APPENDICES

Appendix A

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE JOHN T. LAETTNER, No. 203	NOTICE OF FORMAL PROCEEDINGS

To John T. Laettner, a judge of the Contra Costa County Superior Court from March 2006 to the present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE

On May 18, 2017, you presided over a hearing in *People v. Stephanie Imlay*, Nos. 1-168690-6, 1-171881-6, 1-171945-9, 1-178881-9, and 1-181712-1. The defendant was present and out of custody, having been released on bail in all five cases. The bail

amounts ranged from $4,000 to $20,000. At the outset of the hearing, the defendant's attorney, Deputy Public Defender (DPD) Krista Della-Piana, told you that Ms. Imlay was going to plead guilty to misdemeanor automobile theft in one case and that the other cases would be dismissed. You asked counsel to approach the bench, where you stated that you believed Ms. Imlay was under the influence of a controlled substance, such that she could not enter a change of plea as planned, and directed a law enforcement officer present in your courtroom (Sergeant Garrett Schiro) to examine the defendant to determine whether she was under the influence. Sergeant Schiro left the courtroom with the defendant. After he examined the defendant, Sergeant Schiro returned to your department, where you engaged in a private, ex parte conversation with him about his examination. Sergeant Schiro told you that Ms. Imlay had admitted "using" the night before, and that it was his opinion she was under the influence of a controlled substance. Based upon your ex parte conversation with Sergeant Schiro, you announced that the defendant's conduct had violated "her OR release," that you were going to remand her, and that you would impose sentence and address other issues on May 23, 2017. Although DPD Della-Piana pointed out to you that the defendant had been released on bail and not on her own recognizance (OR), and objected to the defendant being taken into custody, you remanded the defendant without exonerating, revoking, or increasing bail.

After the hearing, and outside the presence of the parties, you abused your authority by directing that the minute orders in each case reflect that bail was exonerated and reset at $25,000. By increasing bail in the defendant's absence and without a hearing on the appropriate bail amount, you failed to accord the defendant and her attorney the full right to be heard according to law.

On May 23, 2017, DPD Della-Piana argued to you in chambers that Ms. Imlay needed to be released because she had been unlawfully remanded. You rejected Ms. Della-Piana's argument. On the record, you set one case for a preliminary hearing and put the other cases over to May 25, 2017.

On May 25, 2017, you requested that Deputy District Attorney (DDA) Jun Fernandez speak with you in chambers regarding Ms. Imlay's cases. You did not ask Ms. Della-Piana to accompany Mr. Fernandez to your chambers. You subsequently had an ex parte communication regarding Ms. Imlay's cases with Mr. Fernandez in chambers. During the conversation, you asked DDA Fernandez what he wanted to do in light of the absence of the defendant's waiver of her rights pursuant to *People v. Arbuckle* (1978) 22 Cal.3d 749. DDA Fernandez told you that if there was no *Arbuckle* waiver in a case, the case had to be transferred. Subsequently, on the record, you transferred case number 1-168690-6 to Judge Bruce Mills. Although you told the parties that your clerk had brought to your attention the fact that the defendant had not signed an advisement of rights, waiver, and plea form, which includes an *Arbuckle* waiver, you did not promptly notify DPD Della-Piana of your ex parte communication with DDA Fernandez.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3, 3B(2), 3B(5), 3B(7), and 3B(8).

COUNT TWO

You engaged in a pattern of conduct towards DPD Krista Della-Piana that was unwelcome, undignified, discourteous, and offensive, and that would reasonably be perceived as sexual harassment or sexual discrimination, as follows.

A. In approximately May 2016, after you presided over a contested disposition hearing in which DPD Della-Piana represented a juvenile, you told Ms. Della-Piana, "Sometimes having you in here is like having a teenage daughter – you constantly argue with me and you just keep talk, talk, talking until you get what you want," or words to that effect. When Ms. Della-Piana reacted adversely, you added, "But I like it – it's a compliment. Take a compliment," or words to that effect.

B. On August 5, 2016, during a hearing regarding administering involuntary medication to a minor in *In re the Matter of Eric B.* (No. J15-00781), you winked at Ms. Della-Piana and later called her to the bench (without the deputy district attorney) to ask her if she saw you winking at her.

C. On August 24, 2016, you presided over a hearing in *In re the Matter of Lauryn G.*, No. J15-00105. Lauryn G.'s assigned attorney, DPD Karen Moghtader, was unable to appear and Ms. Della-Piana appeared for her. When the matter was called, the minor had not yet appeared and Ms. Della-Piana asked you, off the record, to pass the matter until later in the calendar. You agreed. Ms. Della-Piana then informed you that Ms. Moghtader would be available when the case was called again, and would appear on Lauryn G.'s behalf. You told Ms. Della-Piana, "No – I would rather it be you," or words to that effect. When Ms. Della-Piana told you that you did not get to decide who appeared on Lauryn G.'s behalf, you replied, "Well, I'm saying I would rather it be you," or words to that effect. When Lauryn G. arrived, Ms. Della-Piana appeared with her. Ms. Della-Piana informed you that there were only two dates on which Ms. Moghtader would be unavailable for a contested probation violation hearing. You refused to set the next hearing on any date when Ms. Moghtader was available and instead set the next hearing on a date that you knew she was unavailable.

D. On or about October 12, 2016, Ms. Della-Piana looked into your courtroom to see if she could speak with her colleague who was engaged in a felony jury trial there (*People v. Mark Pike*, No. 5-161223-3). When she realized that the parties were on the record (although the prospective jurors were not in the courtroom), Ms. Della-Piana walked away. You subsequently left the bench, walked out of your courtroom, stopped Ms. Della-Piana in the hallway, and engaged her in an ex parte conversation, while the prospective jurors continued to wait outside your courtroom. During this conversation, you told Ms. Della-Piana that you knew she was frustrated with you regarding your involuntary medication order in *In re Eric B.*, *supra*, and explained your order on the basis that you had a family member who was mentally ill, and who did not get better until she was medicated, so you knew what it takes to "fix" them, or words to that effect. You further commented to Ms. Della-Piana that you noticed how happy she was when you ordered Eric B. released from custody, that you know from her face when she is happy with you, and that you liked it when you caused her to have a "happy" face. You also asked Ms. Della-Piana to "cut [you] some slack," or words to that effect, because you

were doing what was best for her client, and then told her, "I like to see you happy," or words to that effect.

E. On June 8, 2017, you told your clerk that you wanted to see Ms. Della-Piana in chambers. When Ms. Della-Piana came to your chambers, you spoke to her, ex parte, regarding the proceedings which had occurred in *People v. Stephanie Imlay*, *supra*. (The allegations in count one are incorporated by reference.) You told Ms. Della-Piana that you did not want "things to be bad between" you, and that you did not want to be "mad at each other," or words to that effect. You told Ms. Della-Piana that you felt bad because she was mad at you and had yelled at you about your ex parte communication with DDA Fernandez. You told Ms. Della-Piana that her objections on the record made you feel bad. You told Ms. Della-Piana that "it's different" with her and that you did not "want to lose that," or words to that effect. You told Ms. Della-Piana that while you usually try not to spend time with attorneys who appear in front of you, it was different with her. You told Ms. Della-Piana she was losing her sense of humor in felony cases. With regard to your speaking with DDA Fernandez in chambers, you told Ms. Della-Piana that you could not believe that she did not trust you enough to know that you would never do anything unethical. You told Ms. Della-Piana that, when she had accused you of misconduct for speaking in chambers with Mr. Fernandez without her being present, you felt as if one of your own children was accusing you of hurting them. You told Ms. Della-Piana that "this really shook" you, or words to that effect, and you had been thinking about it ever since. You told Ms. Della-Piana that it made you sad to think that she would not come to your courtroom and did not want to see you. You told Ms. Della-Piana that when you passed her in the hallway on June 7, 2017, you tried to catch her eye and smile in an effort to communicate to her that you were not mad at her anymore. You told Ms. Della-Piana that, when she looked away, you could not tell whether or not she was looking away on purpose, but that it made you feel better to think she looked away on purpose because that meant that perhaps she was thinking "about it, too," or words to that effect. You also told Ms. Della-Piana that she had "every right" to be mad at you, but that you had been mad at her during the *Imlay* case because you were trying to help

her client, when she just wanted her client out of custody. You also told her that you had asked DDA Fernandez to come into chambers with you because you were mad at Ms. Della-Piana, were not ready to be in her presence, knew exactly what she was going to say, did not want to hear it, and was not ready to hear it. When Ms. Della-Piana attempted to conclude the conversation, you told her that she was a "hard" one and that her parents did not "spank" her enough as a child, or words to that effect.

F. In 2016 and 2017, on several occasions after contentious hearings in juvenile court during which you made rulings adverse to her clients, you asked Ms. Della-Piana to approach the bench without the deputy district attorney, and said things like "I know you're mad at me," and "I don't like to see your face like that."

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 2B(1), 3, 3B(2), 3B(4), 3B(5), 3B(7), and 3C(1).

COUNT THREE

In *People v. Harlan Ventura*, No. 1-142819-2, the defendant was arrested after the Probation Department filed a petition to revoke the defendant's probation. On October 31, 2013, you ordered that the defendant be released on OR and to return to court the next day.

On November 1, 2013, the defendant's attorney, DPD Jermel Thomas, filed a peremptory challenge against you pursuant to Code of Civil Procedure section 170.6. Ms. Thomas then appeared before you with the defendant, who remained in custody due to an Immigration and Customs Enforcement hold. Ms. Thomas told you that she had "filed a paper[]" and asked for a hearing date. You set two hearing dates, but made no order on the record changing the defendant's custody status. After the hearing, you told your clerk that the defendant was remanded, even though there were no grounds to remand the defendant. When the defendant next appeared before you on November 8, 2013, you agreed to order the defendant's release on OR only if the defendant agreed to enroll in a program offered by A Step Forward.

By revoking the defendant's OR release in the defendant's absence and without a hearing, you abused your authority, failed to accord the defendant and his attorney the

full right to be heard according to law, and gave the appearance that you were retaliating for the filing of a peremptory challenge against you.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3, 3B(2), 3B(5), 3B(7), and 3B(8).

COUNT FOUR

You made unwelcome, undignified, discourteous, and offensive comments, some of which would reasonably be perceived as sexual harassment or sexual discrimination, to and about other female attorneys who appeared before you, as follows.

A. Between approximately October 2007 and June 2008, you repeatedly asked DPD Sarah MonPere personal questions, such as whether she had a boyfriend or intended to have children. After Ms. MonPere carried a defendant's baby from your courtroom so the defendant could enter her plea, you repeatedly commented to Ms. MonPere about how natural she looked holding a baby or child. You repeatedly told Ms. MonPere that she could get anything she wanted from you and that you could not say "no" to her. You also told other attorneys that she was your "favorite." You referred to Ms. MonPere as the "teacher's pet" in your courtroom and once made a statement to the effect that Ms. MonPere had you "on a chain."

B. In approximately 2012, you asked DPD Kim Mayer to approach the bench alone. In a tone and with a demeanor that was suggestive and inappropriate, you told her that you had just found out who her husband was and that you were the same age as her husband, who was 14 years older than Ms. Mayer.

C. On March 11, 2013, in *People v. Jacob Pastega*, No. 5-121870-0, you presided over a hearing on a petition to revoke Mr. Pastega's probation. Mr. Pastega was represented at the hearing by DPD Mayer. During the hearing, you repeatedly reprimanded Ms. Mayer for allegedly interrupting you, demeaned her by asking her if she knew what a proffer was, and told her not to argue with you when she replied that she knew what a proffer was and that she was not making a proffer. Although you had not seen the petition, you told Ms. Mayer, "[W]hile you make representations like you are

all-knowing and know everything with regard to this petition, you don't." You then engaged in the following exchange with Ms. Mayer:

> THE COURT: I'm perfectly willing to have Mr. Pastega go to another dual-diagnosis program called Solidarity, and this matter will be continued until next week.
>
> MS. MAYER: Actually, Judge, that's fine. We can continue this to next week, but --
>
> THE COURT: You interrupted me again; didn't you? Will you stop doing that? It is so annoying. You have no idea.
>
> MS. MAYER: No, I think I do. You make it very clear.
>
> THE COURT: You know, I'm just this close to holding you -- holding you in contempt. Do you want me to do that? It's like you're asking me to do that.
>
> MS. MAYER: I feel like I'm doing my job.
>
> THE COURT: Do you want me to do that?
>
> MS. MAYER: I'll speak when I'm allowed to speak. I feel like I'm doing my job the best I can in this department.

D. On November 1, 2013, after you heard *People v. Harlan Ventura*, *supra*, you presided over *People v. Henry Williams*, No. 5-305615-7. DPD Wayne James represented Mr. Williams at a previous hearing, and DPD Christy Wills Pierce represented Mr. Williams at this one. After Mr. Williams admitted violating a term of his probation, you stated that you were "going to order search and seizure and counseling as directed and drug and alcohol testing." DPD Pierce told you that DPD James had not written those conditions in his notes, and asked that you "not order the counseling as directed." You denied the request and stated: "I talked to Mr. James about search and seizure, counseling as directed, and alcohol testing." DPD Pierce also told you that the only testing that would be appropriate was alcohol testing and that she did not "see that there's anything in here related to drugs." You stated that you were "going to order drug and alcohol testing as directed." When DPD Pierce asked you, "What would be the basis for the drug testing?," you replied in a loud and angry voice: "Our prior discussions with

regard to this case. I know you're coming in late. I'm not going to pretry every case all over again just because you're here today."

After the calendar ended, you called DPD Pierce up to the bench to apologize for getting so angry and yelling at her. You also told her, "It just makes me so mad and angry when your friend talks to me like that," or words to that effect. You explained that, by "friend," you meant DPD Jermel Thomas, who had been in the courtroom earlier in the day and had filed a challenge against you, pursuant to Code of Civil Procedure section 170.6.

E. From approximately January 2014 until approximately January 2017, you repeatedly compared DPD Nicole Herron to a British actress named Caroline Catz who appeared in a television show called "Doc Martin." You told Ms. Herron on at least a dozen occasions that you had seen her (Ms. Herron) on television the night before, or that you had watched her show. It appeared that your intention was to repeatedly comment on Ms. Herron's physical appearance. You also frequently commented that Ms. Herron was "someone I just can't say no to," the "best attorney in the public defender's office," the "best attorney in the juvenile division," and your "favorite attorney."

F. From approximately 2014 to 2018, one of your duties was to preside over the criminal grand jury. During that period, DDA Devon Bell was often the prosecutor who escorted the grand jurors to the grand jury room after they were selected. On several occasions, after you selected a grand jury, you told grand jurors that she was "beautiful," that she was one of your favorite attorneys, and that you liked to say that you "married Ms. Bell" because you performed her wedding ceremony. You made these remarks in Ms. Bell's presence, as well as before she arrived in the courtroom. You also joked to the grand jurors that Ms. Bell was a member of the district attorney's volleyball team or the women's volleyball team.

G. In approximately 2017, you commented to DPD Emi Young, who is part Japanese, that you knew some "very beautiful half-Japanese twins in college," or words to that effect. You also asked her intrusive questions about her racial ancestry, background, and upbringing.

H. In approximately 2017, when someone came to your department looking for DPD Emi Young and did not know what she looked like, you told the person to look for "the young attractive Asian woman," or words to that effect.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 2B(1), 3B(4), 3B(5), and 3C(1).

COUNT FIVE

You made unwelcome, undignified, discourteous, and offensive comments to and about other women who appeared or worked in your courtroom, some of which would reasonably be perceived as sexual harassment or sexual discrimination, as follows.

A. Court reporter Jennifer Michel was assigned to your department between approximately 2006 and July 2017. You often made comments to Ms. Michel about her physical appearance, such as, "You're so pretty – I don't know how you do it." On one occasion, in approximately 2010, you ordered Ms. Michel to come to your chambers to put a matter on the record. When Ms. Michel came to your chambers, no attorneys were present. Ms. Michel asked you whether you wanted the attorneys on the matter present, or just Ms. Michel. You responded, "Well, you are hot," or words to that effect.

B. On January 25, 2013, you presided over a restitution hearing in a domestic violence case (No. 02-304201-7). DPD Christy Pierce represented the defendant. Near the end of the hearing, you asked the defendant whether he "got something out of" a 52-week class that he had completed as a condition of probation. When the defendant told you that he had gotten a lot out of the class and that "[w]e have to learn[,]" you responded, "On a lighter note, I can take judicial notice that women can drive you crazy." You then laughed. On or about February 1, 2013, when DPD Pierce told you in chambers that your remarks were inappropriate and made her feel demeaned as a woman, you told her that judges can get in trouble or "fired" for making jokes like that.

C. On December 7, 2015, in *In re Avery S.*, No. J13-01289, you engaged in a lengthy discussion with Avery S.'s mother about her tattoos. You told her that she was a "pretty woman[,]" but that when you initially saw her tattoos, you "thought, oh, crap, look at all of those tattoos."

D. You presided over the juvenile matter of *In re the Matter of Vanessa W.*, No. J14-00233. Vanessa had been involved in an automobile accident and had admitted a violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08% or more). On June 3, 2016, you told Vanessa, off the record, that she was "beautiful" or "pretty," and expressed concern that she could have sustained permanent scarring to her face during the accident. During discussions in chambers regarding Vanessa, you told counsel that Vanessa is "such a pretty girl," or words to that effect. On January 12, 2017, during another hearing regarding Vanessa W., you rejected DDA Adam McConney's suggestion that Vanessa be remanded into custody. After the hearing, you asked DDA McConney and DPD Rory McHale to approach the bench. At the bench you stated that you wanted to explain your decision not to remand Vanessa W. You stated that you had presided over matters regarding Vanessa W. for a number of years. You then stated the following, or words to that effect: "She used to be really cute, back when she was 14. I remember thinking that that girl should be a cheerleader or something. I don't know what happened to her recently though. Maybe drugs are having some effect."

E. You often told other female defendants charged with driving under the influence that they were pretty, and that they should not drink and drive or they might get scars. On March 8, 2017, in *People v. Hannah Thompson*, No. 1-178757-1, the defendant pled no contest to a charge of driving under the influence of alcohol after she was involved in a minor collision. After imposing sentence, you told Ms. Thompson in open court that she reminded you of someone who appeared in front of you many years ago, and that that person saw the scars on her face from a drunk driving accident every time she looked in the mirror. You told Ms. Thompson that she was "a pretty girl," that it looked like she was okay, and that she was very lucky.

F. On June 16, 2017, in *People v. Thalia Hernandez*, No. 166810-2, you placed the defendant on diversion. The defendant was wearing a tank top, so that her tattoos were visible. You engaged the defendant in an off-the-record discussion regarding her tattoos. You told Ms. Hernandez that, when you were her age, tattoos meant something.

When Ms. Hernandez told you that she tried to have her tattoos mean something, too, you commented that tattoos on military and navy personnel have special meaning. You then told Ms. Hernandez that she might want to cover up her tattoos if she was looking for a job. You also made comments to Ms. Hernandez about other people getting tattoos, including that you did not understand why "fat people" get tattoos and or what "fat people" are thinking when they get tattoos. The latter comments were not directed at Ms. Hernandez.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), and 3C(1).

COUNT SIX

While presiding over *In re the Matter of Victor E.*, No. J15-00011, you made statements that gave the appearance of prejudgment and that would reasonably be perceived as bias or prejudice, as follows.

A. On May 6, 2015, you adjudged Victor E. to be a ward of the court and placed him on home supervision for 120 days. While announcing the disposition, you stated: "I'm also ordering that your [15-year old] girlfriend is not to reside at your home."

On June 2, 2015, you presided over Erika N.'s truancy case on the Student Attendance Review Board (SARB) calendar. (No. J15-00091.) Erika N. was Victor E.'s girlfriend. During the hearing, Erika's mother told you that Erika had spent the night of May 31, 2015 at Victor E.'s house. You subsequently instructed your clerk to send the parties in *Victor E.* a notice of hearing to take place on June 4, 2015, for violation of the court's order.

At the outset of the June 4, 2015 hearing in *Victor E.*, you announced that you had put the matter on calendar. You stated that, when Victor was sentenced, the court had told Victor and his family that Erika could not "spend the night" at Victor's house. You also stated that, two days previously, when you presided over the SARB calendar, Erika's mother said that Erika had spent the night at Victor's house on May 31, 2015. You added: "So Victor is in violation of my court's order by virtue of her statements, and so that's why he's been brought in." You then asked Victor's attorney whether there was

any reason why Victor should not be placed in custody. At the end of the hearing, you stated that you were not going to take any action, but that if it happened again, you would put Victor in custody. By stating that Victor had violated your order, before hearing from Victor E. or his attorney, you gave the appearance of prejudgment.

B. On October 25, 2016, the Contra Costa County Probation Department sent Victor E. a Notice of Probation Violation Hearing. The notice alleged that, as of October 4, 2016, Erika N. had been residing at Victor E.'s residence. On December 1 or 8, 2016, prior to a scheduled hearing on the probation violation, you told the attorneys in chambers that what was occurring was a "cultural thing," or words to that effect.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5).

COUNT SEVEN

In approximately late January or early February 2017, shortly after you took over the arraignment and pretrial conference calendar in Martinez, you told attorneys who appeared before you that you had inherited a large backlog of cases and would be instituting a new program to address the backlog. You told counsel that, for a certain time period, in order to encourage defendants to plead guilty, you would offer a 25% reduction in days in jail or in other custody alternatives and/or a 25% reduction in discretionary fines imposed. Your conduct constituted an abuse of authority, had a chilling effect on defendants' constitutional rights to trial by jury, and gave the appearance that you intended to give harsher treatment to defendants who asserted their right to trial and were convicted.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3, 3B(2), and 3B(8).

COUNT EIGHT

Your son, Max Laettner, has been a deputy district attorney with the Contra Costa County District Attorney's Office since approximately June 2015. Previously, Max Laettner worked intermittently as a legal intern and/or law clerk for the Contra Costa County District Attorney's Office. In some cases handled by the district attorney's

office, including but not limited to the following cases, you failed to recuse yourself or timely disclose on the record your son's employment with the district attorney's office:

(a) *In re Vanessa W.*, No. J14-00233;

(b) *In re Lauryn G.*, No. J15-00105; and

(c) *In re Victor E.*, No. J15-00011.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3E.

COUNT NINE

In early 2008, in response to peremptory challenges that deputy public defenders exercised against you, you made ex parte comments that would reasonably be perceived as sexual harassment or sexual discrimination and, at a minimum, gave the appearance that you were attempting to influence the attorneys not to exercise the challenges, as follows.

A. In approximately 2008, DPD Nicole Eiland tried a sexual battery case before you. The defendant was acquitted of sexual battery, but convicted of simple battery. On or about January 28, 2008, you sentenced the defendant to 60 days in county jail. Later, after Ms. Eiland began exercising peremptory challenges against you, pursuant to Code of Civil Procedure section 170.6, you asked her to approach the bench alone. You told Ms. Eiland that you assumed she was challenging you because of your sentence in the sexual battery case. You told Ms. Eiland that you wanted her to know what your thought process was when you were determining the sentence, and you explained that you had imagined that it could have been Ms. Eiland or Sarah MonPere (a deputy public defender who had no connection to the case) who had been sexually assaulted.

B. In early 2008, DPDs Matthew Cuthbertson and Brooks Osborne also started exercising peremptory challenges against you, pursuant to Code of Civil Procedure section 170.6. One day, when DPDs Cuthbertson and Osborne were pre-trying cases in your chambers with you and a prosecutor, you asked the prosecutor to step out of chambers. After the prosecutor left, you told DPDs Cuthbertson and Osborne that, although you would never tell them not to represent their clients to the best of their abilities and that the attorneys should challenge the judge if they thought that it was in

their clients' best interests, the challenges hurt your feelings and did not feel good. DPD Osborne responded by laying out the reasons why the DPDs were challenging you. Among other things, DPD Osborne brought up the 60-day jail sentence you imposed in the sexual battery case that DPD Eiland had tried before you. In response, you asked DPDs Osborne and Cuthbertson whether it would have upset them if the defendant in that case had touched or grabbed DPD Sarah MonPere's breasts.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), 3B(7), and 3C(1).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (20) days after service of this notice upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 14400, San Francisco, California 94102-3660. The answer shall be verified and shall conform in style to the California Rules of Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

Dated: 8/29/2018

Nanci E. Nishimura

Nanci E. Nishimura, Esq.
Chairperson

Appendix B

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE JOHN T. LAETTNER, No. 203	DECISION AND ORDER REMOVING JUDGE JOHN T. LAETTNER FROM OFFICE

I. INTRODUCTION

This disciplinary matter concerns Contra Costa County Superior Court Judge John T. Laettner. The commission commenced this inquiry with the filing of its Notice of Formal Proceedings on September 14, 2018.

Judge Laettner is charged with nine counts of misconduct, which, with subparts, include 28 allegations of misconduct. The allegations involve remanding criminal defendants without notice and the opportunity to be heard in two cases (Counts One and Three); three improper ex parte communications (Counts One and Two); a pattern of undignified and inappropriate comments to women (Counts Two, Four, and Five); making statements that give the appearance of prejudgment and bias (Count Six); improperly instituting a new program to address a backlog of criminal cases (Count Seven); failing to disclose and/or disqualify in some cases involving his son, who is a deputy district attorney (Count Eight); and attempting to persuade certain deputy public defenders not to file peremptory challenges against him (Count Nine).

The California Supreme Court appointed Hon. M. Kathleen Butz, Associate Justice of the Court of Appeal, Third Appellate District; Hon. Douglas Hatchimonji, Judge of the Orange County Superior Court; and Hon. Russell L. Hom, Judge of the Sacramento County Superior Court, as special masters to conduct an evidentiary hearing.

The 10-day hearing took place between February 25 and March 8, 2019, with closing arguments on April 26, 2019. The masters filed a report containing their findings of fact and conclusions of law on June 14, 2019. The commission heard oral argument on October 2, 2019.

The special masters found that the allegations in Counts One (in part), Two (in part), Three, Four (in part), Five (in part), and Nine (in part) were proven by clear and convincing evidence, and that the allegations in Counts Six, Seven, and Eight were not proven. They concluded that Judge Laettner committed willful misconduct as to Counts One (in part) (ex parte communication with a prosecutor), Three (remanding a criminal defendant without notice and an opportunity to be heard), and Nine (discouraging deputy public defenders from filing peremptory challenges); that he committed prejudicial misconduct as to Counts One (in part) (remanding a criminal defendant without notice and an opportunity to be heard), Two, Four, and Five (in part) (gender bias and inappropriate comments to and about women); and that his conduct constituted improper action as to Count Five (in part) (gender bias and inappropriate comments to and about women).

We conclude, based on our independent review of the record, that the masters' factual findings as to all counts are supported by clear and convincing evidence, and we adopt them in their entirety. We include in our decision some additional facts that are supported by clear and convincing evidence.

The masters also found that Judge Laettner was "not credible or not truthful as it relates to his testimony concerning several of the events making up this inquiry," and that "[h]is lack of candor regarding several of the allegations is troubling." We agree with, and adopt, the masters' credibility findings.

We adopt the masters' legal conclusions as to most, but not all, of the allegations. In some instances, we reach our own independent legal conclusions. We base our decision on five acts of willful misconduct and eleven acts of prejudicial misconduct that we find Judge Laettner committed.

Much of Judge Laettner's misconduct reflects a pattern of engaging with attorneys appearing before him in a manner that is governed by his emotions, rather than by the California Code of Judicial Ethics. His desire to have certain attorneys like him and not be upset or "mad at him" about his rulings, and action he has taken when he was angry or upset with them, has, at times, overridden his compliance with the canons of judicial ethics. The factual findings of the special masters suggest that Judge Laettner failed to maintain the necessary professional distance between himself and attorneys appearing before him, or that he became embroiled. "Once a judge becomes embroiled in a matter, fairness, impartiality, and the integrity of decisions leave the courtroom." (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 1:35, p. 27 (hereafter Rothman).)

Judge Laettner has also displayed a pattern of inappropriate treatment of women in his courtroom that reflects bias based on gender, as well as physical appearance. He has taken responsibility for some, but not all, of the improper comments he was found to have made to and about women, but he has not accepted responsibility for the other misconduct that the special masters found was proven (i.e., denying criminal defendants due process, improper ex parte communications, and discussing peremptory challenges against him with the deputy public defenders who were filing them).

There is substantial evidence that, during his 13 years as a judge, Judge Laettner has had an exemplary work ethic and has been a responsible, conscientious judge, and an asset to his court. In light of this evidence, if we were to consider only his acts of willful and prejudicial misconduct, we would impose a censure. But given our mandate to uphold high standards of judicial conduct, protect the public, and preserve the integrity and impartiality of the judiciary, it is Judge Laettner's lack of candor during this proceeding, and his selective and limited acknowledgment of his misconduct, that leads us to conclude that removal from the bench is the appropriate discipline.

Judge Laettner is represented by James A. Murphy, Esq., Janet L. Everson, Esq., and Joseph S. Leveroni, Esq. of Murphy, Pearson, Bradley & Feeney in San Francisco, California. The examiners for the commission are commission trial counsel Mark A. Lizarraga, Esq. and commission assistant trial counsel Bradford Battson, Esq.

II. LEGAL STANDARDS

A. Levels of Misconduct

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

1. Willful Misconduct

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

2. Prejudicial Misconduct

The second most serious type of misconduct is "conduct prejudicial to the administration of justice that brings the judicial office into disrepute," also referred to as "prejudicial misconduct." (Cal. Const., art. VI, § 18, subd. (d).) Prejudicial misconduct does not require bad faith; rather, it is conduct that a judge undertakes in good faith, while acting in a judicial capacity, but that nevertheless would appear to an objective observer to be not only unjudicial but prejudicial to

public esteem for the judicial office. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 284.)

3. Improper Action

Improper action occurs when the judge's conduct violates the canons, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. (*Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 897-899 (*Adams II*).) Improper action may be the basis for a public or private admonishment, but not censure or removal. (Cal. Const., art. VI, § 18, subd. (d).)

B. Burden of Proof

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

C. Standard of Deference to Findings and Conclusions of Special Masters

The California Supreme Court has held that factual findings of the special masters are entitled to special weight because the masters were in a position to observe and assess the demeanor of the witnesses, but the legal conclusions of the masters are entitled to less deference because the commission has expertise with respect to the law concerning judicial ethics. (See *Adams II, supra,* 10 Cal.4th at p. 880, citing *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 832.) Thus, if the commission reaches a contrary legal conclusion, it is free to disregard the legal conclusion of the masters. (*Inquiry Concerning Freedman* (2007) 49 Cal.4th CJP Supp. 223, 232.)

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Count One—People v. Imlay

Judge Laettner is charged with (a) an improper ex parte communication with a law enforcement officer; (b) remanding a criminal defendant without exonerating and resetting bail in open court, and then later increasing bail in the defendant's absence and without a hearing on the appropriate bail amount, thereby failing to accord the defendant and her attorney the full right to be heard according to law; and (c) an improper ex parte communication with a prosecutor. The misconduct allegedly occurred while Judge Laettner was presiding over *People v. Stephanie Imlay*.

The special masters found that Judge Laettner committed willful misconduct by engaging in an improper ex parte communication with a prosecutor, but that his ex parte communication with a law enforcement officer was not misconduct. They also found that Judge Laettner committed prejudicial misconduct by failing to afford a criminal defendant and her attorney the right to be heard regarding bail.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with one additional canon violation (3B(7)), discussed below.

1. Findings of Fact

In May 2017, Judge Laettner presided over a misdemeanor and felony arraignment courtroom in the Martinez courthouse of the Contra Costa County Superior Court, conducting arraignments and pretrial hearings. His courtroom was one of the busiest in the county, often hearing over 100 cases per day.

a. May 18, 2017

On May 18, 2017, Judge Laettner presided over *People v. Stephanie Imlay,* a criminal matter in which Imlay was alleged to have a diversion failure, two probation violations, a misdemeanor drug case, and a felony attempted car theft. Imlay was represented by Deputy Public Defender (DPD) Krista Della-

Piana, and had been released on bail, on all cases. That morning, before her cases were called, Imlay was found sleeping on the floor outside Judge Laettner's department. Imlay was later found asleep inside Judge Laettner's courtroom.

When DPD Della-Piana appeared in Judge Laettner's courtroom on May 18, 2017, she presented to the court an executed waiver of rights form, intending for Imlay to enter a change of plea. Judge Laettner asked DPD Della-Piana about Imlay's condition, stating: "Ms. Della-Piana, your client doesn't look like she feels too well." DPD Della-Piana responded: "She's doing okay. She's ready to proceed." Judge Laettner said he was going to have a law enforcement officer examine Imlay to determine whether she was under the influence, which would affect her ability to competently waive her rights. Operations Sergeant Garrett Schiro volunteered to perform a drug abuse recognition examination of Imlay. DPD Della-Piana was present for some or all of the examination. Sergeant Schiro formed the opinion that Imlay was under the influence of a controlled substance. He then went into Judge Laettner's chambers and told the judge his opinion. DPD Della-Piana was not present during this conversation in chambers. Judge Laettner and Sergeant Schiro returned to the courtroom, where Judge Laettner put on the record that Sergeant Schiro had performed the examination of Imlay and was of the opinion that she was under the influence, so the court was unable to proceed with the change of plea at that time.

After summarizing on the record his conversation with Sergeant Schiro, Judge Laettner remanded Imlay into custody. When Imlay was handcuffed, she became upset, loudly crying and talking directly to Judge Laettner, and protesting her remand and asking to be released. Judge Laettner indicated his belief that Imlay had been released on her own recognizance, but DPD Della-Piana told him that Imlay was out on bail. After some colloquy, Judge Laettner left the bench.

DPD Della-Piana testified that Judge Laettner did not revoke Imlay's prior bail, or raise and reset bail, in her presence, and that he did not give her a chance to be heard about bail.

Judge Laettner testified that, when he returned to the bench a few minutes later, his clerk told him that he needed to set bail in the *Imlay* matter. He testified that he exonerated bail and set new bail in open court, with DPD Della-Piana present. At some point, the judge's clerk prepared minute orders setting bail at $25,000 in each of Imlay's cases.

The masters found that Judge Laettner was "not credible" when he testified that he exonerated and reset Imlay's bail in open court, and in DPD Della-Piana's presence, and that he gave DPD Della-Piana a chance to be heard on bail. He testified that, although the prosecutor was at the counsel table, he called DPD Della-Piana into the well between the counsel table and the bench so that she could receive the minute orders, where he told her that he had reset bail at $25,000 on each case, and she did not object. DPD Della-Piana testified that this did not occur. The bailiff, Deputy Scott Reed, testified that the normal procedure in Judge Laettner's courtroom was to make the orders available to public defenders by putting them in a bin he had for them. The masters said Judge Laettner's stated reason for calling DPD Della-Piana into the well "rings hollow" because there was "no rational reason" for him to want to see that DPD Della-Piana got the paperwork in the well, especially since he must have assumed, at the time, that the court reporter was taking down his open court order to exonerate and reset bail. And it would have been improper for the judge to talk to the public defender in the well while opposing counsel sat at counsel table, as both sides have the right to be heard on bail.

Judge Laettner objects to this finding based on his explanation described above, which the masters found was not credible. We agree with the masters.

The masters also found that Judge Laettner was "not credible" in explaining why his order exonerating and resetting bail, which he said he had issued in open court, was not reflected in the transcript of the proceedings. He testified that he believed his court reporter, Jennifer Michel, was not present when he set bail because she was difficult to locate. But Michel was his court reporter for 11 years and, other than *Imlay* and another case involved in these proceedings (*People v. Ventura*), he could recall only one occasion when he discovered something was not in the transcript that he was sure he had said. He also testified, inconsistently, that things did not appear in the record because Michel *was* present but was not taking things down. The masters found no basis for believing that Judge Laettner's court reporter would not have transcribed a bail order, if he had made one in open court, and that the "only reasonable inference" from the evidence is that he did not exonerate and reset bail in open court, thereby denying the defendant the opportunity to be heard as to bail.

