APPENDIX

(Volumes A-D)

IN THE SUPREME COURT OF CALIFORNIA

S268803

[Filed June 30, 2021]

AMELIA ENG, Petitioner,	**En Banc**
v.	
COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, Respondent;	
MICHAEL ENG et al., Real Parties in Interest.	

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

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En Banc

AMELIA ENG, Petitioner,	)
v.	)
COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, Respondent;	)
MICHAEL ENG et al., Real Parties in Interest.	)

The petition for a writ of mandate, prohibition, certiorari, or other appropriate relief is denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX B

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

B255829, B258567
(Los Angeles County Super. Ct. No. BP113977)

[Filed January 29, 2016]

Estate of EDWARD J. ENG, Deceased.	)
	)
	)
AMELIA ENG,	)
Petitioner and Appellant,	)
	)
v.	)
	)
MARGARET ENG et al.,	)
Objectors and Respondents.	)
	)

APPEALS from a judgment and an order of the Superior Court of Los Angeles County, Daniel S. Murphy, Judge. Affirmed.

Benedon & Serlin, Gerald M. Serlin, Lillie Hsu and Douglas G. Benedon for Petitioner and Appellant.

Nelson Comis Kettle & Kinney and Kerry M. Kinney for Objectors and Respondents Margaret Eng, Susan Eng Madjar, Michael Eng, Jeffrey Eng, Taylor Unger, Jonathan Lum, Jr., and Zhong Pei Wu.

Irsfeld, Irsfeld & Younger and Kathryn E. Van Houten for Objector and Respondent Norman H. Green.

Amelia Eng appeals the trial court's denial of her petition for redress and the court's order awarding attorney fees to the respondents in this protracted dispute over her parents' wills. We affirm.

BACKGROUND

Amelia[1] is one of five children of Edward and Frances Eng. The other children are Michael Eng, Susan Madjar, Margaret Eng, and Cynthia Comiskey. In 2003, Edward and Frances executed joint wills and codicils in which each left everything (including real estate in California, Oregon, and Canada) in a life estate to the survivor, with the survivor leaving everything to the five children.

Without Edward's knowledge, in December 2003 Frances executed a new will prepared by attorney William E. Eick, leaving her share of the estate to the five children and nothing to Edward, and naming Michael, Amelia, and Susan as co-executors. Frances left Michael 40 percent of her total estate, including her share of the family residence and stock in a

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[1] For purposes of clarity, we use first names for the members of the Eng family; no disrespect is intended.

corporation that owned a property (land, an apartment complex, and horse stalls) called the Griffith Park Dude Ranch (GPDR), and additional funds if required to reach 40 percent. The property was to be valued as stated on the federal estate tax valuation. Frances left the rest and residue of her estate to her four daughters in equal shares.

Frances died on March 14, 2004. On March 26, 2004, Amelia, Susan, and Michael met with Edward, and Edward handwrote and signed a document (the March 26, 2004 document) stating, "To Susan Madjar, Amelia Eng and Michael Eng. [¶] I agree to probate the estate of my wife Frances C. Eng and waive all attorney fees thereon. [¶] Because I love my children, the Will and Codicil dated May 31, [20]03 and Dec. 6, [20]03 I am not revoking and the distribution to my children remain as written." Two witnesses signed the document, but none of the children signed. Edward became the attorney for Frances's estate. (Amelia also was a lawyer, although in 2004 she was on inactive status.)

Disputes arose between the children as to whether Frances held her shares in the properties with Edward in joint tenancy or as tenants in common, and over the valuation of the properties. The tax return for Frances's estate dated December 8, 2004 listed a 65 percent share in GPDR as held in joint tenancy with Edward and valued at $650,000, which Amelia disputed, and Amelia did not sign the return. Based on that value for GPDR, Michael claimed that he was due more money from Frances's estate to reach the 40 percent bequeathed to him in Frances's will.

Amelia retained Gerald A. Tomsic in August 2004 to represent her and her sisters "for the purpose of obtaining a contract with [Edward] for him to leave his estate in the manner similar to that of his current will." In a declaration signed December 13, 2004, Amelia described the March 26, 2004 meeting between the executors and Edward, and characterized the March 26, 2004 document as an "agreement to refrain from revoking his Will leaving his Estate to 'all his children.'" Amelia also stated, "So that said 'handwritten' Memorandum signed by [Edward] would be legally binding, the four daughter Beneficiaries hired . . . Tomsic to draft a formal typewritten Agreement." Tomsic drafted an agreement, but Edward refused to sign it.

On November 2, 2004, Amelia and Susan as co-executors filed a petition to remove Edward as the probate attorney for Frances's estate, citing conflicts of interest and breaches of fiduciary duty, including that Edward improperly claimed that the interest in the capital stock of GPDR was now all his. (Michael refused to join, and Susan later withdrew.) On December 28, 2004, the court continued a hearing on the petition and referred the parties to mediation. With attorney Tomsic present at the mediation, Edward signed a handwritten document (the December 28, 2004 document) addressed to the four daughters and stating, "To settle a dispute whether certain property is joint tenant or community property of Mom's estate, I agree to the following [¶] When the various Oregon properties, condo in Vancouver, BC and Colorado property is sold, I agree to distribute to my four daughters one half of the net proceed, share and share

alike to be divided equally." The December 28, 2004 document says nothing about whether Edward will revoke his 2003 will. Edward subsequently distributed half the proceeds of those properties sold during his lifetime to the four daughters.

Edward prepared an income-based "appraisal" valuing GPDR at $9,500,000, which Amelia received from Susan at the end of July 2005.[2] Unbeknownst to Amelia, on June 10, 2006, Edward signed a new will favoring Michael and changing other bequests, leaving much less to Amelia.

To settle a dispute regarding Michael's share of Frances's estate, on January 1, 2007, Edward and Michael signed a contract to make a will in which Edward promised to leave Michael his interest in the family home and Edward's shares in GPDR, as well as other property (consistent with the distribution in Edward's 2006 will). The documents were prepared in consultation with Eick, and Amelia subsequently stated she, not Eick, had drafted the documents that Edward and Michael signed, including the petition for the final distribution of Frances's estate, which referenced the contract to make a will (attached as an exhibit). Amelia, Susan, Michael, and Edward signed the petition for final distribution of Frances's estate providing that Frances's interest in GPDR had been transferred to Michael outside of probate, and all four sisters, Michael, and Edward signed a waiver of accounting agreeing to the distribution.

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[2] At trial, a professional appraiser testified that GPDR had a value of $6,850,000 in March 2004.

On April 27, 2007, the trial court approved and adopted the petition as the judgment of the court regarding Frances's will, including Edward's agreement to change his 2003 will. Edward was awarded $51,427.84 for handling Frances's estate as provided for in the petition. The estate closed in September 2007.

Edward died on October 8, 2008. In December 2008, Edward's executors, Susan and Margaret, petitioned to have his 2006 will admitted to probate.

On June 23, 2009, Amelia filed a creditor's claim against Edward's estate. Amelia argued that the March 26, 2004 document was a binding agreement not to change Edward's 2003 will, the December 28, 2004 document reiterated the agreement, and Edward breached these earlier agreements when he executed his 2006 will and took other actions. She requested enforcement of the 2003 will and alleged claims for breach of fiduciary duty, fraud, and constructive fraud. In September 2009, Susan and Margaret, as the personal representatives of Edward's estate, rejected the bulk of Amelia's claim, allowing only the payment of Amelia's interest in the income on property and her share in sums (neither of which is in issue on this appeal).

Amelia timely filed a petition for redress on September 21, 2009 under Probate Code[3] sections 21700, which governs contracts not to revoke a will, and section 850, which in subdivision (2) allows an

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[3] All further statutory references are to the Probate Code unless otherwise indicated.

interested person to file a petition for an order when a decedent while living was bound by a written contract. The petition named as respondent Susan and Margaret as co-executors of Edward's estate and others, including Cynthia and Michael. Her 64-page second amended petition, filed March 16, 2012, added as a respondent Norman H. Green as administrator of Edward's estate. The second amended petition repeated the allegations in Amelia's creditor's claim that Edward breached the March 26, 2004 and December 28, 2004 documents when he executed his 2006 will, changing the disposition of his estate set out in the 2003 will to Amelia's detriment. Amelia also alleged breach of fiduciary duty, fraud and constructive fraud, civil conspiracy, negligent misrepresentation, constructive trust, accounting, interference with prospective inheritance, and contractual and equitable indemnity. She attached her creditor's claim and an amendment as exhibits.

The trial court heard testimony over 16 days in July, September, and October 2013. In a 33-page statement of decision filed November 12, 2013, the court found that Amelia had not established a breach of contract by Edward, because there was no mutual assent to the March 26, 2004 document (only Edward signed and the actions of the parties showed that the document was not a contract), and the language of the March 26, 2004 document did not establish a contract that Edward would not revoke his 2003 will. The court also rejected all Amelia's other claims.

The court awarded the respondents and Administrator Green a total of $540,418 in attorney

fees in a 20-page statement of decision filed July 9, 2014, in which the court found that Amelia's petition for redress was unreasonable, frivolous, and brought in bad faith.

Amelia filed appeals from the judgment and from the award of attorney fees, and we consolidated the appeals for the purpose of argument and decision.

DISCUSSION

I. The March 26, 2004 document was not a contract never to revoke Edward's 2003 will.

Amelia argues that the trial court erred in finding that the March 26, 2004 document was not a contract in which Edward agreed never to change his 2003 will. The trial court found there was no mutual assent to the March 26, 2004 document, and the language of the document did not support a conclusion that Edward entered into an agreement not to revoke his 2003 will. We conclude that substantial evidence supports the trial court's finding that there was no mutual assent to the March 26, 2004 document, and in any event the plain language of the document does not support the conclusion that Edward agreed never to change his 2003 will.

"'"'[Whether] a certain or undisputed state of facts establishes a contract is one of law for the court . . . . On the other hand, where the existence . . . of a contract or the terms thereof is the point in issue, and the evidence is conflicting or admits of more than one inference, it is for the . . . trier of the facts to determine whether the contract did in fact exist . . . [.]' [Citations.]"' [Citations.] 'Mutual assent or consent is

necessary to the formation of a contract' and '[m]utual assent is a question of fact.'" (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 771–772 (*Vita Planning*).) "Here, the evidence regarding contract formation is conflicting because [the defendants] claim[] there was no mutual assent . . . ." (*Id.* at p. 772.)

The parties disputed at trial the factual question whether Susan, Amelia, and Michael (as the executors of Frances's estate) and Edward mutually agreed that in exchange for the executors' agreement allowing Edward to probate the estate (waiving all attorney fees), Edward promised never to revoke his 2003 will. We must uphold the trial court's finding that no contract existed if supported by substantial existence in the record. (*Vita Planning*, *supra*, 240 Cal.App.4th at p. 772.) Substantial evidence is credible evidence of ponderable legal significance, and "'[t]he ultimate determination is whether a reasonable trier of fact could have found for the respondent based on the whole record.'" (*Ibid.*)

"Mutual assent usually is manifested by an offer communicated to the offeree and an acceptance communicated to the offeror." "The determination of whether a particular communication constitutes an operative offer . . . depends upon all the surrounding circumstances. [Citation.] The objective manifestation of the party's assent ordinarily controls, and the pertinent inquiry is whether the individual to whom the communication was made had reason to believe that it was intended as an offer." (*Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 270–271.) The offeree may

accept either in words or by his or her actions or conduct. (*Vita Planning*, *supra*, 240 Cal.App.4th at p. 773.) "The absence of signatures does not render the [writing] unenforceable" unless, as is not the case here, there is a clear provision that the writing must be signed to become an operative contract, and other evidence that both parties contemplated that acceptance would be signified by signing. (*Ibid.*)

"The words of a contract are to be understood in their ordinary and popular sense . . . ." (Civ. Code, § 1644.) The plain language of the March 26, 2004 document demonstrates that it is not an offer by Edward never to revoke his 2003 will. Instead, Edward stated, "I *am not revoking* [the 2003 will] and the distribution to my children *remain* as written" (italics added), using the present tense. There is no promise not to change his will or the distribution in the future. The objective manifestation of Edward's assent does not support Amelia's argument that he agreed never to change his will. The March 26, 2004 document states only that Edward is not presently revoking his will or changing the distribution.

There is also evidence that Amelia believed the document was not a contract. Consistent with the plain language in the document, Amelia did not "'conduct[] [her]sel[f] as though they had an agreement'" that Edward would never revoke his will in the future. (*Vita Planning*, *supra*, 240 Cal.App.4th at p. 773.) Amelia subsequently hired Tomsic to draft just such an agreement to make "legally binding" a promise not to change the will, evidence that she did not consider the March 26, 2004 document to be legally binding or

enforceable. Further, when in late 2004 Amelia filed a petition to remove Edward as the probate attorney for Frances's estate, she acted inconsistently with any agreement that Edward would serve as the estate's attorney. Finally, Edward did not waive attorney fees, receiving $51,427.84 for the probate of Frances's estate.

At trial, the other executors testified that they did not think the document was a binding contract. Michael testified that he did not see the document until Susan sent it to him after his father's death and the reading of the will, he "did not believe it was any kind of a contract whatsoever," and his father never would have made a contract not to revoke his will. Susan testified at trial that when Edward signed the March 26, 2004 document, she did not know whether it meant he would not change his will in the future (although in her deposition she had testified to the contrary). Susan's reason for hiring Edward to probate Frances's estate was not based on a promise not to revoke his will, but "because he wasn't going to charge us, and he was qualified to do the work." Susan also testified that shortly after Edward signed the document, Amelia told her "'that paper wasn't any good'" and was not enforceable. Amelia then visited Tomsic to prepare a binding agreement for Edward to sign, and Edward again refused. Susan believed he always had the ability to change his estate.

In addition, Eick stated he never saw the March 26, 2004 document before the day of his testimony, Amelia did not mention it to him, and he did not learn of its existence before he received his deposition subpoena. Margaret testified that she received the March 26,

2004 document after Edward's death, and Edward had told her Amelia pressured him to sign the December 28, 2004 document because the earlier document was not legal. Tomsic stated Amelia "was concerned about the validity of the enforceability" of any promise not to make a new will.

Amelia testified, as she argues on appeal, that she believed the March 26, 2004 document was a binding agreement that Edward would not revoke his will. But the trial court did not believe Amelia's testimony and concluded, "No credible evidence was presented that Edward, either orally or in writing, agreed not to revoke his 2003 will and codicil." "[W]e defer to the trial court on issues of witness credibility." (*Conservatorship of Rand* (1996) 49 Cal.App.4th 835, 842.)

Substantial evidence supports the trial court's conclusion that the March 26, 2004 document was not a binding contract in which Edward agreed never to change his 2003 will. As we conclude the document was not an enforceable agreement, we need not address whether res judicata and collateral estoppel barred Amelia's contract claim regarding the March 26, 2004 document.

II. Amelia's breach of fiduciary duty claims are barred by the statute of limitations.

Amelia's second amended petition included a claim that Edward, as her attorney for the probate of Frances's will, breached his fiduciary duties to Amelia by his actions and by failing to disclose conflicts of interest. The trial court ruled that Amelia failed to

bring her cause of action within the one-year statute of limitations applicable to breach of fiduciary duty by an attorney. As a lawyer herself, Amelia would have been aware of Edward's duties and would immediately have been aware of any breach. Amelia's petition to remove Edward as the attorney for Frances's estate, filed on November 2, 2004, asserted numerous breaches of fiduciary duty, and she therefore had known of the alleged breaches since at least November 2004. Further, Edward stopped representing Frances's estate and Amelia as executor on August 19, 2007 at the time of the final discharge, and she failed to file an action against him by August 19, 2008, before Edward's death in October 2008.

The statue of limitations for a claim of breach of fiduciary duty by an attorney is identical to that for a claim for attorney malpractice, and an action "must be commenced within one year after the client discovers, or with reasonable diligence should have discovered, the facts constituting the act or omission . . . ." (*Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1364; Code Civ. Proc., § 340.6.) "The time a cause of action accrues is a question of fact. [Citation.] The trial court's finding on the accrual of a cause of action for statute of limitations is upheld on appeal if supported by substantial evidence." (*Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 17.)

The petition to remove Edward as the attorney for Frances's estate, which Amelia filed as an executor of the estate, is substantial evidence that Amelia was aware that she had been injured by Edward's breaches of his fiduciary duty by November 2, 2004, when the

petition was filed. The petition and its supplement cite numerous actions by Edward demonstrating "conflicts of interest, the failure to provide information, lack of cooperation, [and] failure to turn over any funds from the properties which are currently producing income." Further, when Edward ceased to be the attorney for Frances's estate at the time of final discharge in August 2007, any tolling based on continuous representation ceased. Amelia had a year (until August 19, 2008) to file a claim for breach of fiduciary duty. She failed to do so until September 2009. Substantial evidence supports the trial court's conclusion that her claim for breach of fiduciary duty by Edward is barred.

On appeal, Amelia argues (as she did at trial) that her claim for breach of fiduciary duty did not accrue until after Edward died in October 2008, when she testified she learned of Edward's 2006 will. Amelia claims that Edward had a fiduciary duty to disclose the new will because it reduced her inheritance and breached the March 26, 2004 agreement. We reject this argument. The trial court found that Amelia's testimony was not credible, and as discussed above, substantial evidence supports the trial court's finding that there was no agreement on March 26, 2004. More importantly, Edward's fiduciary duty as an attorney was to Amelia as an executor for Frances's estate, not as an individual. His actions in changing his will to her detriment were not acts or omissions he performed as an attorney for Frances's estate and thus do not affect the accrual of her cause of action for breach of the fiduciary duty owed by an attorney.

III. Substantial evidence supports the conclusion that Amelia failed to prove extrinsic fraud.

The trial court stated that Amelia appeared to want to set aside the final judgment in Frances's estate, which would require that she show extrinsic fraud. Amelia argues on appeal that the trial court erred in concluding that she did not establish extrinsic fraud.

Extrinsic fraud occurs when the losing party has been prevented from fully putting on his case by fraud or deception practiced by his opponent, or "where fiduciaries have concealed information they have a duty to disclose. [Citations.] . . . [E]ven if a potential objector is not kept away from the courthouse, the objector cannot be expected to object to matters not known because of concealment of information by a fiduciary." (*Lazzarone v. Bank of America* (1986) 181 Cal.App.3d 581, 596–597.) The trial court concluded that Amelia did not establish that she did not have enough information to pursue her claims during the pendency of Frances's estate. Substantial evidence supports that conclusion.

Amelia argues that Edward (as the executors' attorney) concealed the following facts that he had a duty to disclose: that GPDR was worth more than the amount Edward put on the estate tax return, and that GPDR was improperly designated as held in joint tenancy. While the failure to disclose the existence of an asset may constitute extrinsic fraud, "'[v]aluation, like designation of property as being either community or separate, is an issue on which reasonable views often differ, and *in the absence of concealment of*

assets—or facts materially affecting their value," no extrinsic fraud occurs. (*In re Marriage of Modnick* (1983) 33 Cal.3d 897, 907–908.) Amelia was fully aware of the estate's interest in GPDR, and "a misrepresentation of that property's value[] [Citation.] . . . may not amount to extrinsic fraud." (*Id.* at p. 907.)

Further, there was evidence at trial that Amelia did not believe that GPDR was worth the amount on the tax return, or that the property was held in joint tenancy. At the end of July 2005, Amelia received Edward's valuation of GPDR at $9,500,000. Amelia as co-executor of Frances's estate sent a letter by email in December 2006 to Eick, stating that she could not sign the proposed petition for final distribution of Frances's estate regarding GPDR "as we do not have any credible evidence that the stock was held in Joint Tenancy."

Substantial evidence supports the trial court's denial of Amelia's petition for redress.

IV. The award of attorney fees was proper.

Amelia appealed from the award of attorney fees, arguing that the trial court lacked the statutory authority to award fees, her petition for redress was not unreasonable, the court did not have the equitable power to award fees, and the court erred in finding that Amelia brought her petition for redress in bad faith.

The trial court awarded attorney fees pursuant to section 9354, which provides in subdivision (a) that a creditor's claim may be commenced in the county where the proceeding administering the estate is pending, and provides in subdivision (c): "The prevailing party in the

action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees." Amelia claims the statute limits the court to a fee award in a prevailing party on a creditor's claim, and so the court had no authority to award fees under section 9354 regarding Amelia's petition for redress.

In its statement of decision awarding fees, the trial court concluded that section 9354, subdivision (c) applied to Amelia's action because the petition for redress was based on the same claim (and the same alleged facts) as her creditor's claim. The main contention in the creditor's claim was that Edward agreed on March 26, 2004 not to revoke his 2003 will, that he breached that agreement (and in so doing breached his fiduciary duty to Amelia), and that as a result of the breach Amelia was deprived of her rightful portion of the estate. Those contentions were rejected, and shortly thereafter Amelia filed her petition for redress, naming as respondents (among others) Margaret and Susan as co-executors of Edward's estate and Norman H. Green as administrator. Amelia's second amended petition reiterates the contentions in the rejected creditor's claim that Edward agreed on March 26, 2004 not to revoke his 2003 will, attaches a copy of her creditor's claim, and states, "On or about September 9, 2009, Amelia received notice that her Creditor's Claim was allowed in part and rejected in part. To date, no part of the Creditor's Claim has been paid by the decedent, the personal representatives, or any other person, and in an abundance of caution,

Petitioner is electing to treat the entire claim as rejected." Further, in her opposition to a petition for an order that Amelia's petition for redress had violated Edward's will's no contest clause, Amelia equated her creditor's claim and the petition for redress, and argued that the will's no contest clause did not apply to the petition for redress because such a clause "need[ed] to include express reference to certain actions, e.g., creditor's claims, to be enforceable against such actions," and Edward's will failed to do so.

There is no right to appeal a rejected creditor's claim, and ""[w]here, as here, there has been a partial rejection of the claim, the only recourse of the dissatisfied creditor is a suit."" (*McDonald v. Structured Asset Sales, LLC* (2007) 154 Cal.App.4th 1068, 1072–1073, 1074.) Section 9353, subdivision (a), provides that "a claim rejected in whole or in part is barred as to the part rejected unless . . . the creditor commences a[] [timely] action on the claim . . . ." Amelia avoided this bar and acted on her rejected creditor's claim by filing her timely petition for redress under section 850, which allowed her to file the petition requesting an order as an interested party. She repeated the allegations in her creditor's claim and attached the claim. The trial court was correct to apply section 9354 to award fees to the prevailing parties in Amelia's timely action on her rejected creditor's claim.

Amelia argues that only the claimant or personal representative of the estate can recover attorney fees under section 9354, subdivision (c). Subdivision (c) uses the term "prevailing party" three times, in contrast to subdivision (b) regarding notice, which uses "personal

representative" three times in providing that the personal representative must receive a copy of the notice of pendency of the action and is not liable on account of prior distribution or payment. Section 1000 provides that general rules of civil practice apply in probate cases unless the code provides otherwise. Here the Probate Code uses "prevailing party" to designate who can be awarded attorney fees, and the trial court was correct to use the general understanding of that term to include each party who was required to defend the petition, given its finding that "respondents prevailed on all substantive issues." (See Code Civ. Proc., § 1032, subd. (a)(4).)

Amelia argues that her petition for redress was "objectively reasonable" and the trial court erred in determining that it was unreasonable under section 9354 subdivision (c). The trial court applied the standard in Code of Civil Procedure section 1038, under which the court must determine whether the plaintiff brought the action with objective reasonable cause, i.e., whether a reasonable attorney would have thought the claim tenable. (See *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 862; *Carroll v. State of California* (1990) 217 Cal.App.3d 134, 141.) Amelia agrees with this standard.

