple cases of a pro per probationer without the files and without ascertaining or reciting the case numbers on the record. The judge failed to implement previously promised action in the cases, including vacating future court dates. This failure, combined with errors by others, led to the probationer's being arrested and incarcerated for more than a week. [Com. on Jud. Performance, Ann. Rept. (2009), Advisory Letter 20, p. 20.]

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