Judge Laettner objects to this finding based on his explanation described above, which the masters found was not credible. We agree with the masters.

b. May 25, 2017

Imlay was set for another hearing on May 25, 2017. DPD Della-Piana and another deputy public defender noticed that Imlay had not given an *Arbuckle* waiver[1] on the diversion case, so Judge Laettner could not sentence her on that case. They brought this to the clerk's attention. The clerk went into the judge's chambers and told him this. Judge Laettner said this meant that he could not sentence Imlay on the diversion case, and he needed to get a deputy district attorney to the other judge's courtroom to handle sentencing.

Judge Laettner asked to speak to Deputy District Attorney (DDA) Jun Fernandez in his chambers. DPD Della-Piana testified that she was in the

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[1] *People v. Arbuckle* (1978) 22 Cal.3d 749, 756-757, provides that a defendant who enters a guilty plea before one judge is entitled to have the same judge impose sentence, unless the right is waived.

courtroom when this occurred. Judge Laettner testified that he did not see her in the courtroom and did not know where she was. DDA Fernandez testified that DPD Della-Piana was not in the courtroom when Judge Laettner called him into chambers.

Judge Laettner testified that he told DDA Fernandez, "We can't discuss the cases," that he was going to send the diversion case to another judge, and that a deputy district attorney would be needed to cover that appearance.

DDA Fernandez testified that Judge Laettner asked him in chambers, "What do you want to do on these matters?" The court reporter, Michel, testified that she overheard the judge say to DDA Fernandez, " . . . 'so what are we going to do about the time waiver or the *Arbuckle* waiver,' something along those lines."

When DDA Fernandez returned to the courtroom from the judge's chambers, DPD Della-Piana asked him if he and the judge had been discussing the *Imlay* cases. He said that they had and that, because there was no *Arbuckle* waiver in one case, Judge Laettner would be sending the cases to a different judge. DDA Fernandez testified that his conversation with the judge in chambers took 30 seconds to one minute.

When Judge Laettner went back on the record, he said the clerk had brought to his attention the lack of an *Arbuckle* waiver on the diversion case and that he would be sending that case to a different judge. DPD Della-Piana then stated that Imlay had been "illegally detained" and asked that Imlay be released. The following exchange occurred:

> MS. DELLA-PIANA: . . . I would also like to put on the record that the court asked Jun Fernandez, the DA in this case, to go back in chambers without anyone from my office being present, discussed this case and what would happen in this case, and the *Arbuckle* waiver without counsel present for Ms. Imlay. [¶] So Ms. Imlay's rights are being violated multiple ways, and I'm asking that she be released immediately.

> THE COURT: Yes. [¶] Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present.
>
> MS. DELLA-PIANA: I do because I asked Mr. Fernandez.
>
> THE COURT: So we—I told Mr. Fernandez that this case was going back to Judge Mills because there was an *Arbuckle* problem.

DPD Della-Piana testified that on June 8, 2017 (about two weeks later), Judge Laettner discussed with her in chambers the *Imlay* matter and his ex parte communication with DDA Fernandez, and that he told her the reason he had not included her in his conversation in chambers with DDA Fernandez: "You want me to tell you why I—why I only brought in Jun Fernandez? I was mad at you. I was mad at you about the *Imlay* case. I was still mad at you that day." The masters found DPD Della-Piana's testimony on this topic to be credible. They also found that Judge Laettner's "petulant" response to DPD Della-Piana's question about the ex parte communication ("Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present.") is consistent with him being mad at her. They noted that "expressing his upset with counsel is an established pattern of conduct," which includes admitting that DPD Della-Piana was mad at him, that he "snapped" at DPD Christy Wills-Pierce, and that he was angry or upset with DPD Jermel Thomas (discussed below).

Judge Laettner objects to the masters' findings regarding his ex parte communication with DDA Fernandez. First, Judge Laettner contends that DPD Della-Piana was not present in the courtroom when he called DDA Fernandez into his chambers, which made "her inclusion [in the conversation] impossible." Although the judge, court reporter Michel, and DDA Fernandez testified that DPD Della-Piana was not in the courtroom, DPD Della-Piana testified that she was present.

The masters found it unnecessary to resolve the dispute about whether DPD Della-Piana was in the courtroom when Judge Laettner called DDA Fernandez into his chambers because, even if she had not been present at that moment, there is "no reason to believe that it was impossible or impracticable for Judge Laettner to wait until DPD Della-Piana was present in the courtroom." "Ex parte communications for scheduling, administrative purposes, and emergencies should only be used when it is impossible or impracticable to assemble everyone." (Rothman, *supra*, § 5:5, p. 269.)

The masters found that the evidence was clear that DPD Della-Piana was in the courtroom when the clerk took the *Imlay* files into the judge's chambers to discuss the lack of *Arbuckle* waiver, and she was in the courtroom when DDA Fernandez emerged from the judge's chambers, where he said he spent only 30 seconds to one minute. Judge Laettner could, therefore, have either had DPD Della-Piana summoned to the courtroom or waited for her to return for the impending hearing, at which she was to be present.

Second, the judge argues that the exception under canon 3B(7)(b) for ex parte communications for scheduling purposes applies because there is no evidence that the subject of the ex parte was anything other than scheduling. DDA Fernandez testified that, when the judge called him into chambers, the judge asked him what he wanted to do on the *Imlay* matters. He also testified that he "got the idea that it was just about procedures." Court reporter Michel heard the judge say, ". . . 'so what are we going to do about the time waiver or the *Arbuckle* waiver,' something along those lines." By asking DDA Fernandez, "What do you want to do on these matters?" the judge appears to have been asking how the prosecutor wanted to handle them. The masters found, and we agree, that this was more than just a question about "scheduling." Scheduling pertains to a date or time something will occur; there is no evidence that setting dates or times for anything was discussed.

But even if the ex parte communication with DDA Fernandez had been to discuss "scheduling," the masters found that Judge Laettner did not promptly disclose it, as required by canon 3B(7)(b)(ii). Judge Laettner claims he promptly disclosed the conversation to the parties, but this is inconsistent with the transcript, which reflects that it was DPD Della-Piana who brought up the ex parte communication, which she learned about from DDA Fernandez, and not the judge. And when she brought it up, the judge said: "Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present." The judge's response does not constitute prompt disclosure.

Third, Judge Laettner argues that DDA Fernandez was assisting him in his adjudicative responsibility, which is permitted by canon 3B(7)(a). Canon 3B(7)(a), however, specifically excludes the lawyers in a proceeding before the judge. DDA Fernandez was a lawyer in the proceeding.

Fourth, Judge Laettner asserts that there is no reliable evidence, "given its source [DPD Della-Piana]," that he told DPD Della-Piana on June 8, 2017 that he was "mad" at her, and contends that this is contradicted by his and Michel's testimony that his conversation in chambers with DPD Della-Piana was about restoring a good working relationship. The masters, who are in a better position to evaluate credibility, found DPD Della-Piana to be credible on this point. The commission should "give special weight to the special masters' resolution of fact issues that turn on the credibility of testimony taken in their presence." (*Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552, 557.) In addition, Michel testified that she probably heard less than a minute of the conversation between the judge and DPD Della-Piana. Contrary to what the judge contends, having a conversation about a good working relationship is consistent (and not inconsistent) with the judge discussing with DPD Della-Piana why he was upset with her, and she with him, with regard to what occurred in *Imlay*. It is also consistent with the judge's pattern of being overly

concerned about how he is perceived by DPDs and his desire to be liked by them, and by DPD Della-Piana in particular.

Fifth, Judge Laettner says that after DPD Della-Piana accused him of having an ex parte communication with DDA Fernandez, he told Supervising Judge Theresa Canepa about the conversation, and she concluded that, because it related to scheduling only, it was proper. Judge Canepa's opinion is irrelevant, especially because it is based on Judge Laettner's (unsubstantiated) representation that he and DDA Fernandez discussed only scheduling.

We agree with, and adopt, the masters' factual findings.

2. Conclusions of law

a. May 18, 2017

The masters concluded, based on clear and convincing evidence, that Judge Laettner directed his clerk to reflect on minute orders that bail was exonerated and reset at $25,000 per case, without giving Imlay, through her counsel DPD Della-Piana, the opportunity to be heard. They took into account the busy environment of the judge's courtroom and indicated that what occurred could have been a mistake. The masters determined that the judge's action constituted prejudicial misconduct and violated California Code of Judicial Ethics canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 3B(2) (a judge shall be faithful to the law and shall maintain professional competence in the law). We find, in addition, that Judge Laettner's conduct violated canon 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law).

Judge Laettner objects to the finding of prejudicial misconduct and argues that there was no misconduct. We agree with the masters that there is clear and convincing evidence that the judge remanded Imlay without exonerating and resetting bail in open court, thereby denying her and her attorney the due process right to be heard.

The examiner objects to the masters' finding of prejudicial misconduct and argues that the judge committed willful misconduct based on his knowing or reckless failure to provide defendant Imlay with due process. The examiner submits that the judge was acting in bad faith by acting with "reckless or utter indifference" as to whether his orders exceeded the bounds of his prescribed powers.

The masters found that Judge Laettner had the authority to remand Imlay; his order doing so did not exceed the bounds of his prescribed powers. The issue is whether he failed to give Imlay and her counsel, DPD Della-Piana, notice and the right to be heard on the issue of bail, a denial of due process. We agree with the masters' finding that, by failing to give notice and the right to be heard about bail, Judge Laettner engaged in conduct that was prejudicial to public esteem for the judiciary, but was not in bad faith. Based on our independent review of the record, we do not conclude that there was clear and convincing evidence that Judge Laettner had a corrupt purpose, or acted recklessly, or with utter indifference, when he revoked and reset Imlay's bail without affording Imlay, through DPD Della-Piana, the right to be heard.

The masters found that Judge Laettner did have an ex parte conversation with Sergeant Schiro in chambers, but they did not conclude that it was improper, as charged, because they found that it related to Sergeant Schiro's "aiding Judge Laettner in his adjudicative responsibilities, within the meaning of canon 3B(7)(a)." They concluded it was within Judge Laettner's discretion to have Imlay undergo a drug abuse recognition examination to ascertain her

competency, and that Sergeant Schiro's communication with Judge Laettner related to assisting the judge in his adjudicative responsibilities.

The examiner objects to this conclusion and argues that the communication does not fall within the canon 3B(7) "court personnel" exception because "court personnel" excludes "employees of other governmental entities, such as lawyers, social workers, or representatives of the probation department," and Sergeant Schiro was an employee of the Contra Costa County Sheriff's Department, an "other governmental entity." The examiner asserts that, although Sergeant Schiro was the court security supervisor who oversaw the bailiffs' activities, he was not one of the judge's bailiffs.

Bailiffs are expressly permitted to assist the judge under canon 3B(7). The judge's bailiff during the *Imlay* proceedings, Deputy Scott Reed, was not qualified to conduct the drug examination, so Sergeant Schiro offered to perform it. We find that, because Sergeant Schiro was acting as the court security supervisor overseeing the bailiffs, who are also employees of the Sheriff's Department, he was properly assisting the judge in carrying out his adjudicative responsibilities, which include determining whether a defendant is competent to waive her rights. (Cal. Judges Benchbook: Felony Arraignment and Pleas (CJER revised 2013); Benchguide No. 91, § 91:26.) Further, we find that Sergeant Schiro conveyed information to the judge that was consistent with the proper performance of his duties, and that the judge promptly disclosed his communication with Sergeant Schiro to DPD Della-Piana. We concur with the masters' conclusion that the judge's ex parte communication with Sergeant Schiro does not constitute misconduct.

b. <u>May 25, 2017</u>

The masters concluded that Judge Laettner committed willful misconduct by engaging in an ex parte communication with DDA Fernandez in chambers about the *Imlay* cases, in violations of canons 1, 2, 2A, 3B(2), 3B(4) (a judge shall be patient, dignified, and courteous to those with whom the judge deals in

an official capacity), and 3B(7) (a judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding). They found that there was no reason for the judge to have talked to DDA Fernandez without DPD Della-Piana present. Although Judge Laettner argued that the ex parte communication with DDA Fernandez involved only scheduling, the masters found that the judge and DDA Fernandez talked about more than scheduling because DDA Fernandez testified that the judge asked, "What do you want to do about these matters?" and the court reporter heard the judge say something similar. Judge Laettner also did not promptly notify DPD Della-Piana about the conversation. The masters found that his subsequent statement to DPD Della-Piana that he was "mad at her" demonstrated that he knowingly engaged in the ex parte communication for a corrupt purpose, which is any purpose other than the faithful discharge of judicial duties.

Judge Laettner posits that this ex parte communication is analogous to the ex parte communication he had with Sergeant Schiro, which the masters found was not improper. The difference between the two ex parte communications is that Judge Laettner had the ex parte communication with DDA Fernandez for an improper purpose—because he was mad at DPD Della-Piana. Moreover, Judge Laettner did not initially promptly disclose the ex parte communication with DDA Fernandez; it was DPD Della-Piana who raised it with him. In contrast, the ex parte communication with Sergeant Schiro was for the legitimate purpose of conducting court business, and it was promptly disclosed, as required.

We agree with, and adopt, the masters' legal conclusions.

B. Count Two—Treatment of Deputy Public Defender Della-Piana

Judge Laettner is charged, in six subcounts, with engaging in a pattern of conduct toward DPD Della-Piana that was unwelcome, undignified, discourteous, and offensive, and that would reasonably be perceived as sexual harassment or sexual discrimination.

The special masters found that five of the six subcounts were proven and that Judge Laettner's conduct toward DPD Della-Piana, taken as a whole, constituted prejudicial misconduct because the incidents involve conduct that is undignified, discourteous, and offensive, and brings disrepute to the bench. They further found that much of Judge Laettner's conduct in Count Two (except subcount 2B), as well as in Counts Four (except subcount 4C) and Five, taken as a whole, constituted gender bias, in violation of canon 3B(5)(a). They did not find sexual harassment.

In response to Judge Laettner's assertion that "maintaining collegial relationships among the criminal justice partners is essential for the orderly administration of justice in criminal courts," the masters stated that it is the relationship between opposing counsel in criminal courts that allows for the efficient and effective administration of court calendars, and it is appropriate for the court to seek to foster that working relationship, but "[d]eputy district attorneys and deputy public defenders are not partners nor are they colleagues of the court, to the extent that these terms imply an equality of relationship." The masters stated:

> The Special Masters are not suggesting that judges must be unsmiling imperious souls. The Special Masters recognize that in these courtrooms judges are witnesses to a wide range of human emotion among the litigants and the attorneys that appear before the court. Judges must view and manage this drama with understanding, empathy, humor, and flexibility, with a calm and steadying hand—but always positionally aware—aware of the proper role of the judge.

The masters found that Judge Laettner's misconduct was "the failure to be aware of and adhere to the boundaries attending with his position as a judge."

We adopt the masters' findings of fact, which are summarized below, in each of the six subcounts. We also agree with the masters' conclusions of law as to the canons violated. We respectfully disagree, however, with the masters' conclusion that all five of the proven subcounts constitute prejudicial misconduct and find that three subcounts (subcounts 2D, 2E and 2F) constitute willful misconduct, for the reasons discussed below.

(a) Count 2A: "Having a teenage daughter"

1. Findings of Fact

Judge Laettner admitted that, in approximately May 2016, he said to DPD Della-Piana words to the effect of, "Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want," followed by: "It's a compliment. Take a compliment." This was said outside another judge's chambers. Judge Laettner testified that he made the comment during a "friendly teasing conversation" in which his comment started as a joke, but then he told her it was a compliment because "maybe [he] wasn't getting the response that [he] expected." He testified that he did not think the comment was demeaning because of the context of their interaction and his rapport with DPD Della-Piana at the time.

DPD Della-Piana testified that the "teenage daughter" comment made her feel demeaned and that her "face definitely showed that [she] didn't care for that."

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that Judge Laettner's "teenage daughter" comment was undignified and inconsistent with the judge's obligation to maintain high standards of conduct, but that it would not be reasonably perceived as sexual harassment or discrimination, as charged. They stated that Judge Laettner's

reference to a "teenage daughter" who just "keep[s] talk, talk, talking" "invokes a stereotypical image of a young, immature, adolescent girl," and that it "is inconceivable that a young professional female attorney would interpret such a comparison as a compliment." The masters further found that, intended or not, there is a gender element to the judge's stereotypical statement, as no one would ever say, "You're like a teenage *son.* You just keep talk, talk, talking . . . ." (Italics in masters' report.)

They found that Judge Laettner violated canons 1, 2, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Two constituted prejudicial misconduct.

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

(b) Count 2B: Winking

Judge Laettner allegedly winked at DPD Della-Piana during a hearing and called her to the bench to ask her if she saw him winking at her.

The masters found that this allegation was not proven by clear and convincing evidence.

Neither party objects to the factual findings or legal conclusion. We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

(c) Count 2C: "I want it to be you"

1. Findings of Fact

On August 24, 2016, Judge Laettner presided over *In re Lauryn G.*, a case involving a juvenile. DPD Karen Moghtader represented Lauryn G., but asked DPD Della-Piana to appear for her because she had a meeting. DPD Della-Piana appeared for DPD Moghtader before Judge Laettner. DPD Della-Piana testified that when she told the judge that DPD Moghtader would be able to appear after her meeting, he said, "No, I want it to be you," and when DPD Della-Piana responded, "I don't think you really get to decide that," Judge Laettner sort of smiled at her and said, "Well, I'm telling you I want it to be you."

After the case was called, there was a discussion about setting the date of a contested probation violation hearing. DPD Della-Piana refused to waive Lauryn G.'s right to a speedy hearing. The following exchange occurred:

> THE CLERK: Last day is September 15.
>
> MS. DELLA-PIANA: I don't know if there needs to be a lot of prep since it was already prepped. Can we do it earlier than that? Ms. Moghtader is out the 15th and 16th. Any other day works. [¶] The Monday of that week maybe? No?
>
> THE COURT: No, no, we'll set it for the 15th given my schedule. *Somebody else is going to have to cover.*
>
> THE CLERK: Thursday, September the 15th at 1:30 in Department 25.
> (Italics in masters' report.)

DPD Della-Piana testified that, during this discussion, the judge locked eyes with her, "sort of tilted his head," and said, "Well, I guess someone else is just going to have to appear." She testified that this comment and "No, I want it to be you" made her uncomfortable.

Judge Laettner testified that he believed DPD Della-Piana was Lauryn G.'s assigned attorney, not DPD Moghtader. He said: "Well, there was, in my mind, confusion as to who Lauryn G.'s attorney was. I believed her attorney was Ms. Della-Piana. And then there were [*sic*] Ms. Moghtader got into the mix somehow." He also testified that it was his preference that the assigned attorney appear because a stand-in attorney does not know the case.

Judge Laettner also testified that he set September 15 as the next hearing date because it was the best date on his personal calendar, there was no time waiver, he did not expect DPD Della-Piana to be at the date set, and her testimony about his tone was "fantasy."

The special masters found "not credible" Judge Laettner's testimony that, on August 24, 2016, he was confused about whom Lauryn G.'s attorney was. The transcript reflects that DPD Della-Piana announced that she was "standing in for Karen Moghtader," and that she referred to DPD Moghtader and her unavailability on September 15 and 16 as a reason to set the hearing on a different date. Further, the transcript of the hearing the day before reflects that DPD Moghtader had appeared before Judge Laettner, representing Lauryn G., and had engaged in substantive discussions with him about the case, including the issuance of a warrant. The judge referenced those discussions when DPD Della-Piana appeared in DPD Moghtader's place the next day. Finally, DPD Della-Piana later wrote down what occurred in court that day from memory, without the benefit of a transcript. The masters found that the unexplained contradiction between the judge's stated preference for having the assigned attorney present and then setting the hearing on a date when the assigned attorney was not available corroborates DPD Della-Piana's belief that Judge Laettner wanted her to appear.

Judge Laettner objects to the masters' finding that his testimony that he was confused about who represented Lauryn G. was not credible, and says he was credible.

We agree with, and adopt, the masters' findings, including that Judge Laettner was not credible when he testified that he was confused about who represented Lauryn G. DPD Moghtader had appeared on Lauryn G.'s behalf the previous day and engaged in substantive discussions with the judge about her case. And DPD Della-Piana informed Judge Laettner at the outset of the hearing that she was "standing in" for DPD Moghtader and referred to DPD Moghtader's availability when discussing scheduling with the judge. We agree with the masters that the judge's claim is contradicted by the evidence.

2. Conclusions of Law

The masters concluded that the judge's conduct violated canons 1, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Two constituted prejudicial misconduct.

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

(d) Count 2D: Conversation regarding *In re Eric B.*

1. Findings of Fact

Judge Laettner presided over *In re Eric B.,* which involved a mentally ill juvenile. DPD Della-Piana represented Eric B. Juvenile proceedings had been suspended due to Eric B.'s incompetency, and he was receiving treatment or competency restoration services in juvenile hall. A hearing in August 2016 involved whether Judge Laettner would order the involuntary administration of medication to Eric B., to which DPD Della-Piana objected.

On October 6, 2016, Judge Laettner released Eric B. from custody to his mother, deemed his sentence satisfied, and set a future competency review date for January 5, 2017.

On October 12, 2016, while DPD Della-Piana was conversing in the courthouse hallway outside Judge Laettner's courtroom with a prospective juror she knew, Judge Laettner approached them, in what he described as "basically a sea of jurors," and initiated a conversation with DPD Della-Piana. He testified that he spoke to DPD Della-Piana because, in his words: "I wanted to make sure everything was okay, because I knew she had been frustrated with Eric B. being in custody for a long time. And I wanted to say in general terms that I was not insensitive to people who are mentally ill." He denied that he discussed the *Eric B.* case during the conversation and said, "I went to the issue of mental health generally with her."

DPD Della-Piana testified that Judge Laettner did bring up the *Eric B.* case, and said he was aware that she was upset with him about the *Eric B.* case and that she should not be upset with him.

The examiner objects that the masters did not make a finding regarding allegations that the judge commented to DPD Della-Piana that he noticed how happy she was when he ordered Eric B. released from custody, and that he said he could tell by her face that she was happy when he did so. Judge Laettner testified that he did not discuss the *Eric B.* case with DPD Della-Piana and that he only discussed mental health generally. While we agree that Judge Laettner was obviously discussing the *Eric B.* case, we do not find it necessary to amplify the masters' findings here to include DPD Della-Piana's additional testimony regarding this conversation (see Count 2F).

2. Conclusions of Law

The masters concluded that the conversation Judge Laettner initiated with DPD Della-Piana in the courthouse hallway constituted an improper ex parte communication, in violation of canon 3B(7), because the matter was still pending, with a future competency review date that the judge had set six days earlier.

The masters also found that Judge Laettner did specifically reference the *Eric B.* case during the conversation, and, even if he did not say the name of the case, it was apparent that he was talking about that case. They stated that "any reasonable trial lawyer would perceive Judge Laettner's comments under such circumstances as not simply a coincidental happenstance," and that "[a] reasonable attorney would immediately realize that, by bringing up the subject matter of a case the attorney was frustrated about and that had just been heard six days before, the judge is talking about that specific case." The masters said that it "belies common sense to think that Judge Laettner and DPD Della-Piana did not know they were talking about the *Eric B.* case, even if the minor's name was not used."

The masters further found that the conversation was undignified and created the appearance of impropriety because it took place amongst "a sea of jurors," who had been before Judge Laettner and knew he was the judge before whom they were providing their jury service. The masters stated that the judge's

desire to make sure things were "okay" with DPD Della-Piana after the contentious *Eric B.* hearing reflected a "solicitousness for her and their relationship that was inappropriate to express in a public hallway."

They found that the conversation violated canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7). They included this charge in their conclusion that Judge Laettner's conduct as alleged in Count Two constituted prejudicial misconduct.

We respectfully disagree with the conclusion that Judge Laettner's hallway ex parte conversation with DPD Della-Piana in a "sea of jurors" about the *Eric B.* case constituted prejudicial misconduct; instead, we find that it constituted willful misconduct, as urged by the examiner, because Judge Laettner was not acting in the faithful discharge of his judicial duties. In *Inquiry Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1, the commission found that it was willful misconduct for Judge Kreep to engage in ex parte communications with attorneys about a pending case for the corrupt purpose of venting his frustration about being the subject of peremptory challenges. (See also, *Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 275 [comments made for the purpose of venting frustration are for a purpose other than the faithful discharge of judicial duties].) Similarly, in this matter, Judge Laettner engaged in an improper ex parte communication about a pending case with an attorney in that case—DPD Della-Piana—in a public venue for a purpose not related to his judicial duties; i.e., his "solicitousness for her and their relationship" and his excessive concern about how she felt about him, which creates the appearance of a lack of impartiality. We find it aggravating that Judge Laettner indulged in this type of conversation with a DPD in a public hallway in the presence of jurors serving in his courtroom.

(e) Count 2E—"Your parents hadn't spanked you enough"

1. Findings of Fact

On June 8, 2017, Judge Laettner asked his clerk to ask DPD Della-Piana to speak with him. The judge and DPD Della-Piana then had a conversation in his chambers. Judge Laettner admitted that, during this conversation, he called

DPD Della-Piana a "hard one" and told her, "[Y]our parents hadn't spanked you enough." At the evidentiary hearing, he acknowledged that it was wrong and apologized because it was something he should not have said.

Judge Laettner said he made the comments because he felt DPD Della-Piana was being "stubborn, unreasonable and petulant," and he wanted to resolve a misunderstanding and she did not. He testified that, after the *Imlay* hearing on May 18, 2017, his relationship with DPD Della-Piana was strained and that she was upset with him. He said he had seen her the day before, on June 7, and she was ignoring him and "didn't say hi or didn't acknowledge [him] on purpose." He testified that he wanted to "correct her attitude" because he does not want to see people who are upset, and he wants people to be happy. He also said that the purpose of his conversation with DPD Della-Piana was to "try to mend the fences, smooth things over, so she could be comfortable coming back to [his] court if she wanted to." He also said he was "a little bit exasperated" with her because he wanted a "truce," but she did not.

DPD Della-Piana testified that, during this conversation, Judge Laettner said a lot of things, including that he did not want things to be bad between them, that he had been thinking a lot about the other day, that she was so mad at him about the *Imlay* case, and that he did not want her to be mad at him anymore. She stated: "I knew he was referring to *Imlay*. And my understanding was that he thought we were in a fight with each other and that we needed to make up. And he sort of wanted to know, did I still care and like him and wanted to kind of pull me back in and make sure I was good with him and close with him." DPD Della-Piana described Judge Laettner as appearing to be "pretty frantic and emotional" during this conversation.

DPD Brooks Osborne testified that he saw DPD Della-Piana on June 8, 2017, and she told him that Judge Laettner had just told her that her parents did not spank her enough. DPD Osborne said she was "ashen" and "looked horrified."

Judge Laettner twice denied discussing the *Imlay* cases with DPD Della-Piana during this conversation. The masters, however, found that Judge Laettner's testimony was impeached by his Answer to the Notice of Formal Proceedings, in which he "does not deny a conversation with Ms. Della-Piana regarding the *People v. Imlay* cases." And he testified that, during this conversation, he told DPD Della-Piana that his conversation with DDA Fernandez about *Imlay* was not an impermissible ex parte communication, which is inconsistent with his testimony that he did not talk to her about the *Imlay* cases during their conversation in chambers.

The examiner contends that additional facts regarding what Judge Laettner said to DPD Della-Piana during this conversation, which were alleged in the Notice of Formal Proceedings, should be included in the findings. We find that the masters' description of DPD Della-Piana's testimony regarding what Judge Laettner said adequately conveys her testimony.

2. Conclusions of Law

The masters concluded that Judge Laettner's June 8, 2017 conversation with DPD Della-Piana was "injudicious, inappropriate and undignified," and constituted an improper ex parte communication concerning *Imlay*, in violation of canon 3B(7). They stated that calling an attorney a "hard one" or saying that the attorney's parents did not "spank you enough" is contrary to the judge's ethical obligations. They noted that conveying to an attorney that his or her feelings about a judge's decision are relevant to the judge gives the appearance of partiality, suggests embroilment, and is undignified. They added that Judge Laettner's purpose for calling DPD Della-Piana to his chambers—to "mend fences" over his decision in *Imlay*—demonstrated that her upset over his decision was of significant enough import that he expressed his frustration by calling her a "hard one" and saying she had not been "spanked enough." They found that Judge Laettner's conduct violated canons 1, 2A, 3B(4), 3B(5)(a), and was prejudicial, but they did not find that it could reasonably be perceived as sexual

harassment, as charged, because DPD Della-Piana did not express that the judge's comments were offensive as sexual harassment.

We agree with the masters' conclusion that Judge Laettner initiated a conversation with DPD Della-Piana that constituted an improper ex parte communication, in violation of canon 3B(7), because they discussed the pending *Imlay* cases. We also agree with the other canon violations found. We respectfully disagree with the masters, however, that Judge Laettner's ex parte communication with DPD Della-Piana, in which he discussed the *Imlay* cases, was prejudicial misconduct and find that, because he initiated the conversation for a purpose not related to the faithful discharge of his judicial duties, his actions constituted willful misconduct. As discussed above, Judge Laettner made the improper comments to DPD Della-Piana because he cared excessively about how DPD Della-Piana perceived him, a motive that was personal rather than a part of his judicial duties, and created the appearance of partiality.

(f) Count 2F: "I know you're mad at me"

1. Findings of Fact

DPD Della-Piana testified that, approximately 10 to 15 times in 2016 and 2017, Judge Laettner asked her to approach the bench to check in to see if she was mad at him. She testified:

> But usually when he ruled against me, I would sort of know that that was coming next. And he would want to debrief, almost as if we were having like a relationship fight or something . . . Like a relationship talk. And he wanted reassurance that I wasn't mad at him. Or he would often comment on my facial expressions, the facial expressions I would make during the hearing. 'Say, you know, I noticed that you were really happy when I said this.' Or 'you didn't like when I said this. I could tell from your face,' and comment how well he knew and could read my facial expressions and how that affected him essentially.

Judge Laettner admitted that he understood that DPD Della-Piana was mad at him at times and does not deny that he probably acknowledged that to DPD Della-Piana.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that Judge Laettner's conduct violated canons 1, 2A, and 3B(4), and was part of a pattern of undignified, discourteous, and offensive conduct toward women, constituting gender bias in breach of canon 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Two constituted prejudicial misconduct. They stated that attempting to "smooth over" the anger or upset of counsel resulting from a judge's decision "gives the appearance that counsel's emotional response to a decision matters," which illustrates a solicitousness that suggests embroilment. They noted that the United States Supreme Court has stated that judges are to represent the "impersonal authority of law" and provide "that atmosphere of austerity . . . indispensable for an appropriate sense of responsibility on the part of court, counsel and jury." (*Offutt v. United States* (1954) 348 U.S. 11, 17 [99 L.Ed. 11]; quoted in Rothman, *supra*, § 2:1, pp. 58-59.)

We respectfully conclude that Judge Laettner's repeated summoning of DPD Della-Piana to the bench to discuss their relationship was willful misconduct because it was for a purpose unrelated to his judicial duties, which was to make sure she was happy with how he was discharging his judicial duties. This is improper because it creates the appearance of partiality and is inconsistent with his duty to remain neutral as to those appearing before him. We find it aggravating that Judge Laettner did this frequently in open court, where his preference for DPD Della-Piana could be perceived by others in his courtroom.

C. Count Four—Treatment of Other Female Attorneys[2]

Judge Laettner is charged, in eight subcounts, with making unwelcome, undignified, discourteous, and offensive comments, some of which would reasonably be perceived as sexual harassment or sexual discrimination, to and about other female attorneys who appeared before him.[3]

The masters found that seven of the eight subcounts in Count Four were proven, except that they did not find sexual harassment or sexual discrimination. Concluding that Judge Laettner's treatment of the various female attorneys involved, taken as a whole, constituted prejudicial misconduct, they stated:

> Lady Justice wears a blindfold. Centuries ago, William Penn explained: "Justice is justly represented Blind, because she sees no Difference in the Parties concerned." (William Penn, *Fruits of Solitude*, The Harvard Classics (1909-14), Part. I, "Impartiality," No. 407.) [¶] Saying that a female attorney is beautiful or otherwise commenting upon her looks lifts Lady Justice's blindfold by suggesting that one of a person's immutable characteristics, her appearance, matters to the judge; suggesting that the judge is partial to the woman he has declared to be beautiful. Even though the judge may have meant the comment to be an innocent courteous compliment, intended to create and maintain a "friendly" and "collegial atmosphere," does not excuse such a statement. Whether the recipient of the comment was offended or made uncomfortable, as in the case of DPD Emi Young, or not, as in the case of DDA Devon Bell, is not the issue upon which the propriety of the statement turns. The reason a judge's declaration that someone is beautiful or attractive is misconduct is due not only to its

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[2] We address Counts Four and Five after Count Two because all three concern Judge Laettner's improper treatment of women. Count Three, which involves an unrelated issue, follows the discussion of Count Five.

[3] Some of the subcounts are outside the statute of limitations and cannot be considered for censure or removal, but can be considered in evaluating whether the judge cooperated honestly in the proceeding. (Policy Declarations of the Com. on Jud. Performance, policy 7.1(2)(b).)

> effect on the person to whom the comment was directed, but also because of the potential impact the statement has upon those who may not perceive themselves as attractive or beautiful. If two attorneys appear before a judge, and one attorney perceives herself to be unattractive, and the judge says to the other attorney, "Here is the beautiful Ms. Bell," it is reasonable for the other attorney to question the fairness and impartiality of the judge. [¶] . . . That the attorneys noted and took advantage of Judge Laettner's favoritism is corrosive to the fair and impartial administration of justice.

They also noted, in connection with subcount 4F: "Unprofessional remarks made in the courtroom concerning an attorney's personal appearance, pregnancy, or sexuality, can have an impact on the credibility of women in court; and when addressed to a woman lawyer, such remarks would make it difficult for her to effectively represent her clients." (Rothman, *supra*, § 2:11, p. 75 ["Judges should not make unprofessional remarks concerning an attorney's personal appearance, pregnancy, or sexuality."].)

The masters found it relevant that Judge Laettner's conduct spanned 11 years, from 2006 to 2017, because, after 10 years on the bench, "it can be expected that a judge's words and conduct will have conformed to the demands of the canons." They found that Judge Laettner's words and conduct did not.

We adopt the masters' findings of fact, which are summarized below, and their conclusions of law as to each of the eight subcounts.

(a) Count 4A: Comments to DPD Sarah MonPere

1. Findings of Fact

DPD Sarah MonPere testified that, between October 2007 and June 2008, Judge Laettner made various comments to her and very frequently asked her personal questions, including whether she had a boyfriend. After a colleague appeared in court with a client who had a fussing infant, and DPD MonPere held the baby while the client finished her plea, Judge Laettner commented, on more than one occasion, about how natural DPD MonPere looked holding the baby,

and asked her if she wanted to have children. He also called her his "favorite" and "teacher's pet," and said something to the effect that she "had him on a chain," implying that she controlled him or could get him to do what she wanted.

DPD Nicole Eiland testified that she heard Judge Laettner ask DPD MonPere personal questions and refer to DPD MonPere as his "favorite" more than once. She also testified that he favored DPD MonPere, and she viewed the judge's behavior toward DPD MonPere as "very flirtatious." DPD Osborne testified that he heard Judge Laettner tell DPD MonPere that he "could not say 'no' to her," that it was obvious that DPD MonPere was the judge's favorite, and that it seemed like he treated her and her clients differently. DPD Matthew Cuthbertson testified that Judge Laettner interacted differently with DPD MonPere, in sort of a flirtatious manner.

Judge Laettner denied most of the alleged comments to DPD MonPere, and claimed he had a "purely professional" relationship with her, but he admitted that he would compliment her on occasion for the purpose of "building her confidence" and thinks he did refer to her as his "favorite."