The trial court found the claim was unreasonable because Amelia was aware before filing the petition that the March 26, 2004 document was not a binding contract, as she had acknowledged in her December 2004 declaration by stating that the document was not legally binding. Given that sworn statement, no

reasonable attorney would have thought that it was a tenable claim to assert that she believed the opposite. Further, the plain language in the March 26, 2004 document stated only, "I [Edward] am not revoking [the 2003 will] and the distribution to my children remain as written," which no reasonable attorney would have thought could be interpreted to mean that Edward would *never* revoke his 2003 will or change the distribution. Nothing in the December 28, 2004 document is a promise not to revoke the 2003 will in the future. We agree with the trial court that no reasonable attorney would believe Amelia had a tenable claim that Edward made a binding agreement never to revoke his will and later breached that binding agreement. The petition was objectively unreasonable.

As the trial court had the statutory power to award attorney fees under section 9354 and properly found that the petition was objectively unreasonable, we need not address whether the court had the equitable power to award fees in the absence of statutory authorization, or whether Amelia brought the petition in bad faith.[4]

DISPOSITION

The judgment and order are affirmed. Costs are awarded to Margaret Eng, Susan Madjar, Michael Eng, Jeffrey Eng, Taylor Unger, Jonathan Lum, Jr., Zhong Pei Wu and Norman H. Green.

NOT TO BE PUBLISHED.

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[4] We deny the respondents' request for judicial notice related to the appeal of the attorney fees award.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.

APPENDIX C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION ONE

B255829 c/w B258567
Los Angeles County No. BP113977

[Filed July 5, 2017]

IN THE MATTER OF THE ESTATE OF EDWARD J. ENG.	)
AMELIA ENG, Petitioner and Appellant,	)
v.	)
MARGARET ENG et al., Respondents.	)

THE COURT:*

Appellant's May 12, 2017 request to recall the remittitur and stay trial proceedings is denied.

* /s/_____
Johnson, J.
/s/_____
Chaney, Acting P.J.
/s/_____
Lui, J.

APPENDIX D

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON
JUDICIAL PERFORMANCE

No. 204

[Filed June 2, 2020]

INQUIRY CONCERNING JUSTICE JEFFREY W. JOHNSON,	)

DECISION AND ORDER REMOVING JUSTICE JEFFREY W. JOHNSON FROM OFFICE

I. INTRODUCTION

This disciplinary matter concerns Justice Jeffrey W. Johnson of the California Court of Appeal, Second Appellate District, Division One. Justice Johnson was notified of the commission's investigation in July 2018. A notice of formal proceedings was filed on January 4, 2019. The notice was amended three times to add charges. A third amended notice was filed on June 18, 2019.

Justice Johnson was charged with 10 counts, which with subparts contain 62 allegations of misconduct. The charges involve sexual misconduct toward 17 women he encountered at the courts where he worked and at professional functions (Counts One, Two, Three,

Four, Five, Seven, and Nine), including the unwanted touching of several women, disparaging women with whom he works (Count Ten), poor demeanor toward those with whom he works (Count Six), and multiple instances of undignified conduct while under the influence of alcohol, which demeaned the judicial office (Count Eight).

The California Supreme Court appointed Hon. Judith L. Haller, Associate Justice of the Court of Appeal, Fourth Appellate District, Division One, Hon. Louis R. Hanoian, Judge of the San Diego County Superior Court, and Hon. William D. Lehman, Judge of the Imperial County Superior Court, as special masters to conduct an evidentiary hearing and prepare a report to the commission of their findings of fact and conclusions of law.

The special masters presided over 17 days of testimony, with over 100 witnesses and 120 admitted exhibits, and multiple discovery motions. The hearing took place between August 5 and 27, 2019, with an additional day of testimony on September 11, 2019, and closing arguments on October 8, 2019. The masters filed their report to the commission on January 3, 2020. The commission heard oral argument, presided over by then-chairperson Nanci E. Nishimura, Esq., on May 7, 2020.

The masters found that the allegations in Count One (in part), Two (in part), Three, Four (in part), Five, Six, Seven (in part), Eight (in part), Nine, and Ten were proven by clear and convincing evidence. They concluded that Justice Johnson engaged in 15 instances of prejudicial misconduct (comprised of 42 proven

allegations), as well as 5 instances of improper action (comprised of 5 proven allegations).

Based on our independent review of the record, we conclude that the findings of fact in the masters' report are supported by clear and convincing evidence, and we adopt them in their entirety. In this decision, we summarize the factual findings. The findings include that Justice Johnson was, at times, intentionally dishonest in his testimony.

We adopt the masters' legal conclusions as to most of the allegations, but respectfully reach our own independent legal conclusions as to certain allegations. We find that Justice Johnson engaged in 18 instances of prejudicial misconduct.

In their report, the masters stated:

> The proven allegations establish Justice Johnson lacked personal boundaries, engaged in unwanted touching of several women, attempted to use the prestige of the judicial office to create personal relationships with women, and engaged in ongoing improper touching and sexually related comments toward his colleague, Court of Appeal Justice Victoria Chaney.
>
> Justice Johnson's pattern of conduct toward these women reflects ethical lapses that undermine the public's trust in the judicial process and erodes the confidence we ask the public to place in our individual judges. These lapses are compounded by Justice Johnson's failure to take responsibility for many of his actions and to manifest insight into his behavior.

> We find particularly concerning Justice Johnson's actions towards women who had recently graduated from law school, were in the early stages of their legal careers, and welcomed the opportunity to establish professional contacts with a Court of Appeal justice. Additionally, the evidence established the most serious misconduct occurred when Justice Johnson was intoxicated, impairing both his judgment and his recollection of events.
>
> In making these findings, we have carefully considered, but largely rejected, Justice Johnson's defenses, including that (1) witness memories of the relevant events were exaggerated or misconstrued because widespread negative publicity and unsubstantiated gossip caused many of the women to rethink and overstate their encounters, and (2) many of the witnesses (including Justice Chaney) should not be believed because they did not tell him his conduct was unwelcome or report his actions until many years later.

We find that, by engaging in sexual misconduct, Justice Johnson severely undermined public esteem for the integrity of the judiciary. Treating women disrespectfully, including unwanted touching and making inappropriate sexual comments, reflects a sense of entitlement completely at odds with the canons of judicial ethics and the role of any judge. Sexual misconduct has no place in the judiciary and is an affront to the dignity of the judicial office.

Justice Johnson refused to admit his most serious sexual misconduct. Rather than take responsibility for his offensive behavior, he maligned the victims, including his colleague Justice Chaney, and accused them of testifying falsely. But it is Justice Johnson whom the masters found, and we find, testified untruthfully in many instances.

As to the sexual misconduct Justice Johnson does admit, he claimed that he did not know it was wrong. At his appearance before the commission, he attributed the misconduct he has admitted to his being "friendly." But friendliness does not extend to sexualized behavior. Judges have been on notice for many years that men and women alike are entitled to a professional workplace free from inappropriate and unwelcome conduct, particularly from judges, who are held to a higher standard of behavior. Judges, including Justice Johnson, receive ethics training that reinforces this concept. In addition, Justice Johnson was personally cautioned about some of his inappropriate conduct. He failed to heed these warnings and to comport himself in a professional manner befitting his position.

At his appearance before the commission, Justice Johnson told commission members that he was raised to treat everyone "with respect and dignity." Yet he failed to treat everyone at the appellate court with dignity and respect, not only by engaging in sexual misconduct, but also by displaying poor demeanor to coworkers and making disparaging remarks about colleagues, and by becoming intoxicated and using the courthouse to socialize late at night, sometimes in the

presence of courthouse custodians and court personnel who were working there.

Justice Johnson's misconduct has severely tarnished the esteem of the judiciary in the eyes of the public. Given his persistent denials of serious misconduct, we do not have confidence that he can reform, as he has not conveyed that he recognizes the extent of his wrongdoing. Further, given his lack of candor during this proceeding, we do not have confidence that he has the fundamental qualities of honesty and integrity required of a judge. Consequently, in order to fulfill our mandate of protecting the public, enforcing high judicial standards, and preserving public respect for the judiciary, we remove Justice Johnson from office.

Justice Johnson is represented by Paul S. Meyer, Esq., Reginald A. Vitek, Esq., Willie L. Brown, Jr., Esq., and Thomas J. Warwick, Jr., Esq. The examiners for the commission are acting commission trial counsel Emma Bradford, Esq., trial counsel Mark A. Lizarraga, Esq., and commission assistant trial counsel Bradford Battson, Esq.

II. LEGAL STANDARDS

A. Three Levels of Judicial Misconduct

Willful misconduct consists of unjudicial conduct, committed in bad faith, by a judge acting in a judicial capacity. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1091.)

Prejudicial misconduct is "conduct prejudicial to the administration of justice that brings the judicial office

into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) The California Supreme Court has defined prejudicial misconduct as either "willful misconduct out of office, i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity" or "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office." (*Broadman*, *supra*, 18 Cal.4th at pp. 1092-1093.) The subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial conduct has occurred. (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 878 (*Adams II*).)

Improper action occurs when the judge's conduct violates the canons of the California Code of Judicial Ethics, but an objective observer aware of the circumstances would not deem the conduct to have an adverse effect on the reputation of the judiciary. (*Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89.) 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).)

Only prejudicial misconduct and improper action are relevant in this matter because the examiner did not argue, and the special masters did not find, that any of Justice Johnson's misconduct constitutes willful misconduct, based on the assertion that it did not involve him acting in his judicial capacity. The masters accepted the parties' agreement that Justice Johnson was not acting in a judicial capacity in connection with

the allegations. The commission accepts this agreement for purposes of this decision only, but notes that certain instances of misconduct occurred in the courthouse, while Justice Johnson was working with others on judicial matters, and other instances of misconduct occurred while he was at professional events in his capacity as an appellate justice.

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, but need not establish the facts beyond a reasonable doubt. (*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.) The legal conclusions of the commission are given great weight because of the commission's 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.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Justice Johnson has been a judge for 19 years. He attended Duke University, studied at Oxford University as a Duke Scholar, and graduated from Yale Law School in 1985. He worked as an attorney in private practice from 1985 to 1989 and was an Assistant United States Attorney from 1989 to 1999. In 1999, he was selected as a United States Magistrate Judge for the Central District, where he served until his appointment in 2009 to the Court of Appeal, Second District, Division One.

COUNT ONE—Sexual harassment of Justice Chaney

Justice Johnson was charged with a pattern of conduct toward his colleague on the bench, Justice Victoria Chaney, that was unwelcome, undignified, discourteous, and offensive, and would reasonably be perceived as sexual harassment or gender bias (counts 1A-1J). The alleged misconduct involved multiple instances of unwanted touching and other sexual misconduct.

A. Proven charges found to constitute misconduct

The masters found, based on clear and convincing evidence, that Justice Johnson, while at court, asked Justice Chaney to have an affair with him after she

had already declined his request (count 1C), said he wanted to "squeeze" her "titties" to make her "feel better" and then squeezed one of her breasts in the courthouse hallway (count 1D), repeatedly touched her breasts while hugging her (count 1E), occasionally patted her buttocks in the courthouse hallway (count 1F), commented on her nipples (count 1G), and warned her not to report him for sexual harassment (count 1J). They also found that, when they were on a work trip, he entered her hotel room uninvited (count 1B), and, at a restaurant, implied that she should not report him for sexual harassment (count 1H).

1. Findings of Fact

Count 1B: Entering hotel room uninvited

Justices Johnson and Chaney attended the National Judicial College in Reno in 2010. They had dinner together each evening. During these dinners, Justice Johnson drank alcohol and appeared to be intoxicated. Justice Chaney testified that, during dinner the first night, Justice Johnson asked her if she ever had an affair. She perceived this as a "come on." When they returned to the hotel, he escorted her back to her room and then followed her into her room uninvited, which made her uncomfortable. Justice Chaney testified that Justice Johnson did not say anything inappropriate, but he touched her shoulder, arm, and back, which made her feel uncomfortable. Although she felt uncomfortable the first night, she continued to spend time with Justice Johnson because they were colleagues on a court together, and were going to be working together for the foreseeable future. Justice Chaney also testified that, after subsequent dinners

together, Justice Johnson again entered her room by walking close behind her when she opened her hotel room door. He left when she asked him to, but she felt upset and uncomfortable because she "felt that he wanted sex."

Justice Chaney's testimony about what occurred the first night was corroborated by the testimony of her best friend, Emily Bernardis, whom the masters viewed as an "open and honest witness." Bernardis testified that Justice Chaney called her from her hotel room and told her that Justice Johnson had been drinking and "pushed his way into the room," which made Justice Chaney "freaked out" and "very upset." Justice Chaney's testimony was also corroborated by Daniel Alexander (her friend and later her research attorney), and Raphael Gunner (her private yoga instructor of 17 years), each of whom testified that she told them about the incident. Gunner testified that Justice Chaney told him that, one evening, Justice Johnson pressured her to let him into her room, that it was obvious to her that he wanted to have a sexual encounter with her, and that she had to firmly keep him from entering the room. Alexander testified that, one year after the trip, Justice Chaney told him that she had dinner with Justice Johnson in Reno and that he had pushed into her hotel room, and she could not get him out. The masters found that, even though the testimony of Bernardis and Gunner did not precisely match Justice Chaney's testimony, it supported the fact that Justice Johnson came into Justice Chaney's hotel room uninvited for at least a few minutes on one night, and the witnesses confirmed the essence of what occurred. The masters also concluded that Justice Chaney's clear

explanation of the incident was believable and consistent with other evidence showing Justice Johnson's overly friendly and overly familiar conduct with women, particularly when he is drinking alcohol.

The masters determined, however, that other details in Justice Chaney's testimony—that Justice Johnson touched her when he came into her hotel room the first night, and that he came into her room uninvited on additional nights after the first night—were not alleged in the notice, and were not disclosed to Bernardis, Gunner, Alexander, commission staff, or Administrative Presiding Justice Elwood G. Lui, to whom she reported Justice Johnson's conduct in connection with a workplace investigation conducted in July 2018 by outside counsel at the court's request. As a result, the masters declined to credit Justice Chaney's testimony on these points, and found that the truth of what actually happened in Reno was somewhere in between each party's version of the events.

Justice Johnson denied propositioning Justice Chaney or going to her room at any time during the trip, and said that he did not know where her room was located. He testified that her testimony that he came to her room was an "unequivocal lie." Justice Johnson also denied being intoxicated the first evening, claiming that he had one or two beers and that this matter is "full of stereotypes." The masters found Justice Johnson's denials about what occurred the first evening in Reno to be "untrue" and that his testimony reflected "intentional misrepresentations."

Justice Johnson asserted that Justice Chaney should not be believed because she testified incorrectly regarding certain details about the trip, such as the name of the hotel, the precise date of the event, and whether she had rented a car. Justice Chaney testified that she rented a car when they arrived in Reno, that she gave Justice Johnson a ride to their hotel, and that they stopped at a convenience store where she purchased Diet Cokes and he purchased a bottle of liquor of some sort. Justice Johnson called her testimony that she drove him in the rental car, and that he stopped to buy liquor, a "total fabrication." He produced copies of expense reimbursement requests he submitted in 2010 that show that he paid $45 for a taxi he and Justice Chaney shared between the hotel and the judicial college each day, and he testified that Justice Chaney paid for a taxi in the other direction each day. He asserted that this proved they used taxis to travel to the judicial college, not Justice Chaney's rental car. He also provided evidence that the program ended at 4:00 p.m. the last day and that his flight was at 5:30 p.m., so they would not have had time to return the rental car before his flight.

The masters agreed that some of Justice Chaney's testimony was not fully substantiated and/or conflicted with written records of the trip, but they concluded that this was the result of her "misremembering, rather than any intentional misrepresentation." They stated: "It makes sense that Justice Chaney would not remember the details of a trip that occurred more than nine years before she testified, but that she would recall an unsettling event—the fact that Justice

Johnson came into her hotel room with some suggestion that he would like to carry things further."

The masters stated that this conclusion is consistent with the opinions of Dr. Mark Kalish, a forensic psychiatrist who testified on Justice Johnson's behalf regarding memory and how it is impacted by internal factors (e.g., an individual's personality, former experiences, and perspective), and external factors (e.g., the passage of time, "social contagion," which is the desire to be part of a group dynamic, and confirmation bias). They noted that Dr. Kalish has not conducted research in the area of sexual harassment. With regard to Justice Johnson's assertion that factors identified by Dr. Kalish as impacting witness memories are present in this matter, the masters stated: "In evaluating testimony, we have carefully considered these views and found some relevant and others inapplicable. For example, we agree that in the case of an emotionally traumatic event, witnesses accurately recall the 'gist' of the encounter, even if they are mistaken regarding details. Likewise, because the passage of time is always an important factor in evaluating witness testimony, we have found contemporaneous corroborating evidence quite helpful."

Justice Chaney and Justice Johnson also each testified that the other had made a sexual proposition while they were at the conference. The masters declined to fully credit either Justice Chaney's or Justice Johnson's versions regarding the propositions, noting that this allegation was not charged in the notice. They concluded that Justice Chaney and Justice Johnson had conversations about various personal

topics, some of which may have included comments of a sexual nature, but did not encompass any form of sexual propositioning. Because this allegation was not charged, and neither party's version was found to be true, we decline to go into detail about the alleged sexual propositioning.

Count 1C: Asking her to have an affair

Between about February to April 2010, while they were in Justice Johnson's chambers, Justice Johnson told Justice Chaney that he wanted to have an affair with her and that they were "perfect together," or words to that effect. His affair proposal made her feel "more than uncomfortable," frustrated, angry, and nervous, and she became concerned about how she was going to get out of it. She responded that she was happily married, and said, "It's not good to dip your pen in the company inkwell," referring to the fact that a romantic relationship at work can be "complicated." Although she rebuffed his advances, within the next two months he again asked her to have an affair with him.

The masters found this improper because the conversations occurred at court during working hours while they were finishing a discussion about a case, and Justice Johnson continued to ask Justice Chaney to have an affair after she declined his offer. They found her detailed recall of this proposal to be "highly credible" and consistent with their findings regarding the events in Reno. Justice Chaney's testimony was corroborated by Justice Thomas L. Willhite, Jr. and Justice Lui, each of whom said that Justice Chaney told them about the incident. They also found it

consistent with testimony given by independent rebuttal witness Nina Park, who testified that, during the same time period, Justice Johnson told her that he "wished his wife would have an affair or something to that effect because that would then kind of give him an open license to have affairs."

Justice Johnson denied the allegations. He testified that, in 2017, Justice Chaney said: "Wouldn't it be funny if we had an affair and no one knew. It would be our laugh alone, and no one else would know about it." He said he ignored the statement. He also said that she asked him if he wanted to see her MRI or X-ray, which he thought was strange because it would have been essentially a "naked" picture of her. The masters found that Justice Johnson's testimony on this subject, including that he "categorially denied ever asking Justice Chaney to have an affair," reflected "his failure to tell the truth."

Count 1D: Wanting to "kiss and squeeze [her] titties" and touching her breast

In approximately the summer of 2010, when Justice Johnson saw Justice Chaney in the courthouse hallway after a difficult hearing she had just finished, he said to her, "Well, I should kiss and squeeze your titties to make you feel better," or words to that effect, and then squeezed one of her breasts. Justice Chaney testified that she was shocked and upset, but did not say anything to Justice Johnson. She went immediately to her chambers and told her research attorney Adam Phipps what had happened. Justice Chaney testified that she was either crying or on the verge of crying, and that she was upset and shaking. The masters

found Justice Chaney's testimony on this matter to be "highly credible." They further found that Justice Chaney's testimony about the motion Justice Johnson made with his hands, as though he would place them on her breasts, to be highly similar to his conduct with federal court employee Isabel Martinez, to whom he made a similar gesture after her breast augmentation surgery.

Justice Chaney's testimony was compellingly corroborated by attorney Eric George, to whom she disclosed the incident at a professional event later that day, only after he observed that she appeared to be upset and repeatedly asked her what was wrong. George confirmed Justice Chaney's account of what occurred. He testified that Justice Chaney told him that Justice Johnson had said he would "rub her breasts to make her feel better." Justice Chaney testified that she told George that she was having problems with Justice Johnson and was afraid of him, but she did not want to take any action because she was concerned that it would upset the "delicate balance" in her division at court.

Justice Chaney also discussed Justice Johnson's conduct with her friend Bernardis, her research attorney Alexander, and California Highway Patrol (CHP) Officers Tatiana Sauquillo and Matthew Barnachia. In October 2016, Justice Chaney had lunch with Officers Sauquillo and Barnachia and disclosed to them some of Justice Johnson's inappropriate conduct toward her. Officer Barnachia testified that, during the lunch, Justice Chaney "mentioned something to the effect that when she was hugging Justice Johnson, he

grabbed maybe her breast or breasts," and that Justice Johnson had "offered to kiss her boobs to make her feel better." Texts between Officers Sauquillo and Barnachia after the lunch further corroborated Justice Chaney's testimony. Among other things, Officer Barnachia texted: "I can't believe he told her that kissing her boobs will make her feel better!!! And I saw her afterwards, the harassment still goes on according to her. It's not just a few random incidents. He wants that ass!! [emojis]" Officer Barnachia also texted: "He is a creep!"

Justice Johnson "strenuously denied" that this incident ever occurred and testified that he does not use the word "titties." He asserted that Justice Chaney was using every stereotype people want to buy into to blame him. The masters specifically rejected his denials about the incident.

Count 1E: Hugging and breast touching

On multiple occasions between January 2010 and June 2018, Justice Johnson hugged Justice Chaney and pressed against her entire body, intentionally touched her breast, and made comments such as, "Mmm-mmm" and "You feel good." Justice Chaney described the touching of her breast as "significant," and not light or fleeting. She testified that this occurred only when they were alone. She would pull away as fast as she could.

Justice Chaney's testimony was corroborated by the testimony of Gunner and Bernardis, whom she told about the breast-touching incidents close to when they were occurring. Justice Chaney's testimony was also corroborated by Alexander, who said that, in August or

September 2017, Justice Chaney came into his office, upset and shaking, and told him that Justice Johnson had grabbed her breast again. And Justice Chaney's testimony was consistent with the independent testimony of former Assistant United States Attorney (AUSA) Barbara Curry, who described receiving similar hugs and hearing similar sounds from Justice Johnson, but without the breast-touching, many years earlier. Curry also said that Justice Johnson sometimes asked her questions about her sex life with her husband.

Justice Johnson denied ever touching Justice Chaney's breasts and said the hugs were mutual. As to the allegation that he would say "Mmm-mmm" while hugging her, he testified that she was "telling lies" and that the "stereotypical allegations" of him "being inarticulate and animal-like and making animal noises is a total insult."

The masters found that Justice Chaney had no motive to lie about the nature of the hugs or breast touching. The masters did not find, however, that the hugs occurred with the regularity to which Justice Chaney testified because there was no specific evidence of hugs occurring after 2014 until about September 2017, when Justice Chaney told Alexander that Justice Johnson had hugged her "again," suggesting that the offensive hugs had resumed following an extended period without hugs.

In addition, in February 2014, Justice Johnson told Justice Chaney that he was going to apply for a position on the California Supreme Court and asked her to write a recommendation letter in support of the

appointment. Justice Chaney wrote a letter to the Governor's appointments secretary, along with Justice Robert M. Mallano, recommending Justice Johnson for the appointment. In the letter, Justice Chaney praised Justice Johnson as a "family man" who was "eminently qualified to sit on the California Supreme Court," who would "make a great contribution to our state," and who "has common sense and is collegial in dealing with the justices on his panel." When asked why she signed the letter given the ongoing harassment issues, Justice Chaney testified that she was not sure how much Justice Johnson understood about his inappropriate behavior and, given that she thought she was the only person at the court who was being sexually harassed, it was okay with her if he was appointed to the California Supreme Court. The masters found it doubtful that Justice Chaney would have written such a glowing letter if Justice Johnson had been grabbing her breasts with "significant pressure" once or twice a month during the years before she signed the letter.

Count 1F: Buttocks-patting

Between January 2010 and June 2018, Justice Johnson occasionally patted Justice Chaney on her buttocks while the justices were walking into oral argument. The masters found this conduct was consistent with Justice Johnson's overly personal and overly familiar conduct toward women in the workplace. Bernardis and Gunner corroborated Justice Chaney's testimony by testifying that she had told them about Justice Johnson patting her bottom.

