

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE SCOTT STEINER**

**DECISION AND ORDER IMPOSING
CENSURE PURSUANT TO
STIPULATION (Rule 116.5)**

INTRODUCTION AND SUMMARY

This disciplinary matter concerns Judge Scott Steiner, a judge at the Orange County Superior Court.

Judge Steiner, acting through his counsel, Paul S. Meyer, Esq., and commission staff counsel proposed to settle the preliminary investigation instituted by the commission in this matter through the issuance of a public censure under the terms and conditions stated below, and upon the stipulated statement of facts and conclusions of law. A Stipulation for Discipline by Consent (Stipulation) signed and executed by Judge Steiner, Mr. Meyer, and Victoria B. Henley, Director-Chief Counsel of the Commission on Judicial Performance is attached to this decision and order. Pursuant to rule 116.5 of the Rules of the Commission on Judicial Performance, the proposed Stipulation was approved by the commission on August 20, 2014.

The terms and conditions of the Stipulation provide that, upon approval of the Stipulation, the commission shall resolve the matters alleged in the pending preliminary investigation with the issuance of a censure based upon the agreed stipulated facts and legal conclusions. Further, the parties agree that the commission's decision and order imposing a censure will be made public and the commission may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

In signing the Stipulation, Judge Steiner expressly admits that the stipulated facts are true and that he agrees with the stated legal conclusions, and waives any further proceedings and review in this matter including formal proceedings and review by the Supreme Court. Accordingly, pursuant to article VI, section 18(d) of the California Constitution, the commission issues this public censure based on the following stipulated statement of facts and conclusions of law:

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Steiner has been a judge of the Orange County Superior Court since January 2011.

I. Engaging in Sexual Activity in Chambers

Judge Steiner engaged in sexual activity in his chambers on multiple occasions, with two women with whom he was engaged in personal relationships. This included engaging in sexual intercourse with Ms. A. in his chambers on one occasion in the evening in early 2012 and engaging in sexual intercourse with Ms. B. in his chambers on two occasions during the work day, although not while court was in session, in May 2012. Both women were former students in law school classes taught by the judge; Ms. A. had been an intern working for the judge, and Ms. B. was an attorney practicing before the Orange County Superior Court.

Judge Steiner's conduct constituted failure to observe high standards of conduct, failure to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, failure to conduct himself in a manner that does not demean the judicial office, and misuse of court facilities. Judge Steiner's conduct was contrary to the California Code of Judicial Ethics, canon 1, which requires judges to personally observe high standards of conduct so that the integrity and independence of the judiciary will be preserved; canon 2A, which requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and canon 4A(2), which requires judges to conduct all of their extrajudicial activities so

that they do not demean the judicial office. Judge Steiner's conduct constituted, at a minimum, conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

While certain media reports raised concerns that the judge's relationship with Ms. B. may have involved a "quid pro quo" arrangement in which the judge assisted Ms. B., an attorney, in obtaining employment in exchange for sex, there was a lack of evidence of any such "quid pro quo" arrangement and an insufficient basis for further proceedings regarding the nature of the relationship.

II. Contacting Attorneys in District Attorney's Office Regarding Ms. A.'s Employment Application

When Ms. A. applied for a position with the Orange County District Attorney's Office, Judge Steiner wrote her a letter of recommendation. Ms. A. was interviewed for the position on or about February 14, 2012. She was not called back for a further interview.

Thereafter, Judge Steiner called the district attorney's office and asked about the interview process of Ms. A. When informed by an attorney who at one time had been his supervisor that Ms. A. had not passed the initial interview, Judge Steiner made a statement to the effect of, "Well, I guess writing a letter of recommendation means nothing." He sounded perplexed and irritated. Judge Steiner had also contacted another attorney in the office after sending a letter of recommendation for Ms. A. The judge asked whether his letter of recommendation had been received. He later asked the same attorney about the interview process and why Ms. A. had not been hired, and asked whether there was anything specific about Ms. A. that could use improvement.

In his contacts, Judge Steiner did not ask that any particular action be taken with respect to Ms. A.'s application, such as requesting that it be reconsidered. Judge Steiner had worked in the Orange County District Attorney's Office before he became a judge, and the persons to whom he spoke were a former colleague and an attorney who at one time had been his supervisor. Although Judge Steiner's contacts were with a former

colleague and supervisor, attorneys in the district attorney's office regularly appeared before Judge Steiner.