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that Judge Laettner made the statements attributed to him by DPD MonPere, in violation of canons 1, 2A, 2B(1) (a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge), 3B(4), and 3B(5)(a). They found that his statements were "inappropriate and lacked any appearance of impartiality."

Judge Laettner objects on the ground that this count is barred by the statute of limitations because the comments were made before January 1, 2013, the cut-off date for the statute of limitations (six years before the commencement of the judge's current term, which was January 1, 2019). (Cal. Const., art. VI,

§ 18, subd. (d).) Due to the statute of limitations, we consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see footnote 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

(b) Count 4B: Comment to DPD Kim Mayer about her husband

1. Findings of Fact

DPD Kim Mayer testified that, in 2012 to 2013, Judge Laettner asked her to approach the bench and commented that he had just found out to whom she was married and that he was the same age as her husband, in a tone that was "somewhat suggestive" or "just inappropriate." This made her uncomfortable because her husband is 14 years older than she is, and it felt like Judge Laettner was comparing himself to her husband.

Judge Laettner testified: "I called her up to the bench in one of our slow moments, and I said, 'I just found out that you're married to Oscar Bobrow.' And she said, 'Yes, yes, I am.' And I said something to the effect of, '*He's a little bit older than you.*' Something like that. And she said, 'Yes.' And that was really it. You know, it was just commenting on that. And I had told her also that I did a felony possession trial with him." (Italics in masters' report.)

2. Conclusions of Law

The masters found DPD Mayer's testimony credible and that Judge Laettner indeed made the comment to DPD Mayer that he was the same age as her husband. The comment violated Judge Laettner's duty to be dignified and courteous, and the suggestive nature of the comment was part of a pattern of conduct that would reasonably be perceived as gender bias, in violation of canons 1, 2, 3B(4), and 3B(5)(a).

Judge Laettner objects that this allegation is barred by the statute of limitations because it occurred in 2012, before the January 1, 2013 cut-off date. DPD Mayer testified that she believes Judge Laettner took over the calendar in 2013, but Judge Laettner testified that the comment occurred in 2012. We agree

with the judge that the comment is barred by the statute of limitations. We consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see footnote 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

(c) Count 4C: Poor demeanor toward DPD Kim Mayer

During a March 11, 2013 hearing in *People v. Jacob Pastega,* Judge Laettner allegedly reprimanded DPD Mayer for interrupting him, demeaned her by asking if she knew what a proffer was, and told her not to argue with him.

The masters found that there were interruptions and interjections during the hearing, but that there was not clear and convincing evidence that Judge Laettner committed misconduct.

The examiner argues that the judge's comments constitute prejudicial misconduct because they were sarcastic and belittling, contrary to canon 3B(4). The masters found that the comments do not rise to the level of misconduct because the words on their face seem de minimis at most, and there is no evidence that the tone used by the judge was sarcastic or belittling. We adopt the masters' conclusion and find no misconduct.

(d) Count 4D: Poor demeanor toward DPD Christy Wills-Pierce

1. Findings of Fact

Judge Laettner presided over *People v. Henry Williams* on November 1, 2013. DPD Christy Wills-Pierce represented the defendant. Judge Laettner admitted that, after DPD Wills-Pierce questioned him about the basis for drug testing the defendant, he snapped at her and replied: "Our prior discussions with regard to this case. I know you're coming in late [to the case]. I'm not going to pretry every case all over again because you're here today." After the hearing, he called DPD Wills-Pierce up to the bench and said that he was sorry he was mad earlier, but it was DPD Wills-Pierce's friend who had made him so mad. When DPD Wills-Pierce asked him whom he meant, he said, "Ms. Thomas," referring to her colleague, DPD Jermel Thomas.

DPD Thomas testified that DPD Wills-Pierce told her about this, which embarrassed her, and she went to Judge Laettner's chambers that day to ask him whether he had said, "Ms. Thomas makes me so angry and she makes me so upset and so mad." Judge Laettner told DPD Thomas that he had said that to DPD Wills-Pierce and that she does make him upset.

Judge Laettner testified that, "I think I snapped at her [DPD Wills-Pierce] because I didn't want to spend two hours going over every case we just pre-tried." He admitted calling DPD Wills-Pierce to the bench and apologizing to her, and that he probably told her that he was mad at her friend, DPD Thomas. Yet on cross-examination, Judge Laettner testified that he did not remember making the statement.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters found that Judge Laettner's conduct violated canons 1, 2, 2A, 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Four constituted prejudicial misconduct.

Neither party objects to these legal conclusions.

(e) Count 4E: Comments to DPD Nicole Herron

1. Findings of Fact

Between 2014 and 2017, Judge Laettner repeatedly told DPD Nicole Herron that she looked like an actress named Caroline Catz, who appeared on the television show, "Doc Martin." DPD Herron testified that Judge Laettner referred to Catz and the show about 12 to 20 times during DPD Herron's weekly appearances in his department, often saying, "I saw you on TV last night."

DPD Herron testified that, when Judge Laettner mentioned the show, he seemed "overly excited," and that his comments felt "creepy" to her. The comments made her uncomfortable because they were about her physical appearance and were made in open court, where other people could hear them, including clients who later commented to her about the judge's statements.

The judge's court reporter, Jennifer Michel, testified that she could tell that the judge's questions made DPD Herron uncomfortable.

Judge Laettner also commented in 2014 and 2015 that DPD Herron "was someone I just can't say no to," was the "best attorney" in the public defender's office or the juvenile court, and his "favorite attorney." He said to her, "I just can't say no to you" about five to ten times.

Judge Laettner did not deny offering these "compliments." He admitted telling DPD Herron that she bore a physical resemblance to Caroline Catz and that he talked about the show with her a few times.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters found that Judge Laettner's repeated comments about DPD Herron's physical appearance were undignified and discourteous, would reasonably be perceived as gender bias, and conveyed the impression that DPD Herron was in a special position to influence him, in violation of canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). The masters included this charge in their determination that Judge Laettner's conduct in Count Four constituted prejudicial misconduct. They concluded, however, that the judge did not commit sexual harassment (canon 3B(5)(b)), as defined in *Hughes v. Pair* (2009) 46 Cal.4th 1035,1042-1043, because sexual harassment requires a finding that the harassing conduct was "severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex." The masters found that, given the conflicting testimony about the number of times Judge Laettner made the comments and the lack of evidence that he described the physical appearance of the actress, his "acts of alleged sexual harassment fall short of establishing a pattern of continuous, sufficiently pervasive harassment, necessary to show a hostile working environment under FEHA [Fair Employment and Housing Act]."

Neither party objects to these legal conclusions.

(f) Count 4F: Comments about DDA Devon Bell

1. Findings of Fact

DDA Devon Bell was the grand jury coordinator for the district attorney's (DA's) office. Once Judge Laettner selected a grand jury, DDA Bell would go to his courtroom and take the grand jurors back to the DA's office, where the grand jury hearings took place.

On about five or six occasions, in the presence of grand jurors, Judge Laettner referred to DDA Bell as "beautiful" or "lovely," and said she was a member of the DA's volleyball team. He also referred to her as one of his "favorite" attorneys, and said that because he had married her and her husband, he liked to say, "I married Ms. Bell." Transcripts corroborate these remarks.

Judge Laettner testified that the reason he discussed DDA Bell with the grand jurors was because he wanted to tell them that she was "competent and they were in good hands." He said he joked that she was a member of the DA's volleyball team after a grand juror said that she was very involved in her daughter's traveling volleyball team.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that Judge Laettner's statements about DDA Bell violated canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Four constituted prejudicial misconduct. They said that even if DDA Bell was not offended by the comments, they were particularly improper because the judge made them in front of other people, including members of the grand jury. And even if the judge intended his references to her playing on the DA's volleyball team (which does not exist) to be a joke, they appear to have been comments about her physical stature or build, which are inappropriate for a courtroom setting and suggested that he evaluated women based on their physical appearance. Further, his comment that

she was "one of [his] favorite attorneys" reflected bias and conveyed the impression that she was in a special position to influence him.

Neither party objects to these legal conclusions.

(g) Count 4G: Comments to DPD Emi Young

1. Findings of Fact

In early 2017, before DPD Emi Young had become a permanent employee of the public defender's office, Judge Laettner began asking her personal questions, including about her ethnicity, her childhood, and her relationship with her father. He also once told her that one of his sons was engaged to an Asian woman, which made him interested in Asian people and culture, and he asked about her background or "what kind of Asian" she was. DPD Young responded that she is part Japanese. Judge Laettner replied that he knew two half-Japanese twins in college and that they were very beautiful. DPD Young testified that she felt incredibly uncomfortable because the judge was singling her out in a way that was not appropriate.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that Judge Laettner's inquiries about DPD Young's racial background, his comments about the physical appearance of persons who shared her ethnicity, and his intrusive questions about her background violated canons 1, 2, 2A, and 3B(4). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Four constituted prejudicial misconduct.

Neither party objects to these legal conclusions.

(h) Count 4H: Comments about DPD Emi Young

1. Findings of Fact

In approximately May or June 2017, Judge Laettner told an attorney who was looking for DPD Young that, "She's the attractive young Asian woman."

Neither party objects to this factual finding.

2. Conclusions of law

The masters found that the judge's comment about the physical beauty of a female attorney violated canons 1, 2, 2A, and 3B(4). The masters included this charge in their conclusion that Judge Laettner's conduct in Count Four constituted prejudicial misconduct.

Neither party objects to this legal conclusion.

D. Count Five—Comments to Other Women

Judge Laettner is charged, in six subcounts, with making unwelcome, undignified, discourteous, and offensive comments to and about other women who appeared or worked in his courtroom, some of which would reasonably be perceived as sexual harassment or sexual discrimination.

The masters found that each of the subcounts was proven. They concluded that the judge's conduct violated canons 1, 2A, and 3B(4), and would be perceived as gender bias in violation of canon 3B(5)(a). As to Count 5B, they also determined that the judge violated canon 2.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with the exceptions discussed below.

(a) Count 5A: Court reporter Jennifer Michel

1. Findings of Fact

Jennifer Michel was Judge Laettner's court reporter from March 2006 to June 2017. When she first started working in his department, he made comments about her appearance that made her uncomfortable. In 2006, he said that when he met his wife, she had long, dark hair like Michel, which made Michel uncomfortable because she felt the judge was comparing her to his wife. In 2007, he told her, "You're so pretty. I don't know how you do it."

In 2009, when Michel entered his chambers to report a hearing and asked if the judge wanted the attorneys present, he responded, "You are hot." Judge Laettner substantially corroborated Michel's account of this interaction, but claims

it was a joke and that he said something to the effect of, "Well, you are hot, but let's do it the way we always do and bring in the parties." He acknowledged that he did not have a joking relationship with Michel, and she did not receive his comment as a joke. Inconsistently, in his December 18, 2017 supplemental response to a preliminary investigation letter, he denied making the statement.

Several witnesses testified that Judge Laettner would refer to Michel as "very pretty" or "beautiful" when introducing her to the jury. DPD Cuthbertson testified that the judge occasionally commented to prospective jurors that Michel was "quite tall" and "very pretty," and that they would "enjoy looking at her." Judge Laettner conceded that he may have introduced Michel as his "lovely court reporter," but denied telling jurors that they would enjoy looking at her.

Michel testified that she quit working in Judge Laettner's department in 2017 because she "could not take the years of unwelcome and inappropriate comments toward [herself] and others," his "favoritism towards tall, skinny blondes, young females [and] petite Asian women," and his bias against "heavyset, pudgy, dark-haired public defenders and ones that would argue their case too strenuously in front of him." The masters found that the impact of Judge Laettner's inappropriate comments based on the physical appearance of female attorneys or litigants created an environment that resulted in Michel changing her court reporting assignment.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters concluded that the judge's comments about Michel's physical appearance were undignified and discourteous, would reasonably be perceived as gender bias, and constituted prejudicial misconduct, contrary to canons 1, 2A, 3B(4), and 3B(5)(a).

The examiner objects that there was no finding of sexual harassment and asserts that Michel was exposed to repeated references about the physical appearance of herself and other women that were sufficient to create a hostile

working environment. Canon 3B(5)(b) provides that 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.

We adopt the masters' legal conclusions, with the exception of their failure to find that Judge Laettner committed sexual harassment. We find that the judge did commit sexual harassment by creating a hostile work environment that caused Michel to leave his department, based on the course of his conduct between 2006 and 2017.

Judge Laettner objects that this charge is beyond the statute of limitations because the allegations span from 2006 to 2017. We find that the cumulative effect of Judge Laettner's comments over the years on his court reporter, Michel, constitutes sexual harassment. But even if the conduct were limited to remarks he made to women after January 1, 2013, it created a hostile work environment that caused Michel to seek employment elsewhere.

Sexual harassment requires a finding that the harassing conduct was "severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex." (*Hughes, supra,* 46 Cal.4th at pp. 1042-1043.) In our view, there is clear and convincing evidence that Judge Laettner's pattern of conduct toward women, which the masters determined was gender bias, as observed by Michel, created a hostile work environment. Michel testified that she heard Judge Laettner commenting to DPD Herron, three to five times, about how she looks like an actress in his favorite television show and asking DPD Herron about it; telling certain female defendants charged with driving under the influence that she is a "pretty girl" or "pretty woman"; frequently referring to DDA Bell as "beautiful"; and remarking to defendant Thalia Hernandez, "I always wonder what fat people were thinking when they get tattoos."

(b) Count 5B: "Women can drive you crazy"

1. Findings of Fact

Judge Laettner admits that, in 2013, while presiding over a domestic violence case, in response to a defendant explaining what he learned from participating in a domestic violence treatment program, the judge said, "On a lighter note, I can take judicial notice that women can drive you crazy." DPD Wills-Pierce, who was representing the male defendant, believed the statement was demeaning and undermined her ability to represent clients in the judge's courtroom. When she explained this to Judge Laettner, he responded that his wife "would be really upset if she heard about this" and, "You know, a judge could get in trouble for something like this." DPD Wills-Pierce memorialized this meeting at the time in an email to her supervisor.

Although Judge Laettner testified that he immediately recognized that the comment was a mistake and apologized for it, it was not until DPD Wills-Pierce confronted him several days after the comment that he expressed contrition. He acknowledged to his supervising judge, Judge Barry Goode, that he made the remark and said it was a "bone-headed statement." Judge Laettner also testified that he and Judge Goode "had a chuckle" about it. The masters found it notable that this conversation occurred as a result of Judge Goode contacting Judge Laettner ostensibly as a result of a complaint.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters found that the comment was prejudicial misconduct and violated canons 1, 2, 2A, 3B(4), and 3B5(a). They stated that, although Judge Laettner minimizes the severity of his comment by contending that it was a joke, it was nonetheless inappropriate and demeaning. As stated in the California Judicial Conduct Handbook (Rothman, *supra*, § 3:42, pp. 189-190):

> A judge must be mindful not to make jokes at the expense of others. The temptation to get a laugh is even greater when there is an audience of people seeking the judge's favor. A judge must remember that the people in the courtroom are generally there because of some serious event in their lives, and they may not appreciate humorous exchanges between the judge and counsel. A judge must be mindful that the use of humor may not be in the service of the goals and objectives of a judicial proceeding.

The masters found it particularly aggravating that Judge Laettner made the remark while on the bench and in the presence of multiple individuals, and that it had the effect of undermining the effectiveness of experienced counsel appearing before him. They also found that it could be perceived that he was biased based upon gender or sex, and that this erodes public confidence in the integrity and impartiality of the judiciary, and diminishes the dignity of the judicial process.

The masters further noted that the judge's remark cannot be considered in isolation, as it was consistent with many other incidents where his comments to women or about women were inappropriate and undignified.

Neither party objects to these legal conclusions.

(c) Counts 5C-E: Comments re tattoos and scarring

The masters found that Judge Laettner engaged in improper action (as opposed to prejudicial misconduct) and violated canons 1, 2A, 3B(4), and 3B(5)(a) by making various comments about the physical appearance of women. The comments included telling female defendants that they were "pretty" and should avoid drinking and driving, or tattoos. The masters found that, although Judge Laettner was motivated by a genuine desire to foster rehabilitation or to impress upon them the seriousness of their conduct, comments about beauty or physical appearance are inappropriate. They said, "An observer might construe such references to the physical appearance of a litigant to imply that there is a different standard of justice based upon appearance."

The examiner asks the commission to reject the masters' conclusions that the comments were improper action and to find that they were prejudicial misconduct, based on *Kreep*, *supra*, 3 Cal.5th CJP Supp. at pages 30-31. In *Kreep*, the commission determined that a judge's comments on the physical appearance of attorneys appearing in court (e.g., "attractive," "lovely," and "pretty girl") constituted prejudicial misconduct because they "were not relevant to the court proceedings, made others in the courtroom uncomfortable, did not afford proper respect to the individuals, diminished the dignity of the judicial process, and may have created the appearance of bias or impartiality." In this matter, Judge Laettner's remarks had some relevance to the proceedings; they were in the context of him trying to help the defendants by conveying the serious consequences, including disfigurement, that could occur from drinking and driving. There was testimony that he made similar remarks to a few male defendants. The comments also did not convey the same level of disrespect to the individuals involved in Judge Kreep's case. We do not think that an objective observer would conclude that the comments would erode public esteem for the judiciary, a requirement for a finding of prejudicial misconduct.

We adopt the masters' findings of fact and conclusions of law, but, because the conduct constitutes improper action, do not consider these allegations as a basis for the judge's removal.

(d) Count 5F: Comment regarding tattoos and "fat people"

1. Findings of Fact

On June 16, 2017, after Judge Laettner presided over a hearing in *People v. Thalia Hernandez*, he stayed on the bench and engaged in a discussion with Hernandez about her tattoos. Court reporter Jennifer Michel testified that Judge Laettner remarked, "I always wonder what fat people were thinking when they get tattoos." Judge Laettner acknowledged discussing Hernandez's tattoos, but said it was in the context of her efforts to obtain employment, and he provided her with a workforce reentry form and resources for job training.

Neither party objects to these factual findings.

2. Conclusions of Law

The masters found that Judge Laettner engaged in improper action (as opposed to prejudicial misconduct) and violated canons 1, 2A, 3B(4), and 3B(5)(a). We respectfully disagree that Judge Laettner's comment about "fat people" constituted improper action and find that it constituted prejudicial misconduct, as argued by the examiner.

In this matter, like in *Kreep,* we find that Judge Laettner's remark erodes public esteem for the judiciary because it was not relevant to his judicial duties, is disrespectful, and creates the appearance of bias against "fat people" and that there could be a different standard of justice based on someone's physical appearance.

E. Count Three—People v. Ventura

Judge Laettner is charged with revoking a criminal defendant's own recognizance (OR) release in the defendant's absence without affording him or his attorney notice and the opportunity to be heard, and with giving the appearance that he was retaliating for the filing of a peremptory challenge against him by the defendant's attorney.

The masters found that Judge Laettner committed willful misconduct by failing to give a criminal defendant notice and the opportunity to be heard with respect to the revocation of his OR release and remand, and the rejection of the peremptory challenge.

The masters further found that Judge Laettner was "not credible" when he stated that he revoked the defendant's OR release and remanded him, and denied the peremptory challenge as untimely, in open court.

We adopt the masters' findings of fact, as summarized below, and their conclusions of law, with one exception discussed below.

1. Findings of Fact

On October 31, 2013, Judge Laettner presided over *People v. Harlyn Ventura.* Ventura was represented by DPD Jermel Thomas. Ventura had been arrested for violating probation. He was released on OR, but remained in custody on an immigration hold.

The *Ventura* matter came before Judge Laettner again the next day, November 1, 2013. During an in-chambers discussion between Judge Laettner, DPD Thomas, DDA Catherine DeFerrari, and probation officer Valerie Miramontes, DPD Thomas advised Judge Laettner that she planned to file a peremptory challenge against him pursuant to Code of Civil Procedure section 170.6.[4]

Back in open court, DPD Thomas filed the 170.6 challenge against Judge Laettner and informed him on the record that she had done so. Judge Laettner set the case for a further pretrial hearing in his court on November 8, 2013, and a contested probation violation hearing on December 20, 2013 before a different judge.

Judge Laettner testified that, in open court at the November 1, 2013 hearing, he (1) revoked Ventura's OR release and remanded him into custody, and (2) found DPD Thomas's 170.6 challenge to be untimely.

Regarding his revocation of Ventura's OR release and remand into custody on November 1, Judge Laettner testified: "I was in open court when all parties were present, and I stated very plainly he's remanded. That was on the record." Judge Laettner's decision to remand Ventura is not reflected in the reporter's transcript of the proceeding. It is also not reflected in the contempo-

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[4] A peremptory challenge of a judge pursuant to Code of Civil Procedure section 170.6 is initiated by the filing of a declaration under penalty of perjury, or an oral statement under oath, that the judge is prejudiced against a party or attorney or that the party cannot have a fair and impartial trial before the judge. No other act or proof is required to disqualify the judge. A peremptory challenge can be stricken, without a hearing, if it is untimely.

raneous notes Judge Laettner took during the in-chambers discussion, and it is not in the contemporaneous notes he made while he was on the bench during the November 1 proceeding. The contemporaneous notes he made for the October 31 and November 8 proceedings, however, do make note of Ventura's release status.

The remand order is reflected on the clerk's minute order. Judge Laettner testified that he turned to his right and told his clerk that Ventura was remanded. When asked whether he looked at DPD Thomas and told her that he was revoking Ventura's OR and remanding him, Judge Laettner testified: "No. I said that to my clerk in court loudly enough that I believed everyone would hear. And I also believe that she [DPD Thomas] knew it was going to happen because [of] what had just happened in chambers. It was no surprise."

DPD Thomas testified that, on November 1, Judge Laettner did not say during the in-chambers conference that he was going to revoke Ventura's OR, and he did not say in open court that he was revoking Ventura's OR and remanding him, or ask if she wished to be heard.

DDA DeFerrari appeared for the prosecution in the *Ventura* matter on November 1, 2013. Consistent with DPD Thomas, her notes for that day reflect that Ventura was on OR status. She does not recall Ventura's OR status being revoked on November 1 or even being discussed that day.

The *Ventura* case came before Judge Laettner again on November 8, 2013. During the morning session of the hearing, DPD Thomas raised the issue of Ventura's remand, stating her belief that the minute order for November 1 "inadvertently" reflected her client's remand without bail. She asked Judge Laettner to correct the minute order "for housekeeping purposes" since the remand order was "in error." She told him: "So it appears as though there was a mistake as to the November 1st hearing because I don't believe we addressed his custodial status at that time. I think we all believed that he would have been released on his own recognizance." According to the transcript, neither Judge

Laettner nor DDA DeFerrari said anything to contradict DPD Thomas's statement that Ventura's custodial status had not been addressed on November 1.

Regarding Judge Laettner's testimony that he denied DPD Thomas's 170.6 challenge as untimely in open court and in her presence on November 1, the transcript does not reflect Judge Laettner saying the challenge was untimely or the basis for the ruling. The minute order also does not reflect that the judge found the 170.6 challenge untimely. Judge Laettner admits that it would be appropriate for the clerk's minute order to reflect his finding that the challenge was rejected as untimely. Judge Laettner's contemporaneous notes do not reflect the filing of the challenge or that he found it untimely; he does not know why this is so. Judge Laettner also testified that he did not look at DPD Thomas and tell her he was rejecting her challenge as untimely or ask her if she wished to be heard.

The masters found Judge Laettner's testimony "not credible" that he "very plainly," in open court, revoked Ventura's OR release and remanded him. They stated:

> While at some point in time he instructed his clerk that the defendant was to be remanded, it was not announced during his chambers discussion or in open court. The transcript does not reflect his decision, his contemporaneous notes do not show it, the deputy public defender testified it didn't happen, and the deputy district attorney cannot recall it happening. And when asked directly, Judge Laettner admitted that he did not turn to DPD Thomas and say: "Ms. Thomas, I'm revoking his OR. I'm remanding your client. Do you wish to be heard?"

The masters also found "not credible" Judge Laettner's testimony that he rejected DPD Thomas's 170.6 challenge in open court and on the record because the transcript does not reflect it, the court minutes do not show it, and his contemporaneous notes do not show it. The masters said: "The fact that the record is devoid of reference to Judge Laettner's rejection of the 170.6 challenge raises the inference that it was never done."

Judge Laettner objects to the finding that he was not credible about revoking Ventura's OR release and remanding him in open court. In addition to insisting that he did so by turning to the right and telling his clerk about the revocation and remand, he asserts that DPD Thomas knew from the chambers discussions on October 31 and November 1 that Ventura was going to be remanded due to his termination from a treatment program, which was a violation of a term of probation. Ventura was released on OR on October 31, so his remand would not likely have been discussed that day. And even if it were discussed in chambers on November 1, his counsel, DPD Thomas, had the right to be heard before the remand occurred. She denies that Judge Laettner told her on November 1, in chambers or on the record, that he was going to revoke Ventura's OR release from the previous day. Other than the judge's testimony, which the masters found not credible, there is no evidence to contradict the testimony of DPD Thomas.

The judge also contends that DPD Thomas did not address the remand between November 1 and November 8, which corroborates that she knew about it on November 1. She did not do anything because she did not learn about it until November 7, when she saw that the remand box on the minute order for the criminal case was checked. Until then, she believed Ventura was in custody on an immigration hold. She learned about the remand when she and Ventura's immigration attorney were trying to get the immigration hold released by posting bond, which they would not have done had they known that Ventura had been remanded without bail by Judge Laettner. The evidence supports a finding that DPD Thomas did not know about the remand without bail on November 1, and that Judge Laettner did not order the remand in open court in her presence.

Judge Laettner also objects to the masters' finding that he was "not credible" about rejecting the 170.6 challenge in open court. He submits that the masters omit that DPD Thomas had previously moved for Judge Laettner to decide contested factual issues, thereby rendering the 170.6 peremptory

challenge untimely. Whether or not the peremptory challenge was untimely or meritorious is not relevant; the issue is whether Judge Laettner's statement under oath that he denied the 170.6 in open court is true. The masters found that it was not, and we agree, based on the evidence. We agree with the judge, however, that if the peremptory challenge was untimely, the judge was not required to hold a hearing regarding the timeliness of the challenge, and could have simply stricken it. He was, nevertheless, required to advise DPD Thomas of his ruling. The evidence does not support his claim that he did so in open court. It shows, to the contrary, that he did not.

We agree with, and adopt, the masters' findings, including regarding credibility.

2. Conclusions of Law

The masters determined that Judge Laettner's conduct in the *Ventura* matter was willful misconduct. They concluded that he abused his authority by failing to give Ventura's attorney, DPD Thomas, notice and the opportunity to be heard as to (1) his decision to revoke Ventura's OR release and remand him on November 1, 2013, and (2) his rejection of her 170.6 challenge as being untimely.

To support their finding that his conduct was in bad faith, they referred to the morning session on November 8, when DPD Thomas raised the issue of Ventura's remand, describing it as an error. At the beginning of the afternoon session, Judge Laettner stated that Ventura would have to enroll in a program as a condition of his OR release. DPD Thomas again raised the issue of the revocation of Ventura's OR, arguing that there had been no changed circumstances to justify his remand. The masters cited the following colloquy from the transcript:

> MS. THOMAS: So the court had previously OR'd him with—subject to no conditions on the 31st of October. I don't believe that there has been any change in circumstance from that date to today.

> THE COURT: He's been remanded. *That's one change.* If you want him released on his OR, those are the conditions. If you don't then we can continue with this hearing on December the 20th with him in custody. (Italics in masters' report.)

The masters found that Judge Laettner took advantage of Ventura's custodial status by conditioning his release on his enrollment in a program, and that the knowing or reckless failure to provide Ventura the process he was due was willful misconduct. And on November 8, Judge Laettner did not correct DPD Thomas by indicating that he had issued the revoke-and-remand order in open court on November 1; instead, he repeatedly reiterated that Ventura's OR would be conditioned upon his entry into a program.

In support of this conclusion, we note from the record that when DPD Thomas's colleague, DPD Jonathan Laba, accompanied her to court on November 8, the following exchange occurred:

> MR. LABA: . . . Our particular concern, procedurally, is what happened on Friday [November 1] because Ms. Thomas and Mr. Vaca [Ventura's immigration attorney], both of whom were here, have conveyed that the court didn't make any statements on the record about changing the previous day's OR to no-bail remand that showed upon the court's minute order, which is why now we're addressing the issue of his being released with conditions. Either the court did that and did it on the record, or the court did not, but that was not done. I don't know why the minute order reflects that, and I don't know why we are now addressing adding conditions to the OR release.
>
> THE COURT: Well, he was remanded on the 1st, and we have had many, many cases. I don't have a clear recollection of what happened on the 1st, but I have reviewed the minute order. He was remanded. It would have been with me saying he's remanded. That's where you find him. He is remanded.

Judge Laettner argues that there is no corrupt purpose for his remand of Ventura because Ventura was in violation of his probation by failing his treatment program. But Ventura had already been released on OR without conditions, and when DPD Thomas asked for him to be released on OR again, the judge required a condition, which appears to be retaliatory.

We further note that on November 1, right after Judge Laettner heard the *Ventura* matter, he heard *People v. Williams*, during which he snapped at DPD Wills-Pierce. He then called her up to the bench and told her that he was sorry he was mad earlier, but that it was her friend, DPD Thomas, who had made him so mad. DPD Thomas testified that when she confronted Judge Laettner about this later the same day, he confirmed that she had made him upset. Judge Laettner testified that he was angry or upset at DPD Thomas because he believed she had been dishonest about her client.

We agree with the masters that there is clear and convincing evidence that Judge Laettner revoked Ventura's OR and remanded him without bail without notifying DPD Thomas or letting her be heard—which the masters found to be a reckless denial of Ventura's due process, the basis for willful misconduct.

We do not find that Judge Laettner was required to give DPD Thomas the opportunity to be heard regarding his denial of her 170.6 challenge as untimely. But we do find that he was required to notify her of his ruling, and we agree with the masters that Judge Laettner lacked credibility when he testified that he did so in open court. There is no evidence to support his claim that he did.

The masters determined that Judge Laettner's conduct violated canons 1, 2, 2A, 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), and 3B(2). We agree with those legal conclusions and that his misconduct was willful.

F. Count Eight—Failure to Recuse or Disclose Son's Employment in District Attorney's Office[5]

Judge Laettner is charged with failing to recuse or timely disclose on the record his son's employment with the district attorney's office in some cases where that office appeared.

The masters found that Judge Laettner had a system for appropriately making disclosures on the record, but that he failed to routinely do so in juvenile cases. They found, nevertheless, that he did not commit misconduct. We respectfully disagree and conclude that the judge's failure to always disclose the conflict on the record in juvenile cases constitutes improper action (which we do not consider for purposes of removal).

1. Findings of Fact

Judge Laettner's son, Max Laettner, was a law clerk at the Contra Costa County DA's Office starting August 18, 2014, and a deputy district attorney starting June 29, 2015. Judge Laettner understood that he was required to disclose his son's employment as an attorney in the DA's office. He established a two-step procedure to address the disclosure requirement, which was to give an oral admonition at the beginning of the calendar, before cases were called, and to have the clerks stamp on the minute orders in every case a notice that his son was a deputy district attorney in the DA's office. The bailiff would double-check that orders were stamped with the disclosure before distributing them. Judge Laettner testified that he made the oral disclosure every day at the commencement of the calendar, before any cases were called, and that he was supposed to give the oral disclosure in the afternoon, but he is not sure he did it every time. In juvenile cases, however, Judge Laettner only made the disclosure to the attorneys, and only at the beginning of the calendar. It is not clear that all of the attorneys would be present at that point. None of the juveniles or their

[5] We address Counts Six and Seven, where no misconduct was found, after Counts Eight and Nine.

families would be present when the judge made the disclosure, as the cases came in "one at a time" after the judge purportedly made the oral disclosure.

Three juvenile cases were identified in which the judge did not make the disclosure on the record:

(a) In *In re Vanessa W.*, Judge Laettner presided over the first hearing on April 1, 2014. His son started as a clerk in the DA's office in August 2014. The first hearing in the case after Judge Laettner's son started in the DA's office, on October 7, 2014, was not reported, and the minutes do not indicate that the judge made a disclosure about his son. There was evidence that Judge Barry Baskin, as the "ethics advisor," had advised Judge Laettner that he was not required to make a disclosure about his son's clerkship. The transcript of the first reported hearing in the case, on April 8, 2016, does not reflect an oral disclosure on the record that day, but the minute order contains the stamped disclosure. Another minute order, dated April 29, 2016, also contains the stamped disclosure.

(b) In *In re Lauryn G.*, Judge Laettner made no disclosure on the record at four hearings. He admitted that, on one occasion, he presided over this case after his son had appeared on an uncontested motion to continue, and that he would have recused from the case had he noticed that. The masters had no doubt that he would have done so.

(c) In *In re Victor E.*, Judge Laettner made no disclosure on the record at a number of hearings. Only some of the minute orders were stamped.

Neither party objects to these factual findings.

2. Conclusions of Law

Canon 3E(2)(a) provides that in "all trial court proceedings, a judge shall disclose on the record . . . information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." Section 170.1, subdivision (a)(6)(A), provides that a judge shall be disqualified if, for any reason, a "person

aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

The masters found that Judge Laettner was diligent in his efforts to disclose that his son was employed as a DDA by routinely making an oral disclosure, backed up by a written disclosure on the minute order, which was checked by the bailiff. There was no evidence that Judge Laettner was careless or indifferent about his duty to disclose.

The masters acknowledged that Judge Laettner handled some of the busiest court calendars with a significant number of cases, and they agreed that, in juvenile matters, "group 'disclosures' are impractical due to the sequential nature of the minors' appearances in a courtroom that is not open to the public." They found, nevertheless, that Judge Laettner omitted necessary on-the-record disclosures in several instances, and stated:

> Minute orders issued after a hearing, which bear the disclosure stamp, do not remedy the lack of an oral disclosure before a proceeding commences. It is at the outset of a hearing that the parties and attorneys must have the relevant disclosure, in order to decide whether to seek a disqualification before the matter is heard by the judge.

The masters concluded that Judge Laettner failed to recuse himself in *In re Lauryn G.* and failed to timely disclose his son's employment with the DA's office in several instances in the *In re Vanessa W.* and *In re Victor E.* matters.

Despite the foregoing, the masters found that, under all of the circumstances, and weighing the court's significant caseload, coupled with the judge's diligent and consistent efforts to comply with the disclosure requirements, there was not clear and convincing evidence that these failures "even approached improper action . . . let alone constituted prejudicial misconduct or willful misconduct," as urged by the examiner.

We respectfully disagree with the masters' legal conclusion regarding Judge Laettner's failure to disclose on the record in every case his son's employment with the DA's office. The rules of ethics are clear that a judge must disclose that his or her adult child works in the district attorney's office in every case in which the district attorney's office appears. (See Cal. Judges Assn. (CJA), Jud. Ethics Update (2017), p. 2; CJA Jud. Ethics Update (2007) p. 1; CJA Jud. Ethics Com. Opinion 51 (2001) p. 2; Cal. Supreme Ct. Com. on Jud. Ethics Opns., Formal Opn. No. 2013-002 (2013) p. 8.)

The evidence establishes that Judge Laettner did not always properly disclose his son's employment with the DA's office in juvenile cases, and that he knew he was supposed to do so. The requisite disclosure is for the benefit of the parties, so that they might evaluate whether to seek to disqualify the judge. We find that the judge's failure to disclose his son's employment on the record in all juvenile cases violated canon 3E(2)(a). We further find that this was improper action, and not willful misconduct as argued by the examiner, because, in light of Judge Laettner's efforts to comply with the disclosure requirement, as described above, we do not believe that an objective observer would find his failure to do so in every case prejudicial to public esteem for the integrity and impartiality of the judiciary. We also find no corrupt purpose. Because we conclude that it is improper action, we do not consider this charge for purposes of removal.