Justice Johnson testified that this "never happened." He argued that witnesses, including four

justices who walked with Justice Johnson and Justice Chaney to oral argument many times, testified that they never noticed any discomfort on the part of Justice Chaney when she was around Justice Johnson.

Count 1G: Comments about nipples

Between January 2010 and June 2018, Justice Johnson would make comments such as "You're happy to see me" or "Looking good today," and make sounds, such as "Mmm, mmm, mmm," while he was looking at Justice Chaney's chest area and the outline of her nipple was visible when she was wearing a sweater. Justice Chaney testified that she would change the subject, back away, or turn around, and that she tried using devices to cover her nipples, but they were uncomfortable and did not remedy the problem.

Gunner corroborated that Justice Chaney told him about the nipples issue. The masters found that this was a highly embarrassing topic for Justice Chaney to testify about, and she had no motive to testify about the comments if they did not occur. They also found that this conduct is consistent with Justice Johnson's overly personal behavior, his comments about breast implants to staff members when he worked at the federal court, and his repeated touching of Justice Chaney's breasts.

Justice Johnson testified that he did not remember Justice Chaney wearing a sweater, but if she did, he was not paying attention. He did not specifically deny this conduct, but he denied making the "noises" Justice Chaney was trying to attribute to him.

Count 1H: Squeezing and sexual harassment remark

In December 2013, Division One of the Second Appellate District held a holiday party at the Taix French Restaurant, attended by 35 to 40 staff members. Justice Chaney and research attorney Peter Israel approached the open bar, where there was an opening next to where Justice Johnson was standing. Justice Chaney testified that she and Israel squeezed in so that she was standing between Justice Johnson and Israel at the bar. Justice Chaney testified that Justice Johnson, who was drinking an alcoholic beverage, put his arm around her, touched her left breast, stroked her buttocks area, and made a "raunchy" comment about her breast or body part. She could not remember the exact comment. She said she was startled and embarrassed, and pulled away. She testified that Israel saw it and appeared startled, and that Justice Johnson said to her and Israel, "You can't sexually harass someone who's on your own level," or words to that effect. She further testified that Israel responded, "Justice Johnson didn't know the law of sexual harassment if he believed that."

Israel testified that he did not recall the incident or making the comment. Justice Chaney's research attorney Alexander testified that she later told him about this incident. Justice Chaney also told Justice Willhite about it.

Justice Johnson testified that Justice Chaney walked up to him and pressed against him, and that he did not rub his hand up and down her side, or put his

hands on her bottom, or make the comment she attributes to him.

The masters found that Justice Johnson squeezed Justice Chaney against him as she stood next to him because this was consistent with their outwardly close and friendly relationship, they were at a holiday party where Justice Johnson was acting in an informal manner and was drinking alcohol, and his conduct in physically touching her had apparently become, in his view, a normal part of their relationship.

The masters did not find, however, that he squeezed her breast or buttocks or rubbed her body or made a vulgar comment about her body, as Justice Chaney testified, because Israel testified that he was present at the restaurant but did not observe such conduct. They also noted that many people were at the Taix event, and they did not believe that Justice Johnson would engage in the breast and buttocks touching, or make a "raunchy" comment, in view of others. The masters also did not believe that Justice Chaney would have written a positive letter about Justice Johnson to the Governor's appointments secretary in connection with his being considered for the California Supreme Court if all of the conduct she described had occurred.

Count 1J: Comment about reporting sexual harassment

In December 2017, during a discussion about sexual harassment, Justice Johnson said to Justice Chaney, "You would never report me [for sexual harassment], would you?" or words to that effect, and he was not joking when he said this. Justice Chaney testified that

he was glaring at her and looked a little frightened, and she felt threatened. She responded by staring at him for a moment and then said, "No." Alexander testified that Justice Chaney told him about the incident.

The masters found little doubt that, by that time, because Justice Johnson knew of ongoing sexual harassment investigations of other judges, the widespread public conversation about the "Me Too" movement, and his own prior conduct, he would have serious concerns about whether information about his past conduct toward Justice Chaney and other women would come to the attention of the authorities.

Justice Johnson testified that he did not recall saying anything like that, but if he did, it would have been a joke.

The examiner did not object to the masters' factual findings regarding the foregoing charges (counts 1B through 1J). Justice Johnson's objections to these factual findings are addressed below.

2. Justice Johnson's objections to allegations involving Justice Chaney

In his post-masters' report briefing, Justice Johnson objected to the foregoing factual findings and argued that Justice Chaney should not be believed about any of the proven charges for the following reasons.

First, Justice Johnson argued that, if Justice Chaney actually believed she was a victim of sexual harassment, she would have reported him, but she never reported him to any authority, despite her duty

under canon 3 to report judicial misconduct ("Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.").

Second, she treated him in a friendly manner, spent time alone with him, and referred to him as her "conjoined twin" and to herself as "the other twin." She would frequently engage in friendly communications with Justice Johnson in person and by telephone, email, and texting. They occasionally had lunch together, and, about six months after the alleged incident at the Taix restaurant, they had dinner alone together at a restaurant during an appellate justices' conference, rather than attending the official group dinner. In January 2017, Justice Chaney sent Justice Johnson a crude political cartoon with sexual overtones. It showed President Trump putting his hand underneath a woman's dress and grabbing her bottom, and, in the next panel, showed Russian President Putin grabbing Trump's bottom. Justice Chaney testified that she sent the cartoon to Justice Johnson because they had been having a conversation with Justice Frances Rothschild about President Trump, and the cartoon fit into what they were discussing.

Third, many witnesses (including four justices) testified that they did not see Justice Chaney displaying discomfort with Justice Johnson, rather, the two acted as if they were good friends and colleagues.

Fourth, Justice Chaney wrote the letter of recommendation to the Governor about Justice

Johnson in February of 2014, listing his many positive attributes.

Justice Chaney testified about the following reasons she did not report Justice Johnson or tell him to stop sexually harassing her. She was concerned about the negative effect that such a report would have on the court's work, particularly in light of her awareness of conflicts and divisiveness among the justices of her division. She did not think there was a person at the court to whom she could report him who would take action on her complaint. She believed that, until the "Me Too" movement, women who complained were not believed and instead were ridiculed, fired, or marginalized. She was afraid of how Justice Johnson would respond based on his temper, which she had previously observed him display at court. She had conflicting feelings about him. She thought she was the only one being subjected to his sexual harassment and believed she could handle it because she is a "tough lady." Although she had heard rumors that Justice Johnson sexually harassed women outside the court, she did not know anything specific about his treatment of women at the court. Once she learned that others at the court claimed he had sexually harassed them and that she would be interviewed as part of a workplace investigation, she decided to report his conduct. Justice Chaney's concerns about the consequences of reporting Justice Johnson were corroborated by her friend Bernardis, her yoga teacher Gunner, research attorney Alexander, Justice Willhite, and Justice Lui.

In late 2013 or early 2014, Justice Chaney told Justice Willhite about various incidents involving

Justice Johnson, including comments he made to her about her body, an affair, and Black men, and that he had touched her breast. Justice Willhite testified that he urged Justice Chaney to report Justice Johnson, but she did not think Justice Mallano, then the administrative presiding justice, would do anything about it because he and Justice Johnson were Yale grads and "seemed to be palling around together." Justice Willhite further testified that Justice Chaney said she was afraid of Justice Johnson's temper (see count 6A), that she was afraid it would be a "he-said, she-said, and he might insert racial overtones into it," and she did "not want to go through all that." She also said she had to work with Justice Johnson. She asked Justice Willhite to keep their conversation confidential, and he did.

In 2018, when Justice Chaney learned that she would be interviewed as part of a workplace investigation, she met with Justice Lui, who testified that she told him that Justice Johnson had asked her to have an affair, would grab her breast when he hugged her, said he should hug her "titties" and kiss them, and grabbed her breast at the Taix holiday party. Justice Lui testified that Justice Chaney told him she had not reported Justice Johnson earlier because she was "fearful" and "women of her generation didn't do that," she wanted to get along with the people in her division, and she could not just transfer somewhere else.

Dr. Louise Fitzgerald, an expert witness in sexual harassment called by the examiner, testified that women generally do not report sexual harassment

because there is a "very high personal and professional cost to reporting, and reporting does not necessarily preclude further harassment." She also testified that if a victim has previously stayed silent about sexual harassment, she is more likely to come forward to prevent the same conduct from happening to other women. Dr. Fitzgerald said that learning that other women have been harassed or are at risk of being harassed can change the calculus and can outweigh the personal costs of reporting.

Based on Justice Chaney's testimony, and that of the expert witness, the masters accepted Justice Chaney's explanation that she believed disclosing Justice Johnson's conduct would seriously disrupt the work of their division, so she committed to maintaining a collegial relationship with him. Although they found her decision to write the letter to the Governor's appointments secretary "perplexing," and stated that her representations in the letter about his fitness, character, and collegial nature stand in "stark contrast" to her testimony, they concluded that Justice Chaney's statements in the letter "do not negate the reliability of her overall testimony." Further, while they agreed with Justice Johnson that Justice Chaney's failure to report his conduct raises "legitimate questions," they found that, despite her awareness of her duty, she made the deliberate decision to address the situation by working cooperatively with him, "an appeasement strategy commonly used by sexual harassment victims." The masters stated:

> Although in retrospect Justice Chaney's decision not to report or at least tell Justice Johnson his

> behavior made her uncomfortable may have been ill-advised, there was nothing in her actions that excused Justice Johnson's conduct.
>
> Any reasonable judicial officer should and would have known that you do not touch a colleague's breasts, you do not pat a colleague's buttocks, you do not comment on her nipples, and you do not state that you want to squeeze her "titties." The conduct would be wrongful under any circumstance, but was particularly objectionable because it occurred at the courthouse and reflected "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." [Citation.]

Justice Johnson also argued that Justice Chaney should not be found credible due to inconsistencies between some of her testimony and that of other witnesses. For example, Justice Chaney testified that she was unaware that other women at court were being harassed, but she admitted being aware in 2010 of numerous rumors that Justice Johnson harassed women outside of court, knowing that Officer Sauquillo was uncomfortable with Justice Johnson while Officer Sauquillo worked at the court, and knowing by February 2018 that Officer Sauquillo alleged that Justice Johnson propositioned her with sexually explicit language. Further, Justice Chaney did not identify Officer Sauquillo or Officer Barnachia as persons with knowledge of the relevant events during the workplace investigation at the court, even though

she disclosed serious misconduct claims to them two years earlier.

The masters determined that the conflicts in the evidence concern "primarily collateral matters and/or reflect faded memories based on the passage of time, and do not suggest that Justice Chaney cannot be believed on the larger issues of whether [Justice Johnson] engaged in unwanted touching and inappropriate statements." They concluded that her omitting to identify Officers Sauquillo and Barnachia as individuals knowledgeable about Justice Johnson's conduct is consistent with her lack of recall about a conversation she had with Officer Barnachia two years earlier, as well as her desire to protect Officer Sauquillo's confidentiality.

Justice Johnson also posited that Justice Chaney should not be believed because some of her testimony about a telephone conversation she had with Justice Lui in July 2018 was impeached by Justice Lui. Justice Chaney testified that she thought Justice Lui asked her about a female officer in the judicial protection unit during their conversation, and he testified that he did not ask her anything about Officer Sauquillo and does not recall whether Justice Chaney mentioned Officer Sauquillo's name. This conflict or confusion seems to be based on whether Justice Lui identified Sauquillo by name during that conversation. Justice Lui's testimony on the subject is unclear and does not unequivocally impeach Justice Chaney's testimony. And it does not establish that Justice Chaney lacked credibility as to all her allegations.

Justice Johnson further argued that the masters used a "double standard" to credit Justice Chaney's testimony and discredit his testimony. The masters, however, did not unquestioningly accept Justice Chaney's testimony wholesale. To the contrary, they specifically declined to credit some of her testimony, including that Justice Johnson came to her hotel room uninvited all three nights of the conference in Reno, that he grabbed her breasts with "significant pressure" once or twice a month in the years before she wrote the letter of recommendation to the Governor, that he hugged her and touched her breast as frequently as she claimed, and that he touched her inappropriately and made a "raunchy" comment about her body at the Taix restaurant. They also credited Justice Johnson's testimony about Officer Sauquillo's most serious allegations by finding that the touching and sexual propositioning she alleged did not occur.

Based on our independent review of the evidence, we have determined that the masters properly evaluated the evidence and reached a balanced and correct assessment of what was—proven and what was not proven—by clear and convincing evidence as to the allegations in Count One. We agree that some of Justice Chaney's conduct while she was experiencing sexual harassment by Justice Johnson particularly the letter to the Governor praising Justice Johnson, her ongoing friendly behavior, and referring to herself as his "conjoined twin" seems odd and hard to explain. Nevertheless, we also agree with the masters that Justice Chaney's behavior toward Justice Johnson was part of her appeasement strategy, born of her desire to get along with her colleagues and maintain conviviality

at the court. And we understand that this desire was one of the several reasons that she did not report him. Justice Chaney's attitude is supported by the testimony of Justice Mallano, who testified that he could understand why she might not want to report sexual harassment if it happened, and remarked: "How could you have four people working as partners, if one suggested that the other committed a sexual battery on them?" Finally, we accept that Justice Chaney had conflicting feelings about Justice Johnson, including being afraid of him, having witnessed his angry demeanor toward her and others.

We do not find Justice Johnson's objections to the masters' findings of fact regarding Justice Chaney persuasive or consistent with the evidence, and we adopt the masters' factual findings.

3. Conclusions of Law

The masters determined that Justice Johnson's conduct toward Justice Chaney, as described above, was unwelcome, undignified, discourteous, offensive, and would reasonably be perceived as sexual harassment of Justice Chaney. They also concluded that it constituted conduct prejudicial to public esteem for the judicial office and 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 act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3B(4) (a judge shall be patient, dignified, and courteous to persons with whom the judge deals in an official

capacity), 3B(5) (a judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as sexual harassment), 3C(1) (a judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as sexual harassment), and 4A(2) (a judge shall conduct all of the judge's extrajudicial activities so that they do not demean the judicial office).

The examiner did not object to these legal conclusions. Justice Johnson's objections to these legal conclusions are the same as his objections to the masters' factual findings, which we find are neither persuasive nor consistent with the evidence. We adopt the masters' legal conclusions.

B. Charges not proven to be misconduct

The masters also found that the facts in two charges involving Justice Chaney (counts 1A and 1I) were proven by clear and convincing evidence, as summarized below, but that they did not constitute misconduct.

Count 1A: Telephone call in 2009

1. Findings of Fact

In June 2009, Justice Johnson and Justice Chaney were nominated to the Court of Appeal, Second Appellate District, Division One, on the same day. Justice Mallano wanted to encourage collegiality at the court. He asked Justice Chaney to call Justice Johnson to welcome him to the court. Justice Chaney called

Justice Johnson and told him that she was looking forward to working with him. He responded, "I didn't know you were so beautiful," and said he had seen her photograph in the newspaper that morning. The comment confused her, but did not make her uncomfortable.

Justice Chaney's testimony was corroborated by Alexander and Gunner, each of whom testified that she told them about the comment. Gunner testified that Justice Chaney told him about it shortly after the telephone conversation. The comment was also consistent with Justice Johnson's own testimony that he regularly complimented people, including on their physical attributes, as his way of creating a positive relationship.

Justice Johnson denied that the telephone call occurred. He testified that he had received calls from the two other justices on the panel and thought it was "unusual" that he had not received a telephone call from "the third person on the panel" to congratulate him.

The masters found Justice Johnson's credibility on this point to be questionable because he and Justice Chaney were nominated the same day, and Justice Chaney was not on the panel at that time. They stated that Justice Johnson's denial that the telephone call occurred illustrates his "lack of candor."

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

2. Conclusions of Law

The masters concluded that the comment was not judicial misconduct because a single comment to a colleague who was not necessarily offended by it does not rise to the level of a violation of the canons of judicial ethics.[1]

Neither side objected to the masters' legal conclusions, and we adopt them. We dismiss count 1A.

Count 1I: Remark re genitals

1. Findings of Fact

Around the time Justice Chaney signed the Supreme Court recommendation letter to the Governor, she had several conversations with Justice Johnson about why the Governor might not select him for the position. Justice Chaney testified that Justice Johnson discussed his belief that his being a Black male would be a negative factor. She testified that he said that a Black man is very powerful and people are "afraid of the size of a Black man's penis or 'cock' or 'dick'," and

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[1] The masters also concluded (incorrectly) that because Justice Johnson made the comment before he was confirmed, it falls outside the commission's jurisdiction as pre-bench conduct. The commission has jurisdiction over conduct occurring within six years before the commencement of the judge's current term. (Cal. Const., art. VI, § 18, subd. (d).) Justice Johnson's current term began in January of 2015. The commission has frequently disciplined judges for pre-bench conduct (e.g., *Inquiry Concerning Couwenberg* (2001) 48 Cal.4th CJP Supp. 205, *Public Censure of Judge Paul D. Seeman* (2013), *Public Censure of Judge Charles R. Brehmer* (2012), *In re Charles S. Stevens* (1982) 31 Cal.3d 403).

that "Black men can pleasure women or something on that order."

The masters found that Justice Johnson made the comments about the size of African-American male genitals, but not in a sexually suggestive or stereotyping manner.

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

2. Conclusions of Law

The masters concluded that no misconduct occurred because the comments did not contravene the canons.

Neither party objected to the masters' legal conclusions, and we adopt them. We dismiss count 1I.

COUNT TWO—Conduct toward CHP Officers Sauquillo and Davison

It was alleged that Justice Johnson made vulgar sexual comments to CHP Officer Tatiana Sauquillo (count 2A), made comments about her appearance (count 2B), put his hand on her thigh while she was driving him (count 2C), and propositioned her for sex (count 2D). It was also alleged that he spoke to CHP Officer Shawna Davison in a sexually suggestive tone (count 2E).

A. Proven charges found to constitute misconduct

The masters found that Justice Johnson made comments to Officer Sauquillo about her appearance and his wife that made her uncomfortable and were improper (count 2B).

Count 2B: Comments to Officer Sauquillo about her appearance

1. Findings of Fact

Officer Sauquillo worked in the Judicial Protection Section (JPS) between 2013 and 2016. Her assignments included transporting Court of Appeal justices to work-related functions. Between October 2013 and May 2016, Justice Johnson occasionally made comments to Officer Sauquillo about her appearance when they were in his chambers, in the court hallways, and when she was driving him while she was assigned to the JPS unit. These comments included that she looked good in her uniform, that he would like to see her out of her uniform, that she looked cute and pretty, that he liked what she was wearing, and unflattering comments about his wife in comparison to Officer Sauquillo. His comments made her uncomfortable.

Justice Johnson admitted that he may have told Officer Sauquillo, "You look nice," but he denied making the other comments.

The masters found that Justice Johnson made the comments because he admitted complimenting Officer Sauquillo's appearance, Officer Barnachia believed that Justice Johnson had a "crush" on Officer Sauquillo, and Justice Johnson's comments were consistent with evidence that he often made these types of comments to women with whom he worked.

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

2. Conclusions of Law

The masters concluded that Justice Johnson's comments to Officer Sauquillo about her appearance and his wife would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).[2]

Neither party objected to the masters' legal conclusions, and we adopt them.

B. Charges not proven to be misconduct

The masters found that three counts of alleged inappropriate conduct involving crude sexual propositioning and touching of Officer Sauquillo (counts 2A, 2C, and 2D), and one count of alleged suggestive conduct toward Officer Davison (count 2E), were not proven by clear and convincing evidence.

Count 2A, 2C and 2D: Touching Officer Sauguillo's thigh and propositioning her in vulgar language

1. Findings of Fact

Officer Sauquillo testified that, on April 11, 2014, when she was driving Justice Johnson back to court from a professional event in Baldwin Hills, he put his hand on her thigh and propositioned her for sex. She said that he asked if she wanted to go have drinks with

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[2] The masters specified that their conclusion that the conduct would reasonably be perceived as sexual harassment does not include a finding that the conduct was in fact sexual harassment under California law because sexual harassment requires severe and pervasive conduct. (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283.)

him afterwards, and if she would go back to his chambers "to essentially have sex." She also testified that she was "pretty sure" it was at that event when he asked her to "pull over" to "have sex." She declined his overtures. During her direct testimony, she did not say that he said he wanted to "bend her over" or "fuck her from behind," as alleged. When asked on cross-examination if the drive from Baldwin Hills was when Justice Johnson made the "gross statements" to her (i.e., "bend her over," etc.), she said, "Yes," without elaboration.

She did not recall telling anyone about the alleged touching, crude statements, and propositioning while she still worked at the court. When she requested a transfer from the JPS, she did not tell anyone that it was because of Justice Johnson's conduct. She testified that she did not file a complaint about him because she wanted to avoid retaliation, which she had experienced when she previously reported her former CHP supervisor for sexual harassment. She testified that, after she left the court, she told Justice Chaney and Officer Barnachia about Justice Johnson's conduct, but was unsure whether she told either of them about the sexual propositioning with vulgar language. Officer Barnachia testified that he did not recall Officer Sauquillo saying anything to him about Justice Johnson making vulgar comments, propositioning her, or putting his hand on her thigh. Justice Chaney testified that she did not learn of Officer Sauquillo's specific claims until February 2018.

Justice Johnson strenuously denied these allegations and presented evidence that, in April 2014,

he and his family were under tremendous stress arising from an incident in which his daughter was being stalked. He also provided evidence that Officer Sauquillo requested a transfer from the JPS unit due to conflicts with her supervisor, and she did not tell anyone it was because of him.

The masters found that the allegations that Justice Johnson once put his hand on Officer Sauquillo's thigh while she was driving him and sexually propositioned her in crude, graphic terms were not proven for several reasons.

First, Officer Sauquillo testified about only one occasion when he sexually propositioned her and touched her, which was while she was driving him from the Baldwin Hills event, and her testimony about this was "equivocal and evasive." For example, when asked to identify all of Justice Johnson's comments that made her feel uncomfortable, Officer Sauquillo briefly stated that, during the drive back, he asked her to have drinks and go to his chambers "to essentially have sex" and she was "pretty sure it was that event, too, when he asked [her] if [she] would pull over [to have sex]."

Second, she admitted that, several years earlier, a CHP supervisor had made vulgar comments to her that were identical to those she alleged Justice Johnson had made (i.e., wanting to "bend her over" and "fuck her from behind"). The masters found that, absent some connection, the possibility of Justice Johnson saying the exact same comments to Officer Sauquillo is "remote."

Third, the masters found it "troubling" that she did not recall telling anyone about the propositioning and vulgar comments until she met with Justice Lui in June 2018 in connection with the workplace investigation. While the masters acknowledge that delayed and selective reporting of sexual harassment is common, and that Officer Sauquillo had suffered retaliation when she reported her previous CHP supervisor for sexual harassment, they viewed these factors "under the unique circumstances" of her close relationships, and highly candid conversations, with Justice Chaney and Officer Barnachia and believed that she would have revealed his behavior to her trusted friends before finally doing so four years later, in February 2018.

Fourth, Officer Sauquillo continued to drive Justice Johnson for about two years and did not ask to not be assigned to drive him or testify about any similar conduct during that time.

Fifth, she testified that she left the JPS unit because she was worried about Justice Johnson's conduct, but her personnel records do not mention that reason, and two witnesses who were close with her testified that she complained about her then-supervisor, not Justice Johnson.

Sixth, no evidence was presented that Justice Johnson was intoxicated the evening of the Baldwin Hills event, which is distinguishable from other incidents in which Justice Johnson engaged in unwanted touching of women while he was intoxicated.

Seventh, Justice Johnson's testimony about the stress he was experiencing due to the events involving his daughter undermines the allegation that he engaged in the conduct at the time. The masters stated that all of these factors together "create serious misgivings about the accuracy of the charged allegations."

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

2. Conclusions of Law

The masters concluded that the allegations were not proven with clear and convincing evidence.

Neither party objected to these legal conclusions, and we adopt them. We dismiss counts 2A, 2C, and 2D.