Canon 2B(2) prohibits judges from lending the prestige of judicial office to advance the pecuniary or personal interests of the judges or others. One exception to canon 2B(2) permits judges to serve as a reference or provide a letter of recommendation based on their personal knowledge (canon 2B(2)(e)). Judge Steiner's conduct in initiating contact with the district attorney's office about the employment application of Ms. A., at or around the time he was engaged in a sexual relationship with Ms. A., in order to follow up on a letter of recommendation he had sent on Ms. A.'s behalf, asking questions about the interview and hiring processes, and expressing irritation that his recommendation had not resulted in her hiring, exceeded the scope of conduct permitted by canon 2B(2)(e). This conduct also was contrary to canon 2B(1), which provides that a judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, and shall not convey the impression that any individual is in a special position to influence the judge. In addition, the conduct violated canon 2A, which provides that judges shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The conduct was, at a minimum, conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

III. Assigning Ms. B's Cases to Other Judges After Disqualifying

After Judge Steiner became involved in a sexual relationship with Ms. B., he began disqualifying himself from cases in which she appeared before him. However, in several instances, Judge Steiner disqualified himself from her cases, which had previously been set for trial or hearing, and then assigned those cases to other judges.

Code of Civil Procedure section 170.3 provides that if a judge determines himself or herself to be disqualified, the judge "shall notify the presiding judge of the court of his or her recusal and shall not further participate in the proceeding, except as provided in Section 170.4, unless his or her disqualification is waived by the parties"

Code of Civil Procedure section 170.4 provides, in pertinent part:

- (a) A disqualified judge, notwithstanding his or her disqualification may do any of the following:
 - (1) Take any action or issue any order necessary to maintain the jurisdiction of the court pending *the assignment of a judge not disqualified.*
 - (2) Request *any other judge agreed upon by the parties* to sit and act in his or her place.
 - (3) Hear and determine purely default matters.
 - (4) Issue an order for possession prior to judgment in eminent domain proceedings.
 - (5) Set proceedings for trial or hearing.
 - (6) Conduct settlement conferences.

(Italics added.)

Judge Steiner has expressed the belief that assigning the cases was within the spirit of the limited acts he was permitted to perform once disqualified. However, assigning a case to another judge is not among the actions the Code of Civil Procedure allows a disqualified judge to take. While a disqualified judge may set proceedings for trial or hearing, this does not mean that a disqualified judge may assign the trial or hearing to a specific judge at that time, particularly in view of the italicized provisions above.

Judge Steiner's conduct in assigning cases in which he was disqualified to other judges was contrary to canon 2A, which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; canon 3B(2), which requires judges to be faithful to the law; and canon 3E(1), which requires judges to disqualify themselves in any proceeding in which disqualification is required by law. The conduct constituted conduct prejudicial to the administration that brings the judiciary into disrepute.

IV. Failure to Disqualify as to Attorney Steven Baric

Judge Steiner and attorney Steven Baric are longstanding and very close friends, but did not have any common financial interests. Despite their very close friendship, Judge Steiner failed to disqualify when Mr. Baric appeared before him. In the case of *People v. Patten*, 11CM15072, Mr. Baric and the prosecution made multiple appearances

before the judge for the purpose of seeking continuances; Judge Steiner did not disqualify himself, although the judge believes that he made an oral disclosure, and the record reflects no disclosure of their relationship.

Canon 3E(1) requires a judge to disqualify in any proceeding in which disqualification is required by law. Canon 3E(2) requires a judge to disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

Judge Steiner has expressed the view that disclosure, rather than disqualification, may be sufficient, despite the existence of a close, longstanding friendship, where an attorney's appearance is for an uncontested motion or does not involve an issue of substance. However, unless the proceedings are among those listed in Code of Civil Procedure section 170.4, *supra*, or disqualification is waived, a judge who has a disqualifying relationship, such as a very close longtime friendship, may not preside. Disclosure is not sufficient when disqualification is required.

Judge Steiner's conduct in failing to disqualify himself as to Mr. Baric was contrary to canon 3E(1), and constituted prejudicial misconduct.

V. Mitigation

In mitigation, the commission noted that Judge Steiner has expressed great remorse and contrition regarding his conduct in engaging in sexual activity in chambers with two women with whom he was involved in personal relationships. The judge acknowledges wrongdoing and apologizes.