G. Count Nine—Ex Parte Comments to Deputy Public Defenders

Judge Laettner is charged with making ex parte comments in response to peremptory challenges exercised by deputy public defenders that would reasonably be perceived as sexual harassment or sexual discrimination and, at a minimum, gave the appearance that he was attempting to influence the attorneys not to exercise the challenges.

The masters found that Judge Laettner committed willful misconduct by engaging in two ex parte communications with deputy public defenders who were filing peremptory challenges against him. They did not find sexual harassment or sexual discrimination.

The masters further found that Judge Laettner's testimony was "not credible" regarding the statements he made to the deputy public defenders.

We adopt the masters' findings of fact. Due to the statute of limitations, we consider this subcount only for purposes of evaluating the judge's honesty during this proceeding (see footnote 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

1. Findings of Fact

a. Conversation with DPD Eiland

In 2008, Judge Laettner presided over the trial in *People v. Hector Ignacio*, a sexual battery case in which defendant Ignacio was charged with grabbing a woman's breast twice. DPD Nicole Eiland represented Ignacio. The jury acquitted Ignacio of sexual battery, but convicted him of simple battery. Judge Laettner sentenced Ignacio to 60 days in jail and probation for three years. The maximum penalty for simple battery is six months in county jail (Pen. Code, §§ 242, 243, subd. (a)).

DPD Eiland considered the sentence to be unduly harsh and began exercising peremptory challenges against Judge Laettner, pursuant to Code of Civil Procedure section 170.6. She testified that, three or four weeks after she began filing the challenges, Judge Laettner called her up to the bench and indicated that he had noticed that there had been challenges filed against him and "couldn't help but think it had something to do with the last case that [they] had together," which was the *Ignacio* case. She testified that he told her that he wanted her to think about "what if this had been [her] or what if this had been Ms. MonPere" whose breast had been grabbed. DPD Eiland testified that Judge Laettner never explicitly said not to file challenges against him, but she felt that

she was "being called into the principal's office and told not to do this [file 170.6 challenges] anymore."

Judge Laettner denied discussing the 170.6 challenges with DPD Eiland. He admitted having a conversation with her about whether his sentence in *Ignacio* was too harsh and said he did so because he could see that she was still very upset with him. He testified that he did not say anything about the sentence, but that he said she needed to consider the victims. He denied making reference to DPD MonPere or grabbing her breast, but testified that he might have said, "[W]hat if it had been a family member or a friend that had been a victim in a case?" He said he did this because he wanted DPD Eiland to have empathy for the victims of crime and "basically to defend [him]self." He also said she needed to consider victims because she had a hostile demeanor toward him and, "in fairness to [him], since [he] was considering the victim who had been essentially molested," she should consider victims.

The masters found DPD Eiland's testimony credible. It was partially corroborated by Judge Laettner's testimony that he asked her what if the assault in *Ignacio* had involved a family member or friend, and was further corroborated by DPDs Osborne and Cuthbertson, who testified that Judge Laettner made similar comments to them. The masters also found that, even though Judge Laettner did not explicitly say not to file 170.6 challenges against him, he indirectly referenced DPD Eiland's 170.6 challenges against him during his conversation with her.

b. Conversation with DPDs Osborne and Cuthbertson

DPDs Osborne and Cuthbertson also began exercising peremptory challenges against Judge Laettner in 2008 after his sentence in *Ignacio*. Because their challenges of him "jammed up" the three-judge courthouse, Supervising Judge William Kolin had a conversation with DPD Osborne, during which it was agreed that he and DPD Cuthbertson would pretry cases with Judge Laettner, which Judge Kolin would review.

About a month or so after Judge Laettner sentenced Ignacio, DPDs Osborne and Cuthbertson and a prosecutor were pretrying cases in front of Judge Laettner. The judge asked the prosecutor to leave. DPD Osborne testified:

> So Judge Laettner said that, you know, *he wasn't trying to tell us to—to not challenge him on cases*, but he could tell that we were upset with him. And so he—I started telling him about why I was—why I was challenging him on those cases. [¶] And I told him that the sentence for Ms. Eiland's client was grossly unfair and disproportionate to the crime that he was convicted of. And—you know, and after that, Judge Laettner said, well, you know, *what if it had been Ms. MonPere's breast that this man had—had grabbed?*
> (Italics in masters' report.)

DPD Osborne got the sense that Judge Laettner was trying to smooth things over with the public defenders.

DPD Cuthbertson also testified that Judge Laettner asked the district attorney to leave. He said the judge then brought up the challenges, saying: "I would never tell you not to represent your clients to the best of your ability. But I would be lying if I told you that being challenged didn't hurt my feelings or didn't hurt." DPD Cuthbertson also testified that, in talking about the *Ignacio* case, Judge Laettner asked, "[W]hat if that was Ms. MonPere's breast that he grabbed?" DPD Cuthbertson remembers this because it was inappropriate, DPD MonPere was his friend, and the "power dynamics in the room" were such that he "felt what was happening wasn't right."

Judge Laettner admitted having an in-chambers discussion with DPDs Osborne and Cuthbertson about *Ignacio,* but he denied asking the district attorney who had been in chambers to leave. Judge Laettner denied knowing, at the beginning of his conversation with the DPDs, that they had been filing 170.6 challenges against him. He testified that DPDs Osborne and Cuthbertson were "kind of my guys" and that he began the conversation by asking them, "[S]o

what's going on you guys?" He said DPD Osborne told him they had been challenging him because of his sentence in *Ignacio,* at which point Judge Laettner said he could not discuss challenges with them, and that they should challenge a judge if they thought it was in their client's best interest. He also testified that when DPD Osborne said the reason they were challenging him was because they thought the sentence in *Ignacio* was unfair, he said something like, "[W]hat if it had been a family member or friend or Ms. Eiland or Ms. MonPere that had been the victim?"

The masters found that Judge Laettner was "not credible" when he testified that, until their conversation in chambers, he was unaware that DPDs Osborne and Cuthbertson were filing 170.6 challenges against him, because he was in a three-judge courthouse, where two judges were having to do the work of three, and the supervising judge took it upon himself to intercede with the DPDs.

The masters found the testimony of DPDs Osborne and Cuthbertson credible that Judge Laettner engaged them in a discussion about their 170.6 filings. Judge David Flinn, formerly on the Contra Costa County bench, testified that when Judge Laettner had been receiving 170.6 challenges for a week or two, Judge Laettner sought his advice about his experience with 170.6 challenges. Judge Flinn related that Judge Laettner was frustrated that he could not stop the deputy public defenders in the hallway and ask why they were doing it, or explain the reason he ruled as he did, but he understood that he could not do this. Judge Flinn told Judge Laettner that, by "reaching out and being friendly to the public defenders," the challenges would stop. DPD Cuthbertson's testimony that Judge Laettner said he would be lying if he said being challenged did not hurt his feelings was consistent with the frustration Judge Laettner expressed to Judge Flinn regarding his inability to explain himself to the DPDs. Further, DPD Cuthbertson's testimony that Judge Laettner brought up the challenges is consistent with Judge Flinn's advice (which the masters found "questionable") to reach out and be friendly to the public defenders.

The masters also found "not credible" Judge Laettner's denial that he referred to touching DPD MonPere's breast. He admitted saying to DPDs Osborne and Cuthbertson, "[W]hat if it had been a family member or friend or Ms. Eiland or Ms. MonPere that had been the victim?" The masters reasoned that, if he was trying to impress upon them the seriousness of the situation, which he said he was, then he would refer to the defendant's conduct, "grabbing breasts," when asking them to imagine if it had been their colleague. And the masters found credible and compelling DPD Cuthbertson's explanation as to why he remembers that Judge Laettner referred to DPD MonPere's breast.

The masters found that Judge Laettner did speak to DPDs Eiland, Osborne, and Cuthbertson about the 170.6 challenges, and that, by telling them to consider victims, he was defending his sentence in *Ignacio.* According to the masters, the misconduct in this case is Judge Laettner's defense of his sentence in response to the public defenders' 170.6 challenges. His suggestion to DPD Cuthbertson that his feelings were hurt by the challenges from his "guys" reasonably calls into question his ability to make a difficult or unpopular decision in the future. As the masters stated, "The integrity of the judiciary depends upon the unflinching posture by judges that necessary but unpopular decisions will always be made."

Judge Laettner objects to the masters' findings that he was not credible. He contends that he never mentioned the 170.6 challenges to DPD Eiland, and that she testified that he did not reference peremptory challenges pursuant to Code of Civil Procedure section 170.6. But DPD Eiland, whom the masters found credible, testified that, while Judge Laettner never said not to file challenges against him, he told her he could not help but notice that she had been exercising challenges against him, and that he thought it had something to do with their last case.

The judge objects that the masters omitted that DPD Osborne admitted misremembering the events and/or adopting the recollections of other parties regarding the conversation about the *Ignacio* sentence. First, DPD MonPere told

DPD Osborne that she did not think he was there when the judge's comment about her was made, but DPD Osborne said he did not think that was the case, and he testified that he had "strong memories" of the conversation with Judge Laettner. Second, DPD Osborne admitted that DPD Cuthbertson reminded him that they had met with the judge when the comment was made, which confirmed his memory. That DPD Osborne was at first uncertain about his memory, and that DPD MonPere thought DPD Osborne was not present, is not determinative of whether the comments were made. We find that there is sufficient evidence to support the masters' finding that they were in fact made.

Judge Laettner argues that there was no "blanket challenge"[6] by the public defenders against him, but that there was one against Judge William Kolin, and that therefore he was credible when he said he did not know that DPDs Osborne and Cuthbertson were filing challenges against him. The masters referred in their report to the filing of 170.6 challenges against Judge Laettner by DPDs Osborne and Cuthbertson in early 2008 as a "blanket challenge." They are not referring to a "blanket challenge" by the entire public defender's office. The evidence that DPDs Osborne and Cuthbertson routinely challenged Judge Laettner for a period of time in 2008 is uncontroverted.

Judge Laettner says that differences in testimony as to whether he referred to DPD MonPere's breast is due to a faulty memory, not dishonesty. But he also asserts that he admitted the conduct before formal proceedings were initiated. In his response to a supplemental preliminary investigation letter and in his verified Answer, however, he denied referring to DPD MonPere's breast during his conversation with DPDs Cuthbertson and Osborne. We agree with the masters' finding that Judge Laettner's denial that he made the comment about DPD MonPere's breast lacks credibility.

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[6] "Blanket challenge" refers to the practice of a party or attorney repeatedly filing 170.6 challenges against a particular judge.

2. Conclusions of Law

The masters determined that Judge Laettner committed willful misconduct because, according to Judge Flinn, he understood that he could not explain himself, but, by asking the public defenders to consider the victim, he was speaking directly to the reason the peremptory challenges were being made. Willful misconduct occurs when a judge acts on the desire to stop 170.6 challenges from being filed against him by "initiating any communication with the lawyer or the law firm involved." (Rothman, *supra*, § 5:4, p. 267.) The masters found that, although he did not explicitly tell the DPDs not to file the challenges, because of the "power dynamics in the room," as felt by DPD Cuthbertson, and DPD Eiland's feeling that she was "being called into the principal's office and told not to do this anymore," the act of explaining his sentencing decision, in the context of a blanket challenge, was for a purpose other than the faithful discharge of his judicial duties.

They also found that the judge's comment about considering if it had been DPD MonPere's breast that had been grabbed was undignified and discourteous, contrary to canon 3B(4). They did not find that it constituted gender bias or sexual harassment. As to both subcounts, they found the judge violated canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7).

Due to the statute of limitations, we consider this count only for purposes of evaluating the judge's honesty during this proceeding (see footnote 3), and we need not address whether we adopt the masters' legal conclusion as to the level of misconduct.

H. Count Six—Comments in dependency case

Judge Laettner is charged with making statements in a case involving a juvenile that gave the appearance of prejudgment and that would reasonably be perceived as bias or prejudice.

We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

I. Count Seven—Instituting program to address backlog

Judge Laettner is charged with instituting a new program to address a backlog in criminal court, which was allegedly an abuse of authority, had a chilling effect on defendants' constitutional right to trial by jury, and gave the appearance that he intended to give harsher treatment to defendants who asserted their right to trial and were convicted.

We adopt the masters' findings and their conclusion that there is not clear and convincing evidence of the alleged misconduct.

IV. APPROPRIATE DISCIPLINE

In determining the appropriate level of discipline, we consider our mandate to protect the public, to enforce rigorous standards of judicial conduct, and to 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 to consider in determining the appropriate sanction, including the judge's honesty and integrity, the number of acts and seriousness of the misconduct, 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. 1, 95-96.) 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 the Com. on Jud. Performance, policy 7.1(1)(f), 7.1(2)(b).)

Foremost in the commission's consideration of the foregoing factors is honesty and integrity. (*Saucedo, supra*, 62 Cal.4th CJP Supp. at p. 96.) Honesty is a minimum qualification expected of a judge. *(Kloepfer, supra*, 49 Cal.3d at p. 865.) A judge who does not honor the oath to tell the truth cannot be entrusted with judging the credibility of others. (*Inquiry Concerning MacEachern* (2008) 49 Cal.4th CJP Supp. 289, 309.) 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. 97.) The California Supreme Court has said, "There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the Commission in the course of its investigation into charges of wil[l]ful misconduct on the part of the judge." (*Adams II, supra,* 10 Cal.4th at p. 914).

Judge Laettner repeatedly asserted, in his post-hearing briefs and at his appearance before the commission, that the special masters concluded that he is "honest to a fault." The masters, however, specifically stated in their report that, to the contrary, Judge Laettner was "not credible" in six instances and that his testimony was "impeached" in another. They also rejected much of his testimony in favor of that of other witnesses. While the masters found Judge Laettner's acknowledgment of wrongdoing as to some of the acts charged to be mitigating, they determined that he was "not credible or not truthful as it relates to his testimony concerning several of the events" in this matter, and that his "lack of candor regarding several of the allegations is troubling."

The instances where the masters found, either explicitly or implicitly, that Judge Laettner was not credible include his testimony that:

- He called DPD Della-Piana into the well to ensure she received the minute orders, while the prosecutor was at counsel table, and told her he was resetting Imlay's bail at $25,000 per case.
- His order exonerating and resetting Imlay's bail is not on the record because his court reporter was not present, or was present but did not take his order down.
- He was confused about who represented Lauryn G.
- He did not talk to DPD Della-Piana about *Eric B.* in the hallway.
- He did not talk to DPD Della-Piana about *Imlay* in chambers.
- He revoked Ventura's bail and remanded him in open court.
- He rejected DPD Thomas's 170.6 peremptory challenge as untimely in open court.
- He did not know he was being routinely peremptorily challenged by DPDs Osborne and Cuthbertson in a three-judge courthouse.
- He did not refer to DPD MonPere's breast when he said the DPDs should consider the victim in *Ignacio*.

Judge Laettner argues that differences in testimony may be the result of faulty memory, rather than conscious dishonesty. But the masters found, in several instances, that the judge's explanations lacked credibility because they did not make sense. For example, he testified that DPD Della-Piana was in the well when he revoked Imlay's bail, but the masters stated that there would be no reason for this to occur, and it would have been improper. His explanations about why something was not on the record in *Imlay* were inconsistent: he said his court reporter was not present, and he also said she was present but not taking things down. According to the masters, his claim that he was confused as to which DPD represented Lauryn G. was not believable given DPD Moghtader's prior involvement in the case and DPD Della-Piana's references to her during the hearing. And his assertion that he did not know he was being peremptorily

challenged is at odds with Judge Flinn's testimony that he sought Judge Flinn's advice on how to handle the challenges.

Judge Laettner also claims that the special masters found that he has taken full responsibility for his mistakes "without excuse." There is no such finding in the masters' report. Judge Laettner denies committing misconduct in three of the six counts the masters found were proven with clear and convincing evidence (Counts One, Three, and Nine), and in a fourth count the masters concluded did not constitute misconduct but we did (Count Eight). Further, he does not take responsibility for the following conduct:

- Ex parte communication with DDA Fernandez—The judge says DPD Della-Piana's absence from the courtroom "made her inclusion [in the ex parte] impossible." (There was no need for the ex parte communication in the first place.)
- "Teenage daughter" comment to DPD Della-Piana—He denies that this was demeaning and said he intended it as a "compliment." (The masters found it "inconceivable" that she might take it as a compliment.)
- Ex parte communication with DPD Della-Piana regarding *Eric B.*—He denies discussing the *Eric B.* case with her. (She testified that he did, and the masters found that he did. And he says in his post-hearing brief that he did not explicitly deny referencing *Eric B.* during the ex parte discussion with DPD Della-Piana, but when he was asked whether he discussed that case with DPD Della-Piana on that occasion, he responded, "No.")
- Ex parte communication with DPD Della-Piana regarding *Imlay*—He denies discussing the *Imlay* cases with her. (She testified that he did, he admitted in his Answer that he did, and the masters found that he did.)
- Remand of Ventura—He denies that he did this off the record. (The evidence indicates that he did not do it on the record.)

- Denial of DPD Thomas's 170.6 request—He denies that he did this off the record. (The evidence indicates otherwise.)
- Discussion of peremptory challenges with DPD Eiland—He denied that he discussed them with her. (She testified that he did, and the masters found her credible.)
- Referring to DPD MonPere's breast when asking the DPDs to consider the victims—He denied doing so. (DPDs Osborne and Cuthbertson testified that he did, and the masters found them credible.)

Judge Laettner emphasizes that he admitted the misconduct in Counts Two, Four, and Five, which the masters found reflected a pattern of gender bias against women. But he only admitted some of the misconduct, and, as the masters stated, he attempted to minimize and justify some of his remarks. For example, he said he commented on DDA Bell's looks because he wanted to convey her competence to grand jurors, he claimed that comparing DPD Della-Piana to a teenage girl was a compliment, and he said he told DPD MonPere that she was "his favorite," in front of other attorneys, to build her confidence.

Judge Laettner also contends that he promptly recognizes his mistakes, and cites as an example his response to DPD Wills-Pierce's complaint that he said, "I can take judicial notice that women can drive you crazy." But he did not apologize for the comment until several days later, when DPD Wills-Pierce confronted him about it. Moreover, he testified that he and then-Supervising Judge Barry Goode "had a chuckle" about it, which does not reflect recognition of the effect such a comment could have on a professional female attorney or her clients, particularly in a domestic violence case.

Further, Judge Laettner still blames the Contra Costa County Public Defender's Office, stating in his post-hearing briefing that "[i]t cannot be overlooked that all but one complainant" is from there, and that he is facing disciplinary action "only as the result of" circumstances involving a campaign against him by the Contra Costa County Public Defender. The masters found,

and we agree, that the source of the complaints is irrelevant; it is the judge's conduct that matters.

Judge Laettner's inability to fully accept responsibility for his behavior was evident at his appearance before the commission on October 2, 2019. While he acknowledged generally the impropriety of his comments in Counts Two, Four and Five, he continued to deny responsibility for the significant acts of misconduct in Counts One and Three, and to blame others. Judge Laettner argued that the special masters were incorrect in each of the multiple instances they found his explanations or statements to be not credible, and he denied that he might have been mistaken as to any instance, even after hearing testimony from other individuals that was inconsistent with what he said was his recollection. When asked why he thought the special masters found some of his testimony to be not credible, he responded that they "weren't given the whole story." He claimed that he had "100 other witnesses lined up and ready to go," with "testimony that corroborated [him]," but that the masters did not allow their testimony. This assertion seems disingenuous in light of what actually occurred during this proceeding.

Judge Laettner called close to 40 witnesses on his behalf during the evidentiary hearing (and cross-examined the examiner's many witnesses). After the special masters heard 34 witnesses testify about Judge Laettner's character and honesty, Judge Laettner said he had seven additional witnesses he wished to call (Kim Carmichael, Thomas Wolfrum, Sergeant Mike Parrish, Deputy Sheriff Lisa Berry, DDA Melissa Smith, Peter Silten, and Laura Delehunt). The masters indicated that they had "heard a great deal of testimony with regard to Judge Laettner's character and traits for honesty, respect, and dignity," including "from some of the most well-respected judges in California," and they excluded the testimony of the last four witnesses on the ground that it was cumulative. Evidence Code section 352 allows the court to exclude evidence if, in its discretion, the probative value of the evidence is substantially outweighed by the

probability that its admission will necessitate undue consumption of time. (See *Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163 [masters may exclude cumulative evidence].) Carmichael was not available to testify, but Wolfrum and Sergeant Parrish testified. Judge Laettner's counsel then informed the special masters that the judge had no other witnesses to call.

We note that testimony about the judge's reputation for honesty is different from that of percipient witnesses who would testify about the facts upon which the misconduct findings are based.

After the evidentiary hearing before the special masters was concluded, Judge Laettner submitted with his opening brief to the commission a request to reopen the evidence, pursuant to commission rule 133(a), on the ground that his due process rights under commission rule 126[7] had been denied because the special masters did not let him call additional witnesses to testify as to his "character for honesty."

Judge Laettner's request also sought to introduce declarations and testimony of witnesses with evidence that he claimed was new and that corroborated his testimony in the six instances where the masters expressly found his testimony to be not credible, summarized as follows:

(a) Declaration of former Judge William Kolin: In his proposed declaration, Judge Kolin does "not recall Judge Laettner being 'blanket' challenged under [Code of Civil Procedure section] 170.6 on all public defender cases." Judge Laettner was not alleged to be the subject of a blanket challenge on all public defender cases. The proposed declaration does not refute the masters' finding that Judge Laettner was not credible when he testified that he did not know of a blanket challenge by DPDs Osborne and Cuthbertson.

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[7] Rule 126 states in relevant part that: "When formal proceedings have been instituted, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses."

(b) Declaration of Deputy Sheriff Lisa Berry: Deputy Berry's proposed declaration states that she does not recall public defenders filing peremptory challenges against Judge Laettner on every matter. Like Judge Kolin's declaration, this is not relevant because there is no allegation that public defenders filed peremptory challenges against Judge Laettner on every matter.

(c) Declaration of DDA Jun Fernandez: DDA Fernandez was a witness during the hearing. His proposed declaration seeks to revise his prior testimony. Judge Laettner had ample opportunity during the hearing to elicit from DDA Fernandez all information relevant to the charges. Judge Laettner offered no reason why he did not do so during the hearing.

(d) Declaration of Deputy Scott Reed: Deputy Reed was also a witness during the hearing. The masters did not believe all of his testimony. His proposed declaration states that Judge Laettner said he was exonerating bail and resetting it in *Imlay* in open court with all parties present. Deputy Reed's declaration also states that he cannot recall if the court reporter was present when the judge issued the bail order, that public defenders commonly interchange cases, and that DPD Della-Piana was often flirtatious in the courtroom, whereas the judge was not.

Deputy Reed testified at the hearing, and Judge Laettner had a full opportunity to question him about all of the issues he seeks to address in the declaration, including that of bail in the *Imlay* case, which was a significant charge in the case. The judge offers no reason why he did not elicit the information in Deputy Reed's declaration during the hearing. And whether public defenders exchange cases has no bearing on whether Judge Laettner knew who was representing the defendant in *Lauryn G.* The issue of DPD Della-Piana's alleged flirtatiousness, and that of the judge, was also the subject of testimony and could, and should, have been fully addressed during the hearing.

(e) Testimony of Lisa Humiston: Judge Laettner also sought to reopen the evidence to have Humiston, his courtroom clerk, testify that he said in open court, with all parties present, that Ventura was remanded. Judge Laettner was notified of this allegation on August 4, 2017, and it was thoroughly addressed at the hearing. The judge included Humiston on his witness list, but he chose not to call her at the hearing. He offered no reason for not calling her.

The commission denied Judge Laettner's request to reopen the evidence on the grounds that he failed to establish that his due process rights were being violated or that there was good cause to reopen the hearing to take additional evidence, as required. (See *Inquiry Concerning Hyde* (2003) 48 Cal.4th CJP Supp. 329 [good cause requirement for reopening the record in formal proceedings].)

Accordingly, Judge Laettner's argument at his appearance that the masters did not get the "whole story" because he was precluded from calling "100 other witnesses" who would have refuted the masters' credibility findings is dubious at best.

Regarding the nature and seriousness of the misconduct, we find, for purposes of determining the appropriate level of discipline, that Judge Laettner committed five acts of willful misconduct and eleven acts of prejudicial misconduct. This is a significant amount of misconduct. Judge Laettner's willful misconduct includes two improper ex parte communications with DPD Della-Piana about pending cases for the impermissible purpose of addressing his frustration about her feelings toward him; his ex parte communication with DDA Fernandez because he was "mad" at DPD Della-Piana; and his retaliatory conduct in remanding DPD Thomas's client, without bail, without affording her the opportunity to be heard. His prejudicial misconduct includes the separate incident of remanding defendant Imlay and resetting bail without affording her attorney, DPD Della-Piana, the opportunity to be heard; inappropriate remarks to DPD Della-Piana; inappropriate comments to and about a number of women,

many of which reflect gender bias; comments that create the appearance of bias based on physical appearance; and poor demeanor toward DPD Wills-Pierce because he was upset with DPD Thomas.

Judge Laettner claims that he did not know that comments about the physical appearance of women were improper, that he learned this from the commission's investigation letter and discussions with his presiding judge, and that he was not trained on this issue until September 2018. The masters noted that, presumably during Judge Laettner's 10 plus years on the bench, he "received ethics and conduct training, in the form of CJER's New Judge Orientation, and qualifying ethics courses, elective and mandatory, every three years." They also found that, after 10 years on the bench, "it can be expected that a judge's words and conduct will have conformed to the demands of the canons," but that Judge Laettner's did not do so.

We also note that the California Judicial Conduct Handbook in effect when Judge Laettner took the bench in 2006 addresses gender bias and states that unprofessional remarks made in the courtroom concerning an attorney's personal appearance can have an impact on the credibility of women in court and, when addressed to a woman lawyer, makes it difficult for her to effectively represent her clients. The 1999 Handbook also notes that exhibitions of gender bias have been regarded as conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Rothman, Cal. Judicial Conduct Handbook (2d ed. 1999) § 2.11, pp. 37-38.) Thus, Judge Laettner should have been on notice that comments in the courtroom about a woman's personal appearance are inappropriate.

Judge Laettner also argued at his appearance that he has received a lot of counseling and now understands that he should not comment on women's physical appearance. But he introduced no evidence of that counseling at the evidentiary hearing. And his misconduct goes beyond improper comments to women. He did not indicate at his appearance that he understood why the

additional misconduct (e.g., denial of due process and improper ex parte communications) was wrong; instead, he claimed that the masters were wrong.

Given the judge's failure to acknowledge the impropriety of much of his misconduct, and his lack of credibility before the masters, we do not believe that he has shown sufficient appreciation of his misconduct to assure us that he will not reoffend. "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; *Ross*, *supra*, 49 Cal.4th CJP Supp. at p. 139.)

Judge Laettner contends that the masters found "undisputed" evidence that there will be no further misconduct. The masters made no such finding. They described him as an "asset" to the local bench, and, from this, he extrapolates a finding as to his future misconduct that the masters never made.

Judge Laettner's claim that he has committed no misconduct since 2017 is not given much weight because neither he nor the commission members would necessarily know if complaints have been made about him because the commission members are typically not told about a new complaint if it is received while formal proceedings are pending.

Regarding the impact of the judge's misconduct on the judicial system, the masters found that Judge Laettner's actions eroded public confidence in the dignity, integrity, and impartiality of the judiciary. They specifically noted that commenting on the physical appearance of women attorneys and joking about how "women can drive you crazy" diminishes the dignity of the process of the court. They said that partiality, showing favoritism, and referring to an attorney's physical beauty "strikes at the very foundation of the administration of justice and erodes public trust and confidence." We agree with the masters' findings that Judge Laettner's conduct had an adverse impact on the judicial system in general.

We also take into account the effect of the judge's conduct on other individuals. The masters found that two individuals' "employment circumstances changed as a byproduct of Judge Laettner's conduct." His former court reporter, Michel, said she left his department in June 2017 because she "could no longer take" his favoritism toward tall, skinny blondes and petite Asian women. DPD Della-Piana was transferred after bringing the judge's comments about being a "hard one" and "not spanked enough" to her supervisor's attention.

Laettner has no prior discipline. This is a mitigating factor in light of his 13 years on the bench. But because the aim of commission proceedings is protection of the public and not punishment, in the more serious cases involving willful and prejudicial misconduct, mitigating circumstances have only limited appeal. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 12:92, p. 856.) The commission has removed other judges from the bench who had no prior misconduct, particularly where dishonesty was involved (e.g., *MacEachern, supra,* 49 Cal.4th CJP Supp. at p. 311; *Saucedo*, *supra,* 62 Cal.4th CJP Supp. at p. 102.)

We also take into account the testimony of numerous witnesses in favor of Judge Laettner, and we acknowledge his years of judicial service and contributions to the bench. But the California Supreme Court has held that even a good reputation for legal knowledge and administrative skills does not mitigate willful misconduct or prejudicial misconduct. (*Kloepfer, supra,* 49 Cal.3d at p. 865.) And as the commission stated in *Ross, supra,* 49 Cal.4th CJP Supp. at page 90, "If the essential quality of veracity is lacking, other positive qualities of the person cannot redeem or compensate for the missing fundamental."

In light of all of the foregoing factors—but particularly the requirement that judges must, at a minimum, be honest and have integrity—we conclude that removal from the bench is warranted.

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 of Judicial Performance, we hereby remove Judge John T. Laettner from office and disqualify him from acting as a judge.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Anthony P. Capozzi, Esq.; Mr. Eduardo De La Riva; Ms. Sarah Kruer Jager; Ms. Kay Cooperman Jue; Dr. Michael A. Moodian; and Mr. Adam N. Torres voted in favor of all the findings and conclusions expressed herein and in this order of removal. Commission members Hon. William S. Dato, Hon. Lisa B. Lench, and Mr. Richard Simpson concur as to the factual findings and most of the legal conclusions expressed herein, but dissent as to the order of removal and would have imposed a public censure.

Dated: November 6, 2019

Nanci E. Nishimura
Chairperson of the commission

Appendix C

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING JUDGE JOHN T. LAETTNER No. 203	FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE SPECIAL MASTERS

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SUMMARY OF FINDINGS AND CONCLUSIONS

The Special Masters find, by clear and convincing evidence, the following:

As to Count One, and the charge involving the remand into custody of defendant Stephanie Imlay, Judge Laettner violated California Code of Judicial Ethics, Canons 1, 2, 2A, and 3B(2) (hereinafter "Canons"), and that his conduct constituted prejudicial misconduct. As to the charge involving an ex parte conversation with a deputy district attorney, regarding the *People v. Imlay* matter, Judge Laettner violated Canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7), and that his conduct constituted willful misconduct.

As to Count Two, paragraph A, telling a deputy public defender "sometimes having you in here is like having a teenage daughter," Judge Laettner violated Canons 1, 2, 2A, 3B(4) and 3B(5)(a). As to paragraph B, winking at a deputy public defender, the charge was not proven by clear and convincing evidence. As to paragraph C, telling a deputy public defender, "I'd rather it be you," Judge Laettner violated Canons 1, 2, 2A, 3B(4) and 3B(5)(a). As to paragraph D, regarding a courthouse hallway conversation with a deputy public defender, Judge Laettner violated Canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7). As to paragraph E, in saying to a deputy public defender, "your parents didn't spank you enough," Judge Laettner violated Canons 1, 2, 2A, 3B(4) 3B(5)(a), and 3B(7). As to paragraph F, telling a deputy public defender, "I know you're mad at me," Judge Laettner violated Canons 1, 2, 2A, 3B(4) and 3B(5)(a). As to Count Two, in its entirety, excluding paragraph B, Judge Laettner's conduct taken as a whole constituted prejudicial misconduct.

As to Count Three, regarding the *People v. Ventura* matter, Judge Laettner violated Canons 1, 2, 2A, 3, and 3B(2), and his conduct constituted willful misconduct.

As to Count Four, paragraph A, concerning conduct involving deputy public defender ("DPD") MonPere, Judge Laettner violated Canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). As to paragraph B, regarding comments made about DPD Kim Mayer's husband, Judge Laettner violated Canons 1, 2, 3B(4), and 3B(5)(a). As to paragraph C, concerning comments made to DPD Kim Mayer, the allegation was not proven by clear and convincing evidence. As to paragraph D, involving statements made to DPD Christy Wills-Pierce, Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a). As to paragraph E, and the comparison of DPD Herron to an actress, Judge Laettner violated Canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). As to paragraph F, and comments made about deputy district attorney ("DDA") Devon Bell, Judge Laettner violated Canons 1, 2, 2A, 2B(1), 3B(4), and 3B(5)(a). As to paragraph G, involving questions about the heritage of DPD Emi Young, Judge Laettner violated Canons 1, 2, 2A, and 3B(4). As to paragraph H, and the reference to a "young, attractive Asian woman," Judge Laettner violated Canons 1, 2, 2A, and 3B(4). As to Count Four, in its entirety, excluding paragraph C, Judge Laettner's conduct taken as a whole constituted prejudicial misconduct.

As to Count Five, paragraph A, concerning statements made to court reporter Jennifer Michel, Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a), which violations constituted prejudicial misconduct. As to paragraph B, concerning a comment made about women in front of DPD Wills-Pierce, Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a), and this also constituted prejudicial misconduct. As to paragraph C (referring to someone as a "pretty woman"); paragraph D (referring to a minor as "pretty"); paragraph E (commenting upon a defendant as a "pretty girl"); and

paragraph F (talking about "fat people" and tattoos); Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a), all of which conduct constituted improper action.

As to Count Six, paragraph A, alleging prejudgment, the allegation was not proven by clear and convincing evidence. As to paragraph B, involving a comment about "a cultural thing," the allegation was not proven by clear and convincing evidence.

As to Count Seven, and an alleged program of a 25 percent reduction in sanctions for guilty pleas, the allegation was not proven by clear and convincing evidence.

As to Count Eight, involving disclosures about DDA Max Laettner, the allegation was not proven by clear and convincing evidence.

As to Count Nine, paragraph A, involving the explanation of a sentence to DPD Nicole Eiland, and paragraph B, concerning an in-chambers conversation with DPDs Brooks Osborne and Matthew Cuthbertson, Judge Laettner violated Canons 1, 2, 2A, 3B(2) and 3B(7), and his conduct constituted willful misconduct.

The Special Masters note that in his Answer to the Commission's Notice of Formal Proceedings, filed October 4, 2018, Judge Laettner argued that "in doing nothing more than raising a question of law regarding the factors considered by the bail reports [that were part of the Contra Costa pretrial bail program], Judge Laettner found himself squarely in the crosshairs of not only Robin Lipetzky [the Public Defender], but of her entire staff— specifically anyone appearing in Judge Laettner's department."

Whether or not there was a "campaign" against Judge Laettner by the Public Defender's office, the Special Masters made no assessment or findings regarding this contention. The Special Masters made their Findings of Fact (by clear and convincing

evidence) and Conclusions of Law, by an individualized assessment of the witnesses, their credibility, the admissions and testimony of Judge Laettner, a review of court reporter's transcripts of the proceedings at issue, evidence in the form of contemporaneous records made at or near the time of the events charged, and corroboration in the form of consistent patterns of conduct.

The Special Masters saw their responsibility as an assessment of Judge Laettner's judicial conduct, regardless of the motivations, political or otherwise, for how that conduct came to the attention of the Commission.

APPLICABLE CANONS

CANON 1 – A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

"An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code."

CANON 2 – A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

Canon 2A - Promoting Public Confidence

"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts

or that are inconsistent with the impartial performance of the adjudicative duties of judicial office."

Canon 2B(1) - Use of the Prestige of Judicial Office

"A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge."

CANON 3 – A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Canon 3B(2) - Adjudicative Responsibilities:

"A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law."

Canon 3B(4) - Adjudicative Responsibilities:

"A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all staff and court personnel under the judge's direction and control."

Canon 3B(5) - Adjudicative Responsibilities:

"A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment."