Count 2E: Invitation to Officer Davison

1. Findings of Fact

In November 2015, CHP Officer Shawna Davison was assigned to drive Justice Johnson home from the airport. This was the only time she performed a protective service detail for him. She testified that, when they arrived at his house, he invited her inside more than once to use the restroom and told her that no one was home. She perceived it as "sexual in nature" and "sexually suggestive," but she did not testify why she perceived it that way. She declined his offer.

The masters found that Justice Johnson invited Officer Davison into his house after she drove him home, but not that it was in a "sexually suggestive" tone or other improper manner.

Justice Johnson testified that he might have said she should feel free to use his bathroom because he knew she had another 50 miles to drive. He also said that he was upset and distracted that day because his best friend from college had died unexpectedly a few days earlier, he was involved with funeral arrangements and eulogies, and his wife was home to assist him. His wife corroborated that she was home that day to assist him.

Neither side objected to these factual findings, and we adopt them.

2. Conclusions of Law

While the masters found Officer Davison credible in thinking that his invitation was "suggestive," they found no misconduct based on the lack of any objective factors supporting her conclusion, as well as on Justice Johnson's credible testimony that he was distracted and upset that afternoon, and that he may have been concerned that Officer Davison would need to use the facilities before making a long drive.

Neither side objected to these legal conclusions, and we adopt them. We dismiss charge 2E.

COUNT THREE—Conduct toward attorney Butterick

Justice Johnson was charged with engaging in unwelcome, undignified, discourteous behavior toward research attorney Jessica Butterick, that would reasonably be perceived as sexual harassment, on three occasions in 2015 and 2018 (counts 3A, 3B, and 3C). The masters found that these counts were proven.

1. Findings of Fact

Butterick began working for Justice Luis A. Lavin at the Court of Appeal in August 2015. Justice Lavin's chambers were in the North Tower, Justice Johnson's are in the South Tower. In September 2015, while Butterick was temporarily working in the South Tower, she encountered Justice Johnson. He asked her what she was doing there, and, while stroking her arm between her elbow and shoulder, said, "Well, we got to get you back over here more often." This made her feel uncomfortable.

Butterick's testimony was corroborated by research attorney Alex Ray, who testified that Butterick told him that she had just met Justice Johnson in the hallway, and that he had said something like, "I've never seen you around here before," and touched her arm or shoulder. Butterick also later told research attorney Merete Rietveld about it, which further corroborated her testimony.

At the evidentiary hearing in this matter, Butterick described the way in which Justice Johnson stroked her arm, which included touching her arm in an intimate manner such that his thumb was squeezing her upper arm or near her underarm.

Two months later, she told other attorneys she would not take an office near Justice Johnson's chambers because she felt uncomfortable being so close to his chambers. Ray corroborated this.

In February or March 2018, Butterick encountered Justice Johnson near his chambers in a hallway with photographs of Court of Appeal justices. When he saw

her, he said, "You're new," and she responded that she had been Justice Lavin's research attorney for several years. He reached out to shake her hand for what she thought was an "unusual amount of time. Justice Johnson said, "Well, I'm Jeff Johnson. Why haven't we met before?" She replied, "Judge, we met a couple of times." He looked at the row of photographs of appellate justices, which Butterick described as a "row of very [W]hite men," and said to her, "Well, not a lot of people around here look like me." She responded, "Well, everyone here looks like me," because she believed most of the research attorneys were White women. He said words to the effect of, "No. Not a lot of people look like you." Butterick found this overly familiar, and it made her feel a little bit uncomfortable. Butterick's testimony about this encounter was corroborated by Ray, who testified that she discussed the incident with him at the time. The masters found that, in context, Justice Johnson's statements were intended to be a comment on Butterick's attractiveness and were overly familiar, and that the extended handshake was inappropriate in the workplace.

Later that week, Butterick again saw Justice Johnson in the hallway. He said to Butterick, "Twice in one week," and briefly stroked her arm, which was unwelcome.

Butterick testified that she did not report the conduct in 2015 because reporting inappropriate behavior is "never good for anyone's career," and she believed it would be "career suicide" and would not make a difference. In 2018, she learned that another research attorney, Katie Wohn, had reported Justice

Johnson's inappropriate conduct to Justice Lui, so she gave Rietveld, who was communicating with Justice Lui about the workplace investigation, permission to give her name to Justice Lui because she wanted to support Wohn and protect other women.

Justice Johnson admitted the three encounters with Butterick and that they may have included "some form of physical touching," but he denied stroking her arm, particularly in the manner she demonstrated.

The masters found that the three encounters occurred, and that Justice Johnson put his hand on Butterick's arm and stroked it between her elbow and shoulder as he was shaking her hand and greeting her in 2015 and 2018, but that he did not do it in the manner she demonstrated at the hearing because that was not included in her earlier description of the touching to her friends or to commission staff.

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

2. Conclusions of Law

The masters concluded that the conduct described above constituted a pattern that would reasonably be perceived as sexual harassment,[3] was prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

Neither party objected to these legal conclusions, and we adopt them.

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[3] See footnote 2.

COUNT FOUR—Conduct toward attorney Blatchford

Justice Johnson was charged with engaging in unwelcome, undignified, discourteous behavior toward his research attorney, Andrea Blatchford, that would reasonably be perceived as sexual harassment on six occasions in 2018 (counts 4A-4F). The masters found that all but one of these charges were proven.

A. Proven charges found to constitute misconduct

1. Findings of Fact

Count 4A: Hug and comment

Blatchford worked as a research attorney on Justice Johnson's staff, starting in February 2018. She transferred after five months. About a month after Blatchford began working in his chambers, Justice Johnson raised his voice and reprimanded her during a phone conversation. Afterward, they had a nice conversation about it, and he asked her for a hug. He hugged her and commented that he was very fond of her. Neither the hug nor the comment made her uncomfortable.

Justice Johnson acknowledged that Blatchford "basically told the truth" about the various incidents and that some of his conduct might have been inappropriate.

Count 4B: Questions about tattoos

In about May 2018, Justice Johnson and Blatchford were in his chambers, and he pointed to her forearm and asked, "Is that a tat?" [referring to tattoos]. She

responded, "Yes." He asked her if she had any more. She said she had five and identified some of them. After the conversation ended, she returned to her office and was working when Justice Johnson came to her office and asked, "Where are the other two?" His question made her a little uncomfortable because he reinitiated the conversation "sort of randomly."

Justice Johnson admitted asking about the tattoos but said he believed the discussion was appropriate because he thought of tattoos as "art" and did not intend anything sexual by his question. He now understands that his behavior was not appropriate. The masters found his "attempts to justify or explain his comments to be unsupported."

Count 4C: Questions about boyfriend

In April or May 2018, Justice Johnson asked Blatchford several questions about her boyfriend. He asked if her boyfriend was an intellectual and said, "You strike me as an intellectual . . . I think it's very important for two people to share that in common." Blatchford felt this discussion was "too personal."

Shortly thereafter, while discussing how to value stolen property in connection with a restitution issue, Blatchford, seeking to show the difficulty in valuing items, noted that a necklace from Tiffany that she was wearing had cost only $200. Justice Johnson asked, "Is that necklace a gift from your boyfriend?" The question made her a little bit uncomfortable because she was wondering why he was asking about her boyfriend again.

In June 2018, Justice Johnson brought up Blatchford's boyfriend again. When she mentioned that she lived in Baldwin Hills, a historically Black neighborhood, he asked, "Oh, is your boyfriend Black?" She said, "No." He then asked her, "Have you ever dated Black guys?" She replied, "Yes." He said, "Well, I guess you went back then." Blatchford understood that Justice Johnson was referring to a well-known joke that, "Once you go Black, you never go back." Blatchford said she felt shocked by the comment because the only other time someone said that to her was when a Black man was hitting on her or flirting with her, and because it is a "very explicit reference to the stereotype that Black men are well-endowed," compared to White men. Blatchford felt really uncomfortable, and she just wanted to "make it stop and get out."

Justice Johnson admitted asking the questions and making the "Well, I guess you went back then" comment, but said it was a "really dumb joke" that was intended to make fun of a stereotype. He testified that he thought she would see how he was making fun of a stereotype because Blatchford "seemed to be a really enlightened person." He also testified that he now understands that she felt uncomfortable, and acknowledged that the joke was in poor taste. He apologized for the joke and accepted full responsibility for it.

Count 4D: Comment about President Trump and Stormy Daniels

Justice Johnson, Blatchford, and others were at a staff lunch at the Blue Cube restaurant in May 2018.

A research attorney raised the subject of a recent television interview of Stormy Daniels and said she did not believe the sexual contact between Daniels and President Trump was consensual. Justice Johnson commented, "To me, it just sounded like it was pedestrian sex." Blatchford understood this to mean that the sex itself was "standard, boring, and not kinky," and it made her uncomfortable because the discussion had been about consent versus coercion, not sex.

Justice Johnson admitted making the statement, but testified that it was merely a shorthand or sanitized version of Daniels's comments about the quality of President Trump's sexual performance. The masters found "his attempts to justify or explain his comments to be unsupported." Justice Johnson testified that he now realizes that there were different sensibilities among those present, and he did not appreciate or respect them the way he should have at the time.

Count 4F: Comment about prostate exam

During a chambers conversation with Blatchford and Justice Helen Bendix, after Justice Bendix mentioned her gynecologist appointment and said, "You men don't have to go through the kinds of things women do," Justice Johnson responded, "Well, there is a prostate exam," and then said, "But it's not like we get aroused during those exams," and laughed. This made Blatchford uncomfortable because "it was yet another instance when he was sort of injecting sex into a conversation that really had nothing to do with sex." Justice Bendix testified that she recalled saying

something about the appointment and that women need to go to these appointments regularly, but she did not remember Justice Johnson responding to her statements.

Justice Johnson denied making the comment about "arousal," but the masters credited Blatchford's testimony on this issue because she recalled that the comment was unnecessary to the conversation, and it was consistent with her observations that Justice Johnson frequently injects sex-related topics into routine conversations.

Neither party objected to the factual findings regarding the foregoing counts, and we adopt them.

2. Conclusions of Law

The masters stated: "Justice Johnson engaged in a pattern of conduct toward his research attorney Blatchford that made her feel uncomfortable. The conduct included asking her overly personal questions about topics related to her tattoos and her boyfriend, making a joke based on sexual and racial stereotypes, making a sexual reference during a staff lunch that was out of context for the specific topic being discussed, and making a joke about sexual arousal while in his chambers. Considered together, the comments were unwanted and had no place in the courthouse or at the staff lunch during the work day." They concluded that allegations proven in counts 4A, 4B, 4C, 4D, and 4F were part of a pattern that would reasonably be perceived as sexual harassment,[4] constituted

[4] See footnote 2.

prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

Neither party objected to these legal conclusions, and we adopt them.

B. Charges not proven to be misconduct

Count 4E: Comment about being his "favorite"

Justice Johnson told Blatchford that she was his "favorite" and put his finger to his lips. Blatchford felt uncomfortable because she did not think it was healthy to compare employees that way, and she did not want to keep secrets from her coworkers. She told him that she did not like him saying that, but he continued to make the comment to her several times. She acknowledged that the comments were made in the context of Justice Johnson's appreciation for her work.

Justice Johnson admitted making the comment that Blatchford was his favorite and putting his finger to his lips. He said he did so because he did not want to make his other attorneys feel bad.

The masters found that, although these facts were proven, the "favorite" comments did not constitute misconduct because Blatchford and Justice Johnson understood that they were made in reference to Blatchford's work.

Neither party objected to these factual findings or legal conclusions, and we adopt them. We dismiss count 4E.

COUNT FIVE—Conduct toward other women at the appellate court

Justice Johnson was alleged to have engaged in inappropriate conduct toward several Court of Appeal employees: judicial assistants Trisha Velez (count 5A) and Carolyn Currie (count 5C), research attorney Katie Wohn (count 5B), and Court of Appeal Justice Elizabeth Grimes (count 5D). All of these charges were found proven.

Count 5A: Judicial assistant Velez

1. Findings of Fact

In 2013, Justice Johnson repeatedly asked Justice Chaney's judicial assistant Trisha Velez to join him for coffee, which she declined about five times. He later saw her walking into the courthouse when Justice Chaney was scheduled to be absent, and told her she had no excuse not to join him for coffee. She reluctantly agreed. During their conversation at the Syrup café, he told her that, if he were appointed to the California Supreme Court, he would like to bring her as one of his judicial assistants. She agreed to have coffee with him a second time, during which he told her he was "unhappily married" and asked about her private life. When she said her first husband was a "philanderer," he replied that if he were married to her, he "would never leave her bed," and that he liked her. This incident had a big impact on her and made her very uncomfortable and upset. Two weeks later, Justice Johnson approached her at her desk, and she told him that she was never going to coffee or anywhere with him again. Five minutes later, he telephoned her and

asked her to come to his chambers and said he wanted to talk to her. This made her feel "panicked," and she contacted research attorney Kristi Cook, who suggested that they immediately leave the court together, which they did. During the five years following the coffee outings, Justice Johnson made comments like, "You're my favorite," "I love you" and wink at her, "I got your back," and "We're good," and would blow kisses at her. Justice Johnson also told Justice Chaney and Justice Rothschild about Velez's private life, which he learned about from Arash Goleh, a friend of his who had attended high school with Velez. Velez was embarrassed and horrified that the justices were discussing her personal life.

Justice Johnson admitted having coffee with Velez twice, asking her to come to his chambers, and making personal statements about her private life to others. He said he regretted revealing Velez's personal information. Justice Johnson denied making the comment that, if he were married to her, he would never leave her bed. He testified that he was "100 percent confident" that he said, "A good man wouldn't leave his wife at home in bed wondering where he was." He also denied telling her he was unhappy in his marriage.

The masters found that his testimony denying the "I would never leave your bed" remark was "not credible" and reflects his "intentional fabrication of the relevant facts." They noted that, in his written response to the preliminary investigation letter, Justice Johnson denied conveying to Velez "anything about a bed." They said: "This evolution in his description of

the conversation suggests that Justice Johnson is being untruthful and is attempting upon further reflection to posit an innocent (but false) context for his remarks." They further noted that, although in his response to the commission's preliminary investigation letter he denied calling her his favorite and blowing her kisses, he did not attempt to rebut these allegations at the evidentiary hearing.

The masters found Velez to be a credible witness who described the events in a detailed and straightforward manner, without embellishment, and who had no motive to misrepresent the facts. Her testimony about her conversations at the Syrup café were corroborated by Cook, with whom Velez discussed Justice Johnson's actions, including the remark about never leaving her bed. Velez's testimony was further corroborated by Justice Johnson's judicial assistant Carolyn Currie, who testified that Velez told her about going to coffee with Justice Johnson, his comment about never leaving her bed, and Velez's statement to her that Justice Johnson was the "biggest sexual harasser." The masters also found Justice Johnson's statements to be consistent with those he made to other women about being in love with them if they had met when they were younger and being unhappily married.

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

2. Conclusions of Law

The masters concluded that seeking to create a personal or romantic relationship with Velez during working hours, making sexually suggestive remarks at a cafe, making inappropriate and overly personal statements to her for the next five years, and discussing her personal life with others without her permission was part of a pattern that would reasonably be perceived as sexual harassment,[5] constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1). As the masters stated, "Respect for the judicial office is diminished when a judicial officer uses sexually suggestive language and seeks to establish a personal or romantic relationship with a judicial assistant during working hours over her clear discomfort."

Neither party objected to these legal conclusions, and we adopt them.

Count 5B: Attorney Wohn

1. Findings of Fact

Katie Wohn was Justice Johnson's research attorney between 2009 and 2015. Between August 2009 through November or December 2012, Justice Johnson made multiple comments about Wohn's appearance and scent, including telling her that certain clothing "looked great" on her, that she "smelled nice," and that she had "beautiful eyes," which made her feel uncomfortable. He also invited her to lunch for her

[5] See footnote 2.

birthday in 2012. She tried to invite other people to join, but no one was available. It was the first time she went to lunch with Justice Johnson. During the lunch, Justice Johnson told Wohn that if he had been in high school with her, he would have been in love with her. This made her feel very uncomfortable because he was looking straight at her and "it seemed flirtatious." She felt it was a "lead-in to looking for more of a relationship" than a work relationship. She responded with something like, "No, you wouldn't," and they left soon after. Wohn testified that Justice Johnson stopped making compliments and personal comments to her after they had a disagreement about her work schedule.

Wohn also testified that Justice Johnson would often sit in a guest chair in his office that allowed him to stare directly into her office, which made her so uncomfortable that she would bring in large flower arrangements to block his view. She also testified that she saw him intoxicated and with a woman late at night in his chambers, and that she saw beer bottles in his office trash can when she arrived in the morning. She did not report his conduct because she did not believe the court would follow up.

Justice Johnson did not specifically deny saying that he would have been in love with Wohn if he had been in high school with her. He admitted making the statements to Wohn about her appearance and smell, but denied that he did so for an improper purpose or to make Wohn uncomfortable. He argued that they were only "social compliments" that are "part and parcel of casual conversation amongst adults." The masters

rejected this contention and stated that his comments about his supervised employee's appearance were not appropriate conversation at work. Justice Johnson also claimed that Wohn's testimony reflected an embellished memory after she spoke with other Court of Appeal attorneys. The masters also rejected this, stating that, based on Wohn's testimony, they were convinced that, from day one, Wohn was uncomfortable with Justice Johnson's informal and overly personal communications with his staff and became increasingly offended when he began making compliments about her appearance and staring at her.

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

2. Conclusions of law

The masters concluded that Justice Johnson's remarks would reasonably be perceived as sexual harassment[6] and violated canons 1, 2, 2A, 3B(4), and 3C(1), but because they were isolated and the content did not bring disrepute to the judicial office, they constituted improper action, rather than prejudicial misconduct.

Justice Johnson did not object to these legal conclusions. The examiner objected and requested that this charge be combined with four others (counts 5A, 5C, 5D, and 10) and be found to constitute prejudicial misconduct. We agree with the examiner that Justice Johnson's remarks to Wohn should be deemed prejudicial misconduct, rather than improper action.

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[6] See footnote 2.

We agree with the masters that the conduct would reasonably be perceived as sexual harassment and conclude, therefore, that because the perception of sexual harassment is involved, a reasonable observer would find it prejudicial to public esteem for the judicial office. In addition, the fact that Justice Johnson was Wohn's supervisor while he was engaging in the misconduct is relevant to our determination. Accordingly, we find that the allegations involving Wohn constituted prejudicial misconduct. We do not find it necessary to consolidate these charges with others, as the examiner suggests, in order to conclude that Justice Johnson's conduct toward Wohn constitutes prejudicial misconduct.

Count 5C: Judicial assistant Currie

1. Findings of Fact

Between 2009 and 2011, Justice Johnson made comments to his judicial assistant Carolyn Currie about her appearance and scent, such as "You look hot," and "You smell good," that made her uncomfortable. Currie said she did not report Justice Johnson's conduct because she did not know what the process was, she did not know of anyone to go to, and Justice Johnson was her boss and had the power to fire her.

The masters found that Currie's testimony was "highly credible," and that her testimony was supported by evidence showing that Justice Johnson frequently did not conduct himself in accord with professional standards at work, and that he often acted

in an overly personal and inappropriate manner with his staff and other employees.

Justice Johnson admitted making the complimentary comments. He said he did not realize that using the word "hot" to compliment someone's outfit was socially inappropriate, and that his intent was solely to express that something looks "really good" on the person.

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

2. Conclusions of law

The masters concluded that Justice Johnson's remarks would reasonably be perceived as sexual harassment[7] and violated canons 1, 2, 2A, 3B(4), and 3C(1), but because they were isolated and the content did not bring disrepute to the judicial bench, they constituted improper action, rather than prejudicial misconduct.

The examiner objected on the ground that the conduct should constitute prejudicial misconduct. We agree with the examiner that if the conduct would reasonably be perceived as sexual harassment, a reasonable observer would find it prejudicial to public esteem for the judicial office. We also find it relevant that Justice Johnson was Currie's supervisor while he was engaging in the misconduct. Accordingly, we find that the allegations involving Currie constitute prejudicial misconduct. We decline the examiner's

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[7] See footnote 2.

request to consolidate this charge with others because we find that it constitutes prejudicial misconduct on its own.

Count 5D: Justice Grimes

1. Findings of Fact

In about 2010, Justice Johnson told Justice Elizabeth Grimes, who was wearing workout shorts and a top at lunchtime, something like, "You have the cutest little ass in the Second Appellate District." He repeated his remark to Justice Chaney, who was present and asked him what he had said. Justice Chaney's testimony on this subject was supported by evidence showing that Justice Johnson would regularly notice and remark on the physical attributes of women, including those with whom he worked (see, e.g., testimony of Officer Barnachia, Officer Sauquillo, Wohn, Currie, and Butterick).

Justice Grimes testified that she did not recall the remark. She acknowledged, however, that she would regularly work out with a personal trainer during the relevant time period. Justice Lui testified that, after Justice Chaney told him about the "best ass" remark, he asked Justice Trisha Bigelow whether she was aware of any inappropriate actions or statements by Justice Johnson, and she volunteered that Justice Grimes had told her about the "best ass" statement.

Justice Johnson denied making the remark and said it was "another lie" by Justice Chaney.

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

2. Conclusions of law

The masters found that Justice Johnson made the "cutest ass" (or similar) statement in a public space that could have been overheard by others (and was overheard by Justice Chaney) during work hours in front of the courthouse building, which, even if in jest, was inappropriate and undignified, in violation of canons 1, 2, 2A, and 3B(4). They concluded that because it was a single remark and not in a courtroom setting, an objective observer would not conclude that it diminished public esteem for the judicial office, therefore, it was improper action and not prejudicial misconduct. They also did not find that it created the appearance of sexual harassment.

The examiner requested that this charge be grouped with others as prejudicial misconduct. We decline to do so because we do not believe a reasonable observer would necessarily find that the comment, made by one judge to a peer, would tarnish public esteem for the judiciary. We adopt the masters' legal conclusions.

COUNT SIX—Demeanor toward people at the appellate court

Justice Johnson was charged with displaying poor demeanor toward four court employees: Justice Chaney (count 6A), judicial assistant Carolyn Currie (count 6B), his research attorney Ellen Lin (count 6C), and Justice Chaney's research attorney Daniel Alexander (count 6D). All of these charges were found proven.

Count 6A: Justice Chaney

1. Findings of Fact

Shortly after an oral argument session in October or November 2009, Justice Johnson approached Justice Chaney in the courthouse hallway, got very close to her, pointed and shook his finger in her face, and said, "Don't you ever interrupt me again." The encounter left her shocked and frightened. Justice Chaney's yoga teacher Gunner testified that she told him about this incident, which left her shaken.

Justice Johnson denied that the incident occurred and suggested that Justice Chaney is overly sensitive.

The examiner did not object to the masters' factual findings. Justice Johnson objected on the general grounds that Justice Chaney was not credible, as discussed in Count One above. We do not find Justice Johnson's objections persuasive or consistent with the evidence, and we adopt the masters' factual findings.

2. Conclusions of Law

The masters concluded that Justice Johnson displayed anger toward Justice Chaney without justification and that this was prejudicial misconduct and violated canons 1, 2, 2A, and 3B(4).

The examiner did not object to the masters' legal conclusions. Justice Johnson objected on the general grounds regarding Justice Chaney, as discussed in Count One above. We do not find Justice Johnson's objections persuasive or consistent with the evidence, and we adopt the masters' legal conclusions.

Count 6B: Judicial assistant Currie

1. Findings of Fact

On multiple occasions between 2009 and 2018, when Justice Johnson's judicial assistant Currie questioned his instructions, he raised his voice (but did not yell), called her "defiant," and told her he was the boss and she needed to do what he said. Currie testified that she would generally respond by going to the bathroom and crying. The masters found that his conduct was not justified because, although a supervisor can become frustrated and angry when a supervised employee challenges his or her decisions, a judge is required to be patient, dignified, and courteous with all persons with whom the judge deals, including court personnel.