DISCIPLINE

Under the California Constitution, imposition of a public censure is the most severe sanction that can be imposed on an active California judge short of removal. (Cal. Const. Art. I, § 18(d).) In accepting this Stipulation, the commission has determined that imposition of a censure is appropriate and necessary to fulfill the commission's mandate

to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judiciary.

Judges are expected to maintain and personally observe “high standards of conduct” and “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Canons 1, 2A.) “Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.” (Canon 2A advisory committee commentary.) In the commission’s view, engaging in sexual intercourse in the courthouse is the height of irresponsible and improper behavior by a judge. It reflects an utter disrespect for the dignity and decorum of the court and is seriously at odds with a judge’s duty to avoid conduct that tarnishes the esteem of the judicial office in the public’s eye. In addition, by engaging in sexual activity in chambers during court hours, Judge Steiner risked exposing court employees who might overhear or otherwise become aware of the libidinous conduct to a hostile work environment. As Judge David M. Rothman states in his California Judicial Conduct Handbook, when a judge’s sexual conduct is not conducted in private or “takes place on public property or by use of public resources, the conduct moves from private to public concern and demeans the judicial office under canon 4A(2).” (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 8.71, p. 439.)

In determining that censure is the appropriate sanction in this matter, the commission has taken into consideration that Judge Steiner has acknowledged wrongdoing and expressed remorse and contrition. An appreciation for the impropriety of one’s actions indicates a capacity to reform. (*Censure of Judge Salvador Sarmiento* (2012) p. 7.) As such, the commission believes this censure adequately protects the public.

Judge Steiner’s other misconduct involving his contacts with the district attorney’s office on Ms. A.’s behalf and failure to disqualify would alone not warrant a censure in the commission’s view. However, consideration of these incidents of misconduct in aggregate with the misconduct related to the judge’s sexual activities bolsters the commission’s conclusion that censure is the appropriate sanction. (*Fletcher v.*

Commission on Judicial Performance (1998) 19 Cal.4th 865, 918 [the number of incidents of misconduct is relevant in determining the appropriate level of discipline].)

Accordingly, the commission hereby imposes this public censure on Judge Steiner.

Commission members Hon. Erica R. Yew; Ms. Mary Lou Aranguren; Hon. Thomas M. Maddock; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Mr. Lawrence J. Simi; Mr. Richard Simpson and Mr. Adam N. Torres voted to accept the parties' settlement proposal and to issue this decision and order imposing public censure pursuant to the stipulated agreement. Commission members Anthony P. Capozzi, Esq.; Ms. Maya Dillard Smith and Ms. Sandra Talcott voted to reject the proposed settlement, dissent from this decision and order imposing public censure, and would have instituted formal proceedings.

Dated: September 2, 2014



Honorable Erica R. Yew
Chairperson

STIPULATION

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE SCOTT STEINER

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Scott Steiner, of the Orange County Superior Court, represented by counsel, and counsel for the commission (“the parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letter dated February 18, 2014. The parties request that the commission resolve this matter by imposition of a censure. The settlement provided by this agreement is in the best interests of both the commission and Judge Steiner because, among other reasons, it adequately protects the public and will avoid the delay and the expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving Judge Scott Steiner.
2. The commission shall issue a censure based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission’s decision and order imposing a censure may articulate the reasons

for its decision and include explanatory language that the commission deems appropriate.

4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.

5. Judge Steiner waives any further proceedings and review in this matter, including formal proceedings (commission rules 118, et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

6. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Steiner.

Accordingly, it is hereby stipulated and agreed that the commission shall issue a censure on the above Terms and Conditions of Agreement, and based on the following Stipulated Facts and Legal Conclusions:

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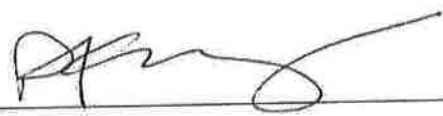
By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Steiner expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

Dated: July 22, 2014.



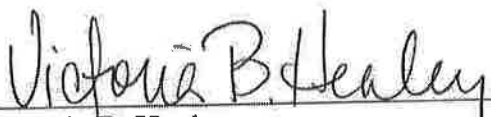
Judge Scott Steiner
Respondent

Dated: 7-22, 2014.



Paul Meyer, Esq.
Attorney for Respondent

Dated: 7.28, 2014.



Victoria B. Henley
Director-Chief Counsel