Canon 3B(7) - Adjudicative Responsibilities:

"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law. Unless otherwise authorized by law, a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic. A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications, except as follows: . . . [¶] (b) A judge may initiate, permit, or consider ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided: [¶] (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and [¶] (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond. [¶] (c) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so or when authorized to do so by stipulation of the parties. [¶] (d) If a judge receives an unauthorized ex parte communication, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

Canon 3B(8) - Adjudicative Responsibilities:

"A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law."

Canon 3C(1) - Administrative Responsibilities:

"A judge shall diligently discharge the judge's administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment."

Canon 3E(1) - Disqualification and Disclosure:

"A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law."

Canon 3E(2) - Disqualification and Disclosure:

"In all trial court proceedings, a judge shall disclose on the record as follows: (a) Information relevant to disqualification[.] [¶] A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification."

WILLFUL MISCONDUCT, PREJUDICIAL MISCONDUCT AND IMPROPER ACTION.

A violation of the California Code of Judicial Ethics constitutes one of three levels of judicial misconduct: willful misconduct, prejudicial misconduct, or improper action. (Cal. Const., art. VI, § 18, subd. (d).)

Willful misconduct is (1) unjudicial conduct that is (2) committed in bad faith (3) by a judge acting in his judicial capacity. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1091 (*Broadman*).) A judge acts in bad faith by "(1) performing a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority." (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

The second most serious level of misconduct is prejudicial misconduct, "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) Prejudicial misconduct occurs when an objective observer would conclude the judge's improper conduct was " ' "prejudicial to [the] public esteem for the judicial office," ' " regardless of the motive or intent of the judge. (*Broadman*, *supra*, 18 Cal.4th at p. 1092.) The appropriate standard is how an objective observer would view the judge's conduct. (*Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 324-325; *Broadman*, *supra*, 18 Cal.4th at p. 1104.) The subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial misconduct has occurred. (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 878 (*Adams*).) Prejudicial misconduct differs "from

willful misconduct in that a judge's acts may constitute prejudicial conduct even if not committed in a judicial capacity, or, if committed in a judicial capacity, not committed in bad faith." (*Ibid.*)

The least serious level of misconduct, improper action, occurs when the judge's conduct violates the canons, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1, 82; *Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89, citing *Adams*, *supra*, 10 Cal.4th at pp. 897-899.)

BURDEN OF PROOF

The Commission 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. (*Broadman*, *supra*, 18 Cal.4th at p. 1090.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. COUNT ONE

Summary of Charge (*People v. Imlay*):

It is alleged that on May 18, 2017, Judge Laettner presided over a hearing in *People v. Stephanie Imlay*. It is alleged Judge Laettner had an ex parte conversation, remanded the defendant, did not exonerate bail and reset bail in open court, failing to give the defendant the opportunity to be heard.

It is alleged that on May 25, 2017, Judge Laettner had an ex parte conversation and failed to promptly disclose the conversation.

Judge Laettner's conduct violated the Canons 1, 2, 2A, 3, 3B(2), 3B(5), 3B(7), and 3B(8).

1. Findings of Fact:

(a) May 18, 2017 remanding of Stephanie Imlay:

In May 2017, Judge Laettner was assigned to a misdemeanor and felony arraignment courtroom, Department 25, in the Martinez courthouse of the Contra Costa County Superior Court, conducting arraignments and pretrial hearings. His courtroom was one of the busiest in the county, often hearing over 100 cases per day. (RT 775:25-776:7) Described as a "zoo" when court was in session, counsel would be coming and going from the courtroom, and multiple conversations would be occurring between prosecution and defense counsel, between defense counsel and in-custody and out-of-custody defendants, and with Judge Laettner conferring with counsel at the bench and in chambers. According to Judge Laettner, his courtroom suffered from poor acoustics. (RT 1567:19-1568:12) It was in this environment that the *People vs. Stephanie Imlay* cases were called on May 18, 2017.

As of May 18, 2017, *People vs. Stephanie Imlay* involved five cases (referred to as "dockets" by the witnesses). Ms. Imlay was alleged to have a diversion failure (case No. 1-168690-6); two probation violations (case Nos. 1-171881-6 & 1-171945-9); a pending misdemeanor drug case (case No. 178881-9); and a felony attempted car theft (case No. 181712-1). (RT 971:10-973:3; Exh. 19-23) On all cases Ms. Imlay was released on bail. (Exh. 14 -18) As to all cases, during May 2017, Ms. Imlay was represented by DPD Krista Della-Piana. (RT 971:7-9)

Prior to May 18, 2017, DPD Della-Piana engaged in settlement negotiations with DDA Molly Manoukian, a senior district attorney "expediter" with sole authority to make offers on felony cases in the Martinez courthouse (RT 2305:20-2306:15), to resolve the pending felony attempted car theft case against Ms. Imlay. As of May 18, the offer by DDA Manoukian, was, in return for Ms. Imlay's guilty plea in the felony matter, a reduction of the felony case to a misdemeanor, a grant of probation, Ms. Imlay's participation in the Sheriff's Work Alternative Program (SWAP), other terms and conditions of probation, and dismissal of Ms. Imlay's other misdemeanor cases. (RT 973:12-21; 1219:4-18; 2309:16-24)

According to DPD Della-Piana[1], she met with Ms. Imlay on the morning of May 18, 2017, to discuss the district attorney's offer and to go over a standard rights waiver (*Boykin-Tahl*) form. On that occasion, Ms. Imlay presented as disheveled, with greasy hair and carrying her belongings because she was homeless. DPD Della-Piana testified that during this meeting, Ms. Imlay responded appropriately during their conversation and indicated that she wished to accept the district attorney's offer and plead guilty. (RT 974:6-976:3)

On the morning of May 18, Contra Costa Sheriff Sergeant Garrett Schiro, the Operations Sergeant in the Martinez courthouse, responded to a call of a woman sleeping on the floor of the courthouse, outside of Department 25, Judge Laettner's

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[1] DPD Krista Della-Piana is the key complaining witness as to Count One and Count Two, paragraphs A through F. Respondent, Judge Laettner, attacked DPD Della-Piana's credibility, by presenting witnesses who testified that she did not have a character and reputation for honesty and veracity, including testimony by Judges Thomas Maddock (ret.) and Leslie Landau, and DDAs Tamara Bartlett, Molly Manoukian, Christopher Sansoe, and Adam McConney. The Special Masters gave weight to the testimony of DPD Della-Piana's in light of these witnesses.

courtroom. He woke her up, observing her to look tired. Ms. Imlay told him that she had a court appearance in Department 25, and thereafter proceeded into the courtroom. (RT 499:19-501:18) (It is unclear from the evidence whether Sergeant Schiro's first encounter with Ms. Imlay occurred before or after DPD Della-Piana's meeting with her.)

Later in the morning, Sergeant Schiro entered Department 25 and observed Ms. Imlay asleep in the courtroom, and either instructed or asked the bailiff, Sheriff's Deputy Scott Reed, if he had advised Judge Laettner that Ms. Imlay might be under the influence of a controlled substance. (RT 501:22-502:9) According to Deputy Reed, he also formed the opinion that Ms. Imlay was under the influence of a controlled substance. (RT 794:1-9)

According to the court reporter's transcript of the proceedings, DPD Della-Piana appeared in Judge Laettner's courtroom on May 18, presenting to the court the executed rights waiver form, intending for Ms. Imlay to enter a change of plea (i.e., from "not guilty" to "guilty" or "no contest"). (Exh. 24, CJP 439:6-18) The transcript reflects that Judge Laettner asked about Ms. Imlay's condition, stating: "Ms. Della-Piana your client doesn't look like she feels too well." In response, Ms. Della-Piana stated: "She's doing okay. She's ready to proceed." (Exh. 24, CJP 439:27-440:2) At the bench, Judge Laettner said that he was going to have a law enforcement officer examine Ms. Imlay and determine if she was under the influence. (RT 977:16-978:4) Sergeant Schiro volunteered to perform a Drug Abuse Recognition ("DAR") examination of Ms. Imlay. (RT 504:3-7)

Sergeant Schiro took Ms. Imlay out of the courtroom and conducted a DAR. The examination took 10 to 15 minutes. During that time, Ms. Imlay admitted to Sergeant

Schiro that she had used methamphetamine the night before. Based upon his DAR examination and Ms. Imlay's statement, Sergeant Schiro formed the opinion that she was under the influence of a controlled substance. (RT 504:8-505:16)

DPD Della-Piana was present for all or a portion of Sergeant Schiro's examination of Ms. Imlay in the hallway outside of the courtroom. (RT 505:16-506:8; 515:16-516:2) According to Sergeant Schiro, he told DPD Della-Piana that he believed Ms. Imlay was under the influence of a controlled substance, that she had admitted to using methamphetamine, and that he would be informing the court of his opinion. Sergeant Schiro testified that if Judge Laettner had not remanded Ms. Imlay, he would have arrested her. (RT 530:10-12) DPD Della-Piana testified that Sergeant Schiro told her that Ms. Imlay *might* be under the influence, that he would not arrest her for a violation of Health and Safety Code section 11550[2], and that he told Ms. Imlay not to worry, that she was not going into custody. (RT 979:11-20; 1109:1-18)

The direct contradiction between DPD Della-Piana's testimony and that of Sergeant Schiro, regarding the results of Sergeant Schiro's DAR examination is relevant as to whether or not Judge Laettner had sufficient cause to later remand Ms. Imlay. Based upon our assessment of the credibility of these two witnesses, the Special Masters reject DPD Della-Piana's testimony on this point and accept that of Sergeant Schiro. (See fn. 1, *ante*.)

Sergeant Schiro returned to the courtroom and spoke to Judge Laettner in his chambers. Only Judge Laettner and Sergeant Schiro were present for this

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[2] Health and Safety Code section 11550 prohibits the use or being under the influence of specified controlled substances, with certain exceptions. A person convicted of violating this section is guilty of a misdemeanor.

conversation. (RT 506:20-507:3; 980:2-13; 1576:12-17) Sergeant Schiro told Judge Laettner his opinion that Ms. Imlay was under the influence and that she had admitted to using methamphetamine. (RT 507:4-8; 1576:23-1577:1) Judge Laettner then stated: "Let's go out and put it on the record." (RT 1578:17-18) According to Judge Laettner and Sergeant Schiro, they then returned to the courtroom and the sergeant stated his opinion in open court. (RT 507:9-10; 1587:21-1579:2)

Upon Judge Laettner's return to the courtroom, the reporter's transcript of the proceedings on May 18, 2017 (Exh. 24) reflects the following exchange:

> THE COURT: Recalling the cases of Stephanie Imlay.
>
> MR. DE FERRARI: Aron De Ferrari for the People.
>
> THE COURT: All right. Back on the record in the Imlay matter. [¶] For—What's your name, sir?
>
> SERGEANT SCHIRO: Sergeant Garrett Schiro.
>
> THE COURT: Mr.—Officer Schiro—Sergeant Schiro did a [DAR] examination on—of Ms. Imlay and is of the opinion she's under the influence of a stimulant so the court is not able to proceed with this plea at this time. [¶] The court is going to remand Ms. Schiro [sic] and put the matter over for sentencing—
>
> THE DEFENDANT: Sir?
>
> THE COURT: — for the hit-and-run docket that she's in violation of her probation on and also to address—
>
> THE DEFENDANT: I'm going to jail?
>
> THE COURT: —to address the other issues.

(Exh. 24; CJP 441:2 – 22)

Both Sergeant Schiro and Judge Laettner testified that the sergeant spoke in the courtroom stating his opinion that Ms. Imlay was under the influence. (RT 507:16-508:8; 1578:21-1579:2) As the transcript excerpt quoted above shows, the sergeant's statement is not reflected in the reporter's transcript of the proceeding, it begins with Judge Laettner going on the record, Sergeant Schiro stating his name, and then Judge Laettner, not the sergeant, stating the sergeant's opinion that Ms. Imlay was under the influence. As to the discrepancy, Judge Laettner explained that he occasionally failed to make it clear to his court reporter that he was going on the record, and that sometimes after stating something in court, his reporter would ask, "Is this on the record?", indicating that she had not, or had, transcribed what had just been said. (RT 1775:13-1776:7) Judge Laettner testified that it was his belief that this is what occurred on the occasion of Sergeant Schiro's statement concerning the results of his DAR examination. According to Judge Laettner, Sergeant Schiro's statement occurred just before the transcribed statements in the reporter's transcript, and that once they were on the record, Judge Laettner summarized what Sergeant Schiro had stated earlier in court. (RT 1776:11-1777:11) The Special Masters accept Judge Laettner's interpretation of what occurred, given the busy nature of his arraignment calendar, which the Special Masters have similarly experienced in their judicial careers.[3] And in

[3] During the course of the Hearing, counsel for Respondent parsed the meaning of the phrase "on the record", suggesting that the clerk's minutes of a proceeding was "on the record", in the same manner that the reporter's transcript was "on the record." The Special Masters find that it is unnecessary to resolve this semantical hairsplitting, stating only that for the purposes of these Findings of Fact and Conclusions of Law, being "on the record" refers only to a court reporter's simultaneous transcription of what is being said by court and counsel.

any event, as reflected in the reporter's transcript, Judge Laettner recited the substance of Sergeant Schiro's opinion on the record.

After summarizing on the record Sergeant Schiro's opinion that Ms. Imlay was under the influence, Judge Laettner stated that he was remanding the defendant. (Exh. 24; CJP 441:15-20) According to the bailiff, Deputy Scott Reed, Judge Laettner's use of the term "remand" was the signal for him or a partner to place Ms. Imlay in handcuffs. (RT 805:18-806:13) By all accounts and from the reporter's transcript, when Ms. Imlay was handcuffed she became upset, hysterical, loudly crying and talking directly to Judge Laettner, protesting her remand and asking to be released. (RT 981:7-15; 1212:8-12; 1778:1-6) DPD Della-Piana was talking to Ms. Imlay as Ms. Imlay was talking to the court. From the moment Ms. Imlay was remanded to the end of the reporter's transcription, across four pages and 92 lines of text, DPD Della-Piana's argument to the court is nine lines of text. (Exh. 24; CJP 440:15-444:23) At one point, the bailiff urges Ms. Imlay to listen to her attorney, to no avail. (Exh. 24; CJP 442:14) During this exchange, Judge Laettner indicated his belief that Ms. Imlay was released on her own recognizance (OR), which was immediately corrected by DPD Della-Piana and Ms. Imlay. (Exh. 24; CJP 444:1-14) The court reporter's transcript of the proceeding then stops in the middle of Ms. Imlay's protestations, her last words being: "Why are you putting me in jail? Can I just—" (Exh. 24; CJP 444:22-23) Judge Laettner and DPD Della-Piana testified that Judge Laettner left the bench at this point.[4] (RT 1216:21-1217:6; 1778:9-1779:4)

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[4] The Notice of Formal Proceedings does not expressly allege misconduct or improper action with respect to the basis for Judge Laettner's decision to remand Ms. Imlay. Nevertheless, based upon Sergeant Schiro's DAR examination findings, including Ms.

The reporter's transcript of the proceedings on May 18, 2017, in the *People v. Imlay* matters cease at this point. Later, at some point in time, minute orders were prepared by Judge Laettner's clerk, Sally Tigue, setting bail in Ms. Imlay's cases, at $25,000 for each case. (Exh. 19, CJP 553; Exh. 20, CJP 593; Exh. 21, CJP 623; Exh. 22, CJP 653; Exh. 23, CJP 676)

DPD Della-Piana testified that Judge Laettner did not revoke Ms. Imlay's prior bail, or raise and reset bail, in her presence. She testified that Judge Laettner did not give her a chance to be heard about bail. (RT 982:24–983:22)

Judge Laettner testified that after leaving the bench in the middle of Ms. Imlay's entreaties to him, he went into chambers for less than five minutes. (RT 1780:20-24) According to Judge Laettner, when he returned to the bench, it was not to further address the *Imlay* matter, but to "get on with the day's business." (RT 1781:16) The first thing that was brought to his attention by his clerk was the need to set bail in the *Imlay* matter. (RT 1781:10-20) Judge Laettner testified that he then exonerated bail and set new bail in open court. (RT 1781:21-23)

According to Judge Laettner, he has a "vivid recollection" of DPD Della-Piana being present when he exonerated and reset bail. (RT 1781:1) He testified that DPD Della-Piana was in the "well," between counsel table and the bench, and that he told her that he had set bail at $25,000 on each case. The deputy district attorney remained at

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Imlay's admission that she had ingested methamphetamine the night before her court appearance, the Special Masters find that sufficient cause and changed circumstances existed for remanding Ms. Imlay pending her posting of increased bail. (Pen. Code, § 1289; *In re Annis* (2005) 127 Cal.App.4th 1190, 1195-1196; *In re Alberto* (2002) 102 Cal.App.4th 421, 430-431.)

counsel table during this time. According to Judge Laettner, DPD Della-Piana didn't voice any objection. (RT 1781:24-1782:25)

The reporter's transcript does not record Judge Laettner setting bail.

Judge Laettner explained that he had DPD Della-Piana enter the well and approach the bench because he wanted her to have the minute orders. (RT 1783:8-13) He testified: "The reason she was in the well is because I called her. I said, Ms. Della-Piana, I have to set bail, and bail is set at $25,000 on each case. And then my clerk filled out the paperwork. And then she either handed it to her directly or she handed it to my bailiff." (RT 1782:19-24) Judge Laettner testified that he cannot say for sure if the clerk gave the paperwork to DPD Della-Piana or to the bailiff. But according to the bailiff, Deputy Scott Reed, the usual procedure in Judge Laettner's courtroom would be to make the minute orders available to the public defenders and district attorneys by placing copies in a bin he had for each, and the attorneys would come pick them up during the day. (RT 795:24-796:18)

As to the reason his exoneration and resetting of bail is not reflected in the reporter's transcript of the *Imlay* hearing, Judge Laettner believes the court reporter was not present. (RT 1784:14) According to him, the reporter was difficult to locate, and "I was frustrated with her at times because when we were ready to go, she was always the last one. Where's Jennifer was a common question." (RT 1784:10-18) The court reporter, Jennifer (Lent) Michel was Judge Laettner's court reporter for 11 years. (RT 639:3-9) According to Judge Laettner, other than the *People v. Imlay* and *People v. Ventura* (Count Three, *post*) cases, he can recall only one other occasion when he discovered something was not in the transcript that he was sure of saying. Contrary to

his explanation that his court reporter was not present (as the reason the transcript does not reflect him exonerating and resetting bail in the *Imlay* cases), he testified that things did not appear in the record because the reporter was "[*p*]*resent* but not taking things down by virtue of—part of it is my fault where I would launch. You know, I would come in and start. And then she would say, are we on the record?" (RT 1794:13-20) (Italics added.)

Judge Laettner's bailiff, Deputy Scott Reed, testified that after remanding Ms. Imlay, "I don't recall if we took a break at the time. I am only assuming that we did." (RT 803:8-9) He recalled Ms. Imlay continued with her emotional outbursts and, as to DPD Della-Piana, "I remember her making a comment about [Ms. Imlay] not being on OR, that she had bailed out. I remember that." (RT 803:10-804:4) Deputy Reed then testified that there was a short break in the proceeding, where he searched Ms. Imlay, and then "If I remember right . . . " the case went back on the record, and there was argument about the remand and bail. (RT 808:14-809:1)

The Special Masters find that the court clerk's minutes were prepared shortly after Ms. Imlay was taken into custody. According to Sergeant Schiro, procedurally, when a defendant is remanded in court into the custody of the Sheriff, they are walked from the courthouse directly to the jail, where they are booked into custody. A clerk's minute order must accompany the person from the courtroom, because a defendant cannot be booked into the jail without a court minute order stating the amount of bail. (RT 533:13-22) According to the Sheriff's booking records for Ms. Imlay, on May 18, she was arrested at 10:05 a.m. and booked into the jail at 10:32 a.m. (RT 535:8-

536:11; Exh. 557, JL 1175–1176) Therefore, the clerk's minutes would have been prepared between 10:05 a.m. and 10:32 a.m.

(b) May 25, 2017 ex parte communication:

On May 25, 2017, the *People v. Imlay* matter was set for a hearing. According to DPD Della-Piana, before the case was called, she and another public defender, Michael Lepie, examined the *Imlay* court files and noted that on one case, where Ms. Imlay had pled guilty before a different judge and diversion had been granted, an *Arbuckle* waiver had not been given.[5] (RT 986:23-987:17) At some point, Judge Laettner's court clerk came over to the table where they were working and the public defenders showed the clerk that there was no *Arbuckle* waiver. The clerk then took the files and proceeded into Judge Laettner's chambers. (RT 987:17-988:1) Judge Laettner's clerk advised him that there was no *Arbuckle* waiver on one of Ms. Imlay's cases, and he also learned that DPD Della-Piana would not waive *Arbuckle*. (RT 1595:4-1596:4) To Judge Laettner, this had two effects: he could not sentence Ms. Imlay on her diversion case, as the judge who took her plea would have to do so, and he needed to get a deputy district attorney to the other judge's courtroom to handle the sentencing. (RT 1596: 5-14) Judge Laettner, DPD Della-Piana and the deputy district attorney in the courtroom, Jun Fernandez, all testified that Judge Laettner then asked to speak to DDA Fernandez in his chambers. (RT 268:18-20; 269:8-12; 988:2-7; 1598:3-10)

DPD Della-Piana testified that when Judge Laettner called DDA Fernandez into his chambers she and DPD Lepie were in the courtroom. (RT 988:8-12) According to

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[5] *People v. Arbuckle* (1978) 22 Cal.3d 749, 756-757, provides that a defendant who enters a guilty plea before one judge is entitled to have the same judge impose sentence, unless the right is waived.

Judge Laettner, he did not see DPD Della-Piana in the courtroom and did not know where she was. (RT 1598:11-13) DDA Fernandez testified that DPD Della-Piana was not in the courtroom when Judge Laettner called him into chambers, and also testified he was unsure whether there were other public defenders in the courtroom at the time. (RT 273:5-8; 282:13-17)

In his chambers Judge Laettner spoke to DDA Fernandez about the lack of an *Arbuckle* waiver. According to Judge Laettner: "It was very short. I fanned out the five files. And the first thing I told him is we can't discuss the cases. I said, open, open probation, open probation, attempted car theft, felony preliminary hearing, DUI probation – excuse me, open [Health and Safety Code section] 11550, and possibly a diversion." (RT 1599:6-13) Judge Laettner indicated that he was going to send the diversion case to Judge Bruce Mills, and that a deputy district attorney would be needed there to cover the appearance. (RT 274:22-275:3; 1599:16-18) DDA Fernandez testified that Judge Laettner asked him what do you want to do on these matters? (RT 274:9 -11; 289:1-7) The court reporter, Jennifer Michel, was walking through Judge Laettner's chambers at this time, and observed DDA Fernandez standing and Judge Laettner sitting, and overheard the judge to say: ". . . so what are we going to do about the time waiver or the Arbuckle Waiver, something along those lines." (RT 660:15-24)

According to DDA Fernandez, upon his return to the courtroom, DPD Della-Piana asked him what he had discussed with Judge Laettner and if they had been discussing the *Imlay* case. (RT 276:2-17) DDA Fernandez testified: "She just asked me did we speak about the *Imlay* matter in chambers. I said, yes, because he's going to send it out. There's no Arbuckle Waiver on one of the cases, so we're going to send them all

out." (RT 277:12-15) DDA Fernandez testified that his chambers conversation with Judge Laettner took 30 seconds to one minute. (RT 277:23-278:8)

According to the reporter's transcript of the proceedings, upon returning to the courtroom, Judge Laettner stated that his clerk brought to his attention the lack of an *Arbuckle* waiver on Ms. Imlay's diversion case and stated he would be sending the diversion case to Judge Mills. (Exh: 26; CJP 450:13-25) DPD Della-Piana then stated that Ms. Imlay had been "illegally detained" and requested her client be released. According to the transcript, DPD Della-Piana then stated:

> MS. DELLA-PIANA: ...I would also like to put on the record that the court asked Jun Fernandez, the DA in this case, to go back in chambers without anyone from my office being present, discussed this case and what would happen in this case, and the *Arbuckle* waiver without counsel present for Ms. Imlay. [¶] So Ms. Imlay's rights are being violated multiple ways, and I'm asking that she be released immediately.
>
> THE COURT: Yes. [¶] Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present.
>
> MS. DELLA-PIANA: I do because I asked Mr. Fernandez.
>
> THE COURT: "So we—I told Mr. Fernandez that this case was going back to Judge Mills because there was an *Arbuckle* problem."

(Exh: 26, CJP: 451:20-452:9)

On June 8, 2017, Judge Laettner spoke to DPD Della-Piana in his chambers. (This conversation is the subject of Count Two, paragraph E, and is more fully addressed below.) Among the things Judge Laettner talked to DPD Della-Piana about

was the *People v. Imlay* matter, and specifically his ex parte conversation with DDA Fernandez. (Answer to Notice of Formal Proceedings, p. 20; RT 1616:24-1617:2) DPD Della-Piana testified that during this conversation, Judge Laettner explained why he did not include her in the discussion with DDA Fernandez. According to DPD Della-Piana, Judge Laettner stated: "You want me to tell you why I—why I only brought in Jun Fernandez? I was mad at you. I was mad at you about the *Imlay* case. I was still mad at you that day." (RT 997:13-24)

The Special Masters find this testimony by DPD Della-Piana, that Judge Laettner told her he was mad at her as the reason he had an ex parte discussion with DDA Fernandez, credible. The petulant response by Judge Laettner, reflected in the court reporter's transcript, when DPD Della-Piana raised the issue of his ex parte conversation ("Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present."), is consistent with him being mad at her. Further, expressing his upset with counsel is an established pattern of conduct, including: His admission and acknowledgement that DPD Della-Piana was mad at him (Count Two, paragraph F, *post*); his admission at the Hearing that he "snapped" at DPD Wills-Pierce (RT 1362:25-1363:1-20); and that he was angry or upset at DPD Thomas (Count Four, paragraph D, *post*).

2. Conclusions of Law:

(a) May 18, 2017 remanding of Stephanie Imlay:

Judge Laettner did have a "private, ex parte conversation" in his chambers with Sergeant Schiro about his DAR examination of Ms. Imlay. (Notice of Formal Proceedings; Count One, page 2.) This was not contested. As to this conversation, the

Special Masters find that it was not shown, by clear and convincing evidence, that it was unauthorized, improper or misconduct.

Canon 3B(7), prohibiting ex parte communications, provides: "A judge may consult with court personnel or others authorized by law, as long as the communication relates to that person's duty to aid the judge in carrying out the judge's adjudicative responsibilities." (Canon 3B(7)(a).) Court personnel includes bailiffs.

Among a judge's adjudicative responsibilities is the determination that a criminal defendant, offering to change his or her plea to guilty, is competent to make a knowing, intelligent and voluntary waiver of his or her constitutional rights. (Cal. Judges Benchbook: *Felony Arraignment and Pleas* (CJER revised 2013); Benchguide No. 91, §91.26, p. 91-20.) This was Judge Laettner's responsibility when presented with Ms. Imlay's prospective change of plea. The Special Masters find that, commensurate with this adjudicative responsibility, when he observed: "Ms. Della-Piana your client doesn't look like she feels too well," it was well within his discretion to have Ms. Imlay undergo a DAR examination to ascertain her competency.

Further, the Special Masters find that Sergeant Schiro's in-chambers and ex parte communication of his DAR examination results related to his aiding Judge Laettner in his adjudicative responsibility, within the meaning of Canon 3B(7)(a).

Having had an ex parte conversation with Sergeant Schiro where he received substantive information upon which he would be taking judicial action—remanding Ms. Imlay—Judge Laettner was required to disclose the communication. "If a judge receives an unauthorized ex parte communication, the judge shall make provision promptly to notify the parties of the substance of the communication and provide parties

with an opportunity to respond." (Canon 3B(7)(d).) The Special Masters find that a disclosure was made and an opportunity to be heard provided, as reflected in the transcript of the proceedings. (Exh. 24)

As to whether or not bail was exonerated, and bail reset in open court, the Special Masters find, by clear and convincing evidence that Judge Laettner directed his clerk to reflect on the minute orders that bail was exonerated and bail reset at $25,000 per case, without giving notice and an opportunity to be heard to Ms. Imlay, via her counsel.

DPD Della-Piana's testimony that she was not given an opportunity to be heard on the resetting of bail is corroborated by the lack of a reporter's transcript of the proceeding.

The Special Masters find Judge Laettner's testimony not credible on this point. He testified that he called DPD Della-Piana into the well to tell her that he was resetting bail at $25,000, while DDA Aron De Ferrari remained at counsel table. This, in and of itself, is improper and unusual. The district attorney has as much right to be heard on the issue of bail as did defense counsel. Leaving the district attorney at counsel table either leaves the deputy district attorney completely out of the argument or communicates an inequality of the position of the parties and counsel that is improper. Further, Judge Laettner's stated reason for calling DPD Della-Piana into the well, to see that she got the minute orders resetting bail, also rings hollow. The procedure for the courtroom was that the minute orders would be given to the bailiff, who would put them into the PD and DA bins to be picked up by the attorneys later. In the extremely busy courtroom that was Judge Laettner's, procedures are what allow for a smooth and

efficient operation. There is no rational reason to call DPD Della-Piana into the well to ensure she got Ms. Imlay's paperwork, as Judge Laettner suggests, especially since he must have assumed—at the time—that the court reporter was taking down his open court order to exonerate and reset bail.

Also not credible is Judge Laettner's explanation for why his order exonerating and resetting bail is not reflected on the court reporter's transcript of the proceedings. In one instance during his testimony he surmised that the reporter was not present, since "Where's Jennifer was a common question." He later testified that on only one other occasion, besides the two cases involved in this inquiry, does he recall the court reporter not getting something down that he said, and in that instance, it wasn't because the reporter wasn't present, but that he failed to instruct her to go on the record. The Special Masters find that if Judge Laettner did state his orders regarding bail, in open court, there is no basis to believe that his court reporter, Jennifer Michel, was not present or that she would not have transcribed his orders. The only reasonable inference from the evidence is that Judge Laettner did not exonerate bail and reset bail in open court, thereby denying the defendant the opportunity to be heard.

Concerning the remanding of Stephanie Imlay on May 18, 2017, the Special Masters find that Judge Laettner's failure to provide the defendant notice and an opportunity to be heard regarding the exoneration and resetting of her bail constitutes prejudicial misconduct. As to the level of misconduct, the environment in which the event occurred is relevant. As the Special Masters know well through personal experience, presiding over high-volume criminal calendars is difficult to describe. These calendars can be a beehive of activity, with attorneys, defendants, family members and

spectators constantly going in and out, and necessary conversations and negotiations between counsel, and between counsel and clients happening in the background as the court is hearing cases, and clerks working to produce minute orders. In such an environment, a judge must make dozens of decisions on caseloads approaching a hundred per day, ensuring that all due process procedures are met, and maintaining appropriate personal and courtroom decorum. Under such circumstances, it is conceivable that a judge may fail to abide a party's due process rights, not for a corrupt purpose or even in conscious disregard, but simply because mistakes happen.

Accordingly, the Special Masters find Judge Laettner committed prejudicial misconduct by violating Canons 1, 2, 2A, and 3B(2).

(b) May 25, 2017 ex parte communication:

Canon 3B(7)(b) provides: "A judge may initiate, permit, or consider *ex parte* communications, *where circumstances require*, for *scheduling*, administrative purposes, or emergencies that do not deal with substantive matters provided: (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) *the judge makes provision promptly to notify all other parties of the substance of the ex parte communication* and allows an opportunity to respond." (Italics added.)

As to the requirement that circumstances required the initiation of an ex parte communication by Judge Laettner with DDA Fernandez, there is a dispute in the testimony as to whether DPD Della-Piana or any other public defender was in the courtroom when Judge Laettner called DDA Fernandez into his chambers. Judge Laettner says DPD Della-Piana was not there, DDA Fernandez says she was not but is

unsure as to any other public defender, and DPD Della-Piana says she was in the courtroom. However, the Special Masters find that it is not necessary to resolve this conflict.

"Ex parte communications for scheduling, administrative purposes, and emergencies should only be used when it is impossible or impracticable to assemble everyone." (Rothman, Fybel, MacLaren, Jacobson, Cal. Judicial Conduct Handbook (4th ed. 2017), Judicial Communications, § 5:5, p. 269 (hereinafter "Rothman et al.") Here there is no reason to believe that it was impossible or impracticable for Judge Laettner to wait until DPD Della-Piana was present in the courtroom, assuming that she was not present. The evidence is clear that she (and DPD Lepie) were in the courtroom when Judge Laettner's clerk, Sally Tigue, took the court's files into chambers to advise the judge of the lack of an *Arbuckle* waiver, and that DPD Della-Piana was present when DDA Fernandez returned to the courtroom after talking to Judge Laettner for 30 seconds in chambers. The Special Masters find the circumstances did not require an ex parte conversation between Judge Laettner and DDA Fernandez, within the meaning of Canon 3B(7)(b).

Additionally, the Special Masters find that Judge Laettner's ex parte conversation was not restricted to simple scheduling. DDA Fernandez testified that Judge Laettner asked him what he wanted to do on the five *Imlay* matters, testimony corroborated by the court reporter Jennifer Michel. This was not a scheduling question.

Lastly, Judge Laettner failed to promptly notify DPD Della-Piana of the nature of his ex parte conversation with DDA Fernandez. In point of fact, according to the transcript of the court proceeding, when DPD Della-Piana put on the record her

awareness that an ex parte conversation had taken place, Judge Laettner petulantly responded: "Well, you really don't have any idea what I discussed with Mr. Fernandez. First off, you weren't present." (Exh: 26; CJP 452:2-4) It wasn't until DPD Della-Piana told him that she had talked to DDA Fernandez that he disclosed the substance of the conversation.

Since Judge Laettner failed to comply with the provisions Canon 3B(7)(b), his ex parte conversation with DDA Fernandez, about the *People v. Imlay* matter, violated Canon 3B(7).

The Special Masters find that Judge Laettner's conduct constituted willful misconduct. His statement on June 8 to DPD Della-Piana concerning why he spoke to DDA Fernandez alone ("I was mad at you about the *Imlay* case"), demonstrates that he knowingly conducted an ex parte conversation because he was mad at her, a "corrupt purpose" or "conscious disregard", constituting willful misconduct.

Accordingly, the Special Masters find that Judge Laettner committed willful misconduct in violating Canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7).

II. COUNT TWO

Judge Laettner engaged in a pattern of conduct towards DPD Krista Della-Piana that was unwelcome, undignified, discourteous, and offensive, and that would reasonably be perceived as sexual harassment or sexual discrimination.

A. Summary of Charge ("like having a teenage daughter"):

In approximately May 2016, Judge Laettner told DPD Della-Piana, "Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want," or words to that effect.

1. **Findings of Fact:**

In his verified Answer to the Notice of Formal Proceedings, Judge Laettner admits to saying to DPD Della-Piana, words to the effect of: "Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want," followed by, "it's a compliment. Take a compliment." (Answer, p. 15) This was said outside Judge Haight's chambers. According to Judge Laettner, he would joke and be friendly with DPD Della-Piana, they had a good rapport, and he was comfortable with her, noting "She can be quick." (RT 1525:11-25; 1526:11-15) On the occasion he made the "teenage daughter" comment, he described a "friendly teasing conversation" in which his comment started as a joke, but then he told her it was a compliment, because "maybe I wasn't getting the response that I expected." (RT 1524:20-1525:3)

Asked whether he thought the "teenage daughter" comment was demeaning, Judge Laettner testified: "No. You—you have to understand the—the context of the conversation and the context of the interaction and the rapport with her at that time. It was—it was not—it was not demeaning and, you know, she could—she could give things right back to me and tease me, too." (RT 1677:6-11)

DPD Della-Piana testified that the "teenage daughter" comment made her feel demeaned. (RT 1003:23) She also testified that her "face definitely showed that I didn't care for that." (RT 1003:14-15) DPD Della-Piana's testimony concerning her facial expression was corroborated by Judge Laettner's testimony that he told her his "teenage daughter" statement was a compliment, because "maybe I wasn't getting the response that I expected." (RT 1524:20-1525:3)

2. **Conclusions of Law:**

The Special Masters find that Judge Laettner's "teenage daughter" comment was inconsistent with his obligation to maintain high standards of conduct and was undignified, but that it would not be reasonably perceived as sexual harassment or discrimination, as alleged by the Commission. Judge Laettner states in his Answer that he was paying DPD Della-Piana a compliment, although he testified that he added that statement only when he didn't get the response he expected. Judge Laettner's reference to a "teenage daughter," who just "keep[s] talk, talk, talking," invokes a stereotypical image of a young, immature, adolescent girl. It is inconceivable that a young professional female attorney would interpret such a comparison as a compliment. Further, intended or not, there is a gender element to Judge Laettner's stereotypical statement—no one would ever say "you're like a teenage *son*, you just keep talk, talk, talking . . . . "

Accordingly, as to Count Two, paragraph A, the Special Masters find Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a).