Justice Johnson admitted becoming upset with Currie six or seven times and talking to her in a stern tone, but he denied yelling at her.

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

2. Conclusions of Law

The masters concluded that the conduct toward Currie was improper action because Justice Johnson's discourteous treatment of her happened only a "handful" of times in eight years, the conduct reflected frustrations that are not uncommon when supervisors and staff disagree, and the remarks were not flagrant. They concluded that the conduct violated canons 1, 2, 2A, and 3B(4).

Neither party objected to these legal conclusions, and we adopt them.

Count 6C: Attorney Lin

1. Findings of Fact

Between October 1, 2015 and September 9, 2016, Justice Johnson told his research attorney Ellen Lin that her work on draft opinions was "horrible" and "ignorant," yelled at her on numerous occasions, and stomped his feet while yelling at her on at least one occasion. The masters found Lin to be highly believable, and her testimony was corroborated by Currie, who testified that she twice heard Justice Johnson "aggressively yelling" at Lin when he was in Lin's office with the door closed, and by judicial assistant Tracey Bumgarner, who testified that she once heard Justice Johnson yelling at Lin. The masters stated that the fact that Justice Johnson was not satisfied with Lin's work did not provide justification to yell and stomp his feet at a supervised employee.

Justice Johnson did not specifically deny yelling at Lin. He acknowledged that he was highly frustrated with the quality of Lin's work.

The examiner did not object to the masters' factual findings. Justice Johnson objected that the findings regarding yelling are unsubstantiated. Because the masters found that Currie and Bumgarner corroborated the yelling allegation, we adopt the masters factual findings, including as to yelling.

2. Conclusions of Law

The masters concluded that Justice Johnson used derogatory and humiliating words to criticize Lin's work, which was prejudicial misconduct and violated canons 1, 2, 2A, and 3B(4).

Neither party objected to the masters' legal conclusions, and we adopt them.

Count 6D: Attorney Alexander

1. Findings of Fact

In approximately December 2017 or January 2018, when Justice Johnson was discussing a case with Justice Chaney and Justice Rothschild, and research attorney Alexander, he disagreed with Alexander about how the case should be decided and became angry and yelled at Alexander over their difference of opinion. Alexander testified that it was like an "explosion," and that Justice Johnson called him and Justice Chaney "stupid," which felt humiliating. The masters found his testimony credible.

Justice Chaney corroborated Alexander's testimony, stating that Justice Johnson disagreed with Alexander "strongly, rudely, aggressively" and called them "stupid." She said it was frightening and upsetting. Justice Rothschild also corroborated Alexander's testimony, testifying that Justice Johnson became angry and aggressive with Alexander, and she believed his anger to be inappropriate to the situation.

The masters found that Justice Johnson attacked Alexander personally by yelling at him in a demeaning fashion, which was offensive and discourteous.

Justice Johnson denied acting inappropriately or calling Alexander "stupid." He described Alexander's claim that he called Alexander "stupid" an "abject lie." Johnson's defense was supported by the testimony of Roger Smith, his former research attorney, who described Johnson's communication style as forceful and direct, but without animosity or ill will. He said he never saw Justice Johnson show anger. Smith said that when Justice Johnson engaged in a vigorous discussion about the law, his voice would go up in volume and acquire an edge, which he did not regard as yelling, although others might. Rebekah Young, another former research attorney, also testified that she never saw Justice Johnson act inappropriately in terms of tone or demeanor, and she always observed him to be respectful of staff attorneys from other chambers.

The examiner did not object to the masters' factual findings. Justice Johnson objected that the findings regarding yelling are unsubstantiated, as corroborated by Justice Rothschild. But Justice Rothschild corroborated that Justice Johnson displayed inappropriate anger toward Alexander. Because the masters found that Justice Rothschild and Justice Chaney corroborated the yelling allegation, we adopt the masters' factual findings, including as to yelling.

2. Conclusions of Law

The masters concluded that Justice Johnson's disrespectful conduct toward Alexander was not

patient, dignified, or courteous, which was prejudicial misconduct, and violated canons 1, 2, 2A, and 3B(4).

Neither party objected to these legal conclusions, and we adopt them.

COUNT SEVEN—Conduct toward other women attorneys

Justice Johnson was charged with engaging in a pattern of conduct toward other women attorneys that demeaned the judicial office and lent the prestige of judicial office to advance his personal interests. The alleged conduct involved the following female attorneys, who did not work at the Court of Appeal: Melanie Palmer (count 7A), Allison Schulman (count 7B), Wendy Segall (count 7C), Price Kent (count 7D), Roberta Burnette (count 7E), and Taylor Wagniere (count 7F). The masters found that the allegations were proven as to all of these women except Segall.

A. Proven charges found to constitute misconduct

With respect to Palmer, Justice Johnson was attempting to engage in a personal relationship by seeking to impress her with his status and power, and the trappings of his judicial office, by inviting her to the courthouse and making inappropriate comments to her (count 7A). With respect to Schulman, Justice Johnson became intoxicated, repeatedly touched her body in inappropriate ways, grabbed her waist and wrist, kissed her, and made inappropriate statements to her at one professional event, and became intoxicated and made inappropriate statements to her at another event (count 7B). With respect to Kent, Justice Johnson became highly intoxicated at a dinner, discussed

inappropriate personal subjects, suggested he could assist her career, and ran his hand up her thigh under the table (count 7D).

Count 7A: Attorney Palmer

1. Findings of Fact

Attorney Melanie Palmer met Justice Johnson at a mentorship event for new attorneys in 2013. He encouraged the new attorneys there to reach out to him for mentorship. Palmer did so. They agreed to meet for dinner. During the dinner, Palmer told Justice Johnson that she was interested in working at the district attorney's office. They had dinner and drinks, during which he told her that she looked "pretty and young," and that she would have to "prove herself." After dinner and drinks, Justice Johnson took her back to his chambers at the courthouse, where he commented on her legs and told her she was fit and beautiful, and suggested that his wife used to be attractive, but no longer cared about fitness. This made Palmer uncomfortable. He also told her that he knew Los Angeles County District Attorney (DA) Jackie Lacey and walked his dogs with her, implying that he could help Palmer get a job at the DA's office. He also sent sexually suggestive texts to Palmer over the course of the next few months. This made her feel uncomfortable and "gross." In 2016, she told her friend, attorney Allison Schulman, about Justice Johnson inviting her to his chambers and that it made her feel uncomfortable. Palmer also told Helen Zukin, then a partner at her law firm and now a judge, that she had had a bad experience with Justice Johnson when she was a new lawyer, and that he had taken her back to

his chambers after dinner, where he complimented her body and made negative comments about his wife's body, and then sent her texts that were very suggestive and inappropriate.

The masters said, "Viewing the totality of the circumstances, Justice Johnson was attempting to create a personal or romantic relationship with Palmer by bringing her to his chambers, impressing her with his power and status, suggesting that he could assist her with employment opportunities, and then sending her sexually suggestive texts for about four months."

Justice Johnson admitted bringing Palmer back to the courthouse at night and talking to her, but he denied mentioning anything about his wife or sending her suggestive texts. Justice Johnson said he took Palmer to the courthouse because she was asking questions about it, he believes it is one of the most beautiful courtrooms in the state, and he wanted to show her photographs of himself with his family and famous people. He denied that taking a young woman back to his chambers alone after dinner and drinks created any appearance of impropriety. He specifically denied that he told her that he knows DA Lacey and walks his dogs with her, and that he said or implied he could help her get a job with the DA's office. He testified that he told Palmer that he knows DA Lacey and walks his dogs past her house a lot of mornings. He acknowledged that he was willing to help advance Palmer's career, but said he was not trying to create the impression that he could help her get into the DA's office.

The masters found Justice Johnson's denials "not credible." They found Palmer credible because the conduct about which she testified was consistent with that of other witnesses who had no connection to her, there was no evidence she had any motive to fabricate or exaggerate her testimony, she told a friend about her visit to Justice Johnson's chambers and that it made her uncomfortable well before the court's workplace investigation began, she fit the pattern of the type of women with whom Justice Johnson tried to cultivate a personal or romantic relationship, a superior court judge vouched for her credibility, and she was worried about what the reporting would do to her career. Further, the number and timing of the texts from Justice Johnson do not support his testimony that they were work-related and instead support Palmer's testimony that they were inappropriate. The masters also found that one allegation about a text stating that he felt "insecure" and that she needed to "give [him] something" was not proven because no evidence was produced to support this allegation.

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

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Palmer violated his obligations to uphold the integrity of the judiciary, demeaned the judicial office, impaired the dignity and prestige of the institution of the Court of Appeal, and lent the prestige of the judicial office to advance his personal goals. They stated that a "judicial officer must act in an honorable fashion and must participate in maintaining standards

of conduct so that the integrity of the judiciary is preserved." They further concluded that Justice Johnson's actions toward Palmer constituted prejudicial misconduct and violated canons 1, 2, 2A, 2B(2) (judge shall not lend the prestige of judicial office to advance the judge's personal interests), and 4A(2).

The examiner did not object to the masters' legal conclusions. Justice Johnson objected by stating his belief that a conclusion of improper action should be applied to all of the findings in Count Seven, rather than prejudicial misconduct, because an objective observer would not conclude that his conduct would undermine public esteem for the judiciary or bring the judicial office into disrepute. Justice Johnson asserted that the findings in Count Seven "relate to social conversations unrelated to judicial conduct, and when examined separately reflect settings in which judicial officers routinely engage in casual private discussions."

We agree with the masters that Justice Johnson's attempts to cultivate a personal relationship with Palmer, and taking advantage of his position as a respected justice to do so, including by taking her to the courthouse alone at night, making inappropriate comments about her body and his wife, and sending her suggestive texts, bring the judicial office into disrepute and constitute prejudicial misconduct. We adopt the masters' legal conclusions.

Count 7B: Attorney Schulman

1. Findings of Fact

In June 2015, at a reception hosted by the Consumer Attorneys Association of Los Angeles (CAALA) for graduates of its trial academy for newer attorneys, Justice Johnson was introduced to young attorney Allison Schulman, who was excited to meet an appellate justice. He suggested that attorneys take photographs with him and then text him the photographs so he would remember their names. Schulman agreed, took a photograph with Justice Johnson, and texted it to him. Later at the reception, he began acting in a "touchy-feely" manner toward Schulman. He put his hand on her arm, and grabbed her stomach and waist area to turn her body around so that he could talk to her. She testified that he did this more than five times, which made her uncomfortable. Schulman testified that she was uncomfortable with Justice Johnson's conduct and said, "I don't think it's really appropriate for a man I don't know that I just met to be touching my stomach, and he's in a power [position] and should be more professional than that." As Schulman was leaving the reception with Jake Finkel, a young male attorney who also had attended the trial course, Justice Johnson grabbed her wrist and pulled her toward him, and made comments about her leaving the party with Finkel, including telling her that Finkel was going to "rape" her. He also told her that his friends who were sheriffs or police chiefs would come looking for her if she did not text him the next morning to let him know she was okay. She told Justice Johnson that they were just going to their cars. She felt shocked

by his behavior. As she started to exit, Justice Johnson pulled her forward and kissed her cheeks three times. She described the kisses as "really wet" and "gross." Schulman believed Justice Johnson was intoxicated based on the way he was speaking and his unprofessional behavior. She testified that she had only one drink that night. She did not ask him to stop his behavior because she "didn't want to have any problems with him, because he was a judge," and she "just wanted to get out of this situation."

The masters found that Schulman's testimony was "highly believable" regarding this event. They said she testified in a careful manner, provided specific details, and made no attempt to overstate the events. They also found that Justice Johnson was intoxicated at this event.

Schulman's testimony was corroborated by Finkel, who said that, as they were leaving, Schulman looked "surprised and shocked" and was "upset" and told him that Justice Johnson had grabbed her arm, kissed her on the cheek, and told her not to leave with Finkel because Finkel was going to rape her.

Schulman's testimony was also corroborated by the testimony of attorney Ariadne Giannis, who attended the reception and witnessed Justice Johnson touching Schulman inappropriately, putting his arm around Schulman's waist or shoulder, and "being generally touchy and feely." Giannis could tell from Schulman's face that she was "incredibly offput and uncomfortable" by Justice Johnson's actions. When Schulman later told Giannis that she was very upset, Giannis indicated

that she had seen what had happened and understood why Schulman would be upset.

Schulman's testimony was further corroborated by Facebook Messenger communications that she exchanged with attorney Michelle Iarusso that evening, in which she said that Justice Johnson was "groping all of the women" and told her that the guy she was talking to was going to rape her. When Schulman sent Iarusso a photograph of Justice Johnson, which she said was taken when he was "soberish," Iarusso responded, "Jeff," and "He likes a good drink." Iarusso was, coincidentally, friends with Justice Johnson.

Three months later, in September 2015, Schulman and Justice Johnson both attended a CAALA event in Las Vegas. Justice Johnson was a speaker and attended the event in his capacity as an appellate justice. He spent some of his free time with his close friend, Goleh. Goleh invited Schulman to an invitation-only dinner, and said they should meet at a cocktail party beforehand. When Schulman arrived at the cocktail party with Iarusso, Goleh was there and was soon joined by Justice Johnson and his friend Ray Patel. Goleh told Schulman that she would be going to the dinner alone with Justice Johnson because there were only two tickets. This made her feel very uncomfortable. She suggested that they all go to a party that they could all attend instead, which they did. At one point, Schulman was sitting on a couch with Justice Johnson, Patel, and Iarusso. When Iarusso left to get a drink, Justice Johnson asked Schulman to sit right next to him on the couch. When she declined, he asked her about her law firm. She told him she handled

employment law cases. He responded that he had the perfect employment case, with "100 percent perfect liability" and "high damages," to refer to her, and said, "But I can only give it to you if you come sit right next to me." Schulman did not want to do this and got up. When she started to walk away, he yelled at her. Schulman testified that she was "fairly sober" when this occurred.

The masters found that Schulman's testimony was "highly believable" as to the CAALA event and "highly credible" as to the Las Vegas event. They also found that there was "strong, highly credible" evidence that Justice Johnson was intoxicated at the CAALA event.

Schulman's testimony about the Las Vegas event was corroborated by texts between Schulman and Iarusso that were sent before there were any reports of Justice Johnson's alleged sexual harassment of others.

Justice Johnson claimed that Schulman was not credible because she was drinking alcohol at both events and was prone to overdramatizing incidents. He denied grabbing Schulman's stomach and wrists and said he put his arm around her waist only once when the photograph was taken, and he may have shaken her hand with two hands and kissed her "European style." Justice Johnson said he spent the entire evening in Las Vegas with Goleh and Patel, and his only exchange with Schulman and Iarusso was to briefly say hello. He denied sitting on a couch with Schulman and said it made no sense to refer a case to her because she was a brand-new lawyer.

Justice Johnson called his friend Goleh as a witness in his defense. Goleh testified that he was with Justice Johnson most of the evening of the CAALA reception and did not see Justice Johnson acting inappropriately, and that Justice Johnson routinely hugs and kisses people. Goleh said he saw Justice Johnson greet Schulman by shaking her hand and kissing her in a "European" or "Persian" style. He testified that Schulman is often "emotional" when she drinks, and he once saw her standing alone and crying at an unrelated event. Goleh further testified that he was with Justice Johnson the entire evening of the party in Las Vegas, except when he had to use the restroom, and he did not recall seeing Schulman.

The masters rejected Goleh's assertions that Justice Johnson always acted appropriately toward Schulman at the CAALA event because of Goleh's close relationship with Justice Johnson and the inconsistency of his testimony with established facts, including the testimony of Justice Johnson and Iarusso. They did not find it believable that Goleh would have been standing next to Justice Johnson most of the night of the CAALA reception and, therefore, did not accept his assertions that Justice Johnson always acted appropriately toward Schulman. And both Justice Johnson and Iarusso recalled seeing or being with Goleh and Schulman in Las Vegas, which undermines Goleh's testimony that he did not recall seeing Schulman there.

Justice Johnson also called Iarusso as a witness in his defense. The masters found that Iarusso's testimony was "unreliable and biased." Iarusso testified

that she and Schulman "drank with abandon" in Las Vegas and that Schulman was "very intoxicated" when they met up with Justice Johnson and Goleh that evening. Iarusso testified that Schulman never complained about Justice Johnson's conduct at either event, but the masters found that Iarusso's testimony was "severely impeached" on cross-examination when she acknowledged her communications with Schulman the evening of the CAALA event. She admitted Schulman had texted her that Justice Johnson got "wasted," "was groping all of the women," and suggested Finkel was going to rape her, to which Iarusso responded that "Jeff" "likes a good drink." Iarusso had a text message exchange with Schulman about nine months after the Las Vegas event, in which Schulman complained about Justice Johnson's conduct and referenced Justice Johnson's "groping all of us" and "telling me that my friend was going to rape me" and that he was going to call his sheriff friends if she did not text him the next morning to tell him she was okay. Schulman also texted that, in Las Vegas, Justice Johnson "was telling me he had a great employment law case for me which he was completely making up, but that I could only have it if I came and sat right next to him."

The masters found Justice Johnson's defenses concerning the first event to be unsupported, and that his denials were overcome by strong, highly credible evidence. Concerning the Las Vegas event, they found that he was attempting to create a personal relationship with Schulman that evening, and that he was seeking to pressure Schulman to sit next to him on the couch by stating that he could refer a case to her.

His anger when she refused is consistent with other evidence of his demeanor.

Schulman testified that she did not report the events involving Justice Johnson because she was concerned about retaliation and the consequences of reporting a judicial officer. She first reported the incidents to the commission in July 2018, after her acquaintance Melanie Palmer told her about the Daily Journal article discussing sexual harassment allegations against Justice Johnson.

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

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Schulman violated his obligations to uphold the integrity of the judiciary, demeaned the judicial office, impaired the dignity and prestige of the institution of the Court of Appeal, and lent the prestige of the judicial office to advance his personal goals. They further concluded that it constituted prejudicial misconduct and violated canons 1, 2, 2A, 2B(2) and 4A(2).

The examiner did not object to the masters' legal conclusions. Justice Johnson objected by stating his belief that a conclusion of improper action should be applied to all of the findings in Count Seven, which he asserted "related to social conversations unrelated to judicial conduct," and, when examined separately, "reflect settings in which judicial officers routinely engage in casual private discussions."

We agree with the masters that Justice Johnson's conduct toward Schulman, including grabbing her waist and wrist, kissing her, saying the person she was with was going to rape her, and trying to get her to sit next to him by taking advantage of his position and saying he would refer a case to her, bring the judicial office into disrepute. We adopt the masters' legal conclusions.

Count 7D: Attorney Kent

1. Findings of Fact

Attorney Price Kent worked as a young associate at the law firm of Marcin Lambirth from 2007 to 2012. At that time, the firm was managed by partners John Marcin and Timothy Lambirth. The firm is now closed. In about June 2009, the Marcin Lambirth partners invited Kent to attend Justice Johnson's Court of Appeal nomination party. Marcin was close friends with Justice Johnson. When Kent met Justice Johnson, he told her that he would like to invite her to his chambers to talk, so he could learn more about her and perhaps help her with her career. Two months later, the firm partners invited Kent to Justice Johnson's swearing-in ceremony and told her that Justice Johnson had been impressed with her and asked them to bring her to the ceremony.

In late 2009 or early 2010, the firm hosted a bowling event for its attorneys, followed by a dinner at Maggiano's restaurant. Justice Johnson attended both the bowling event and the dinner. At the bowling alley, Justice Johnson discussed inappropriate personal subjects with young attorneys. He drank a lot of alcohol

and discussed with Kent his views that "humans were not meant to be a monogamous race" and identified various "powerful people" who agreed with him. Kent tried to change the subject and did not think it was professional or appropriate to be discussing "people's sexual exploits or whether it was okay to cheat." Kent felt Justice Johnson was acting "flirtatious," "overly friendly," and "entitled" toward her. At the dinner, Justice Johnson asked to sit next to Kent. He sat to her left, and the partners sat to her right. During the dinner, Justice Johnson again invited her to his chambers and said he could help her with her career and networking, and introduce her to people he knew "in the business." He then reached under the table, put his hand just over her knee, and slid his hand up to the middle of her thigh. Kent was shocked and tried to remove his hand, and said something to the effect of, "Are you kidding me?" Justice Johnson did not immediately remove his hand and said something like, "What?" Kent immediately left the table because she was upset and in shock. She told her paralegal what had happened. When she returned to the table to get her things, Justice Johnson kept insisting that he walk her to her car. She repeatedly said, "No."

The next morning, Kent emailed the law firm partners telling them what had happened and that she was very upset about the incident. (The email was not produced, presumably because the firm dissolved years ago, and such records were not kept.) Kent expressed concern that Justice Johnson had an alcohol problem. The partners told her they would handle it and speak to Justice Johnson. They later told her they had done

that and that Justice Johnson apologized and said he had had too much to drink.

Kent's testimony was corroborated by Regina Ashkinadze Spurley, a former Marcin Lambirth attorney who attended the bowling event and the dinner. Spurley recalled Justice Johnson leaning in toward Kent and paying attention only to Kent at the dinner, and that Kent was very upset later that night and Justice Johnson had said or done something during the dinner that made Kent highly upset and leave the event. Spurley remembered thinking that Justice Johnson was under the influence of alcohol that evening.

Justice Johnson recalled seeing Kent at a bowling alley event, but in 2012. He denied being intoxicated at the event that took place in 2009 or 2010. He did not recall sitting next to Kent at Maggiano's or speaking to her while he was there. He said the allegations about putting his hand on Kent's thigh was "pure fabrication." The masters found Kent's recall of the events to be "highly credible" and that there was no evidence she had any motive to misrepresent the truth. To the contrary, she was a reluctant witness. The masters declined to credit Justice Johnson's assertions that he did not engage in the wrongful conduct.

Justice Johnson called as a defense witness Timothy Lambirth, a partner at the firm where Kent was employed. Lambirth testified that he did not believe Justice Johnson was intoxicated at the bowling event. He did not testify about Justice Johnson's level of intoxication at the subsequent dinner. Lambirth also testified that the next day Kent, who was "a little bit

agitated," told him that Justice Johnson had "hit on her" and walked her to her car, where he wanted, or tried, to kiss her. Lambirth did not recall Kent saying anything about Justice Johnson touching her thigh, but he acknowledged that he had suffered from a neurological condition that could cause some cognitive issues. The masters found Lambirth's testimony that Kent complained to him the next day about Justice Johnson's behavior to be corroborating.

Justice Johnson objected to the masters' factual findings on the grounds that there is no clear and convincing evidence of this charge based on Lambirth's testimony, Kent's conversation with "scorned" attorney Lisa Miller, and the influence of (unspecified) outside events. Justice Johnson asserted that Miller had propositioned him, and when he told the partners at the Lambirth firm, where she was employed, she lost her job.

Justice Johnson argued that Lambirth's memory was distinct as to certain details (Justice Johnson's level of intoxication and what Kent reported to Lambirth the next day), and that those details are in conflict with Kent's testimony. He also asserted that Lambirth's memory difficulties only kept him from managing full cases by himself.

Justice Johnson claimed that Lambirth, who attended the dinner, testified "unequivocally" that Justice Johnson was "sober for the entirety of the event." Lambirth did not testify that Justice Johnson was "sober" at the dinner, he testified that Justice Johnson "did not appear intoxicated" and, in his opinion, "had not been drinking much," at the bowling

alley. This preceded the subsequent dinner at a restaurant, where the thigh touching of Kent occurred. Moreover, Kent and Spurley each testified that Justice Johnson appeared to be intoxicated at the dinner.

Justice Johnson pointed to Lambirth's testimony that Kent told him Justice Johnson had tried to kiss her on her way to her car, but did not say that he touched her thigh. The masters apparently concluded, however, that Lambirth's memory was less reliable than Kent's about the actual conduct because Lambirth had neurological problems during the relevant time. And the touching was likely to make more of a memorable impact on Kent than on Lambirth, and she had no motive to misrepresent the truth.