B. Summary of Charge (*In re Eric B.* - winking):

On August 5, 2016, during a hearing Judge Laettner winked at DPD Della-Piana and called her to the bench to ask her if she saw him winking at her.

1. **Findings of Fact:**

The August 5, 2016 hearing in the *In re Eric B.* matter involved the question of whether Judge Laettner would order the involuntary administration of medication to the minor. (RT 1527:13-23) A Dr. Martin Blinder testified during the hearing. (RT 1528:16-22) DPD Della-Piana represented the minor and objected to the involuntary medication of Eric B. (RT 1531:2-10)

According to Judge Laettner, during the hearing, the minor Eric B. was responding to internal stimuli, voices, moving about in his chair, laughing, and showing signs of mental illness. (RT 1530:23-1531:1) Dr. Blinder believed forcibly medicating Eric B. was in his best interest to prevent him from becoming schizophrenic. (RT 1530:12-19)

DPD Della-Piana testified that Judge Laettner questioned Dr. Blinder, and at the conclusion of his questioning, caught her eye and winked at her. (RT 1005:4-11) After the hearing was completed, Judge Laettner summoned DPD Della-Piana up to the bench, and as the deputy district attorney approached, he told the deputy district attorney that he didn't need him, according to DPD Della-Piana's testimony. At the bench, Judge Laettner asked DPD Della-Piana if she saw him wink at her during the hearing, and said, "I thought you'd like that part." (RT 1005:15-24) DPD Della-Piana testified: "And he sort of wanted to have a debrief on our feelings about the hearing to make sure that I was okay with him and, I don't know, still liked him. I don't know." (RT: 1006:8-11)

Judge Laettner testified that he did not wink at DPD Della-Piana during the *In re Eric B.* hearing. (RT 1532:10-12) He also does not believe he called her to the bench at the end of the hearing. (RT 1532:3-5) Judge Laettner related that on a different occasion, not related to the *Eric B.* matter, he did wink at DPD Della-Piana, and raised his hand, as a signal to ask her to remain in the courtroom, rather than go to Judge Hardie's courtroom, and that he called her to the bench later to thank her for staying. (RT 1535:16-21)

2. **Conclusions of Law:**

The Special Masters are not convinced by clear and convincing evidence that the "winking" incident occurred as alleged in Count Two, paragraph B.

C. Summary of Charge (*In re Lauryn G.* - "rather it be you"):

On August 24, 2016, Judge Laettner presided over a hearing in *In re the Matter of Lauryn G.* Regarding the matter, Judge Laettner told DPD Della-Piana, "No—I would rather it be you," or words to that effect, and "Well, I'm saying I would rather it be you," or words to that effect.

1. Findings of Fact:

The *In re Lauryn G.* matter was heard on August 24, 2016. DPD Karen Moghtader was the attorney assigned to represent Lauryn G., but she had a meeting after lunch, and asked DPD Della-Piana to appear for Lauren G. to recall a warrant. (RT 1019:4-11) DPD Della-Piana appeared for DPD Moghtader before Judge Laettner. DPD Della-Piana testified that she asked Judge Laettner to call the *Lauryn G.* matter after a dependency case he was hearing. Judge Laettner agreed to do that, at which point DPD Della-Piana informed him that DPD Moghtader would be able to appear since her meeting would be over. DPD Della-Piana testified that Judge Laettner responded, "No, I want it to be you." (RT 1019:24-1020:11) She responded: " . . . well, Judge, I don't think you really get to decide that." Judge Laettner's response was: ". . . he sort of smiled at me and said, well, I'm telling you I want it to be you." (RT 1020:12-17)

According to the reporter's transcript of the August 24 proceeding (Exh. 47), DPD Della-Piana appeared on behalf of Lauryn G. Once the case was called, a discussion ensued regarding the setting of a contested probation violation hearing. (Exh. 47, CJP

1132:6-16) DPD Della-Piana refused to waive Lauryn G's right to a speedy hearing. (Exh. 47, CJP 1134:27-28) The transcript of the hearing states:

> THE CLERK: Last day is September 15.
>
> MS. DELLA-PIANA: I don't know if there needs to be a lot of prep since it was already prepped. Can we do it earlier than that? Ms. Moghtader is out the 15th and 16th. Any other day works. [¶] The Monday of that week maybe? No?
>
> THE COURT: No, no, we'll set it for the 15th given my schedule. *Somebody else is going to have to cover.*
>
> THE CLERK: Thursday, September the 15th at 1:30 in Department 25.

(Exh. 47, CJP 1135:12-23; italics added.)

According to DPD Della-Piana, during this scheduling discussion, Judge Laettner looked at DPD Della-Piana, locked eyes with her, sort of tilted his head, and said "well, I guess someone else is just going to have to appear." (RT 1022:14-20)

DPD Della-Piana testified that Judge Laettner's two comments—"No, I want it to be you" and "well, someone else is just going to have to appear"—made her uncomfortable. As to the second comment, she thought his message was that Judge Laettner wanted her to appear. (RT 1135:12-23; 1044:16-24)

Judge Laettner testified that he believed that DPD Della-Piana was Lauryn G's assigned attorney, not DPD Moghtader: "Well, there was, in my mind, confusion as to who Lauryn G's attorney was. I believed her attorney was Ms. Della-Piana. And then there were [sic] Ms. Moghtader got into the mix somehow." (RT 1549:11-14) It was always his preference that the handling attorney be present, because you cannot do

anything with a stand-in attorney, since they don't know the case, "you just have a wasted court appearance." (RT 1549:14-24)

According to Judge Laettner, the date selected for the next hearing in the *In re Lauryn G.* matter, September 15, was set because it was the best date on his personal calendar and there was a no time waiver. He did not expect DPD Della-Piana to be there on the date set. (RT 1553:2-7; 1554:2-8) Judge Laettner testified that when he said that someone else would have to cover the next hearing date, he said it in a normal tone, and that DPD Della-Piana's testimony regarding his tone was "fantasy." (RT 1555:17-25)

The Special Masters find Judge Laettner's testimony at the Hearing, that on August 24, 2016, he was confused as to who Lauryn G's attorney was, not credible. Judge Laettner knew that DPD Moghtader was assigned to represent Lauryn G. First is the transcript of the August 24 hearing itself. The hearing begins with DPD Della-Piana announcing her appearance "standing in for Karen Moghtader." (Exh. 47, CJP 1131:24-27) Later, when setting the hearing date, DPD Della-Piana again references DPD Moghtader and her being out on September 15 and 16 as the reason for setting the hearing earlier. (Exh. 47, CJP 1135:15-17) Secondly, on the previous day, August 23, 2016, DPD Moghtader appeared before Judge Laettner representing Lauryn G. (Exh. 45, CJP 1119:11-13) According to the reporter's transcript for August 23, Judge Laettner thought Lauryn G's probation violation was for a failure to do community service. DPD Moghtader told the judge that allegation had been dismissed, to which Judge Laettner noted the violation was truancy and a failure to attend therapy. (Exh. 45, CJP 1119:14-25) Also later on August 23, Judge Laettner issued a bench warrant

for Lauryn G, after a back-and-forth with DPD Moghtader about its issuance and appearing on the warrant. (Exh. 45, CJP 1121:6-1123:2) The next day, August 24, with DPD Della-Piana, Judge Laettner references the basis for Lauryn G's probation violation that he was corrected on the day before by DPD Moghtader. (Exh. 47, CJP 1132:9-13) And on August 24 Judge Laettner references his issuance of a bench warrant in the *Lauryn G.* matter, an issue he had discussed with DPD Moghtader the day before. In sum, Judge Laettner's testimony at the Hearing and in his Answer to the Notice of Hearing, that, "It appears that there was some confusion as to who was the actual attorney on the [*Lauryn G.*] case . . ." (Answer, p. 16), is contradicted by the evidence.

DPD Della-Piana's testimony regarding her interaction with Judge Laettner in the *Lauryn G.* matter is corroborated by a memorandum to the Contra Costa County Public Defender, Robin Lipetzky, dated June 22, 2017, describing her various alleged inappropriate interactions with Judge Laettner. This memorandum includes a recounting of the *In re Lauryn G.* hearing on August 24, 2016. DPD Della-Piana does not recall when she wrote the *Lauryn G.* portion of the memo, although she started the memo in May 2017. (RT 1023:21-1024:8; Exh. 47) According to her, it was written from memory and she did not have the benefit of the transcript of the August 24 hearing. (RT 1024:15-20)

2. Conclusions of Law:

The Special Masters find the allegations in Count Two, paragraph (C) proven by clear and convincing evidence. Judge Laettner expressed a preference for having the actual attorney assigned to represent a party to appear so as not to waste a court appearance with an attorney that did not know the case. On August 24, Judge Laettner

knew that DPD Moghtader was the assigned public defender for Lauryn G. For the reasons stated, his testimony that there was some confusion as to the assigned attorney is not credible. According to the hearing transcript, Judge Laettner was aware that DPD Moghtader was not available on September 15, the date he selected for the contested probation violation hearing in *Lauryn G*, because DPD Della-Piana told him. This unexplained contradiction between his preference for having the assigned attorney present and his setting of the contested hearing on a date when the assigned attorney was not available, corroborates DPD Della-Piana's belief that Judge Laettner wanted her to appear.

Additionally, that DPD Della-Piana prepared a memorandum eight or nine months later recounting the August 24, 2016 episode, without the benefit of a transcript, corroborates her testimony at the Hearing before the Special Masters.

Accordingly, as to Count Two, paragraph C, the Special Masters find Judge Laettner violated Canons 1, 2A, 3B(4), and 3B(5)(a).

D. Summary of Charge (Courthouse hallway conversation):

On October 12, 2016, Judge Laettner had an ex parte conversation with DPD Della-Piana in the courthouse regarding the *In re Eric B.* matter.

1. Findings of Fact:

The *In re Eric B.* matter which is also the subject of Count Two, paragraph (B), *ante*, involved a mentally ill juvenile. Juvenile proceedings had been suspended due to his incompetency, and he was receiving treatment or competency restoration services in juvenile hall. (RT 1538:10-20) An August 2016 hearing in the *In re Eric B.* matter involved the question of whether Judge Laettner would order the involuntary administration of medication to the minor because of mental health problems. (RT

1527:13-23) DPD Della-Piana represented the minor and objected to the involuntary medication of Eric B. (RT 1531:2-10)

On October 6, 2016, Judge Laettner released the minor Eric B. from custody to his mother, and deemed his sentence satisfied. (RT 1538:21-1539:2) Again DPD Della-Piana represented Eric B. The minute order of October 6, 2016 reflects that Judge Laettner set a future "Competency Review" date for January 5, 2017. The minute order also shows DPD Della-Piana representing Eric B. (Exh. 27, CJP 1015-1016)

Attorney Craig Stewart is a partner with the law firm of Jones Day and is a social friend of DPD Della-Piana. (RT 573:15-21) In October 2016 he was summoned to the Contra Costa Superior Court to be a juror in a case presided over by Judge Laettner. The first day of his service was October 11, 2016. On that day, Mr. Stewart and 60 to 70 other jurors on his panel went to Judge Laettner's courtroom, had the charges read to them, excuses given for hardship, and the balance of the panel was ordered to return the next day. (RT 573:22-575:16; 579:22-580:5) The next day, October 12, while waiting in the public hallway outside of Judge Laettner's courtroom, Mr. Stewart encountered DPD Della-Piana, and began conversing with her. (RT 576:13-577:8) Judge Laettner, whom Mr. Stewart recognized, walked up and initiated a conversation with DPD Della-Piana. Mr. Stewart then drifted away so as not to eavesdrop, and he does not recall what was said. (RT 577:17-578:16) According to Mr. Stewart, the conversation lasted less than 10 minutes and he does not recall what they talked about. (RT 578:21-579:8)

Judge Laettner admits that on October 12, 2016, six days after he ordered Eric B's release, in the courthouse hallway, surrounded by "basically a sea of jurors," he had a conversation with DPD Della-Piana. (RT 1545:1-2) According to Judge Laettner, he spoke to DPD Della-Piana because: "I wanted to make sure everything was okay, because I knew she had been frustrated with Eric B. being in custody for a long time. And I wanted to say in general terms that I was not insensitive to people who are mentally ill." (RT 1545:5-9) Judge Laettner denies discussing the *Eric B.* case during this conversation: "I went to the issue of mental health generally with her." (RT 1546:6-7) Judge Laettner admits that he talked about his experiences in mental health court and that he was not insensitive to the mentally ill. (RT 1545:10-19) According to Judge Laettner, he did not talk about the *Eric B.* case because: "There's really nothing to discuss. He was—he was done. He was out. He had done his service. And I didn't talk about that. I talked about mental health in general." (RT 1546:19- 24)

DPD Della-Piana testified that in this hallway conversation Judge Laettner did bring up the *Eric B.* case, saying that he was aware that she was upset with him about the *Eric B.* case and that she should not be upset with him. (RT 1011:18-24)

2. Conclusions of Law:

The Special Masters find DPD Della-Piana's testimony, that Judge Laettner spoke to her in the courthouse hallway about the *Eric B.* case to be credible, in light of Judge Laettner's express testimony during the hearing that he wanted to make sure everything was okay, since DPD Della-Piana had been frustrated by how long Eric B. had been in custody. Based upon DPD Della-Piana's testimony, the Special Masters find that Judge Laettner did specifically reference the *Eric B.* case in the conversation he initiated with DPD Della-Piana.

However, even if he did not specifically mention the *Eric B.* case by name, Judge Laettner's conversation was still improper. Notwithstanding a contested evidentiary hearing about Eric B.'s mental health care, and with the specific concern about DPD Della-Piana's frustration about the length of Eric B.'s incarceration, six days after he released the minor from custody, Judge Laettner testified he spoke to DPD Della-Piana about the "issue of mental health generally." The Special Masters find that any reasonable trial lawyer would perceive Judge Laettner's comments under such circumstances as not simply a coincidental happenstance. A reasonable attorney would immediately realize that, by bringing up the subject matter of a case the attorney was frustrated about and that had just been heard six days before, the judge is talking about that specific case. It belies common sense to think that Judge Laettner and DPD Della-Piana did not know they were talking about the *Eric B.* case, even if the minor's name was not used.

The Special Masters find that Judge Laettner's conversation with DPD Della-Piana in the courthouse hallway was an improper ex parte communication, under Canon 3B(7). As of October 12, 2016, the *Eric B.* matter was still pending, with a future competency review date on January 5, 2017, that Judge Laettner had set six days prior. In Judge Laettner's Answer to the Notice of Formal Proceedings, he emphasized that his conversation with DPD Della-Piana occurred post the release of Eric B. from custody, on October 6. This fact does not authorize an ex parte conversation.

Further, the Special Masters find that this hallway conversation with DPD Della-Piana had the appearance of impropriety and was undignified. Judge Laettner spoke to DPD Della-Piana, amongst a "sea of jurors," who, because they had been before him

the day before, knew he was a judge, in fact the judge before whom they were providing their jury service. Judge Laettner spoke to DPD Della-Piana because he wanted to make sure that things were "okay" with her following the contentious *Eric B.* hearing, a solicitousness for her and their relationship that was inappropriate to express in a public hallway.

Accordingly, as to Count Two, paragraph D, the Special Masters find Judge Laettner violated Canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7).

E. Summary of Charge (June 8 – "parents didn't spank you enough"):

On June 8, 2017, Judge Laettner spoke to DPD Della-Piana in chambers, ex parte, regarding the proceedings which had occurred in the *Stephanie Imlay* matter.

1. Findings of Fact:

According to Judge Laettner, after the hearing on May 25, 2017, concerning the *People v. Imlay* matter (addressed in Count One, *ante*) his relationship with DPD Della-Piana: "It was strained. She was upset with me." (RT 1603:19- 23) Judge Laettner testified that on June 7, 2017:

> "I passed her in—on the way to my courtroom the day before, on June the 7th, and I wasn't sure she was averting me, you know, avoiding me. Or usually, you know, we would say hi or something as we passed. But my—my feeling at that time was that she was still upset and—and she was ignoring me. Didn't say hi or didn't acknowledge me on purpose."
>
> (RT 1605:6-12)

According to Judge Laettner, DPD Della-Piana: "seemed like she was holding a grudge. . . . " (RT 1605:19) Judge Laettner testified that he wanted to correct DPD Della-Piana's attitude, because:

"Well, I—I—frankly, I don't have time in my life for that kind of thing. I don't want to see people that are upset, you know. I want to—I do want people to be happy. I want everybody to get along. I want a collegial atmosphere. I want a professional relationship with everyone. And so I definitely wanted to change it." (RT 1606:10-16)

Consequently, on June 8, 2017, Judge Laettner asked his clerk to ask DPD Della-Piana if she had some time to speak to him. (RT 1607:17-24) He testified that this conversation took place just inside his chambers, with his chambers' door open. (RT 1608:12-1609:11) His purpose for the conversation was: "I was going to try to mend the fences, smooth things over, so she could be comfortable coming back to my court if she wanted to." (RT 1609:7-11)

Testifying at the Hearing, Judge Laettner twice denied that during this June 8, 2017 conversation with DPD Della-Piana he discussed the *Imlay* case with her. (RT 1614:7-9; 1684:13-16) This testimony is impeached by his Answer to the Notice of Formal Proceedings, wherein he states: "Judge Laettner does not deny a conversation with Ms. Della-Piana regarding the *People v. Imlay* cases, but does dispute the accuracy, the context, and the spin of words attributed to him by the Commission . . . ." (Answer, p. 20) Additionally, during his testimony, Judge Laettner volunteered that in this conversation he told DPD Della-Piana that his scheduling conversation about the *People v. Imlay* matter, with DDA Fernandez (see Count One, *ante*), was not an impermissible ex parte communication, testimony inconsistent with his testimony that he did not talk about the *Imlay* case. (RT 1616:22-1617:2)

During this June 8 conversation with DPD Della-Piana, Judge Laettner admits that he called her a "hard one." (RT 1618:7-15) Judge Laettner explained that he called her a "hard one" because it was his impression she was not interested in the "truce" that he was requesting. (RT 1618:19-1619:21) He also explained that he called her a "hard one" because: "Well, I was a little bit exasperated with her, because I felt like she was being unreasonable, petulant and I was acting the adult—acting like an adult wanting to resolve this misunderstanding, and she didn't—she didn't want to resolve it." (RT 1620:3-9)

After Judge Laettner called DPD Della-Piana a "hard one," he said that "your parents hadn't spanked you enough." (RT 1620:14-15) He said this because he felt DPD Della-Piana was being "stubborn, unreasonable, and petulant." (RT 1620:14-18) Judge Laettner acknowledged at the Hearing that the statement was wrong, and "I am publicly apologizing again because it was something I should not have said." (RT 1620:19-1621:6)

DPD Brooks Osborne testified that he and another public defender, Lauren Askeland, encountered DPD Krista Della-Piana after her June 8 conversation with Judge Laettner, recounting: "Krista came and—or Ms. Della-Piana came up to us. And she said that Judge Laettner had just told her that her parents didn't spank her enough. And she looked horrified. I mean the look on her face was— [¶] She was—she was ashen. She was very upset." (RT 1231:5-15) The Special Masters found Mr. Osborne to be a credible witness.

Regarding her June 8 conversation with Judge Laettner, according to DPD Della-Piana: "He said a lot of things. He said that he didn't want things to be bad between us,

that he had been thinking a lot about the other day. And that I was so mad at him about the *Imlay* case. And that he didn't want me to be mad at him anymore. He wanted things to be good between us. And so he –he wanted to talk to me." (RT 994:6-12) Further, she testified: "I knew he was referring to *Imlay*. And my understanding was that he thought we were in a fight with each other and that we needed to make up. And he sort of wanted to know, did I still care and like him and wanted to kind of pull me back in and make sure I was good with him and close with him." (RT 1162:17-22) According to DPD Della-Piana, during the conversation, Judge Laettner "appeared to be pretty frantic and emotional". (RT 1163:25)

2. Conclusions of Law:

The Special Masters find that Judge Laettner's June 8, 2017 conversation with DPD Della-Piana was injudicious, inappropriate and undignified, within the meaning of Canons 2 and 3, and constituted an improper ex parte communication concerning the *People v. Imlay* case, in violation of Canon 3B(7). Calling an attorney a "hard one" or commenting that your parents "didn't spank you enough" is contrary to his obligations under the Canons.

The Special Masters find that Judge Laettner's conduct on June 8 did not involve conduct that could reasonably be perceived as sexual harassment. At no time during her testimony regarding her June 8 conversation with Judge Laettner did DPD Della-Piana express that his comments to her were offensive as sexual harassment. The evidence is not clear and convincing that Judge Laettner's conduct described in Count Two constituted sexual harassment.

Based upon his own testimony, the Special Masters find that Judge Laettner called DPD Della-Piana into his chambers because it was his perception DPD Della-

Piana was upset with him regarding his handling of the *People v. Imlay* matter (Count One, *ante*), and that it was his goal to "mend the fences," "establish a truce" (RT 1619:2-5), and "extend an olive branch" (RT 1646:2-6), and in that context he engaged in an improper ex parte conversation about the *Imlay* case.

Judge Laettner's purpose for calling DPD Della-Piana to his chambers, to "mend fences" and declare a 'truce" between them, because of his decisions in the *People v. Imlay* matter, demonstrated that her upset over his decision was actually of significant consequence to him, if not giving the appearance that that was the case; of significant enough import that he expressed his frustration at her unwillingness to agree to "call a truce" by calling her "hard" and saying that she had not been "spanked enough." Conveying to an attorney that his or her feelings about a judge's decision are relevant to the judge gives the appearance of partiality, suggests embroilment and is undignified.

Accordingly, as to Count Two, paragraph E, the Special Masters find Judge Laettner violated Canons 1, 2A, 3B(4), 3B(5)(a), and 3B(7).

F. Summary of Charge ("I know you're mad at me"):

In 2016 and 2017, Judge Laettner asked DPD Della-Piana to approach the bench without the deputy district attorney and said things like "I know you're mad at me," and "I don't like to see your face like that."

1. Findings of Fact:

DPD Della-Piana testified that approximately 10 to 15 times, when she and Judge Laettner were in juvenile court, he would call her up to the bench to check in to see if she was mad at him. (RT 1015:13-25) She testified that:

"But usually when he ruled against me, I would sort of know that that was coming next. And he would want to debrief, almost as if we were having like a

relationship fight or something . . . Like a relationship talk. And he wanted reassurance that I wasn't mad at him. Or he would often comment on my facial expressions, the facial expressions I would make during the hearing. Say, you know, I noticed that you were really happy when I said this. Or you didn't like when I said this. I could tell from your face, and comment how well he knew and could read my facial expressions and how that affected him essentially."

(RT 1007:8-22)

Judge Laettner, in his Answer to the Notice of Formal Proceedings, notes he had several contentious hearings with DPD Della-Piana, and admits that he "understood that Ms. Della-Piana was 'mad' at him and doesn't deny that he probably acknowledged that fact to Ms. Della-Piana." (Answer, p. 21) According to Judge Laettner, "At worst, Judge Laettner was merely attempting to smooth over hard feelings directed at him by Ms. Della-Piana." (Answer, p. 22) Judge Laettner's Answer explains:

"Again, Judge Laettner has throughout his judicial career attempted to maintain collegial relationships with the deputy public defenders and deputy district attorneys appearing in his department and tries to convey that regardless whether counsel is mad at him he is attempting to discharge his judicial responsibilities appropriately."

(Answer, p. 22.)

2. Conclusions of Law:

The Special Masters find that Judge Laettner's misconduct here is similar to Count Two, paragraph E. Attempting to "smooth over" the anger or upset by counsel resulting from a judge's decision gives the appearance that counsel's emotional response to a decision matters. According to the United States Supreme Court, judges

are to represent "the impersonal authority of law" and provide "that atmosphere of austerity . . . indispensable for an appropriate sense of responsibility on the part of court, counsel and jury." (*Offutt v. United States* (1954) 348 U.S. 11, 17 [99 L.Ed. 11]; quoted in Rothman, et al., *supra*, Judicial Behavior and Its Implications, § 2:1, pp. 58-59.) Smoothing over the upset of an attorney who is mad at the judge for a decision illustrates a solicitousness that suggests embroilment.[6]

Accordingly, as to Count Two, paragraph F, the Special Masters find Judge Laettner violated Canons 1, 2A, and 3B(4).

Count Two - Conclusions of Law (Level of Misconduct)

In his Answer and before the Special Masters, Judge Laettner has expressed that "maintaining collegial relationships among the criminal justice partners is essential for the orderly administration of justice in criminal courts." (Answer, p. 19) The Special Masters (who each have had extensive experience handling heavy criminal calendars) agree that a professional collegial working relationship *between opposing counsel* in criminal courtrooms allows for the efficient, timely and effective administration of court calendars, and that the court should seek to foster such a working relationship. The danger here is confusing the role and position of the court. Deputy district attorneys and deputy public defenders are not partners nor are they colleagues of the court, to the extent that these terms imply an equality of relationship.

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[6] This is distinguished from a judge taking appropriate corrective action to address an attorney's indecorous conduct in response to a decision, consistent with a judge's duty to maintain courtroom decorum, under Canon 3B(4). Although Judge Laettner's Answer states that several deputy district attorneys told his counsel that DPD Della-Piana can be "difficult" and will "posture," there was no evidence that she displayed conduct that warranted corrective action by Judge Laettner, under Canon 3B(4).

Judges must always be mindful to remain both above the fray and at a distance from the discourse between counsel, both collegial and otherwise. To do otherwise creates the danger of embroilment. Rothman et al., teaches:

> "The most common sources of disciplinary trouble for trial judges are the loss of decorum, inappropriate demeanor, and abuse of authority in the performance of judicial duties. An important contributing factor is the danger of what is referred to as 'embroilment.' For a variety of reasons, judges sometime have difficulty maintaining the necessary professional distance between themselves and the attorneys, the parties or the causes before them. Embroilment is the process by which the judge surrenders the role of impartial factfinder/decisionmaker and joins the fray."

(Rothman et al., *supra*, Judicial Behavior and Its Implications, § 2:1, p. 58.)

The Special Masters are not suggesting that judges must be unsmiling imperious souls. The Special Masters recognize that in these courtrooms judges are witnesses to a wide range of human emotion among the litigants and the attorneys that appear before the court. Judges must view and manage this drama with understanding, empathy, humor, and flexibility, with a calm and steadying hand—but always positionally aware—aware of the proper role of the judge.

As to the six paragraphs constituting Count Two, excluding paragraph B, the Special Masters find that Judge Laettner's conduct, taken as a whole, constitutes prejudicial misconduct, because the incidents involve conduct that is undignified, discourteous and offensive, bringing disrepute to the Bench. In assessing the level of

Judge Laettner's misconduct, as to Count Two, the Special Masters have taken into consideration his proven conduct related to Count Four and Count Five, *post*.

In the opinion of the Special Masters, much of the sustained conduct in Counts Two, Four and Five, taken as a whole, evinces a pattern of similar undignified, discourteous and offensive conduct toward women, constituting a breach of Canon 3B(5)(a), gender bias.

In 2013, Judge Laettner received a phone call from the Presiding Judge of Contra Costa County, who he believes was Judge Barry Goode, about his comment to a defendant, on the record, "I can take judicial notice that women can drive you crazy." (RT 1259:3-6) (This comment is the subject of Count Five, paragraph B.) Judge Laettner testified that he and Judge Goode had a "chuckle" about the comment: "Because it was so stupid. You know, frankly. That's—and I apologized. And I was embarrassed. And we laughed about it because it was—I think I said—I testified this is such a bone headed thing to say. And I—and I—I told him he didn't have to worry about me saying that again. And I never said anything like that again." (RT 1756:6-13)

In the opinion of the Special Masters, telling a female attorney she's like a "teenage daughter" and that her "parents didn't spank her enough," both statements admitted to by Judge Laettner, were similarly undignified, discourteous and offense, and made four years after he assured his presiding judge he would not say anything like that again.

While Judge Laettner engaged in a pattern of similar undignified, discourteous, and offensive conduct toward women, having heard the evidence in this matter, including an assessment of Judge Laettner's credibility, the Special Masters find that his

conduct toward women was neither for a corrupt purpose or done in conscious disregard for his ethical duties, so as to constitute willful misconduct. His misconduct was the failure to be aware of and adhere to the boundaries attendant with his position as a judge because, we believe, as Judge Maddock testified: ". . . he likes to like people. He's a friendly person. And that's something you can't be as a judge." (RT 2370:1-6) Judge Maddock also testified: "I think after Judge Laettner's heart attack, he was very happy to be alive and took it rather personal if people didn't like him." (RT 2374:10-12) We give great weight to Judge Maddock's testimony and find it relevant to the issue as to whether Judge Laettner's conduct was willful. On the other hand, regardless of this motive, Judge Laettner's pattern of conduct was prejudicial to public esteem for the judiciary and brings the judiciary in disrepute, such that his conduct viewed as a whole is not simply improper action.

III. COUNT THREE

Summary of Charge (*People v. Ventura*):

In *People v. Harlan Ventura*, by revoking the defendant's own recognizance (OR) release in the defendant's absence and without a hearing, Judge Laettner abused his authority, failed to accord the defendant and his attorney the full right to be heard according to law, and gave the appearance that he was retaliating for the filing of a peremptory challenge against Judge Laettner.

Judge Laettner's conduct violated Canons 1, 2, 2 A, 3, 3B(2), 3B(5), 3B(7), and 3B(8).

1. Findings of Fact:

In the *People v. Harlan Ventura* case, Mr. Ventura was on probation. On October 30, 2013, Mr. Ventura was arrested for a violation of probation, and appeared

before Judge Laettner on October 31, 2013, represented by DPD Jermel Thomas. On that day, Judge Laettner released Mr. Ventura on his own recognizance in the *People v. Ventura* matter, although he remained in custody on an immigration hold. (RT 873:11-874:19; Exh. 53, CJP:22-24)

The *Ventura* matter next came before Judge Laettner the following day, November 1, 2013, with the defendant again represented by DPD Thomas. In an in chambers discussion between DPD Thomas, DDA Catherine DeFerrari, probation officer Valerie Miramontes, and Judge Laettner, DPD Thomas advised Judge Laettner that she planned to file a 170.6 challenge against him.[7] (RT 875:18-876:4; RT 1351:23-1352:6) Back in open court, DPD Thomas did file a written 170.6 challenge and informed Judge Laettner of the "paper" on the record. (RT 877:17-21; Exhs. 50, 53, CJP 209:11-12) The *Ventura* case was then set for a further pretrial hearing on November 8 before Judge Laettner, and a contested probation violation hearing on December 20, in Department 35, before Judge Canepa. (RT 879:24-880:10; 1356:25-1357:10; Exh. 53, CJP 209:13-210:10)

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[7] Code of Civil Procedure section 170.6, provides for the filing of a peremptory challenge, by an attorney as to a judge, disqualifying the judge in civil, criminal and special proceedings of any kind or character from hearing any contested issue of law or fact. A 170.6 challenge is initiated by the filing of a declaration under penalty of perjury or by an oral statement under oath stating that the judicial officer is prejudiced against a party or attorney or the party cannot have a fair and impartial trial before the judicial officer. (§ 170.6, subd. (a)(2).) Other than that perfunctory statement no other "further act or proof" is required to disqualify the judge. (§ 170.6, subd. (a)(4).) Unless the 170.6 challenge is untimely (see § 170.6, subd. (a)(2)), the case must be reassigned to another judge. A peremptory challenge under section 170.6 is commonly referred to as filing a "paper," or in its verb form, "papering" a judge. (RT 1769:10-15) Serial peremptory challenges filed by an attorney, or a group of attorneys, for all cases or a type of case, as to a judge, is commonly referred to as "blanket papering."

Judge Laettner testified that, at the November 1, 2013 hearing, he made two decisions: (1) he revoked Mr. Ventura's OR release and remanded him to custody; and (2) he found DPD Thomas's 170.6 challenge to be untimely. (RT 1353:22-24; 1355:20-1356:6)

At the Hearing, concerning his revocation of defendant Ventura's OR release and remand into custody on November 1, 2013, Judge Laettner testified: "I was in open court when all parties were present, and I stated very plainly he's remanded. That was on the record." (RT 1690:11-14) However, Judge Laettner's decision is not reflected in the reporter's transcript of the proceeding. (Exh. 53, CJP 209-210) On November 1, Judge Laettner took contemporaneous notes of his chamber's discussion with counsel and probation, and took contemporaneous notes while on the bench. (Exh. 52; RT 1758:9-14; 1759:6-16) Judge Laettner's contemporaneous notes do not reflect his decision to remand Mr. Ventura, although his entries for October 31 and November 8, make note of Mr. Ventura's release status. (RT 1760:13-1761:8)

The remand order is reflected on the clerk's minute order. (Exh. 51) Judge Laettner testified that he turned to his right and told his clerk that Mr. Ventura was remanded. (RT 1767:7-1768:2) But, Judge Laettner testified:

> Q. Okay. Similarly, with respect to the remand, do you have a recollection of looking at Ms. Thomas and saying, Ms. Thomas, I'm revoking Mr. Ventura's OR and I'm remanding him?
>
> A. No. I said that to my clerk in court loudly enough that I believed everyone would hear. And I also believe that she knew it was going to happen because what had just happened in chambers. It was no surprise.

(RT 1770:7-14)

Judge Laettner admits that he did not turn to DPD Thomas and say: "Ms. Thomas, I'm revoking his OR. I'm remanding your client. Do you wish to be heard?" (RT 1771:16-21)

DPD Thomas testified that on November 1, when counsel and probation were in chambers with Judge Laettner, he did not say I'm going to revoke your client's OR. (RT 876:18-22) She also testified that Judge Laettner did not state in open court that he was revoking Mr. Ventura's OR and remanding him, did she wish to be heard. (RT 888:16-21) DPD Thomas's testimony is corroborated by the reporter's transcript of the proceedings, a week later, on November 8, in the *People v. Ventura* matter. On that date, DPD Thomas raised the issue of Mr. Ventura's remand, stating her belief that the minute order "inadvertently" reflected her client's remand, asking that the court correct the minute order for "housekeeping purposes," since the remand order was "in error." Later during the hearing on November 8, DPD Thomas states: "So it appears as though there was a mistake as to the November 1st hearing because I don't believe we addressed his custodial status at that time. I think we all believed that he would have been released on his own recognizance." (Exh. 53, CJP 216:23-28) Neither Judge Laettner nor the deputy district attorney that appeared, Catherine DeFerrari, are reported on the transcript to have said anything to contradict DPD Thomas's statement that Mr. Ventura's custodial status was not addressed on November 1.

DDA Catherine DeFerrari appeared for the prosecution in the *People v. Ventura* matter on November 1, 2013. (Exh. 53, CJP 209:9-10) Consistent with DPD Thomas, her notes reflected that Mr. Ventura was on OR status. (RT 376:9-10) She does not

recall Mr. Ventura's OR status being revoked on November 1, or his custodial status being discussed that day. (RT 372:11-13; 374:10-17) Although it would not have been unusual for Mr. Ventura to remain in custody while the case was sorted out, that is not what she recalls happening. (RT 377:5-7)

Concerning the 170.6 challenge filed by DPD Thomas on November 1, Judge Laettner testified that, in open court, in front of the deputy district attorney and DPD Thomas, he ruled that the challenge was untimely and denied it. (RT 1766:13-19; 1767:1-5) The reporter's transcript of the November 1 hearing does not reflect Judge Laettner saying that the challenge was untimely, or the basis for his ruling. (Exh. 53, CJP 209-210) The clerk's minute order for the November 1 hearing does not reflect Judge Laettner's finding that the 170.6 challenge was untimely. (Exh. 51) Judge Laettner admits that it would be appropriate for the clerk's minute order to reflect his finding that a 170.6 challenge was rejected as untimely. (RT 1772:9-16) Although he believes he would have made a note about the filing of the 170.6 challenge, Judge Laettner's contemporaneous notes, made in the *Ventura* matter on November 1 do not reflect the filing of the challenge or his finding of its untimeliness. Judge Laettner does not know a reason his finding was not reflected in his notes. (RT 1759:17-1760:2)

Judge Laettner testified that he turned to his clerk and told her that the 170.6 challenge was denied as timely. (RT 1767:7-1768:2) Judge Laettner has no recollection of looking at DPD Thomas and saying, "Ms. Thomas I'm rejecting your 170.6." (RT 1768:18-22) Judge Laettner testified that he did not look at DPD Thomas and say: "Ms. Thomas I'm rejecting your 170.6 as being untimely. Do you wish to be heard?" (RT 1771:10-15)

2. Conclusions of Law:

The Special Masters find that Judge Laettner abused his authority by failing to give Mr. Ventura's attorney, DPD Thomas, notice and the opportunity to be heard as to: (1) his rejection of her 170.6 challenge as being untimely, and (2) his decision to revoke Mr. Ventura's OR release and remand him on November 1, 2013.

The Special Masters find Judge Laettner's testimony not credible that he "very plainly" in open court revoked Mr. Ventura's OR release and remanded him. While at some point in time he instructed his clerk that the defendant was to be remanded, it was not announced during his chamber's discussion or in open court. The transcript does not reflect his decision, his contemporaneous notes do not show it, the deputy public defender testified it didn't happen, and the deputy district attorney cannot recall it happening. And when asked directly, Judge Laettner admitted that he did not turn to DPD Thomas and say: "Ms. Thomas, I'm revoking his OR. I'm remanding your client. Do you wish to be heard?" (RT 1771:16-21)

Whether or not Judge Laettner had sufficient legal basis on November 1 to revoke Mr. Ventura's OR release that he had ordered the day before, is not relevant. The issue is due process and providing Mr. Ventura notice of his decision to remand and an opportunity to be heard.

The Special Masters also find not credible Judge Laettner's testimony that in open court and on the record, he rejected the 170.6 challenge filed by DPD Thomas as untimely. The reporter's transcript does not record his rejection, the court minutes do not show his decision, nor do his contemporaneous notes. In the opinion of the Special Masters, the rejection of a 170.6 challenge by the challenged judge must be approached carefully with due attention to making a clear record. If a judge's rejection

of a 170.6 challenge is found to be error by a higher court, decisions made by the judge after the erroneous rejection are subject to attack. (See: Rothman et al., *supra*, Consequences of failure to disqualify when required, §7:5, pgs. 396-399, and cases cited therein.) The fact that the record is devoid of reference to Judge Laettner's rejection of the 170.6 challenge raises the inference that it was never done.

Whether or not the 170.6 challenge filed by DPD Thomas was timely or not is irrelevant. Again, it is a denial of due process not to give Mr. Ventura's counsel notice and an opportunity to be heard.

The Special Masters find that Judge Laettner's conduct in the *People v. Ventura* matter constituted willful misconduct. In the opinion of the Special Masters, after failing to give Mr. Ventura notice and an opportunity to be heard with respect to the revocation of his OR release and his remand, and the rejection of his 170.6 challenge, the transcript of the hearing Judge Laettner conducted on November 8, 2013, demonstrates (1) unjudicial conduct that was (2) committed in bad faith (3) by a judge acting in a judicial capacity. (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

According to the reporter's transcript of the proceedings on November 8, 2013 (Exh. 53, CJP 211-229), in the morning session, DPD Thomas raised the issue of Mr. Ventura's remand describing it as an error. At the beginning of the afternoon session, Judge Laettner stated that as a condition of his OR release Mr. Ventura would have to enroll in a program, A Step Forward. (Exh. 53, CJP 215:18-24) DPD Thomas again raised the issue of the revocation of Mr. Ventura's OR, arguing that there had been no changed circumstances to justify his remand. The transcript includes the following colloquy:

MS. THOMAS: So the court had previously OR'd him with—subject to no conditions on the 31st of October. I don't believe that there has been any change in circumstance from that date to today.

THE COURT: He's been remanded. *That's one change.* If you want him released on his OR, those are the conditions. If you don't then we can continue with this hearing on December the 20th with him in custody.

(Exh. 53, CJP 215:25-216:6) (Italics added.)

On November 8, after DPD Thomas stated on the record that Mr. Ventura's custodial status was not addressed on November 1, Judge Laettner does not correct DPD Thomas by indicating that he had issued his revoke-and-remand order in open court; instead he reiterates his indication that Mr. Ventura's OR would be conditioned upon his entry into a program. (Exh. 53, CJP 216:23-217:10)

In the opinion of the Special Masters, after remanding Mr. Ventura without notice and an opportunity to be heard, a situation brought to his attention by DPD Thomas, Judge Laettner took advantage of the defendant's custodial status by conditioning his release on the defendant's enrollment in a program. Whether there was good cause in the first place to remand Mr. Ventura or order him into a program, is beside the point. The knowing or reckless failure to provide the defendant the process that he was due was willful misconduct, and violated Canons 1, 2, 2A, 3, and 3B(2).

IV. COUNT FOUR

Summary of Charge (treatment of female attorneys):

Judge Laettner made unwelcome, undignified, discourteous, and offensive comments, some of which would reasonably be perceived as sexual harassment or sexual discrimination, to and about other female attorneys who appeared before him.

Judge Laettner's conduct violated Canons 1, 2, 2A, 2B(1), 3B(4), 3B(5), and 3C(1).

A. Summary of Charge (Sarah MonPere):

Between approximately October 2007 and June 2008, Judge Laettner repeatedly asked DPD Sarah MonPere personal questions. Judge Laettner commented to DPD MonPere about how natural she looked holding a baby or child. He repeatedly told DPD MonPere that she could get anything she wanted from him and that he could not say "no" to her. He also told other attorneys that she was Judge Laettner's "favorite." Judge Laettner referred to DPD MonPere as the "teacher's pet" in his courtroom and once made a statement to the effect that DPD MonPere had him "on a chain."

1. Findings of Fact:

Sara MonPere has been a deputy public defender since October 2007. Her first year, she was assigned to misdemeanors at the Walnut Creek courthouse. In that capacity, she appeared in Judge Laettner's courtroom for approximately nine months, until the summer of 2008, when Judge Laettner changed assignments. (RT 63-65; 85) At the time, DPD MonPere was single. (RT 65, 96:19)

When DPD MonPere was first introduced to Judge Laettner he commented on her last name, which he recognized. He asked her to approach, and after questioning

DPD MonPere at the bench, he determined that he had been a patient of her uncle's. (RT 67, 89-90)

During the 2007-2008 time frame, while DPD MonPere was appearing before Judge Laettner, he very frequently asked her personal questions. (RT 67) She recalled that during a pretrial (held in a conference or meeting room), he asked her what she had done over the weekend and whether she had a boyfriend. (RT 66, 118:15, 119) These questions began within the first month or month and a half of her appearances before Judge Laettner. His questions began to make her feel uncomfortable and to her the questions were inappropriate. (RT 66; 83)

A particular incident occurred in the spring of 2008 when DPD MonPere was in Judge Laettner's courtroom during a pretrial calendar, with between 30 and 50 clients in the courtroom. (RT 68) DPD Matthew Cuthbertson was at the podium in the front of the courtroom, appearing with a female client who was entering a change of plea. (RT 68) The client had a nine-month-old infant with her and the infant was fussing during the plea colloquy. (RT 122) DPD MonPere felt badly for the client and offered to hold her infant while she finished her plea. The woman agreed and DPD MonPere took the child, exited the courtroom and waited for the woman to finish. When the woman was done with the plea allocution, DPD MonPere returned with the infant and gave the baby back to the woman. (RT 68-69) At the conclusion of the morning session, Judge Laettner said to DPD MonPere how natural she looked holding a baby, and then asked her if she wanted to have children, and if she thought she would have children at any point. (RT 69) His comments made her feel uncomfortable. Thereafter, Judge Laettner

repeated these comments on two to three occasions, about DPD MonPere looking so natural with a baby and asking whether she wanted to have children. (RT 70, 124-125) DPD MonPere testified that Judge Laettner would also call her his "favorite," and referred to her once as "teacher's pet." (RT 70:8) He once said something "to the effect that [she] had him on a chain"—implying that she controlled him or could get him to do what she wanted. (RT 70:11-13) (Exh. 207, ¶ 12 lists examples of how Judge Laettner spoke to her on an "almost daily basis.") DPD Nicole Eiland also testified that she heard Judge Laettner refer to DPD MonPere as his "favorite" more than once. (RT 23:2-11) DPD Eiland testified that on perhaps five or six occasions, she asked DPD MonPere to pretry cases[8] for her in Judge Laettner's courtroom, for "very sensitive situation[s] that I felt that she was in a better position to negotiate the case because of how Judge Laettner treated her." (RT 23:25-25:9) DPD Eiland testified that Judge Laettner asked DPD MonPere where she was from, about her upbringing, and her relationship status, questions that he did not ask DPD Eiland. (RT 27:11-6) DPD Eiland testified she viewed Judge Laettner's behavior toward DPD MonPere as "very flirtatious. But he favored [MonPere] out of the four senior attorneys . . . that practiced in Walnut Creek at the time." (RT 24:19-21, 25:2-4) DPD Eiland discussed with other public defenders whether Judge Laettner had a preference for DPD MonPere. (RT 30:5-7) DPD Brooks Osborne, who later became DPD MonPere's husband, testified to hearing Judge Laettner say to DPD MonPere that he "could not say 'no' to her." (RT 146:18) According to DPD Osborne, it was obvious from Judge Laettner's actions that

[8] "Pre-trying" cases refers to conferences in criminal cases involving negotiations between prosecutors, defense counsel and a judge with the goal of settling cases short of trial.

DPD MonPere was his favorite. (RT 146:11-12) DPD Osborne admitted that this kind of comment by Judge Laettner in open court, along with his "demonstrating that [MonPere] was his 'favorite'", made Osborne uncomfortable. (RT 147:6-15) DPD Osborne testified: "It seemed like he was—treated her differently, you know, just the way he said that he couldn't say no to her. And so it seemed like he treated her and her clients differently." (RT 149:16-20) DPD Matthew Cuthbertson testified that Judge Laettner interacted differently with DPD MonPere, in a sort of "flirtatious" manner, that was not overtly sexual. (RT 297:8; 344:14-18; 348) This interaction was observed both in open court and in chambers during pretrials and was discussed among the public defenders. (RT 350:11-22) According to DPD Cuthbertson, Judge Laettner's inappropriate comments to DPD MonPere did not cease during Cuthbertson's tenure in the Walnut Creek assignment. (RT 297:9-12)

DPD MonPere never reported this behavior by Judge Laettner. (RT 128) It never occurred to her to report it; she did not want anything to be done on her behalf out of concerns it would impact her ability to get hired into a permanent position. (RT 128-129)

In his Answer and his testimony at the Hearing, Judge Laettner denied most of the alleged comments to DPD MonPere. In his Answer, he stated that all he could recall about DPD MonPere was his connection to her physician uncle. (Answer, p. 26) He acknowledged the conversation with DPD MonPere about her uncle, who treated Judge Laettner for hearing loss when he was six years old. (RT 1235)

Before the Special Masters, Judge Laettner described his relationship with DPD MonPere as "purely professional" (RT 1268:11) and admitted that on occasion he would

"compliment her," for the purpose of building her confidence and making her more comfortable. (RT 1270) As part of his attempt to bolster her confidence—and "joking around"—he thinks he did refer to DPD MonPere as his "favorite." (RT 1297:10-19) He denied ever making a statement to the effect that DPD MonPere had him "on a chain;" he stated, "that's public defender lore." (RT 1298:18-19)

2. Conclusions of Law:

The Special Masters find DPD MonPere's testimony credible. Her explanation of why, as a first-year attorney in the Public Defender's office, she would not complain about comments by a judge that made her uncomfortable, was entirely believable. The Special Masters also find credible DPD MonPere's, Eiland's, Osborne's and Cuthbertson's testimony that Judge Laettner would comment in front of others that DPD MonPere was his "favorite" attorney, a comment Judge Laettner essentially admits saying. Judge Laettner's explanation for such a comment was to bolster the confidence of a new attorney, whom he perceived to be insecure. DPD MonPere was not the last attorney Judge Laettner designated a "favorite." He did not deny in his Answer that he made similar comments to DPD Nicole Herron. (See Count Four, paragraph E, *post.*) Judge Laettner's references were inappropriate and lacked any appearance of impartiality. The Special Masters also find credible DPD MonPere's testimony regarding Judge Laettner's comments about how natural she looked holding a baby and inquiring about her desire to have children. These comments violated the "purely professional" relationship described by Judge Laettner.

As to Count Four, paragraph A, the Special Masters find by clear and convincing evidence that the statements DPD MonPere attributes to Judge Laettner were made to her and violated Canons 1, 2A, 2B(1) and 3B(4) and 3B(5)(a).

B. **Summary of Charge (Kim Mayer's husband):**

In approximately 2012, Judge Laettner asked DPD Kim Mayer to approach the bench alone. In a tone and with a demeanor that was suggestive and inappropriate, he told her that he had just found out who her husband was, and that Judge Laettner was the same age as her husband, who was 14 years older than DPD Mayer.

1. Findings of Fact:

DPD Kim Mayer testified that in 2012-2013 she would appear before Judge Laettner every week or maybe twice a week. (RT 385) At that time, DPD Mayer had been a lawyer for about 17 years. (RT 398:10) On one occasion, she was in his courtroom, with other court staff or personnel present, and Judge Laettner asked her to approach the bench. (RT 386) He made the comment to her that "he had just found out who [her] husband was and who [she] was married to[,] and made a comment that he [Judge Laettner] is the same age as [her] husband." (RT 386:11-14) It made her uncomfortable because her husband is 14 years older than her and it felt like Judge Laettner was comparing himself to her husband. (RT 386:19-22) His tone was somewhat "suggestive" or "just inappropriate." (RT 387:3-5) At the Hearing, Judge Laettner admitted he made a comment to DPD Mayer about her husband's age in January or February 2012. He testified: "I called her up to the bench in one of our slow moments, and I said, I just found out that you're married to Oscar Bobrow. And she said, yes, yes, I am. And I said something to the effect of, *he's a little bit older than you.* Something like that. And she said, yes. And that was really it. You know, it was just commenting on that. And I had told her also that I did a felony possession trial with him." (RT 1316:25-1317:4, 1321:19-23, 1320:19-1321:1, italics added)

2. Conclusions of Law:

The Special Masters find DPD Mayer's testimony credible. As to Count Four, paragraph B, we find by clear and convincing evidence that Judge Laettner indeed made the comment to DPD Mayer that he was the same age as her husband. This comment violated Judge Laettner's duties to be dignified and courteous, and the suggestive nature of the comment was part of a pattern of conduct that would reasonably be perceived as gender bias or harassment and violated Canons 1, 2, 3B(4) and 3B(5)(a).

C. Summary of Charge (*People v. Pastega* – Kim Mayer):

On March 11, 2013, in *People v. Jacob Pastega*, Judge Laettner presided over a hearing. The defendant was represented at the hearing by DPD Kim Mayer. During the hearing, Judge Laettner repeatedly reprimanded DPD Mayer for interrupting him, demeaned her by asking her if she knew what a proffer was, and told her not to argue with him.

1. Findings of Fact:

On March 7, 2013, the Contra Costa County Probation Office filed a petition to revoke probation in the *Pastega* case. (Exh. 54) The petition alleged that the defendant violated the terms of his probation by being discharged from the Discovery House Residential Facility before completing a 90-day program. (Exh. 54) The defendant was arrested by Deputy Tao (who was present at the hearing), and appeared before Judge Laettner with his attorney, DPD Kim Mayer, on March 11, 2013. (Exh. 55, CJP 293:6-9)

There had been a chamber's meeting prior to the appearance. In chambers there were "some representations" about how Mr. Pastega had done in the program.

(RT 1327:19-21) Dr. Martha Wilson, who headed the treatment team for the behavioral health court, told Judge Laettner and DPD Mayer what she had learned from the probation officer and the treatment program. (RT 406:7-8, 408:3-15.)

DPD Mayer testified that Judge Laettner was hostile and very angry with her during the hearing and that he raised his voice at her. (RT 388:19-389:1, 390:7-8; 641:25-642:8) Judge Laettner admitted that he was "frustrated" with DPD Mayer during the hearing. (Exh. 3, CJP 240) During the hearing, Judge Laettner repeatedly asked DPD Mayer to stop interrupting him, asked her if she knew what a proffer was, and told her not to argue with him when she replied that she knew what a proffer was and that she was not making a proffer.

The transcript of the hearing reflects the following. After some dialogue between the judge and Mr. Pastega's father, DPD Mayer stated, "I would like a chance to be heard, Judge." (Exh. 55, CJP 296:19-20) Without acknowledging DPD Mayer, the judge spoke again to Mr. Pastega's father before asking DPD Mayer, "So Ms. Mayer, what did you want to tell me?" (Exh. 55, CJP 296:21-26) The following exchange then occurred:

> DPD MAYER: I understand that you don't have a copy of the petition [to revoke probation] at this point. We do know what—through the team and Dr. Wilson and Deputy Tao what that petition alleges. Is that—[9]
>
> THE COURT: I don't know that.

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[9] Jennifer Michel, who reported the hearing, testified that, when a dash ("--") appears in the transcript, it usually means that the speaker was interrupted. (RT 640:16-25) If someone trailed off and did not finish their sentence, Ms. Michel would report it as an ellipsis. (RT 729:4-12)

DPD MAYER: Well, we were told—they told us—

THE COURT: I don't have the petition. I don't know what it alleges.

DPD MAYER: Well—

THE COURT: I represented—let me say—and don't interrupt me. You have a really bad habit of doing that. [¶] Let me say that I indicated what I understood may be on the petition, but I don't have the petition. [¶] So you may continue.

(Exh. 55, CJP 296:27–297:15)

DPD Mayer then described for the record information regarding Mr. Pastega's situation that she had learned from Dr. Wilson during the chamber's discussion. (Exh. 55, CJP 297:16-298:9) When DPD Mayer began to state, "This is all information that was represented to you in chambers as to the chronological—" (Exh. 55, CJP 298:7-9), Judge Laettner interjected:

THE COURT: This is your proffer, true? This is a proffer. It's not evidence. It's a proffer. [¶] You know what a proffer is?

DPD MAYER: I do know what a proffer is, Judge, and it is not my proffer.

THE COURT: That's what you're saying, it's a proffer, and don't argue with me. [¶] It's a proffer. It's not evidence. I heard what I heard in chambers, and I told you. [¶] So move on to a legal point.

(Exh. 55, CJP 298:10-20)

According to DPD Mayer. when Judge Laettner asked her if she knew what a proffer was, his tone was condescending. (RT 389:18-24)

Judge Laettner testified that he believed that DPD Mayer "was basically disputing what Dr. Wilson had represented in chambers." (RT 1330:10-11) He also testified that he asked DPD Mayer whether she knew what a proffer was because he "wanted to bring home to her that there's a difference between what she expects something is and what something truly is so that she would be careful in telling" the judge "only true facts." (RT 1328:5-8)

Toward the end of the hearing, Judge Laettner stated: "Well, the incarceration is not illegal. There's a petition that apparently has been filed to revoke his probation, and while you make representations like you are all-knowing and know everything that has ever happened with regard to this petition, you don't, and I have not seen it." (Exh. 55, CJP 300:6-12)

DPD Mayer testified that the judge's comment that she makes "representations like [she is] all-knowing and know[s] everything that has ever happened with regard to this petition" was belittling to her. (RT 390:20-21)

Judge Laettner then engaged in the following colloquy with DPD Mayer:

THE COURT: I am perfectly willing to have Mr. Pastega go to another dual-diagnosis program called Solidarity, and this matter will be continued until next week.

DPD MAYER: Actually, Judge, that's fine. We can continue this to next week, but—

THE COURT: *You interrupted me again; didn't you? Will you stop doing that? It is so annoying. You have no idea.*

DPD MAYER: No, I think I do. You make it perfectly clear.

(Exh. 55, CJP 300:14-22, italics added.)

According to DPD Mayer, the judge was frustrated and angry when he made the italicized statement. (RT 391:5-9) According to Judge Laettner, DPD Mayer's response was disrespectful, hostile and rude. (RT 1330:22-23)

After the hearing, DPD Mayer testified she was in tears. (RT 391:8-10) The defendant's mother gave her a hug after the hearing. (RT 391:15-23) Later that week, Dr. Wilson brought her flowers. (RT 392:11-21) Shortly after the hearing, DPD Mayer obtained the reporter's transcript of the hearing and spoke about it with her supervisor. (RT 387:21-23, 426:19-25)

Judge Laettner testified that DPD Mayer was rude and disrespectful to the court when appearing in his department. (RT 1318:21–1320:10) DPD Mayer would often interrupt him as he was speaking. (RT 1923:15-19; 1924:18-21) Judge Laettner would often have to address DPD Mayer's propensity for interrupting the court during court proceedings. Prior to March 11, 2013, Judge Laettner had to repeatedly ask DPD Mayer to not interrupt him during court proceedings. (RT 1331:19-1332:7) Judge Barry Baskin testified that DPD Mayer had a tendency to misrepresent facts and the law. (RT 2180:1-12) (Judge Baskin did not corroborate Judge Laettner's observations about her rudeness and interruptions.)

2. Conclusions of Law:

As to Count Four, paragraph C, the Special Masters agree there were interruptions and interjections during the *Pastega* hearing but cannot find, by clear and convincing evidence, that Judge Laettner was demeaning and hostile to DPD Mayer during the hearing as alleged, in violation of Canon 3B(4). The Special Masters appreciate that discussions in open court can be testy and emotional and participants

may talk over each other. In the circumstances of this hearing and considering the court's express concerns regarding the exact nature of DPD Mayer's representations to the court on the *Pastega* matter, we find the tone and demeanor alleged on the part of Judge Laettner were not proved, by clear and convincing evidence.

D. Summary of Charge (*People v. Williams* – Christy Wills-Pierce):

On November 1, 2013, Judge Laettner presided over *People v. Henry Williams*. DPD Christy Wills-Pierce represented the defendant. DPD Wills-Pierce asked Judge Laettner, "What would be the basis for the drug testing?" and he replied in a loud and angry voice. Later, Judge Laettner called DPD Wills-Pierce up to the bench to apologize for getting so angry and yelling at her. He told her, "It just makes me so mad and angry when your friend talks to me like that," or words to that effect. Judge Laettner explained he meant DPD Jermel Thomas.

1. Findings of Fact:

On November 1, 2013, after he presided over the hearing in *People v. Ventura* (Count Three, *ante*), Judge Laettner presided over a hearing in *People v. Henry Williams*. DPD Wayne James represented Mr. Williams at the pretrial conference (RT 1361:9-15), and DPD Christy Wills-Pierce represented Mr. Williams at the November 1 hearing.

DPD Wills-Pierce told Judge Laettner that the defendant was prepared to admit to a probation violation with the understanding that he would serve "45 days [in] county jail at halftime [*sic*]." (Exh. 56, CJP 484:12-15) The defendant waived his right to a hearing and admitted the allegations that he was terminated from a batterers' intervention program due to excessive absences. (Exh. 56, CJP 485:2-20) Judge Laettner found the defendant in violation of his probation and sentenced him to 45 days

in county jail. (Exh. 56, CJP 485:21-23) After discussion of another probation violation that the defendant had previously admitted, DDA Catherine DeFerrari asked, "Did we discuss AA or outpatient or something to address the violation of the no-alcohol clause?" (Exh. 56, CJP 486:25-27) Judge Laettner replied, "Yes we did. We ordered counseling as directed and drug and alcohol testing. That will be part of the sentence." (Exh. 56, CJP 486:28-487:2) DDA DeFerrari confirmed that that information (the counseling and drug and alcohol testing) was in her notes. (Exh. 56, CJP 487:3-4)

According to the transcript of the proceedings, Judge Laettner then ordered "search and seizure and counseling as directed and drug and alcohol testing." (Exh. 56, CJP 487:5-7) DPD Wills-Pierce stated that she did not have that in her notes, and that she looked at the notes of DPD James, who "had just written the 45 days." (Exh. 56, CJP 487:8-11) DPD Wills-Pierce asked Judge Laettner "to not order the counseling as directed." (Exh. 56, CJP 487:13-14) The judge denied the request and stated that he had "talked to [DPD] James about search and seizure, counseling as directed, and alcohol testing." (Exh. 56, CJP 487:15-17) DPD Wills-Pierce then told the judge that the defendant may want to withdraw his plea. (Exh. 56, CJP 487:18-19) She stated: "I did not explain to him that part of it included counseling, and I didn't know about that." (Exh. 56, CJP 487:19-21) The judge then asked DPD Wills-Pierce if she wanted to talk to the defendant some more. (Exh. 56, CJP 487:22-23) When DDA DeFerrari pointed out the defendant had a "no-alcohol clause on his other docket[,]" DPD Wills-Pierce said that, based on the alleged conduct and the violation, the only testing that would be appropriate would be for alcohol, not drugs. (Exh. 56, CJP 487:24-488:2) When Judge Laettner repeated that he was going to order drug and alcohol testing, DPD Wills-Pierce

asked what the basis for the drug testing would be. (Exh. 56, CJP 488:3-6) Judge Laettner replied: "Our prior discussions with regard to this case. I know you're coming in late. I'm not going to retry every case all over again just because you're here today." (Exh. 56, CJP 488:7-10) Judge Laettner was very mad and yelled at DPD Wills-Pierce when he said this. (RT 233:7-11, 234:24-235:3; Exh. 57)

At the end of the calendar, Judge Laettner called DPD Wills-Pierce up to the bench. (RT 235:12-14) The judge said that he was sorry he was mad earlier but claimed that he was not mad at DPD Wills-Pierce. (RT 235:15-18) The judge told DPD Wills-Pierce that it was her "friend" who had made him so mad. (RT 235:17-18; Exh. 57) When DPD Wills-Pierce asked the judge who he was talking about, the judge "leaned forward and said, Ms. [Jermel] Thomas." (RT 236:7-12) On November 5, 2013, DPD Wills-Pierce summarized, in an e-mail to her supervisor and to Robin Lipetzky, what the judge had told her. (RT 238:19-239:9; Exh. 57)

According to Judge Laettner's response to the preliminary investigation letter, the judge did not have a specific recollection of the incident. (Exh. 3, CJP 241) As noted, in his verified answer, Judge Laettner denied that he discussed with DPD Wills-Pierce any alleged frustration with DPD Thomas and claimed he "has no recollection of saying anything about DPD Thomas to DPD Wills-Pierce." (Answer, p. 29)

DPD Thomas, however, corroborated DPD Wills-Pierce's testimony. She testified that DPD Wills-Pierce had a conversation with her about Judge Laettner's comments about DPD Thomas. (RT 882:3-7) DPD Thomas was embarrassed by the judge's comments and went to Judge Laettner's chambers that day (November 1, 2013) to see whether he had made them. (RT 883:7-20) DPD Thomas told Judge Laettner:

"Ms. Pierce had told me that you confronted her at the bench and said Ms. Thomas makes me so angry and she makes me so upset and so mad." (RT 884:6-8) DPD Thomas asked the judge whether he said that. (RT 884:8-9) Judge Laettner said that he did, and that she does make him upset. (RT 884:9-11) Judge Laettner also told DPD Thomas that he was happy that she "held her composure" and "didn't overreact to it[]" when they all learned that the probation department had filed a petition (to revoke probation in the *Ventura* case). (RT 884:20-885:3)

At the Hearing, after observing DPDs Wills-Pierce and Thomas testify, Judge Laettner admitted that he "snapped" at DPD Wills-Pierce (RT 1364:15) and that he was angry or upset at DPD Thomas (RT 1365:10-15). The judge testified: "I think I snapped at her [Wills-Pierce] because I didn't want to spend two hours going over every case we just pre-tried." (RT 1362:23-1363:2) Judge Laettner also admitted that after the hearing, he called DPD Wills-Pierce up to the bench and apologized to her. (RT 1364:5-6) Judge Laettner also admitted that he probably told DPD Wills-Pierce that he was mad at her friend, DPD Thomas. (RT 1365:3-9) Yet on cross-examination, the judge testified that he did not remember making the statement. (RT 1717:3-8)

2. Conclusions of Law:

Judge Laettner's conduct during the *Williams* hearing was impatient, undignified, and discourteous, in violation of Canon 3B(4). The conduct also violated the judge's duties to observe "high standards of conduct" so that the integrity and independence of the judiciary are preserved (Canon 1), to avoid impropriety and the appearance of impropriety (Canon 2), to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary[]" (Canon 2A), and to perform judicial duties and discharge administrative responsibilities, without "bias or prejudice," and

without engaging in "conduct that would reasonably be perceived as" bias or prejudice (Canons 3B(5)(a)).

Accordingly, as to Count Four, paragraph D, the Special Masters find Judge Laettner violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a).

E. Summary of Charge (Nicole Herron comparison to an actress):

From approximately January 2014 until approximately January 2017, Judge Laettner compared DPD Nicole Herron to a British actress named Caroline Catz. Judge Laettner also commented that DPD Herron was "someone I just can't say no to," the "best attorney in the public defender's office," the "best attorney in the juvenile division," and his "favorite attorney."

1. Findings of Fact:

Between January 2014 and January 2017, DPD Nicole Herron appeared before Judge Laettner in juvenile court every one or two weeks. (RT 430:4-14) Beginning in 2014 or early 2015, Judge Laettner repeatedly told DPD Herron that she looked like Caroline Catz, a British actress on the television show, "Doc Martin." (RT 430:15–431:11) According to DPD Herron, the judge referred to Caroline Catz and the Doc Martin show about 12 to 20 times over the course of DPD Herron's weekly appearances in his department. (RT 442:2-8) At first, Judge Laettner asked DPD Herron if she knew who Caroline Catz was and if she had seen Doc Martin. (RT 431:8-11) The judge's court reporter, Jennifer Michel, could tell that the judge's questions made DPD Herron uncomfortable. (RT 701:22-25)

At some point, Judge Laettner started telling DPD Herron, "I saw you on TV last night." (RT 431:11-12) When Caroline Catz started appearing on a different TV show on BBC, the judge said, "I saw you on a new TV show." (RT 431:14-15)

DPD Herron testified that, when the judge mentioned the Doc Martin show, he seemed "overly excited." (RT 438:24-439:3) The judge's comments felt "creepy" to her. (RT 431:18-20) They made her uncomfortable because they were comments on DPD Herron's physical appearance. (RT 432:5-10) When the judge told DPD Herron that he saw her on TV, it made her "think that he was thinking about [her] at night or ... when he was watching the show. . . . " (RT 432:12-14) The comments also made DPD Herron uncomfortable because they were made in open court where other people could hear them, including some clients who later commented to her about the judge's statements. (RT 432:16-19; 1373:12-22)

DPD Herron complained to her supervisor about Judge Laettner's comments about Caroline Catz shortly after he began to make them. (RT 442:22-443:5) DPD Herron did not tell the judge that she did not like him referring to Caroline Catz and her TV show, because it was too uncomfortable for her. (RT 442:18-21, 446:16-17; 1371:22-1372:5) DPD Herron "felt like this is kind of how some men act, and [she] didn't really know how to handle that." (RT 446:18-20)

In 2014 and 2015, Judge Laettner also made a lot of comments about DPD Herron being his "favorite attorney," the "best attorney" in juvenile court or the public defender's office, and "someone he couldn't say no to." (RT 432:20-433:9) The judge told her, "'I just can't say no to you'" about five to 10 times. (RT 445:25-446:5) The comments made DPD Herron uncomfortable. (RT 432:20-433:2) According to his verified answer, Judge Laettner "does not deny" making these "compliments." (Answer, p. 30) The judge made the comments less frequently after DPD Krista Della-Piana (the

In early 2017, before DPD Young was a permanent employee, Judge Laettner asked her personal questions, almost always in chambers. (RT 452:6-23) The judge asked her questions about her ethnicity, her childhood, her relationship with her father, and her motivations for the work she was doing. (RT 453:1-5) The judge asked her questions about what city and state she grew up in and told her that he wanted to learn more about what it was like for her growing up. (RT 456:13-18) The judge asked her questions about her childhood about five times. (RT 467:22-468:3.) He told her that he wanted to know more about her childhood, her father, and her relationship with her father. (RT 497:22-23) The questions made DPD Young uncomfortable. (RT 456:19-21)

During one pretrial chambers conference, Judge Laettner stated that one of his sons was engaged to an Asian woman and that it had made him very interested in Asian people and culture. (RT 453:11-18) The judge asked DPD Young about her background or "what kind of Asian" she was. (RT 453:19-20, 454:4-23) DPD Young responded that she was part Japanese. (RT 453:20-21) Judge Laettner replied that he "knew two half Japanese twins in college and that they were very beautiful." (RT 455:2-3) The judge's comment made it seem that the judge was not sincerely interested in DPD Young's background or culture but was commenting about her physical appearance. (RT 465:19-466:1) DPD Young felt "incredibly uncomfortable" because the judge was singling her out in a way that was inappropriate. (RT 465:17-19)

Judge Laettner testified that he asked DPD Young if he could ask her about her heritage, and she said yes. (RT 1460:3-6) DPD Young does not recall the judge asking her if it was okay if he asked her some personal questions about her background. (RT

455:17-18) She also does not remember telling the judge that he could ask her about her background. (RT 455:24-456:3.) Given the dynamics of the working environment and appearing in Judge Laettner's courtroom, DPD Young felt that she needed to respond to the judge's question. (RT 456:7-9)

Judge Laettner testified he told the attorneys that his son's fiancée was Chinese and Vietnamese and was raised in the Vietnamese culture, and that he was going to preside over their wedding. (RT 1460:16–1461:2) The judge testified that he noticed that DPD Young was "potentially biracial." (RT 1459:22-25) Since his son, Max Laettner, was going to marry an Asian-American woman, Judge Laettner thought that his grandchildren "could look biracial." (RT 1459:25–1460:3) Part of the reason he asked DPD Young about her heritage was because he suspected that she was a biracial Asian-American (he "didn't know if she was Korean, Thai, Vietnamese, or Chinese[]"), and he thought his potential grandchildren might look like her. (RT 1789:24-1791:11) Judge Laettner testified that DPD Young told him that she was half Japanese and half European. (RT 1460:8-9)

Judge Laettner did not initially admit that he made the comment about the half-Japanese twins. According to his October 10, 2017 response to a preliminary investigation letter: "Judge Laettner never commented to Ms. Young on her own appearance. He does not dispute that he had two friends in college who were one-half Japanese and one-half Italian, so he presumes the comment was made." (Exh. 3, CJP 244) Judge Laettner repeated these statements in his verified answer. (See Answer, p. 36) At the Hearing, Judge Laettner admitted he stated that he "knew some very beautiful half Japanese twins in college[.]" (RT 1461:22-25)

Judge Laettner also admitted that he asked DPD Young what her father did for a living. (RT 1669:15-18) He testified that he asked the question after DPD Young related a story during a pretrial conference about how her father had let her rabbit die. (RT 1669:6-18) When she was young, DPD Young had a pet rabbit who died when her father left the rabbit in a car. (RT 469:14-17) DPD Young represented a defendant charged with animal cruelty for leaving an animal in a car for a short time and used her experience as an anecdote to try to convince the district attorney not to view it as a criminal case. (RT 469:12-14, 20-25)

2. Conclusions of Law:

As to Count Four, paragraph G, the Special Masters conclude that Judge Laettner's inquiries into DPD Young's racial background, his comments about the physical appearances of persons who shared her ethnicity, and his intrusive questions about DPD Young's personal background were undignified and discourteous (Canon 3B(4)). The conduct also violated the judge's duties to observe "high standards of conduct" so that the integrity and independence of the judiciary are preserved (Canon 1), to avoid impropriety and the appearance of impropriety (Canon 2), and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary[]" (Canon 2A).