Justice Johnson also argued that Kent's 2018 contact with Miller cast doubt on her credibility and motivation. The masters found no showing of any relationship between them, other than a professional relationship because they had both worked at the Lambirth firm. They also found no evidence that Kent had any reason to lie on the witness stand merely to gain favor with Miller.

We concur with the masters' factual findings and adopt them.

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Kent demeaned the judicial office and lent the prestige of the judicial office to advance his personal interests. They further concluded that it constituted prejudicial misconduct and violated canons 1, 2, 2A, 2B(2), and 4A(2).

The examiner did not object to the masters' legal conclusions. Justice Johnson objected by stating his belief that a conclusion of improper action should be applied to all of the findings in Count Seven, which he asserted "related to social conversations unrelated to judicial conduct," and, when examined separately, "reflect settings in which judicial officers routinely engage in casual private discussions."

We agree with the masters that Justice Johnson's actions toward Kent, including making inappropriate comments and running his hand up her thigh, bring the judicial office into disrepute. We adopt the masters' legal conclusions.

Count 7E: Attorney Burnette

1. Findings of Fact

In October 2015, attorney Roberta Burnette attended an Association of Business Trial Lawyers (ABTL) dinner at the Jonathan Club in Los Angeles as a networking event because she hoped to be appointed to the ABTL board by her firm. She attended with her then-boyfriend, now-husband Greg Elliot. Justice Johnson also attended the event. When she was alone at a table with Justice Johnson, he said to her, "You know, you're very voluptuous." Trying to brush it off, she said, "Thank you," and then "Hey, have you heard of the Los Angeles Lawyers Philharmonic Orchestra?" He nodded yes, and she said, "I'm in the orchestra. I play the viola. I'm the principal violist." He kept nodding, and she said, "My stand partner is Judge Bendix [then a superior court judge, now a justice on Justice Johnson's court]. Do you know Judge Bendix?"

Justice Johnson continued to nod and said, "Yes." He then said, "So you play the viola?" When Burnette said, "Yes," he said, "You need to put your viola mouth on my big black dick." She was shocked and tried to treat it like he had been joking and said, "Oh, no. You don't play the viola with your mouth. It's a string instrument. It's like a big violin." She pantomimed how to play a viola. He responded, "Oh, so you stroke it?" She started saying, "Oh, no, no," and he blurted out, "You need to stroke my big black dick with your viola hand." She stood up, approached Elliot, and said to him, "Get me out of here right now." They left immediately. As they were leaving, she told Elliot what Justice Johnson had said to her.

Elliot corroborated substantially all of Burnette's testimony. He testified that after Burnette told him that she wanted him to get her out of there, as they were taking the elevator, she told him that Justice Johnson had made "very crude and disgusting" remarks to her. He could not recall the precise words used.

After Burnette reported Justice Johnson's actions to her law firm, they did not appoint her to the ABTL board. Burnette did not report Justice Johnson's conduct to any authority because it was embarrassing, she thought it was a "one-off situation" involving a man who had "just made a really vulgar pass," and she was concerned about retaliation against her or her law firm.

Justice Johnson strenuously denied ever meeting Burnette and said her claims were false and "malicious," and based on a stereotype of a Black man. He testified: "She says that I told her she was

voluptuous. So that stereotype, Black male sexualization. She says that I didn't know what the viola was. I'm a Duke, Yale, Oxford educated man whose wife plays cello, who grew up in a household full of music. And she assumed I didn't know what the viola was. So stereotype, ignorant Black man. Then she goes to my next thought being put your viola mouth on my genitals. I described my genitals. No educated Black man who wants to fit into the world and who has been as lucky, successful, and fortunate as I have been wants to be known by his genitals. I'm not going to say to somebody, the first time I meet them, something about my genitals or the color of my genitals or the size. This is not something I've ever said."

Justice Johnson provided a declaration from attorney Eric Swanholdt, which stated that Swanholdt was with Justice Johnson the entire evening, and he did not observe Justice Johnson acting in an improper manner.[8] Swanholdt also stated that he has never seen Justice Johnson show "aggressive sexual or improper intent" or use the type of vulgar language identified by Burnette.

In his post-masters' report briefing, Justice Johnson objected to the masters' factual findings and argued that the clear and convincing standard was not met, based on the following arguments.

First, he claimed that the masters' "reliance on what appear to be political considerations arising from

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[8] The parties stipulated to the admissibility of the declaration due to Swanholdt's unavailability to testify in person.

the 'Me Too' movement prompted clear distortions and a reliance on a double standard."

Justice Johnson offered no evidence to support the notion that the masters credited Burnette's testimony due to political considerations, and there is none.

Second, Justice Johnson claimed that there is not a "single witness to corroborate [Burnette's] version of the events." He argued that the masters' conclusion that Burnette's testimony was corroborated by Elliot and two other witnesses is "demonstrably false." He asserts that Elliot's inability to recall the exact words allegedly used means that Elliot "did not corroborate anything."

To the contrary, Elliot testified that Burnette told him that Justice Johnson had made "very crude and disgusting" remarks to her that made her "creeped out" and "quite upset" and caused her to want to leave the event immediately. Elliot did not testify that he could not recall any of the words she spoke, as Justice Johnson asserts. He testified that Burnette told him the language used, but that he did not recall the "exact words." The masters found it surprising that Elliot did not remember the precise words used, but that this did not negate his credibility because it "is reasonable to conclude that an individual would not necessarily commit to memory the vulgar language used against his girlfriend." They also found Elliot credible because he could easily have pretended to remember the exact words since he and Burnette continued to discuss the event after she reported the facts to the commission.

The masters also found that Swanholdt's declaration corroborated Burnette's testimony, contrary to Justice Johnson's assertion that it supports his claim that he never met Burnette. Swanholdt's declaration states that he "believes" he and Justice Johnson were together the entire evening, he does not recall them being apart, and he did not see Justice Johnson sitting next to anyone alone at a table at any time. The masters gave little weight to this because "it is not realistic to assume that two friends would be physically together for an entire night at a professional event at which socializing and networking is expected." Further, Swanholdt declared that he and Justice Johnson joined a table with two other people near a bar, which is consistent with Burnette's testimony that she walked up to a group of four or five people seated at a table near a bar.

Justice Johnson also contended that the testimony of Los Angeles County Superior Court Judge Kevin Brazile only corroborates that he had been drinking, and not that he "was 'highly intoxicated' to the point where he would black out," a conclusion he asserts is unsupported by any evidence.

The masters never stated that Justice Johnson was intoxicated "to the point of blacking out." What they said is: "Heavy intoxication can affect the ability to recall events. It is undisputed that Justice Johnson was drinking heavily that evening." Judge Brazile, who is Justice Johnson's friend, testified that Justice Johnson "had been drinking a bit much" and was headed to the bar to continue drinking, and that he expressed concern about how Justice Johnson was going to get

home because he felt the justice was not in a condition to drive. Justice Johnson testified that he did not think he was able to drive.

Justice Johnson also argued that Burnette testified that she told her adult children and friends what occurred, but that there is no corroboration because these witnesses were not called.

Burnette and her husband Elliot testified convincingly about what occurred. The masters found Burnette and Elliot to be credible and deemed their testimony sufficient to prove the allegations. We concur that their testimony is sufficient.

Third, Justice Johnson claimed that Burnette's story is "unbelievable on its face." The masters found Burnette to be a "highly believable witness" and with "nothing to gain from the reporting" of Justice Johnson's conduct. They stated that there was "no evidence whatsoever supporting that she would concoct an elaborate story of Justice Johnson making vile comments to her in response to her mentioning that she plays in an orchestra." They also found no motive why she would fabricate a story to accuse an appellate justice she did not know of such offensive conduct.

Fourth, Justice Johnson argued that Burnette's "actions did not match her words" because she did not walk away after he allegedly called her "voluptuous." The masters found believable her explanation that she tried to divert his attention and allow him to save face. And she did walk away after his remarks became more offensive.

Fifth, Justice Johnson claims that the comments play into the worst racial stereotypes, that no self-respecting African-American man would ever use them, and that no witness has suggested that he has. He asserts that the vulgar language Burnette attributed to him "is the type of language that a Caucasian person might believe a [B]lack man would use based on stereotypes about how [B]lack men talk."

The masters found no evidence to support Justice Johnson's claim that Burnette's testimony is the result of stereotyping of Black males. The evidence also shows that Justice Johnson has invoked racial stereotypes himself (e.g., his comment to Blatchford about "going back," and his remarks to Justice Chaney about the size of an African-American man's genitals, both of which are based on a stereotype).

Justice Johnson also argued that "no witness came forward to suggest that these highly offensive, racially tinged remarks are any part of Justice Johnson's vocabulary or character," and that the masters improperly considered his alleged propensity to use sexually inappropriate language when drinking. The masters found Justice Johnson's claim that he never uses sexually inappropriate language to be "not credible." The evidence shows that Justice Johnson can be crude. He admitted giving his externs T-shirts stating "BAMF," which he testified stands for "badass motherfucker." They also found that he asked attorney Nina Park, "I've always been wondering, but do you shave your pussy?" (Park was a rebuttal witness whose testimony the masters considered solely for its relevance to certain issues, such as this one.) And

Martinez testified that, at a dinner attended by law clerks, Justice Johnson said, "If you want a daughter, you need to do it doggy style." He admitted making this comment. They further found that he told Justice Chaney that "people are afraid of the size of a Black man's ... cock or dick."[9]

Sixth, he contended that Burnette could be helping her friend Lisa Miller by "embellishing" the story. Burnette described Miller as a "professional acquaintance" with whom she speaks only once every one or two years. Embellishment implies that Justice Johnson did meet Burnette that evening, but that Burnette exaggerated what occurred, whereas he denies ever meeting Burnette at all. The masters found "no evidence that Burnette had any reason to lie on the witness stand merely to gain favor with Miller or because Miller was angry with Justice Johnson."

Seventh, Justice Johnson argued that Burnette has her own ax to grind with him because she suggested that her then-law firm retaliated against her for complaining about him by denying her the position she wanted on the ABTL board. This makes no sense if, as Justice Johnson claims, he never met Burnette, there would be no reason for her to invent a complaint about an appellate justice before the firm decided not to put her on the board.

In our view, not only would Burnette have no reason to make up this story, but when her testimony is viewed in light of the corroborating testimony and the

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[9] The masters concluded that this last statement was not misconduct under the circumstances in which it was said.

many claims of Justice Johnson's sexual impropriety toward women, including putting his hand on Kent's thigh at a different dinner, also while he was intoxicated, the evidence is clear and convincing that the alleged misconduct involving Burnette occurred. We do not find any of the justice's arguments or objections persuasive, and we adopt the masters' factual findings.

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Burnette demeaned the judicial office and the integrity of the judiciary. They further concluded that it constituted prejudicial misconduct and violated canons 1, 2, 2A, and 4A(2).

The examiner did not object to the masters' legal conclusions. Justice Johnson objected by stating his belief that a conclusion of improper action should be applied to all of the findings in Count Seven, which he asserted "related to social conversations unrelated to judicial conduct," and, when examined separately, "reflect settings in which judicial officers routinely engage in casual private discussions."

We agree with the masters that Justice Johnson's crude, graphic remarks to Burnette during a professional dinner bring the judicial office into disrepute. We adopt the masters' legal conclusions.

Count 7F: Attorney Wagniere

1. Findings of Fact

Taylor Wagniere met Justice Johnson when she was a law-student extern for a different justice at the Second District Court of Appeal in 2011. Between 2013 and 2015, after her externship had concluded, Justice Johnson and Wagniere had a friendly relationship and occasionally met for lunch or dinner. During that time, Justice Johnson sometimes made her feel uncomfortable by divulging more personal information than she felt was appropriate, commenting on her physical appearance, wanting to know who she was dating, and implying that their lunches or dinners were dates. Justice Johnson also told Wagniere that he was unhappily married, and that he and his wife were living separately, but in the same house. He once kissed her on the mouth, without her consent, which shocked her and made her feel uncomfortable. She continued to exchange texts with Justice Johnson and occasionally see him for meals until 2018.

Justice Johnson admitted kissing Wagniere once, but asserted that he did so to show her his support. He denied making the comments about his marriage.

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

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Wagniere constituted improper action and violated canons 1, 2, 2A, 2(B)2, and 4A(2).

Neither party objected to the masters' legal conclusions, and we adopt them.

B. Charges not proven to be misconduct

The masters found that the allegations in one charge (count 7C) were proven, but that they were not misconduct.

Count 7C: Deputy District Attorney Segall

1. Findings of Fact

When Justice Johnson was walking to lunch with then-Deputy District Attorney Wendy Segall (now a judge), he made comments about her appearance and put his hand on the small of her back to guide her across the street, both of which made her uncomfortable. At the lunch, when talking about Justice Johnson's children, Segall said something like, "You finally got a boy," to which Justice Johnson responded, "Well, it was fun trying," or words to that effect.

Justice Johnson admitted the allegations, but denied that they were canon violations.

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

2. Conclusions of Law

The masters concluded that Justice Johnson's conduct toward Segall (count 7C) did not constitute a violation of the canons. They stated that, although Justice Johnson's comments during lunch could possibly be perceived as personal or overly friendly,

and he may have had a hope or desire to develop a closer relationship in the future, the "judicial canons are not so broad that they prohibit such thoughts or giving compliments to a lunch companion with whom he or she does not work."

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

COUNT EIGHT—Alcohol-related behavior

Justice Johnson was charged with nine instances of demeaning the judicial office by appearing to be under the influence of alcohol seven instances of which occurred at the courthouse late at night. The masters found that seven of the allegations were proven.

A. Proven charges found to constitute misconduct

The masters found that seven of the instances were proven and grouped them into three findings of prejudicial misconduct (one for a wedding he attended (count 8B), one for the CAALA event in Los Angeles (count 8C), and five incidents at the courthouse (counts 8D, 8E, 8G, 8H, and 8I).

1. Findings of Fact

Count 8B: Wedding

In September 2011, Justice Johnson attended the wedding of AUSA Julian Andre in Modesto. Andre was Justice Johnson's extern in 2005 or 2006, and the two have remained good friends. Justice Johnson performed the wedding ceremony, after which there was a cocktail hour, a dinner, and a reception. During the cocktail hour and dinner, Justice Johnson drank to excess.

Around midnight, close to when the reception was ending, a staff member asked Justice Johnson to leave the establishment. He was the only guest asked to leave before the end of the reception. Andre testified that he heard Justice Johnson asking, in "an elevated voice," why he had to leave. Andre's brother saw Justice Johnson and a staff person "appear agitated," and it seemed that their voices were raised. Andre's brother and a friend told Justice Johnson it was time to go, and he agreed. The next day, some of Andre's friends thought Justice Johnson may have had a little too much to drink and maybe was "a little flirty," and they felt "somewhat uncomfortable." Andre's brother did not think Justice Johnson appeared intoxicated at that point, but may have been "buzzed." The masters declined to give much weight to the testimony of Andre and his brother regarding Justice Johnson's level of intoxication due to their relationship with him and their status of groom and best man at the wedding.

The masters gave more credit to the notes of an interview given to commission staff by Daniel Nobel, a friend of Andre's who attended the wedding and is now a pediatric dentist.[10] According to the notes, Nobel said that, at the rehearsal dinner, Justice Johnson gave unwelcome attention to various young women and commented on their beauty. The notes reflect that Nobel said Justice Johnson was asked to leave by a restaurant employee and had said or done something disrespectful to a female employee. According to the

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[10] The notes were admitted by stipulation because Nobel was unavailable to testify.

notes, Justice Johnson was "drunk" and "loud, yelling, belligerent," and had "no level of decorum."

Justice Johnson testified that he had a glass or two of wine at the dinner, or maybe a couple of glasses during the remainder of the night, and when he asked for a beer at the end of the evening, the waiter said, "No, we're closing," and told him he had to leave. According to Justice Johnson, he asked why the waiter was yelling so loud, the waiter said it was because it was time for him to go, he responded, "Okay. That's not very nice of you, but I'll go," and Andre's brother and a "really big guy" showed up and said it was time to go. He denied that there was an incident involving a female staff member.

The masters stated: "The evidence was undisputed that Justice Johnson was the only guest who was asked to leave the reception before the end of the party. Instead of complying, he demanded another alcoholic beverage and, when this was refused, he became loud, yelled, and acted in a 'belligerent' manner. This confrontation was noticeable to the guests and was so unsettling that the groom's brother and at least two others were required to intervene and make clear to Justice Johnson that he needed to leave the premises." The masters noted that Justice Johnson had served as the officiant at the wedding and those in attendance were aware of his status as a Court of Appeal justice, and his intoxicated state was a topic of discussion among the wedding guests the next day.

Count 8C: CAALA reception

The masters referred to the facts in count 7(B) regarding the CAALA reception in Los Angeles, at which Justice Johnson became highly intoxicated and engaged in inappropriate behavior with a young female attorney (Schulman) (i.e., grabbing her waist repeatedly, grabbing her wrist and pulling her toward him, kissing her on the cheeks, and telling her that the man she was going to leave with was going to rape her).

Justice Johnson denied being intoxicated at this event.

Count 8D: Incident in August or September 2016

In August or September 2016, custodian Rodney Pettie and Justice Rothschild's judicial assistant Tracey Bumgarner saw Justice Johnson intoxicated at the courthouse late at night. Bumgarner testified that she was working late, and Justice Johnson came into Justice Rothschild's chambers and said, "I got your back Trace, I got your back." She said Justice Johnson appeared to be "very, very, very intoxicated" and was "slurring his words a lot" and "speaking very slowly." Shortly after, she and custodian Pettie were leaving when they encountered Justice Johnson, who was also leaving, and they spoke with him for five to ten minutes. When Bumgarner took the elevator to the judicial parking area where her car was parked, she saw Justice Johnson get into his car and start driving away. As he was driving away, she heard his vehicle hit something or "he slammed his brakes on so hard it sounded like he hit something." Pettie testified that

Justice Johnson appeared to have "had a few drinks that night" and that he believed Justice Johnson was intoxicated based on the "slurring of words, the dialogue that he was having" with them, and the smell of alcohol.

Justice Johnson denied being intoxicated at the courthouse at any time.

Count 8E: Incident in summer of 2017

During the summer of 2017, custodian Darnice Benton saw Justice Johnson outside the courthouse at around 1:00 a.m., as she was driving away at the end of her shift. He was walking on the street and, in her opinion, looked "severely inebriated." She testified that he was walking "topsy-turvy" and in a manner consistent with others she has seen who were intoxicated. She demonstrated this by walking in an extremely unsteady manner, taking very high steps and waving her arms up and down. Benton pulled over to the side of the street and called her supervisor because she was worried about Justice Johnson's safety. Benton's supervisor told her Justice Johnson was a grown man and could handle himself. Benton saw Justice Johnson walk into the Court of Appeal building.

Justice Johnson denied being intoxicated at the courthouse at any time.

Count 8G: Incident involving statues

Custodians Pettie and Cruz Hermosillo testified that they saw Justice Johnson at the courthouse at approximately 1:00 a.m. one night in 2015 with two

young women who were dressed as if they were going to a club, with short skirts and high heels. The women appeared to be drunk. The women climbed on large lion statues in the lobby of the courthouse and took "selfies." One of the women fell off a statue and was laughing hysterically. Justice Johnson was standing about ten feet away from them, acting nonchalant, and holding a brown paper bag. He looked at the custodians and shrugged his shoulders, saying, "What are you going to do?" He also asked custodian Hermosillo if he wanted to come to his chambers to "party" with him and the women. These findings are consistent with evidence that the masters found "convincingly shows" that Justice Johnson would often leave court at about 5:00 p.m. or 5:30 p.m., go to bars or restaurants and drink alcohol, and then come back to the Court of Appeal many hours later.

Justice Johnson did not deny that this incident occurred, but he denied that he was intoxicated. He said he was with "two White women" whom he knew, and whom he said were close friends and "free spirits." He said he told them to get off the statue and they would not. He did not specifically deny asking Hermosillo whether Hermosillo wanted to "party" with him.

Count 8H: Incident in 2016

In 2016, custodian Hermosillo saw Justice Johnson, whom Hermosillo described as "over-the-top drunk," in the courthouse at approximately 11:00 p.m. Justice Johnson told Hermosillo that some people were going to come into the courthouse and asked if Hermosillo would bring them to his chambers. A man and a

woman subsequently entered the building from the parking garage. The woman appeared to be intoxicated. Hermosillo took them to Justice Johnson's chambers, and they remained in the building past midnight.

Justice Johnson did not deny that this incident occurred, but he denied that he was intoxicated.

Count 8I: Incident in December 2017

In approximately December 2017, custodian Gabriel Gutierrez saw Justice Johnson in the courthouse hallway around 10:00 p.m. and thought the justice was "drunk." Justice Johnson was leaning against the wall, walking slowly, and stumbling a little bit. Gutierrez asked if Justice Johnson needed assistance. Justice Johnson responded that he was "okay," smiled and burped, while putting two fingers against his lips. He also said, "Take care. Happy holidays. Have a good night."

Justice Johnson denied being intoxicated at the courthouse at any time.

Additional Evidence

The masters considered as additional evidence the testimony of custodian Pettie, who has been cleaning Justice Johnson's chambers for nine years. He has a friendly relationship with Justice Johnson. Although a somewhat reluctant witness, he testified that, between 2016 and 2018, he saw Justice Johnson intoxicated in the late evening about five times. He occasionally saw beer bottles in Justice Johnson's office trash can, "maybe like twice in three or four months." The masters also considered the testimony of custodian

Hermosillo, who testified that, between 2015 and 2018, he saw Justice Johnson at the courthouse "on a regular basis" and on "multiple occasions" with "different women" late at night, usually between 10:30 p.m. and 11:00 p.m. He could not tell for certain whether Justice Johnson was actually drunk. He said Justice Johnson would often be carrying a brown paper bag that appeared to contain a "six-pack." He told his supervisor about this behavior because he did not think it was "normal," but he was told to mind his own business. Hermosillo also testified that Pettie would tell him stories about "unusual things going on pertaining to Justice Johnson's chambers."

Justice Johnson's former research attorney Wohn testified that, between 2009 and 2015, she would sometimes see beer cans or bottles in Justice Johnson's trash can when she arrived in the morning. One evening when she was working late, she saw Justice Johnson come into chambers walking very carefully and hanging onto whatever was next to him. He appeared to be trying very carefully to look like he was not intoxicated. She also testified about an incident in about 2011 or 2012 when she heard Justice Johnson enter his chambers with a woman who was apparently not his wife, and they were laughing. Wohn left very soon thereafter.

2. Justice Johnson's defenses and objections to intoxication allegations

Justice Johnson testified that he has never been under the influence of alcohol at the courthouse and that all of the witnesses who testified that he was under the influence were "testifying falsely" as the

result of a stereotype of a "shiftless, drunk, lazy Black man." The masters found no evidence that the witnesses who observed Justice Johnson intoxicated at the courthouse testified falsely or were motivated by racial stereotypes. We agree that there is none.

Justice Johnson also argued that he suffers from diabetes, and that this should be a mitigating factor for him. He asserted that both high blood sugar and low blood sugar can cause problems for him, and that high blood sugar causes him to stammer and stutter and experience headaches and fatigue. His wife and two close friends (Goleh and Ralph Galloway) testified that they have seen him unbalanced and unsteady, and slurring words, due to diabetes.

Justice Johnson provided a letter from his treating physician, Dr. Bennett Sloan, stating that he has Type 2 diabetes and that hypoglycemia can occur. The masters noted that Dr. Sloan does not state that Justice Johnson suffers from hypoglycemia or its symptoms.

Justice Johnson also provided a Mayo Clinic article entitled "Hypoglycemia," which states that shakiness, fatigue, pale skin, and tingling around the mouth can be caused by blood sugar levels that are too low. The masters noted that the article states that these same symptoms can also be caused by "excessive alcohol consumption." They concluded that hypoglycemia and its symptoms can also manifest if a person with diabetes consumes alcohol. They specifically rejected Justice Johnson's arguments that his symptoms were the result of low blood sugar, stating that he never presented any evidence that he was suffering from

diabetes symptoms or low blood sugar when he was observed exhibiting symptoms of intoxication at the courthouse at night.

The masters also pointed out that Justice Johnson had a habit of going to bars after work and returning to court after drinking alcoholic beverages, and that two witnesses testified about beer bottles found in his chambers trash can. Twelve witnesses testified that they observed him under the influence of alcohol to a degree that he appeared intoxicated (Benton, Pettie, Gutierrez, Hermosillo, Kent, Justice Chaney, Judge Brazile, Burnette, Schulman, Bumgarner, Wohn, and Spurley). Further, he did not explain what he was doing at court late at night when he encountered Bumgarner and Pettie. His close friend Goleh could not recall a single instance, among the hundreds of times they had been together, when he had seen Justice Johnson with diabetic symptoms in the evening. The masters concluded that, by blaming his intoxication symptoms on his diabetes, Justice Johnson "ignores the facts, manifests a lack of awareness that he has a problem with alcohol, and reflects a lack of candor on his part."

We agree with the masters and reject Justice Johnson's arguments about diabetes. We adopt the masters' factual findings.

3. Conclusions of Law

The masters concluded that Justice Johnson's conduct at the wedding (count 8B), his conduct at the CAALA reception (count 8C), and his conduct at the courthouse taken as a group (counts 8D, 8E, 8G, 8H,

and 8I) demeaned the judicial office, constituted prejudicial misconduct, and violated canons 1, 2, 2A, and 4A(2). His undignified conduct, as described in counts 8B, 8D, 8E, 8H, and 8I, also violated canon 3B(4).

Regarding the wedding, the masters stated that although it was a private event, "a judge must expect to be the subject of constant public scrutiny, and is prohibited from behaving with impropriety or the appearance of impropriety in both professional and personal conduct."

Regarding the intoxication at the courthouse, the masters found that Justice Johnson "was improperly using court facilities for his personal benefit as a venue to socialize with others in a fashion that was discourteous and disrespectful to others at the court facility." They stated: "Engaging in irresponsible and improper behavior in the courthouse '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,'" citing *Censure of Judge Steiner* (2014) at page 7.

The examiner did not object to the masters' legal conclusions. Justice Johnson's objections to their legal conclusions are predicated upon his objections, discussed above. We find those objections unavailing and adopt the masters' legal conclusions.

B. Charges not proven to be misconduct

Count 8A: Intoxication at bar on Spring Street

Justice Johnson was alleged to have been intoxicated at a bar on Spring Street near the Court of Appeal building (count 8A). The masters found that not all of the allegations in this count were proven and that no canons were violated by his actions.

Neither party objected to the masters' factual findings and legal conclusions, and we adopt both. We dismiss count 8A.

Count 8F: Smelling of alcohol at courthouse at night

Justice Johnson allegedly was frequently seen returning to the courthouse at approximately 10:30 p.m. or 11:00 p.m. with a strong smell of alcohol on his breath. The masters found that this charge was not proven.

Neither side objected to the masters' factual findings or legal conclusions, and we adopt both the findings and the conclusions. We dismiss count 8F.

COUNT NINE—Conduct while magistrate judge

It was alleged that Justice Johnson made inappropriate comments to federal court employees Isabel Martinez (count 9A) and Nicole Denow (counts 9B-9E) between 2004 and 2008, while he was a federal magistrate judge. The masters found that the allegations in Count Nine are barred by the statute of

limitations,[11] but they made the factual findings, summarized below, because they are relevant to support other allegations.

1. Findings of Fact

Count 9A: Clerk Martinez

The masters found that then-Magistrate Judge Johnson asked Isabel Martinez, another judge's courtroom clerk who had had a breast augmentation, "out of the blue" if she had had her "boobs done," and held up his hands with his fingers spread apart and asked if he could touch them. She said, "No." The comments made her feel uncomfortable and embarrassed. Martinez testified that, even before he made the comments about her breasts, she did not feel comfortable with him because he would often make inappropriate comments to her, such as asking why she did not "date Black guys."

Martinez's testimony was corroborated by Currie, who worked at the federal court at that time. Currie testified that Martinez told her about the breast incident and that Martinez thought it was "very creepy." Martinez also told Chief Magistrate Judge Patrick Walsh about the incident in 2018. Judge Walsh, who supervised Martinez for 18 years, testified

[11] The commission can censure or remove a judge for conduct occurring within six years of the start of the judge's current term. (Cal. Const., art. IV, § 18, subd. (d).) Justice Johnson's current term began in January 2015. Conduct that occurred before January 2009 is, therefore, barred by the statute of limitations.

that it was difficult for Martinez to talk about the incident and that he has never questioned her honesty.

Justice Johnson denied asking to touch Martinez's breasts, but admitted asking if she had a breast augmentation. He said he commented on her breasts because he was under the mistaken impression that she had asked his opinion about them. The masters did not find this explanation to be credible.

Neither party objected to these factual findings, other than on statute of limitations grounds, and we adopt them.

Count 9B-9E: Denow

The masters found that, from August 2006 to May 2008, then-Magistrate Judge Johnson made various comments to his law clerk, Nicole Denow, that she found offensive and that made her uncomfortable. These comments included remarks about her physical appearance, questions about an extern's boyfriend, negative comments about his wife, and remarks about other women's "boob jobs." The remarks were offensive to her at the time. He once asked her whether it was her "time of the month," which she found uncomfortable, demeaning, and sexist. Once, after Denow went to a farmer's market with another law clerk, then-Magistrate Judge Johnson made a "face of disgust" and said, "I just pictured you having sex with [the law clerk]."

The masters found that Denow was a very honest person and the remarks were consistent with some of Justice Johnson's conduct toward other women. The masters also found that Justice Johnson's denials

about making negative comments about his wife, the "sex with [the law clerk] remark," and the "time of the month" remark reflected his "attempts to misrepresent the true facts and the context of the remarks."

Justice Johnson admitted some, but not all, of the remarks.

Neither party objected to these factual findings, other than on statute of limitations grounds, and we adopt them.

2. Conclusions of Law

We agree with the masters that the allegations are barred by the statute of limitations, and, therefore, reach no conclusion as to the level of misconduct and do not consider these allegations when determining discipline. We do, however, consider the conduct to the extent that it supports factual findings in other charges and as evidence of Justice Johnson's honesty, or lack thereof, during these proceedings.

COUNT TEN—Comments about Justices Chaney and Rothschild

Justice Johnson allegedly referred to Justices Chaney and Rothschild as "nasty ass bitches" when speaking to certain CHP officers.

1. Findings of Fact

The masters found that, between September 2015 and October 2016, during a conversation with CHP Officer Barnachia, who was driving him in an official capacity, Justice Johnson referred to Justices Chaney and Rothschild as "nasty ass bitches." They found it corroborating that Officer Barnachia sent Officer

Sauquillo a text in October 2016 stating that Justice Johnson would "talk shit" about Justices Chaney and Rothschild, and called them "nasty ass bitches." Officer Sauquillo replied to Officer Barnachia with a text that Justice Johnson called them that to her as well. The masters also found Officer Sauquillo's testimony that Justice Johnson referred to Justices Chaney and Rothschild in the same way to be credible. They further found that such a remark is consistent with Justice Johnson's admission that he used profanity in the workplace in another context, such as giving his externs T-shirts with the initials "BAMF" on them, which he said stands for "bad ass motherfucker."

Justice Johnson testified that he did not recall using the phrase "nasty ass bitches" and that it is not a phrase he uses, but he was "not going to call [Officer] Barnachia a liar." He also testified that the phrase is a "sideways" compliment for a tough or strong-willed woman who is hard to get along with. He said that, if he used it, he is sorry, but he does not believe it violates the canons because it was a private comment that had no improper purpose, and he did not expect the comment would be made public.

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

2. Conclusions of Law

The masters concluded that the conduct violated canons 1, 2, 2A, and 3B(4), and stated that, "Making personal remarks using profanity about a fellow judicial officer to a subordinate state employee places the judiciary in a negative light and undermines

respect for the judiciary." Nevertheless, they found that the conduct was improper action because they did not think an objective observer would conclude that a few comments made in private to security officers about judicial colleagues would erode public esteem for the judiciary or bring the judicial office into disrepute.

Justice Johnson objected to the legal conclusion that the remark was improper action on the ground that a private comment to another person "in a casual setting where profanity is often used" is not a violation of the canons. He argued that there is no claim that he was actually demeaning another person when he used profanity to underscore a comment about a "strong willed woman." We disagree and find, based in part on the corroborating texts between Officer Barnachia and Officer Sauquillo, that the comment was pejorative and disparaging about his fellow justices, and that it violated the canons.

The examiner objected to the masters' legal conclusion that the remark was improper action, and not prejudicial misconduct, on the ground that the test for prejudicial misconduct is not whether the remarks were made in private, but whether they would, if known to an objective observer, appear to be prejudicial to public esteem for the judicial office, citing *Geller v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275. The examiner also cites *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 377 for the proposition that, regardless of the speaker's intent, derogatory remarks may become public knowledge and thereby diminish the hearer's esteem for the judiciary, and the "reputation in the

community of an individual judge necessarily reflects on that community's regard for the judicial system." The examiner argued that the justice's use of the phrase should be grouped in with comments to Wohn, Currie, and Justice Grimes for a finding of prejudicial misconduct.

We agree with the examiner that disparaging one's colleagues on the bench to individuals who also work for those colleagues (providing judicial security), and using profanity to do so, would, to an objective observer, be prejudicial to public respect for the judiciary. The masters agree that the remarks undermine respect for the judiciary. And the remarks have, in fact, become public. We conclude that this conduct constitutes prejudicial misconduct.

Rebuttal and Sur-rebuttal Testimony

The examiner called 11 rebuttal witnesses. Justice Johnson called one witness, and testified himself, in sur-rebuttal. Justice Johnson objected to all but three of the rebuttal witnesses. The masters overruled his objections. In their report, the masters stated that their conclusions would have been the same had the rebuttal witnesses not testified, and they only reference the witnesses' testimony to emphasize prior conduct similar to conduct charged in the notice. The masters declined to provide detailed accounts of these witnesses' testimony.

In his post-masters' report briefing, Justice Johnson argued that the testimony of the rebuttal witnesses was improperly admitted and was a "shocking breach of due process and equal protection under the law." We

disagree and find that the masters' exercise of their discretion in allowing the testimony was not improper. We refer to this testimony only to the extent that it supports the masters' findings regarding conduct charged in the notice.

IV. DISCIPLINE

In determining the appropriate level of discipline, we consider that our mandate is not to punish, but rather is to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and impartiality of the judiciary. (See *Broadman*, *supra*, 18 Cal.4th at pp. 1111-1112.)

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

The commission may also consider the effect of the misconduct on others and whether the judge has cooperated fully and honestly in the commission proceeding. (Policy Declarations of Com. on Jud. Performance, policies 7.1(1)(f) and 7.1(2)(b).)

The commission also considers any mitigating factors that a judge may advance. (*Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJID Supp. 257, 295.)

A. <u>Number of Acts and Seriousness of Misconduct</u>

The number of acts of misconduct is relevant to determining appropriate discipline to the extent that it shows whether the conduct consisted of isolated incidents or a pattern that demonstrates a lack of judicial temperament. (See *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 918.)

Justice Johnson committed 18 acts of prejudicial misconduct (based on 42 separate instances of proven misconduct). This is a substantial amount of misconduct, and some of it is quite egregious. The masters found the "particularly flagrant" nature of some of the misconduct and the "large number of victims" to be factors in aggravation. Eleven women were victims of Justice Johnson's sexual misconduct (Justice Chaney, Officer Sauquillo, court staff attorneys Butterick, Blatchford, and Wohn, judicial assistants Velez and Currie, and private attorneys Palmer, Schulman, Kent, and Burnette). Seven women were victims of conduct that would reasonably be perceived as sexual harassment in their workplace (Justice Chaney, Officer Sauquillo, Butterick, Blatchford, Velez, Currie and Wohn). Justice Johnson also touched four women's bodies without their consent. He touched Justice Chaney's breasts and patted her buttocks on a number of occasions, he stroked Butterick's arm twice, he grabbed Schulman repeatedly around the waist and at her wrist, and kissed her, and he ran his hand up Kent's thigh. The incidents involving Justice Chaney and Butterick occurred at the courthouse, during business hours. The incidents involving Schulman and

Kent occurred at law-related functions. Unwanted touching is especially serious misconduct.

Justice Johnson also engaged in patterns of making comments to women that were unseemly and particularly inappropriate coming from an appellate justice. Seven women testified that his behavior toward them at court made them uncomfortable (Justice Chaney, Officer Sauquillo, Butterick, Blatchford, Velez, Wohn, and Currie).

Four additional women, who encountered Justice Johnson at professional functions and were aware of his judicial position, testified that his inappropriate behavior toward them shocked them or made them uncomfortable (Palmer, Schulman, Kent, and Burnette).

Justice Johnson also displayed inappropriate demeanor toward three attorneys with whom he worked and his peer on the bench, Justice Chaney.

Justice Johnson further displayed undignified behavior by becoming intoxicated on multiple occasions, and, as the masters stated, he had a pattern of acting "highly inappropriately with female attorneys when he is intoxicated."

Justice Johnson's patterns of improper conduct demonstrate that he lacks the temperament and judgment required for his position.

Justice Johnson argued that he should not be removed for prejudicial misconduct alone because judges have only been removed in matters that include willful misconduct. Justice Johnson appears to believe

that prejudicial misconduct is, by definition, less serious than willful misconduct. As noted above, the Supreme Court has defined prejudicial misconduct as "willful misconduct out of office," with the same characteristics as willful misconduct (i.e., unjudicial conduct committed in bad faith), but which takes place when the judge is not acting in a judicial capacity. (*Broadman*, *supra*, 18 Cal.4th at pp. 1092-1093.) The California Constitution (art. VI, § 18, subd. (d)(2)) states that the commission may remove a judge for prejudicial misconduct. (See, e.g., *McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 191 [prejudicial conduct may "by itself, justify removal"], *Saucedo*, *supra*, 62 Cal.4th CJID Supp. at p. 46 ["judge may be removed for prejudicial misconduct"], *Van Voorhis*, *supra*, 48 Cal.4th CJP Supp. at p. 314 [judge can be removed for "conduct prejudicial to the administration of justice that brings the judicial office into disrepute"].) A judge can even be removed for only one act of prejudicial misconduct. (*Inquiry Concerning Willoughby* (2000) 48 Cal.4th CJP Supp. 145, 165 ["The commission's reluctance to remove Judge Willoughby from office should not be construed to suggest that the commission will not in the future remove a judge from office, even for a single act of prejudicial conduct, where warranted"].) And, last year, the commission imposed a censure and bar the maximum penalty available for former judges based solely on prejudicial misconduct. (*Inquiry Concerning Bailey* (2019) 6 Cal.5th CJP Supp. 24.)

The number and nature of the 18 acts of prejudicial misconduct, and the several acts of unwanted physical

touching in particular, support our determination that removal is the appropriate sanction.

B. 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 v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 865.) A judge's dishonesty has often been a factor when removing judges from the bench. (See, e.g., *Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146, *Inquiry Concerning MacEachem* (2008) 49 Cal.4th CJP Supp. 289, 309, *Ross*, *supra*, 49 Cal.4th CJP Supp. at pp. 87, 141-143, *Inquiry Concerning Spitzer* (2007) 49 Cal.4th CJP Supp. 254, 286, *Saucedo*, *supra*, 62 Cal.4th CJP Supp. at p. 52.) "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." (*MacEachern*, *supra*, 49 Cal.4th CJP Supp. at p. 309.)

The masters found, as the first aggravating factor, that "Justice Johnson was not truthful in several aspects of his testimony and made affirmative misrepresentations about his behavior and the conduct of others." They specifically pointed out his lack of

honesty in connection with five of the ten counts (Counts One, Five, Seven, Eight, Nine),[12] including the following:

- He was "not always truthful" in his testimony about Justice Chaney.
- His "lack of candor" was illustrated by his denial of his telephone call with Justice Chaney.
- His denials that he entered Justice Chaney's hotel room the first night of the Reno trip were "untrue," reflects his "intentional mis-representations," and were "untruthful."
- His denials that he asked Justice Chaney to have an affair reflect "his failure to tell the truth" and were not credible.
- His testimony about his conversation with judicial assistant Velez, in which he denied making a comment about never leaving her bed, was "not credible" and reflects his "intentional fabrication of the relevant facts."
- His denials that he told attorney Palmer that he knows Los Angeles County DA Jackie Lacey and walks his dogs with her, and that he said or implied he could help Palmer get a job with the DA's office, were "not credible."

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[12] The judge's testimony regarding the allegations in Count Nine, which are barred by the statute of limitation for purposes of evaluating the level of discipline, can be considered for purposes of evaluating his truthfulness during the proceeding. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)((b).)

- His denials of certain comments he made to former federal law clerk Denow about his wife, visualizing Denow having sex with another law clerk, and Denow's time of the month reflect "attempts to misrepresent the true facts and the context of the remarks."
- His claim that he does not use sexually inappropriate language was found "not credible" by the masters.
- His argument that his intoxication symptoms should be blamed on his diabetes "reflects a lack of candor on his part."

The Supreme Court has said there are few actions that "provide greater justification for removal from office than . . . deliberately providing false information to the Commission in the course of its investigation." (*Saucedo*, *supra*, 62 Cal.4th CJP Supp. at p. 50). The commission 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*, Cal.4th CJP Supp. at p. 90.)

We find that Justice Johnson's intentional fabrication and misrepresentation of facts during the evidentiary hearing, while he was under oath, is exceptionally egregious and demonstrates that he lacks the essential qualities of honesty and integrity that are required of a judge.

C. Appreciation of the Misconduct and 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." (*Inquiry Concerning Platt* (2002) 48 Cal.4th CJP Supp. 227, 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.)

- Justice Johnson denied the following allegations, which the masters found were proven by clear and convincing evidence:

- Justice Chaney's testimony that he became intoxicated in Reno and entered her hotel room uninvited, solicited an affair with her, offered to "squeeze [her] titties" to make her "feel better," touched her breasts and made "mmm-mmm" sounds when he hugged her, patted her on the buttocks, made comments while staring at her chest, and squeezed her and said, "It can't be sexual harassment because we are both on the same level." He said the "titties" comment was an "absolute fabrication" and Justice Chaney was "using stereotypes to blame" him, and that the allegations about touching her breasts and making sounds were "lies" and "racial stereotyping."

- Butterick s testimony that he stroked her arm between her elbow and shoulder.
- Velez's testimony that he said if he were married to her, he would "never leave her bed," and that he would blow her kisses and call her his "favorite."
- Palmer's testimony that he made negative remarks about his wife, sent Palmer sexually suggestive texts, and told her that he was friends with DA Lacey.
- Schulman's testimony that he grabbed her stomach and wrist, kissed her, said the attorney with whom she was leaving an event was going to rape her, and tried to get her to sit next to him on a couch at a law function by telling her he could refer a case to her.
- Kent's testimony that he put his hand on her thigh under the table during a dinner, which he called "pure fabrication."
- Burnette's testimony about his repugnant comments about the viola, which he said was false and "malicious," and based on stereotypes of a Black man.
- All seven instances of being intoxicated, claiming that every witness who testified about seeing him intoxicated at the courthouse was testifying "falsely" as a result of a racial stereotype.

The masters found it to be an additional aggravating factor that "Justice Johnson showed only limited insight into his misconduct as evidenced by his focus on blaming others for the more serious incidents." They specifically rejected his assertion that he has accepted responsibility for his conduct and stated that, with respect to his most serious misconduct, "there is no evidence he has accepted responsibility for this behavior." To the contrary, he has "attempted to shift the blame to the victims, suggesting they were lying, improperly influenced by third parties, or advancing racial stereotypes."

Justice Johnson has, in fact, gone beyond "suggesting" certain victims were lying and has outright accused them of doing so. He accused Justice Chaney of "telling lies" for "the entire nine-year period" that they were colleagues on the bench, Velez of telling a "false lie" about what he said to her, Kent of "lying" about him touching her thigh, and Burnette of making claims that were "false" and "malicious." He accused Justice Chaney, Officer Sauquillo, and Burnette of racism, asserting that they were "invoking images" of him that were "racist and stereotypical because they thought it would make their story more believable." He also claimed the witnesses who observed him to be intoxicated at the courthouse were resorting to racist stereotypes of him "being a shiftless, drunk, lazy [B]lack man."

The masters found that the claims of stereotyping and racism were not supported by the evidence. We agree that there is no evidence to support Justice Johnson's claims of stereotyping or racism. In *Spitzer*,

supra, 49 Cal.4th CJID Supp. at page 287, the commission stated that it was "troubled" by the judge's willingness to impugn the credibility of witnesses, and noted that the judge's lack of candor was "fundamentally at odds with the role of a judge who is sworn to uphold the law."

We, too, are troubled by Justice Johnson's assertions that certain witnesses, whom the masters found credible, were lying or invoking racist stereotypes. These unfounded accusations compound the injury these witnesses have suffered as a result of Justice Johnson's actions.

As to the limited conduct Justice Johnson does admit (primarily the comments to Officer Sauquillo about her appearance, and various comments to Blatchford, Velez, Currie, and Wohn), the masters state that, while they believe he has gained insight and now understands that he overstepped boundaries, he continues to attempt to justify his behavior by arguing that he did not intend to offend, that he was "curious," that he was attempting to create a positive relationship with others, and that he thought the woman was "more sophisticated and would understand." To the extent that Justice Johnson admitted some of the less serious misconduct, he has, for the most part, either minimized it or argued that it does not violate the canons, as exemplified by the following:

- He characterized the masters' finding that he stroked Butterick s arm twice as a "contested view of [a] handshake or touching forearm in greeting."

- He said his overly personal questions to Blatchford, jokes, and references to sex ("pedestrian sex," "arousal," "Well, I guess you went back then") are "not significant misconduct at all."

- He asserted that blowing kisses, and saying, "You're my favorite" and "I love you," to Velez are comments "praising work performance."

- He argued that the phrase "nasty ass bitches" is "complimentary" and did not violate the canons.

Justice Johnson contended that it is mitigating that much of his proven past conduct was "within the bounds of tolerated or acceptable conduct in the not-so-distant past." The masters found that this contention is unsupported as it concerns judicial officers. They stated:

> It has long been the rule that in all aspects of a judge's life, "a judge must be acutely and constantly aware that everything he or she does or says must be managed through the filter of identity with this high office," and with the awareness a judge is a "public figure who is seen as a symbol of justice." (Rothman [et al., Cal. Judicial Conduct Handbook (4th ed. 2017)] § 1:31 at 21-22.)
>
> Many of the misconduct incidents at issue in these proceedings were clearly wrong today and were clearly wrong from the time he was appointed in 2009. This is true even with respect to his inappropriate compliments and personal questions to female court staff. For well over 10

> years, judicial officers have been required to attend mandatory ethics courses where they have been cautioned to avoid engaging in overly familiar conduct with staff and commenting on their appearance. (See Rothman, *supra*, § 2:11 at 74-75.)

At Justice Johnson's appearance before the commission, he stated that classes on gender in the workplace that he has taken since the investigation began have made him "more aware of the changing mores in our society and the rights of women in the workplace." While it is true that social mores have evolved, it has never been acceptable for a judge to engage in unwelcome physical contact with women, or to engage in conduct that would reasonably be perceived as sexual harassment, especially at court. Since 2009, when Justice Johnson was appointed to the Court of Appeal, the Code of Judicial Ethics has required judges to be patient, dignified, and courteous to those with whom they deal in an official capacity, to avoid impropriety and the appearance of impropriety, to refrain from conduct that would reasonably be perceived to be sexual harassment, and to not demean the judicial office. Since 1999, when the second edition of the California Judicial Conduct Handbook was published, judges have been warned to avoid sexual harassment: "Judges, as administrators of the judicial system, have an obligation to know what constitutes sexual harassment in the work place, and to not only avoid it themselves, but to deal with it in their supervisorial capacity over staff." (Rothman, Cal. Judicial Conduct Handbook (2d ed. 1999) § 6.29, pp. 174-175). Moreover, judges, including Justice Johnson,

have been receiving training in avoiding sexual harassment for years.

It is implausible that Justice Johnson did not know the appropriate standards of behavior for a person in his position. Indeed, this is evidenced by his proven comments to Justice Chaney: "It can't be sexual harassment because we're both on the same level" and, "You would never report me [for sexual harassment], would you?" Justice Johnson disregarded those standards for years, creating discomfort for multiple women. And being intoxicated at the courthouse late at night in the presence of those working there has never been proper. We are not persuaded by the argument that much of his proven conduct was within the bounds of acceptable conduct in the "not-so-distant" past.

Justice Johnson also argued that he had no notice that his conduct was improper, and stated, in his post-masters' report briefing that, "While a judicial officer, [he] was never afforded the opportunity to demonstrate his ability to reform in the face of discipline or allegations." The masters rejected this claim, and so do we.

First, the masters stated that he "was, or should have been, aware his misconduct violated the judicial canons" because "some of his conduct was so flagrant that a warning was unnecessary," and "[h]is conduct in becoming highly intoxicated and then engaging in grossly inappropriate behavior with female attorneys did not require advance notice [that] the conduct violated judicial canons of ethics."

Second, he "was on notice that he needed to change his behavior," at least with respect to his alcohol intoxication at the courthouse and his conduct toward women. In late 1994, then-AUSA Richard Drooyan warned then-AUSA Johnson about comments Johnson had made to a young female AUSA about her looks and her dress on several occasions, and told Johnson that he could not do that in a professional setting in an office. Further, Eric George, an attorney whom the masters found "highly reliable on this topic," testified that in approximately late 2009, he learned that the Daily Journal was planning to publish a story about Justice Johnson being ejected from a bar after grabbing the posterior of a waitress while intoxicated. George told Justice Johnson that he had to be careful about being in a situation where he "could be compromised by having these sorts of things said about him." And Justice Johnson admitted that former Justice Joan Dempsey Klein told him in 2014 that there were rumors about him bringing women back to the courthouse, which, if true, would put him in "deep trouble." The masters found that the evidence establishes that some of the rumors were true (i.e., that he was highly intoxicated at the courthouse and brought women guests who were intoxicated into the building).

The evidence establishes that Justice Johnson was on notice about the impropriety of his behavior, yet continued to engage in such behavior for years. Even without the warnings, he should have known his behavior was improper.

Justice Johnson also seems to fault some of the women for not reporting him sooner, arguing that he was denied the opportunity to effect change and modify his behavior. This reflects a lack of awareness that most of the women involved, especially at court, were in a subordinate position to him and did not want to risk potential retaliation if they reported his misconduct. Even some of the women outside of court were reluctant to report his behavior due to possible adverse consequences to their careers. Burnette experienced such a consequence when, after she reported his conduct to her law firm, she was not asked to represent her firm on the ABTL board. Palmer testified that she did not initially report Justice Johnson because she was concerned that he would badmouth her, and she did not want to put herself in a position where a justice did not like her. Schulman testified that she did not initially report Justice Johnson because she was concerned about retaliation and the consequences of reporting a judicial officer. These concerns are understandable, and the failure to immediately report the misconduct does not mean that it did not happen.

At his appearance before the commission, Justice Johnson asserted that he has undergone therapy and taken various classes, that he has stopped drinking alcohol, and that he has learned to be more cognizant of how his behavior affects others. But he only undertook education and abstinence since the inception of this proceeding. What he did not say at his appearance is that he admits the most serious sexual misconduct. This fact strongly supports our determination that he lacks the capacity to reform.

Justice Johnson further argued that his "excellent" and "exemplary" conduct over the last two years is "the only evidence/predictor" of his "future self-discipline and sensitivity" that the masters had before them. This argument lacks merit because Justice Johnson has been away from the court and its female employees, other than for oral argument, since July 2018, and there is no evidence in the record of his conduct toward women during the past two years.

We find that the extent of Justice Johnson's lack of recognition of his misconduct creates a significant risk that he will reoffend.

D. Impact on Judicial System and Others

"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 et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 12:91 at p. 849, citing *Inquiry Concerning Hyde* (2003) 48 Cal.4th CJP Supp. 329, 370.) The nature and extent to which the misconduct has been injurious to others is also relevant in this matter. (Policy Declarations of Com. on Jud. Performance, policy 7.1(1)(f).)

In his post-masters' report briefing, Justice Johnson asserted that, "No person was harmed in their position or treated unfairly by Justice Johnson." This statement reflects a remarkable lack of recognition of the impact of his behavior on others. Although none of Justice Johnson's prejudicial misconduct occurred while he was on the bench, certain instances occurred in the courthouse during court hours, and other instances

occurred while he was holding himself out as an appellate justice at professional functions. Further, much of Justice Johnson's misconduct affected the working lives of women at the court, as exemplified by the following:

- Justice Chaney testified that his conduct toward her made her uncomfortable, and she was, and is, afraid of him. Some of his sexual harassment of her made her feel "shocked" and "upset," and she discussed his behavior toward her with others working at the court.

- Butterick, a court research attorney, testified that her interactions with Justice Johnson made her uncomfortable, she told her colleagues she would not take a particular office that was close to Justice Johnson's chambers, and she avoided the South Tower because she did not want to encounter Justice Johnson there.

- Blatchford, a court research attorney, said Justice Johnson's questions about her tattoos and her boyfriend made her "a little uncomfortable," his comments about "pedestrian sex" and "arousal" made her "uncomfortable," and his comment about "not going back" made her "really uncomfortable." She said his references to personal topics caused her to be "on guard."

- Velez, Justice Chaney's judicial assistant, testified that Justice Johnson's remark about never leaving her bed had a "big impact" on her and made her "very uncomfortable." She also

said she felt "panicked" when he called her and asked her to come to his chambers, which caused her to leave work early. She felt "embarrassed and horrified" by his discussing her personal life with other justices. She would attempt to avoid interactions with him, pretending to be on a call, ducking behind her monitor, or leaving the courthouse.

- Wohn, his former research attorney, said that Justice Johnson's comments about her appearance and smell, and that he would have been in love with her in high school, made her feel uncomfortable. She was so uncomfortable about him looking at her that she brought in large flower arrangements to obscure his view of her at her desk.

- Currie, his judicial assistant, testified that Justice Johnson's comments about her appearance and smell made her uncomfortable and embarrassed her.

- Officer Sauquillo said Justice Johnson's comments about her appearance when she was at court made her uncomfortable.

Justice Johnson's conduct also had an adverse impact on female attorneys who did not work at the court, but who encountered him at various law-related functions that he attended by virtue of his position as an appellate justice. For example:

- Palmer said Justice Johnson's comments during her visit to the courthouse made her

uncomfortable, and his subsequent sexually suggestive texts made her "feel gross."

- Schulman was "shocked" and "very upset" by his grabbing of her stomach and wrist, kissing her, and commenting that she was going to be raped.
- Kent felt uncomfortable when he paid too much attention to her and was "shocked" and "very upset" when he ran his hand up her thigh under the table.
- Burnette was "quite upset" and "creeped out" by Justice Johnson's vulgar comments related to her playing the viola, and left the event immediately after he made them.

Justice Johnson's displays of anger toward those with whom he worked also had an adverse impact on them. For example:

- Justice Chaney felt "shocked" and "frightened" by his angry outburst toward her.
- Currie would go to the restroom and cry after Justice Johnson became angry with her.
- Alexander testified that Justice Johnson's yelling and calling him "stupid" felt humiliating.

Justice Johnson's appearances at the courthouse late at night when he was intoxicated, and often in the company of others, affected the custodians who were working there. For example:

- Custodian Hermosillo testified that he told his supervisor about Justice Johnson's behavior

involving women at the courthouse late at night because he did not think such behavior was "normal," and his supervisor told him to mind his own business.

- Custodian Benton testified that, when she observed him intoxicated out on the street at around 1:00 a.m. one night, she was so concerned about his safety that she called her supervisor, who told her Justice Johnson could handle himself.

- Custodian Gutierrez once encountered Justice Johnson walking slowly and stumbling in the courthouse hallway around 10:00 p.m. and believed he was drunk, so he asked Justice Johnson if he needed assistance.

We consider the adverse effects of Justice Johnson's misconduct on the individuals who were subjected to his actions, and the negative impact of his misconduct on public perception of the judiciary, to be a substantial aggravating factor.

E. <u>Prior Discipline</u>

Justice Johnson has no prior discipline. The masters found that, while mitigating, this is of "limited weight" given their serious reservations about his ability to reform. Mitigating circumstances have only limited appeal because the aim of commission proceedings in the more serious cases is protection of the public and not punishment. (Rothman, *supra*, § 12:92, p. 856-857.) The commission has removed other judges from the bench who had no prior misconduct, particularly where dishonesty was involved (e.g., *MacEachem*, *supra*, 49

Cal.4th CJID Supp. at p. 311, *Saucedo*, *supra*, 62 Cal.4th CJP Supp. at p. 53.)

With 18 findings of prejudicial misconduct, some of which would reasonably be perceived as sexual harassment and involves unwelcome touching, and others of which involve misuse of the prestige of office in an effort to cultivate personal relationships with young women, and still others involve intoxication at the courthouse, this matter falls within the "more serious cases" category, and Justice Johnson's lack of prior discipline is of little weight in mitigation.

F. Contributions to Others

There is substantial evidence about Justice Johnson's contributions to the judiciary and to his community. The masters found Justice Johnson's community service to be mitigating, as follows. He has had a positive impact on many lives and devoted time and effort to giving back to the community. His community service includes teaching, tutoring, assisting students in an underserved elementary school, and helping establish a toy drive for underprivileged children. He has taught at local law schools and served as an important mentor to young men and women, many of whom attribute their success in the legal field and their personal lives to Justice Johnson's encouragement and guidance. He assisted others in difficult times. Justice Johnson has also performed important work for, and made exemplary contributions to, the judicial branch as a member of the Court Facilities Advisory Committee and as chair of the Courthouse Cost Reduction subcommittee, for which he received a Judicial Council award in 2017.

In his post-masters' report briefing, Justice Johnson claimed that his work is "exceptional" and that he was lauded by Justice Rothschild and "all staff attorneys" for his intellect and ability to keenly examine legal issues, without anyone noting any issue that affected his work performance. This claim is undercut by the testimony of Justice Rothschild and Justice Lui.

Justice Rothschild, Justice Johnson's presiding justice since 2014, testified that, while she respected his intellect, she did not respect his work ethic or his work product. She also testified that she counseled Justice Johnson about his demeanor, and that she observed him being angry toward individuals and too aggressive toward attorneys. Justice Rothschild also testified that Justice Lui spoke with Justice Johnson about his demeanor. Justice Rothschild further testified that Justice Johnson's frequent absences from the courthouse and unavailability during work hours made it more difficult to get the division's work done.

Justice Lui, the administrative presiding justice, testified that Justice Johnson had an inappropriate demeanor in court and raised his voice in an angry manner at Justice Rothschild during a case conference.

Justice Johnson also claimed that colleagues testified enthusiastically about his work ethic and intensive preparation for difficult hearings. But that testimony pertains solely to his work on the Court Facilities Advisory Committee, not his work on the bench.

It is undisputed that Justice Johnson has made significant contributions to the judiciary as well as to

his community. But even a good reputation for legal knowledge and administrative skills does not mitigate prejudicial misconduct. (*Kloepfer*, *supra*, 49 Cal.3d at p. 865.)

G. "Social Contagion"

Justice Johnson argued, as another mitigating factor, that he is the victim of "social contagion," whereby witnesses' testimony was tainted because they talked to each other about him. According to Justice Johnson, the following occurred: "Rumors and unsubstantiated gossip" about him began to circulate at the Court of Appeal at least as early as 2016, which included the "exchange and propagation of recalled experiences among persons who would later become complaining witnesses." In the fall of 2017, a staff attorney at the appellate court, Merete Rietveld, began collecting stories about his rumored conduct and, in 2018, initiated circulation of a petition urging sexual harassment training at the court. It went to over 100 people in the judiciary. Rietveld also urged Administrative Presiding Justice Lui to conduct an investigation of allegations about Justice Johnson. Justice Lui initiated a workplace investigation that was conducted by outside counsel.

Around the same time, on July 2, 2018, Justice Lui asked Officer Barnachia whether he was aware of any inappropriate behavior by Justice Johnson toward a female CHP officer. Officer Barnachia mentioned Officer Sauquillo. Justice Lui interviewed Officer Sauquillo, who reported that Justice Johnson had propositioned her, using crude, graphic sexual language. Justice Lui prepared an email about her

allegations that he sent to "hundreds and likely thousands" of court personnel throughout the state.[13] Justice Lui sent a subsequent email asking recipients to disregard and not redistribute his earlier email. The Daily Journal printed an account of Officer Sauquillo's allegations the next day. Justice Johnson asserts that the story "spread like wildfire" and influenced witnesses' thoughts about him.

After the Daily Journal article appeared, attorney Lisa Miller contacted various witnesses whom she knew had had encounters with Justice Johnson and sent an anonymous letter to the commission describing people who had information about Justice Johnson. Justice Johnson asserts that Miller has animosity toward him because he reported her to her boss after she sexually propositioned him, and she was let go by her law firm as a result. He says that a number of witnesses talked among themselves before they were interviewed by commission staff. Justice Johnson argued that there was the "contagion effect" of publicity and gossip that adversely affected witnesses' attitudes and recollections over time.

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[13] Justice Lui testified that he intended to send a cc of the email to Kathleen Ewins, counsel for the court, but, by mistake, the recipient line autofilled "EXEC-appellate and Supreme Court Staff," which is the group for all appellate court justices and staff, and he did not notice the error. (He apparently typed "Ex" rather than "Ew.") Officer Sauquillo was later discovered to have made similar allegations against a former CHP supervisor, using the same crude language she attributed to Justice Johnson. As discussed above, the masters ultimately found her claim against Justice Johnson to be not credible.

But Justice Johnson offers no proof that any witness fabricated a story about him based on conversations with other people. The masters concluded that, while there was evidence that Miller had been terminated after Justice Johnson's complaint to the partners in her law firm that she had contacted him about personal matters, the women identified by Miller told the truth and were not improperly influenced by her.

Justice Johnson also points to "admissions about Justice Chaney's private discussions with her staff before they went in for interviews." But this reference pertains to Velez's testimony that Justice Chaney briefly told her "a few things" about Justice Chaney's experience with Justice Johnson before Velez's interview with commission staff, but *after* Velez's interview with the attorney retained to conduct the court's investigation. Velez had, therefore, already been interviewed about her own experiences with Justice Johnson. Justice Johnson also points out that the masters found that Butterick embellished her description of his stroking of her arm while she was testifying, which he attributes to her having talked to other people. But there is no evidence this occurred as a result of her talking to people, and the masters rejected her embellished description because it was inconsistent with her prior descriptions to friends and commission staff.

Justice Johnson argued that the "toxic nature of the allegations and virulent social metastatic oozing of the leaked email, gossip, Me Too's impact on social and political burdens of proof and objectivity, media propagation of salacious claims, coupled with

confirmation bias—rendered fair and objective decision-making more difficult and more politically risky." The masters found that the evidence did not support Justice Johnson's "social contagion" argument.

We agree. Not only is there no evidence to support this highly speculative theory, but there is clear and convincing evidence to support the masters' factual findings, many of which are undergirded by contemporaneous corroborating evidence that preceded any discussions witnesses may have had with one another.

Furthermore, the masters were apparently not swayed against Justice Johnson by any outside factors when they determined to discredit Officer Sauquillo's allegations about Justice Johnson propositioning her for sex in graphic, vulgar language. This was a significant charge in this matter, and their decision to reject it, and some of Justice Chaney's allegations, demonstrates their neutrality. We acknowledge that Officer Sauquillo's allegations were widely disseminated via Justice Lui's email and were publicized in the media, but this does not support Justice Johnson's claim that the victims of his more serious sexual misconduct, or the custodians who observed him intoxicated at the courthouse late at night, fabricated their testimony.

Justice Johnson also argued that the witnesses benefitted from making claims against him, asserting: "Once the word is out that the administration, back channel conversations, colleagues and coworkers are promoting a negative view of a judicial officer, the benefits to career and social approval become

irresistible. . . . Simply stated: *when your boss asks you to join the team, you join the team*." (Italics in original.) There is no support for this assertion.

First, there is no evidence that anyone's "boss" asked anyone to do anything, especially with respect to an investigation of Justice Johnson.

Second, a number of witnesses do not work for the court and stand to gain nothing from their testimony (e.g., Burnette, Kent, Schulman, and Palmer). Indeed, it is difficult to understand how testifying publicly about being the victim of sexual misconduct could result in any career benefit.

Third, some witnesses were reluctant and required subpoenas before they would testify (e.g., Butterick, Lin, Kent, Pettie, Denow, and Melissa Miller [rebuttal witness whose testimony was not used for findings]).

We reject Justice Johnson's argument that "social contagion" is a mitigating factor.

H. <u>Comparable Discipline</u>

Justice Johnson claimed that he does not fall within the realm of other removal decisions by the commission because his conduct does not include the certain "disqualifying characteristics" or "critical elements generally common to those decisions."

First, he argued that there is no willful misconduct. As previously discussed, willful conduct is not required for removal.

Second, he has no "prior discipline which was not heeded." Of the 12 judges removed by the commission,

five (or nearly half) had no prior discipline (Judges Couwenberg, Spitzer, MacEachern, Saucedo, and Laettner). The existence of prior discipline is not a prerequisite for removal.

Third, he said that "a failure to take steps to modify behavior" "after notice of the investigation" is another "critical element." This is also not required. Several judges were removed for conduct they could have not subsequently modified (e.g., Saucedo, MacEachern, and Stanford).

Fourth, Justice Johnson listed the "occurrence of improper efforts to influence witnesses and/or non-cooperation with the commission" as another required element for removal. That is also not required, and Justice Johnson does not cite any authority identifying that as a requirement.

Justice Johnson also argued that he should receive lesser discipline than removal based on Supreme Court and commission precedent in the following cases.

Judge Gary Kreep, who was censured in 2017, engaged in 29 individual acts of misconduct (grouped into one instance of willful misconduct and 17 instances of prejudicial misconduct) over a three-year period, with the majority occurring within his first year on the bench. (*Inquiry Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1.) Justice Johnson drew various similarities and differences between his matter and that of Judge Kreep, arguing that he, too, should receive a censure. He said that Judge Kreep's misconduct included sexual comments, among other things, and the commission found that, in addition to

constituting a pattern, his behavior evidenced his "failure to recognize that his comments could offend people or make them feel uncomfortable."

There are significant differences between this matter and that of Judge Kreep. Judge Kreep's conduct toward women was much less serious, it did not involve the unwanted touching of multiple women. It also did not involve undignified conduct while intoxicated on multiple occasions. Judge Kreep's conduct occurred mostly during his first year on the bench, but Justice Johnson's misconduct upon which our decision is based spanned nine years on the bench. Judge Kreep modified his behavior while at court, after being counseled. Justice Johnson received several warnings, but did not modify his behavior.

Judge John Fitch was censured in 1995 for inappropriate comments to court staff attorneys, and others, as well as for nonconsensual touching of women working under his supervision. (*Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552.) Judge Fitch made the remarks "on several occasions," and "on a few isolated occasions" touched, or attempted to touch, women working under his supervision (e.g., slapping or patting their buttocks). (*Id.* at p. 557.) The commission found that the touching was episodic, relatively infrequent, and did not constitute a pattern of misconduct. (*Id.* at p. 554.) In contrast, Justice Johnson's improper touching of Justice Chaney was found to constitute a pattern, and his touching of Kent and Schulman was more extreme than Judge Fitch's conduct. Also, Judge Fitch had ceased his conduct for the three years before the commission issued its

decision, whereas Justice Johnson has been away from the court since the investigation began, and has not been able to demonstrate that he has ceased the conduct toward court employees. Significantly, 25 years have elapsed since the decision involving Judge Fitch, and behavioral standards for judges, particularly with respect to sexual harassment, have changed.

Judge John Gibson received a public admonishment in 2010 for inappropriate gestures and comments to court staff, many of which were sexually suggestive. (*Inquiry Concerning Gibson* (2000) 48 Cal.4th CJP Supp. 112.) Judge Gibson's case is distinguishable because he had a "unique" joking relationship with the woman involved in seven of the eight incidents of prejudicial misconduct, and several circumstances mitigated the risk of future violations, including that the events had occurred six years earlier, when he was new to the bench, and no subsequent incidents had been reported.

Judge John Harris received a public admonishment in 2005 for, among other things, making comments to women at court, and, in one instance, putting his hands on an attorney's face and saying, "You're so cute." (*Inquiry Concerning Harris* (2005) 49 Cal.4th CJP Supp. 61.) Judge Harris was a former judge when the discipline was issued and did not intend to return to the bench, therefore, the capacity to reform was not a relevant consideration. (*Ibid.*) Here, the conduct is far worse, and a critical issue is Justice Johnson's capacity to reform.

Judge Scott Steiner stipulated to a censure in 2014 for, among other things, engaging in sexual activity in

chambers with two women with whom he had personal relationships. (*Censure of Judge Steiner* (2014).) Justice Johnson argued his conduct "does not begin to approach the level or nature of misconduct found in Judge Steiner's matter." The difference is that, as Justice Johnson notes, the commission agreed to a censure, rather than removal, because Judge Steiner fully acknowledged his wrongdoing, which involved consensual conduct, and expressed remorse and contrition. Justice Johnson does not admit most of the misconduct proven in this matter, particularly the most serious misconduct, and it was not consensual.

Similarly, Judge Cory Woodward received a censure in 2014 for engaging in sexual activity in the courthouse with his clerk and misleading court administration about their relationship. (*Censure of Judge Woodward* (2014).) Like Judge Steiner, he admitted all of his misconduct, which involved consensual behavior, and expressed remorse and contrition.

V. CONCLUSION

"Certain misconduct is so completely at odds with the core qualities and role of a judge that no amount of mitigation can redeem the seriousness of the wrongdoing or obviate the need for removal in order to fulfill our mandate to protect the public, enforce high standards of judicial conduct, and maintain public confidence in the integrity of the judiciary." *(Saucedo*, *supra*, 62 Cal.4th CJID Supp. at p. 53.) The "ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibility of judicial office." (*Geller*, *supra*, 10 Cal.3d at p. 281.)

Judges are expected to be honest, have integrity, uphold high personal standards, and treat everyone with dignity and respect, on or off the bench. Justice Johnson's conduct before, and during, this proceeding demonstrates that he does not meet these fundamental expectations. He committed 18 acts of prejudicial misconduct and was found to have engaged in the unwanted touching of four women, to have engaged in conduct that would reasonably be perceived as sexual harassment of seven women at his court, to have misused the prestige of his position and demeaned his judicial office by attempting to develop personal relationships with three other young women, and to have further demeaned his office by his offensive conduct toward a fourth woman, as well as by multiple incidents of undignified conduct while intoxicated.

Justice Johnson's refusal to admit to serious misconduct, and his intoxication, coupled with his failure to be truthful during the proceedings, compels us to conclude that he cannot meet the fundamental expectations of his position as a judge. Fulfilling the commission's mandate—particularly with respect to maintaining public confidence in the integrity of the judiciary—can only be achieved by removing him from the bench.

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 Justice Jeffrey W. Johnson from office and disqualify him from acting as a judge.

Commission members Hon. Michael B. Harper; Dr. Michael A. Moodian; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Kay Cooperman Jue; Nanci E. Nishimura; Esq.; Victor E. Salazar, Esq., Mr. Richard Simpson; and Mr. Adam N. Torres voted in favor of all the findings and conclusions expressed herein and in this order of removal. Commission members Ms. Sarah Kruer Jager and Hon. Lisa B. Lench were recused from this matter.

Dated: June 2, 2020 s/_____
Nanci E. Nishimura, Esq.
Former chairperson of the commission

Dated: June 2, 2020 s/_____
Honorable Michael B. Harper
Current chairperson of the commission