H. Summary of Charge ("young attractive Asian woman"):

In approximately 2017, when someone came to Judge Laettner's department looking for DPD Emi Young and did not know what she looked like, Judge Laettner told the person to look for "the young attractive Asian woman," or words to that effect.

1. **Findings of Fact:**

In approximately May or June 2017, while court was in session in Judge Laettner's department, there were three attorneys at the bench, one of whom was looking for DPD Emi Young. (RT 644:11-18, 645:2-19, 723:12-22) The judge told the attorney: "[O]h, you don't know who Emi Young is? She's the attractive young Asian woman." (RT 725:14-16) Judge Laettner did not deny the allegation; he simply testified that he did not recall referring to DPD Young as the "young, attractive Asian woman[.]" (RT 1465:9-24)

2. **Conclusions of Law:**

As to Court Four, paragraph (H), the Special Masters conclude that Judge Laettner's comment about the physical beauty of a female attorney who appears before him violated his duty to be dignified (Canon 3B(4)). The comment also violated the judge's duties to observe "high standards of conduct" so that the integrity and independence of the judiciary are preserved (Canon 1), to avoid impropriety and the appearance of impropriety (Canon 2), and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary[]" (Canon 2A).

Count Four - Conclusions of Law (Level of Misconduct)

Lady Justice wears a blindfold. Centuries ago, William Penn explained: "Justice is justly represented Blind, because she sees no Difference in the Parties concerned." (William Penn, *Fruits of Solitude*, The Harvard Classics (1909-14), Part. I, "Impartiality," No, 407.)

Saying that a female attorney is beautiful or otherwise commenting upon her looks, lifts Lady Justice's blindfold, by suggesting that one of a person's immutable characteristics, her appearance, matters to the judge; suggesting that the judge is

partial to the woman he has declared to be beautiful. Even though the judge may have meant the comment to be an innocent courteous compliment, intended to create and maintain a "friendly" and "collegial atmosphere," does not excuse such a statement. Whether the recipient of the comment was offended or made uncomfortable, as in the case of DPD Emi Young, or not, as in the case of DDA Devon Bell, is not the issue upon which the propriety of the statement turns. The reason a judge's declaration that someone is beautiful or attractive is misconduct is due not only to its effect on the person to whom the comment was directed, but also because of the potential impact the statement has upon those who may not perceive themselves as attractive or beautiful. If two attorneys appear before a judge, and one attorney perceives herself to be unattractive, and the judge says to the other attorney, "Here is the beautiful Ms. Bell", it is reasonable for the other attorney to question the fairness and impartiality of the judge.

Canon 2B(1) states: "...nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge." Commenting that an attorney is his "favorite" and that he "cannot say no to" the attorney, as Judge Laettner did in the cases of DPD MonPere and DPD Herron, expressly conveys that they are in a special position. And in the case of DPD MonPere, the credible testimony of DPD Eiland was that she asked DPD MonPere to pre-try particularly sensitive cases for her to Judge Laettner because of his preference for her; and according to DPD Osborne, " . . . he treated her and her clients differently." (RT 149:19–20) That attorneys noted and took advantage of Judge Laettner's favoritism is corrosive to the fair and impartial administration of justice.

It is relevant in the opinion of the Special Masters, that Judge Laettner's conduct described in Count Four spans 11 years, from 2006 to 2017. The Special Masters acknowledge and empathize that a new judge just donning his or her black robe may take time adjusting to the burdens of the role. But after 10 years on the Bench it can be expected that a judge's words and conduct will have conformed to the demands of the Canons. The Special Masters conclude that Judge Laettner did not do so.

As to Count Four, Judge Laettner's conduct constituted prejudicial misconduct. Partiality, showing favoritism, and the appearance of partiality, referring to an attorney's physical beauty, strikes at the very foundation of the administration of justice and erodes public trust and confidence.

As stated in the Special Master's conclusions as to Count Two, having heard the evidence in this matter, including an assessment of Judge Laettner's credibility, the Special Masters find that his conduct described in Count Four was neither for a corrupt purpose or done in conscious disregard for his ethical duties, so as to constitute willful misconduct. Rather, his misconduct was the failure to be aware of and adhere to the boundaries attendant with his position as a judge, and as such represented prejudicial misconduct.

V. COUNT FIVE

Summary of Charge (treatment of other women):

Judge Laettner made unwelcome, undignified, discourteous, and offensive comments to and about other women who appeared or worked in his courtroom, some of which would reasonably be perceived as sexual harassment or sexual discrimination.

Judge Laettner's conduct violated Canons 1, 2, 2A, 3B(4), 3B(5), and 3C(1).

22) Under the circumstances, Judge Laettner's comments to Justine S. about seeking the removal of her tattoos were appropriate and appeared to be genuinely motivated by his desire to assist Justine S. in moving forward with her life. Justine S. apparently appreciated Judge Laettner's assistance. (RT 1389) However, Judge Laettner's reference to Justine S. being a "pretty woman" does not appear to serve a legitimate judicial purpose and is irrelevant to whether Justine S. should seek the removal of tattoos.

D. Summary of Charge (*In re Vanessa W.* – "pretty girl"):

Judge Laettner presided over the juvenile matter of *In re Vanessa W.* On June 3, 2016, he told Vanessa W., off the record, that she was "beautiful" or "pretty." Judge Laettner told counsel that Vanessa is "such a pretty girl," or words to that effect. On January 12, 2017, at the bench he stated to the deputy district attorney and deputy public defender that he had presided over matters regarding Vanessa W. for a number of years, and then stated words to that effect: "She used to be really cute, back when she was 14. I remember thinking that that girl should be a cheerleader or something. I don't know what happened to her recently though. Maybe drugs are having some effect."

1. Findings of Fact:

The evidence presented in support of this allegation came principally from DPD Della-Piana. The *In re Vanessa W.* matter was a juvenile delinquency matter assigned to Judge Laettner. A petition filed pursuant to Welfare and Institutions Code section 602[11] alleged that Vanessa W. had, *inter alia*, driven under the influence and committed

[11] Welfare and Institutions Code section 602 provides that any minor who is between 12 and 17 years of age when he or she violates any law (other than an ordinance

a hit and run. (Exh. 75) According to her counsel, DPD Della-Piana, during a chamber's discussion about the case, Judge Laettner commented several times that the minor was "pretty." (RT 1017:19-20; 1018:10-22) The reference to Vanessa W.'s physical appearance was related to his concern that she could be scarred in the event that she was involved in another accident while under the influence. (RT 1193:3-10) It was not DPD Della-Piana's opinion that Judge Laettner's comments about Vanessa W.'s appearance were motivated by a desire to impress upon the minor the consequences of her actions. (RT 1194) On one specific occasion during an in chambers conference, Judge Laettner indicated that he wanted to add terms to her probation "that would help prevent her from sleeping with older Latino men." (RT 1017:21-24)

Judge Laettner does recall having a discussion with Vanessa W. about driving under the influence. (RT 1485-1486) Judge Laettner believed that Vanessa W. was lucky that no one was injured in the accident but recalls relating to the minor a story about another case when he was in Walnut Creek where the defendant, who had been "attractive" was scarred and disfigured. (RT 1485:18-25) Judge Laettner acknowledges that he did make a comment at his bench and in the presence of both the deputy district attorney and the deputy public defender that Vanessa W. "used to be really cute back when she was 14. [He] remember[ed] thinking that girl should be a cheerleader or something." (RT 1487:12-20) However, Judge Laettner testified that these comments

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establishing a curfew based on age) comes within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court. Minors who are under the age of 12 and commit certain specified, serious offenses may also be adjudged as wards of the juvenile court.

were designed to provide some background information to counsel about Vanessa W. and to "appeal to her vanity." (RT 1488:2-5; 1486:2-3)

With respect to the comments made to Vanessa W., it appears that Judge Laettner was motivated by a desire to impress upon the minor the dangers and consequences of driving under the influence. Notwithstanding Judge Laettner's good intentions, his comments regarding the beauty or physical appearance of litigants were inappropriate and served no legitimate judicial purpose.

E. Summary of Charge (*People v. Thompson* – "pretty girl"):

On March 8, 2017, in *People v. Hannah Thompson*, after imposing sentence, Judge Laettner told Ms. Thompson in open court that she reminded Judge Laettner of someone who appeared in front of him many years ago, and that that person saw the scars on her face from a drunk driving accident every time she looked in the mirror. Judge Laettner told Ms. Thompson that she was "a pretty girl," that it looked like she was okay, and that she was very lucky.

1. Findings of Fact:

Ms. Thompson was represented by DPD Giovanni Macias at a pretrial conference on March 8, 2017. (RT 828) Ms. Thompson was entering a change of plea to a driving under the influence charge. (RT 829:1-3) According to DPD Macias, during the plea colloquy, Judge Laettner said something to the effect of "if you don't mind my saying so, you're a pretty girl." (RT 829:11-19) Judge Laettner then related a similar example about a young woman disfigured in a driving under the influence accident. (RT 829:14-19) Judge Laettner acknowledges making these comments. (RT 1489:13-22) However, he says that he engaged in this commentary with Ms. Thompson and other

litigants to discourage defendants or minors from continuing to drive under the influence and to understand the consequences of such conduct. (RT 1490:2-6)

With respect to the comments made to Ms. Thompson, it appears that Judge Laettner was motivated by a desire to impress upon her the dangers and consequences of driving under the influence. Notwithstanding Judge Laettner's good intentions, his comments regarding the beauty or physical appearance of litigants were inappropriate.

F. Summary of Charge (*People v. Hernandez* – tattoos):

On June 16, 2017, in *People v. Thalia Hernandez*, Judge Laettner placed the defendant on diversion. Judge Laettner engaged the defendant in an off-the-record discussion regarding her tattoos. He also made comments to Ms. Hernandez about other people getting tattoos, including that he did not understand why "fat people" get tattoos or what "fat people" are thinking when they get tattoos.

1. Findings of Fact:

On June 16, 2017, Judge Laettner presided over the matter of the *People v. Thalia Hernandez*. (Exh 94) After concluding the hearing, Judge Laettner stayed on the bench and engaged in a discussion with Ms. Hernandez about her tattoos. (RT 655:8-18) According to court reporter Jennifer Michel, Judge Laettner commented "I always wonder what fat people were thinking when they get tattoos." (RT 655:15-16) During his testimony, Judge Laettner acknowledged discussing Ms. Hernandez's tattoos. However, this discussion was in the context of her efforts to obtain employment. (RT 1392:17-23) During his exchange with Ms. Hernandez, Judge Laettner provided her with a workforce reentry form and resources for job training. (RT 1391:16-20) It appeared that Ms. Hernandez welcomed Judge Laettner's comments. (RT 1394:4-10)

Count Five, paragraphs C, D, E and F - Conclusions of Law (Level of Misconduct):

Although the evidence establishes that Judge Laettner made comments about the physical appearance of litigants appearing before him, as it pertains to Count Five, paragraphs C, D, E and F, with the exception of the comment about "fat people," his comments were motivated by a genuine desire to foster rehabilitation or to impress upon a defendant or ward of the court the seriousness of their conduct. Judge Laettner now acknowledges that comments about the appearance of someone coming before the court or working in the court system were not appropriate and has refrained from making such comments since receiving notice from the Commission. (RT 1774:5-11)

Notwithstanding Judge Laettner's good intentions, his comments regarding the beauty or physical appearance of litigants, counsel and staff were inappropriate. An observer might construe such references to the physical appearance of a litigant to imply that there is a different standard of justice based upon appearance. The Special Masters find that Judge Laettner's references to personal appearances were undignified and would reasonably be perceived as gender bias. (*See Inquiry Concerning Bailey* (2019) 6 Cal.5th CJP Supp. 24, 49.) Indeed, his repetitive reference to the physical appearance of individuals appearing or working in his courtroom created a work environment where Jennifer Michel could no longer work. In addition, Judge Laettner failed to observe "high standards of conduct so that the integrity and independence of the judiciary are preserved" and did not act at all times in a manner that promoted public confidence in the integrity and impartiality of the judiciary. Accordingly, as to Count Five, paragraphs C, D, E and F, the Special Masters find Judge Laettner violated Canons 1, 2A, 3B(4) and 3B(5)(a). The appropriate level of discipline depends to a

large extent on the nature and number of incidents of misconduct. (*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1307, fn. 2.)

The Special Masters conclude that Judge Laettner's conduct as alleged in Count Five, paragraphs C through F constituted improper action.

VI. COUNT SIX

Summary of Charge (*In re Victor E.*):

While presiding over *In re Victor E.*, Judge Laettner made statements that gave the appearance of prejudgment and that would reasonably be perceived as bias or prejudice. Judge Laettner's conduct violated Canons 1, 2, 2A, 3B(4), and 3B(5)(a).

A. Summary of Charge (*In re Victor E.* – prejudgment):

At a June 4,2015 hearing in *In re Victor E.*, Judge Laettner announced that he had put the matter on calendar, and stated that, Erika's mother said that Erika had spent the night at Victor's house on May 31, 2015. He added: "So Victor is in violation of my court's order by virtue of her statements, and so that's why he's been brought in." By stating that Victor had violated Judge Laettner's order, before hearing from Victor E. or his attorney, Judge Laettner gave the appearance of prejudgment.

1. Findings of Fact:

On May 6, 2015, Judge Laettner presided over a hearing at which he adjudged Victor E. to be a ward of the juvenile court and placed him on the home supervision program for 120 days for auto theft and driving without a license, both misdemeanors. (Exh. 109, CJP 2025:22–2026:2) The stolen vehicle belonged to Victor's sister. (Exh. 109, CJP 2022:19-26) Before issuing his order, Judge Laettner noted that Victor "essentially committed a new crime by getting his 15-year-old girlfriend [Erika N.] pregnant. . . ." (Exh. 109, CJP 2022:1-5) In announcing the disposition, Judge Laettner

stated, among other things: "I'm also ordering that your girlfriend is not to reside at your home. She's 15, she has a home of her own. She's not to reside there." (Exh. 109, CJP 2027:8-10)

Judge Laettner also presided over Erika N.'s truancy case. On June 2, 2015, when the judge presided over the SARB calendar, Erika's mother said that Erika spent the night at Victor's house on May 31, which the judge later stated placed Victor in violation of the court's order. (Exh. 113, CJP 2040:25-27) On the same day (June 2), Judge Laettner's clerk sent the parties in the *Victor E.* case a notice of hearing to take place on June 4, "for Violation of Court's Order." (Exh. 112)

Judge Laettner admits that, "[o]n June 2nd, 2015, the court set on its short cause calendar a 'Violation of Court Order.' " (Answer, p. 45) He testified that he put the matter on calendar "to look at the issue as to why [his] order was being violated." (RT 1400:10-11) No notice had been filed pursuant to Welfare and Institutions Code section 777[12] (RT 1788:11-18), and Judge Laettner did not sign an affidavit indicating the factual basis for a potential violation of Victor E.'s probation. (RT 1645:16-19)

At the outset of the June 4, 2015 hearing in *Victor E.*, Judge Laettner stated (incorrectly) that, when Victor was sentenced, the court had told Victor and his family that Erika could not "spend the night" at Victor's house. (Exh. 113, CJP 2040:18-20) The judge added that, two days previously, he had heard from Erika's mother that Erika had spent the night at Victor's house on May 31. (Exh. 113, CJP 2040:20-25) Judge

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[12] Welfare and Institutions Code section 777 provides procedures for an order changing or modifying a previous order of the juvenile court by removing a minor from the physical custody of a parent or guardian and directing placement in a foster home or private or public institution, because of "a violation of probation not amounting to a crime." (Welf. & Inst. Code, § 777, subd. (a)(2).)

Laettner stated: "So Victor is in violation of my Court's order by virtue of her statements, and so that's why he's been brought in." (Exh. 113, CJP 2040:25-27) At the Hearing before the Special Masters, Judge Laettner continued to take the position that, when Erika had spent the night at Victor's house, Victor violated his order. (RT 1401:16-22)

Judge Laettner asked Victor's attorney, Deputy Alternate Public Defender (DAPD) Garth McCardle, whether there was any reason why Victor should not be placed in custody. (Exh. 113, CJP 2040:28–2041:1) DAPD McCardle explained that it was not Victor's fault that Erika had stayed at the house. (Exh. 113, CJP 2041:4-6) DAPD McCardle stated that Erika was pregnant, had run away from home, and had called Victor's father for help. (Exh. 113, CJP 2041:9-13) Victor's father told the judge that Erika had spent the night on the couch, but that Victor never had contact with her. (Exh. 113, CJP 2042:5–2043:4) Judge Laettner told Victor's father that he almost had Victor "put in custody" because he previously had ordered that Erika was "not to be there at all." [13] (Exh. 113, CJP 2043:10-12) Judge Laettner stated that he was not going to take any action, but that if it happened again, he would put Victor in custody. (Exh. 113, CJP 2044:3-4, 15-16) Judge Laettner also testified that when he asked Victor's lawyer why Victor should not be put into custody, he knew that he did not have the statutory authority to put Victor in custody. (RT 1789:10-14) Judge Laettner testified that the statement was a "bluff." (RT 1789:21) Judge Laettner clarified the

[13] At the Hearing, Judge Laettner admitted that this was not an accurate statement about the terms of Victor E.'s probation. (RT 1653:1-9) The judge had only ordered that Erika not "reside there." (Exh. 109, CJP 2027)

order and gave the juvenile and his parents a warning. No action was taken by the court. (Exhs. 113 and 114)

2. Conclusions of Law:

Judge Laettner did not give the appearance of prejudgment when he stated at the outset of the June 4, 2015 hearing, before hearing from Victor, his attorney, or his father: "So Victor is in violation of my court's order by virtue of [Erika's mother's] statements, and so that's why he's been brought in." The judge's statement, based on a communication he received in a different case, framed the concern he had over the situation between Victor and his girlfriend. Judge Laettner considered the comments of counsel, clarified the order and gave the juvenile and his parents a warning. The Special Masters conclude the allegations of Count Six, paragraph (A) are not supported by clear and convincing evidence.

B. Summary of Charge (*In re Victor E* – "cultural thing"):

On October 25, 2016, the Contra Costa County Probation Department sent Victor E. a Notice of Probation Violation Hearing. On December 1 or 8, 2016, Judge Laettner told the attorneys in chambers that what was occurring was a "cultural thing," or words to that effect.

1. Findings of Fact:

On October 26, 2016, (after the events described in Count Six, paragraph A, *ante*) the Contra Costa County Probation Department filed a Notice of Probation Violation Hearing in Victor E.'s case. (Exh. 123) The notice alleged that, as of October 4, 2016, Erika N. had been residing at Victor E.'s residence. (Exh. 123)

Judge Laettner had in chambers conversations with the prosecutor and DPD Kira Klement prior to the hearings on December 1 and 8, 2016. (RT 543:9-13; RT 1656:14-

1657:3) DDA Sarah Barkley was the prosecutor at the December 1 hearing (Exhs. 125-126); DDA Greg Chiarella was the prosecutor at the December 8 hearing (Exhs. 127-128). During the conferences, Judge Laettner was upset that Victor had "flagrantly" violated a term of probation that he had imposed on him. (RT 546:12-14)

Judge Laettner also stated that he did not understand why Victor (who was 16 at the time) had never been prosecuted by the district attorney's office for statutory rape for having sex with his girlfriend, who was about a year younger than him. (RT 546:14-19) During both conversations, Judge Laettner asked the district attorney why the district attorney's office had never filed statutory rape charges against Victor E. (RT 543:20-25; RT 1224:9-12.)

Judge Laettner also stated that he felt that "the fact that the parents were not concerned about their son having underage sex and that he had gotten his girlfriend pregnant and were allowing the girlfriend to stay there with him was *a cultural thing*." (RT 546:20-24, italics added) At the time, Judge Laettner knew that Victor's father's last name was a Spanish surname, and that both families spoke limited English. (RT 1664:1-6) The judge made the comment the same year that he commented that Vanessa W. "was a pretty girl, [and] that he wanted to add some sort of terms to her probation that would help prevent her from sleeping with older Latino men." [14] (RT 1017:21-24; see RT 1192:3-6)

During the chamber's conversations on December 1 and 8, 2016, DPD Klement told Judge Laettner what Victor's father had told her about why he was allowing Erika to

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[14] DPD Della-Piana appeared before Judge Laettner on behalf of Vanessa W. on three dates: April 29, June 3 and 7, 2016. (Exhs. 80, 82, 84, 137, CJP 2258-2259)

stay at his house. (RT 544:13-19) She explained that Victor's father was allowing her to spend the night at his house because Erika's mother had kicked Erika out of her home and Erika had been staying on the streets. (RT 544:24-545:6) DPD Klement also told Judge Laettner that, as a grandfather of the child, Victor E.'s father felt morally bound to let Erika stay at his home, with the child. (RT 546:2-9)

Before the Special Masters, Judge Laettner testified that he never said to Victor E., his father, or DPD Klement that the situation between Victor E. and his girlfriend was a "cultural thing." (RT 1399:9-12) Judge Laettner testified, however, that on December 1 or 8, 2016, he asked, "is this a cultural thing," or something like that. (RT 1665:19-22) The judge admitted that he asked DPD Klement whether "there was some cultural influence or something like that that [he] should know about as to why this family was not following the court orders." [15] (RT 1659:24-1660:2)

According to his response to a preliminary investigation letter, Judge Laettner denied telling DPD Klement that the teenage pregnancy was a "cultural thing." (Exh. 3, CJP 246) However, the judge admitted that he believed that "cultural influences" may have been "at play" in Victor E.'s family: "Given the initial noncompliance by Victor E.'s parents of Judge Laettner's order that Eri[k]a N. could not live with the family, she being 15 and Victor E. being 17, absent legal authority, and that Eri[k]a N. and the baby would

[15] The prosecutors who were present at the December 1 and 8, 2016 hearings do not shed any light on what was said about cultural influences. DDA Sarah Barkley, who appeared at the December 1 hearing, did not recall the judge referring to a "cultural thing" or anything regarding culture; or asking, "is this a cultural thing?"; or making any remarks such as "are there any cultural influences going on here?" (RT 1445:16-24, 1451:14-23) DDA Greg Chiarella, who appeared at the December 8 hearing, could not recall whether there was a reference to a "cultural thing" during any conversation in the case. (RT 1221:1-6) He also did not recall Judge Laettner asking the public defender words to the effect of, "is this a cultural thing?" (RT 1224:5-8)

have to return to Eri[k]a N.'s home, Judge Laettner was of the belief that there were possibly "cultural influences" at play in Victor E.'s family." (Exh. 3, CJP 246) The response implied that those cultural influences contributed to the family's "initial noncompliance" with the judge's order that Erika not live with them. (Exh. 3, CJP 246)

DPD Klement brought up the subject at the January 10, 2017 hearing before Judge Laettner, during her argument that Victor E. should be released from custody pending a disposition hearing. According to the transcript, DPD Klement argued:

> "So as we discussed in chambers, you know, I think even the court noted that Victor, when having [Erika] stay in his house, which I understand is a violation so does Victor, with his parents, that really Victor was trying to keep the mother of his child sober. And that the court also commented that since the court has seen Eri[k]a separately in truancy court that she looked a lot better, she looked great, and it's a lot of the reasoning that went behind his parents also despite the court order letting her stay. [¶] And I don't believe-- *I think the court noted once before that this is a cultural thing.* I think that really this was a safety thing, that Eri[k]a was a runaway prior to staying at Victor's parents' residence, and she was a mess. She was getting in trouble, she was out on the streets, she was hopping around from place to place, and the father felt, you know, in his words to me, guilty, you know, that if he didn't let her stay there and stepdad was kicking her out of their residence, that she would be on the streets and return to drugs, and this is the mother of his grandchild."

(Exh. 129, CJP 2097:19–2098:13, italics added)

2. Conclusions of Law:

The Special Masters find Judge Laettner did use the phrase "cultural thing" in the course of informal conversations with counsel in the *Victor E.* matter. In context this was a poor choice of words on Judge Laettner's part. The Examiner argues that a reasonable person would conclude that the judge's comment reflected bias or prejudice based on race, national origin, or ethnicity, and as such, violated Canon 3B(5). (Examiner's Proposed Findings and Conclusions of Law, p. 105) Respondent argues the Examiner failed to provide clear and convincing evidence that a reasonable person would conclude Judge Laettner's attempt to understand Victor E.'s background reflected any racial bias in violation of Canon 3B(5): "Rather, Judge Laettner's inquiry into Victor E.'s home life is, in fact, evidence that Judge Laettner was trying to gain a better understanding of the individual before him so that he could more fairly deal with the issues presented. Such consideration of an individual's background, including their family culture, is to be commended, not punished." (Respondent's Proposed Findings and Conclusions of Law, p. 122) Respondent has the better argument.

While the phrase "cultural thing" could certainly be interpreted as reflecting an improper racial or ethnic bias or prejudice, in this instance, the Special Masters cannot say there is clear and convincing evidence that Judge Laettner's use of the phrase was intended to convey an improper racial or ethnic animus. We agree that Judge Laettner sought to understand what was going on with Victor E.'s family and wanted more information as to why his orders were not being followed. While his choice of words was unfortunate, we find no violation of Canon 3B(5).

VII. COUNT SEVEN

Summary of Charge (25 percent reduction for guilty pleas):

Judge Laettner told counsel he would offer a 25 percent reduction in days in jail or in other custody alternatives and/or a 25 percent reduction in discretionary fines imposed. His conduct constituted an abuse of authority, had a chilling effect on defendants' constitutional rights to trial by jury, and gave the appearance that Judge Laettner intended to give harsher treatment to defendants who asserted their right to trial and were convicted. Judge Laettner's conduct violated Canons 1, 2, 2A, 3, 3B(2), and 3B(8).

1. Findings of Fact:

It is undisputed that there was a significant backlog of cases on the misdemeanor arraignment calendar when Judge Laettner assumed that new assignment in January 2017. (RT 1914) Due to the trial setting policy of the judicial officer who preceded Judge Laettner, the back log was "untenable." (RT 1947-1948) Judge Laettner was tasked by the then Presiding Judge Jill Fannin to reduce the backlog. According to Judge Fannin, Judge Laettner was "dedicated to improving the calendar." (RT 1914)

In response to the backlog of cases, Judge Laettner reached out to both the Contra Costa Public Defender's Office and the Contra Costa District Attorney's Office to solicit ideas to reduce the backlog. (RT 604) Representatives from both offices met with Judge Laettner, where he proposed "solutions to create . . . incentives or motivations to resolve cases on behalf of the public defender clients." (RT 605:17-21)

There were two programs designed to reduce the number of cases pending in the misdemeanor calendar court. One was euphemistically called the "fire sale" and the other program was an "early resolution program." (RT 605:25; 607:8-12; 670:21-24)

The "early resolution program" involved a unilateral reduction in fines and fees that are normally associated with a conviction as well as a reduction in the standard jail sentence of a case. (RT 607) To incentivize the early resolution of cases, Judge Laettner proposed a reduction in fees and/or fines in the amount of 25 percent. However, he indicated during the meeting that he wanted to conduct some "research" on the extent to which fines or fees could be reduced. (RT 608) According to Judge Laettner, he modeled the early resolution program on the "Humboldt County Program." (RT 1471)

With respect to the "fire sale program," Judge Laettner tasked Patrick Cannon, the assistant public defender (APD) supervising misdemeanors and his counterpart in the District Attorney's Office, DDA Ryan Wagner, with identifying cases that had been pending for more than six months for inclusion in the "fire sale" program. (RT 610:7-17)

The "fire sale" program involved a two-step process. First, APD Cannon and DDA Wagner identified cases that they believed were suitable for preferential disposition. They would then confer about the case and then conference with Judge Laettner. (RT 623-624) If there was agreement as to a resolution, the defendant would then enter a plea. The clients would enter pleas only after conferring with counsel regarding the consequences of a plea and filling out a waiver of rights form that included an advisement of the *Boykin Tahl* rights.[16] (RT 625-628) The Examiner does not contend that Judge Laettner's involvement in the "fire sale" program violated the Canons of Judicial Ethics.

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[16] The plea forms contained advisements of the defendant's Constitutional rights and inquiries to ensure that the plea was voluntary. (Exh 560; see *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.)

The early resolution plan was implemented with the concurrence of both Presiding Judge Fannin and the supervising criminal judge, Judge Canepa. (RT 1914:13-18) Neither the Public Defender's Office or the Contra Costa District Attorney's Office objected to either of the case disposition programs. (RT1472) According to DDA Wagner, a career deputy district attorney, they typically tried to "reward a defendant for early admission of guilt at an early stage in the process" and considered this a factor in mitigation. (RT 1938:2-5; 1938:9-20) This position is consistent with California Rules of Court, rule 4.423(b)(3), which permits the court to consider the fact that "[t]he defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process" as a factor in mitigation.

No evidence was presented at the hearing that indicated any defendant who refused to resolve his or her case as part of either the "fire sale" or "early resolution program" received an enhanced punishment as a result of exercising their right to a jury trial or that any participants in the program were coerced to enter pleas that they would not have otherwise entered. According to DPD Macias, Judge Laettner would ensure that defendants were advised of their constitutional rights and that their pleas were knowing and voluntary. (RT 833)

Judge Laettner participated in either individually evaluating each case at its inception or after both APD Cannon and DDA Wagner brought the case to his attention as a suitable case for resolution and after they had negotiated a disposition. (RT 1473:12-17; 1950) According to DPD Macias, the early resolution offers were based upon Judge Laettner's individualized determination of an appropriate offer. (RT 869) It was only after Judge Laettner made an individual assessment of a case and determined

an appropriate offer as to the amount of custodial time that he then reduced the offer by 25 percent to acknowledge the early resolution of the case as a factor in mitigation. (RT 868-869) There is no evidence to establish that Judge Laettner abdicated his responsibility to protect the statutory and constitutional rights of defendants appearing in his department, including the right to a jury trial. Nor did he abrogate his obligation to consider the circumstances of the individual defendant's case or to exercise discretion as to the merits of a defendant's case. (Cf. *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 375.)

2. Conclusions of Law:

The Special Masters find that the allegations of Count Seven were not proven by clear and convincing evidence.

VIII. COUNT EIGHT

Summary of Charge (disclosure of son as DDA):

Judge Laettner's son, Max Laettner, has been a deputy district attorney with the Contra Costa County District Attorney's Office. In some cases handled by the district attorney's office Judge Laettner failed to recuse himself or timely disclose on the record his son's employment with the district attorney's office:

Judge Laettner's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3E.

1. Findings of Fact:

Judge Laettner's son, Max Laettner, has been employed by the Contra Costa County District Attorney's office since August 18, 2014. He was a post-bar law clerk there beginning on August 18, 2014. He has been a deputy district attorney in Contra Costa County since June 29, 2015. (RT 1477:13-17) The only other time Max Laettner

worked for the Contra Costa County District Attorney's office was when he was a second-year law clerk there from late May 2013 until August 2, 2013. (Exh. 138; RT 211:13–212:2) Judge Laettner understood that he was required to disclose his son's employment as an attorney in the district attorney's office. (RT 1477:13-17)

Judge Laettner established a two-step procedure to address the disclosure requirement: "I would announce at the beginning of court . . . I called it the admonition. . . . And I would give an oral admonition. And . . . I had my clerks stamp the minute orders. They were instructed to stamp the minute orders on every case, which was a notice that my son was a deputy district attorney in Contra Costa County." (RT 1480:13-19) According to Judge Laettner, he makes the oral disclosure every day at the commencement of the calendar, before any cases are called. (RT 1481:23-25; 1482:5-10) Judge Laettner testified that he was supposed to do an oral disclosure in the afternoon but was not sure he did it every time. (RT 1672:5-8)

The court clerk stamped each case's minute order with a notice to the effect that the judge's son was a deputy district attorney in the county. The stamp states: "NOTICE IS HEREBY GIVEN THAT JUDGE LAETTNER HAS A SON WHO IS A DEPUTY DISTRICT ATTORNEY WITH THE CONTRA COSTA COUNTY DISTRICT ATTORNEY'S OFFICE." (See, e.g., Exh. 121, CJP 2061) The courtroom bailiff would double check to be sure the minute orders had been stamped before distributing them to the parties. (RT 1482:25-1483:5) In preparation for the Hearing, Judge Laettner reviewed hundreds of minute orders from matters he handled in the juvenile division assignment and confirmed that the minute orders were stamped with the written disclosure. (RT 1484:6-16)

The notice of formal proceedings alleges three juvenile cases in which Judge Laettner failed to make on-the-record disclosures: (a) *In re Vanessa W.*, (b) *In re Lauryn G.*, and (c) *In re Victor E.*

(a) In *In re Vanessa W.*, Judge Laettner presided over the first hearing in the case, which took place on April 1, 2014. (Exh. 69, CJP 1556) The first hearing while Max Laettner worked for the district attorney's office (as a post-bar clerk) took place on October 7, 2014. (See Exh. 137, CJP 2260) According to the October 7, 2014 minutes, Judge Laettner directed a representative of the school district to meet with Vanessa, her mother, and her uncle that day after court, and set the next truancy review hearing to take place on November 18, 2014. (Exh. 71, CJP 1563) The hearing was not reported, and nothing in the minutes of that hearing, or any other hearing prior to 2016, indicates that the judge made any disclosure about his son. (See Exhs. 69-72) There was evidence that Judge Barry Baskin, as the "ethics advisor," had advised Judge Laettner that he was not required to make a disclosure about his son's *clerkship*. (RT 1478-1479:14) The reporter's transcript of the first reported hearing in the case, which took place on April 8, 2016, does not reflect that Judge Laettner made any disclosure on the record that day. (Exh. 77, CJP 1583:6–1589:20) However, a minute order of the hearing contains the stamped disclosure. (Exh. 590, RT 1523:23-1524:3) Another minute order, dated April 29, 2016, also contains the stamped disclosure. (RT 1523:11-15; Exh. 589)

(b) In *In re Lauryn G.* Judge Laettner also made no on-the-record disclosure about his son when he first heard this matter on August 23, 2016. (Exh. 45; Exh. 136, CJP 2243-2244) On that day, Lauryn failed to appear, and Judge Laettner issued a

bench warrant. (Exh. 45, CJP 1121:9-11, 19) Judge Laettner also made no disclosure on the record on August 24, September 15, and September 29, 2016, when Lauryn appeared with counsel. (Exhs. 47, 134, 135) On August 24, 2016, Judge Laettner recalled the warrant, denied a motion to remand Lauryn, and set a probation violation hearing to take place on September 15, 2016. (Exh. 47, CJP 1132:5, 1134:6–1135:24) The judge presided over a contested probation violation hearing on September 15, 2016, and a disposition hearing on September 29, 2016. (Exhs. 134-135) Max Laettner had previously appeared in the case on June 28, 2016 (before Judge Maddock), for a pretrial conference on a probation violation. (Exh. 39, CJP 1100)

(c) In *In re Victor E.*, beginning on February 18, 2015, Judge Laettner presided over many hearings in case No. J15-00011. (Exh. 95, CJP 1929-1936) None of the transcripts reflect that Judge Laettner made any disclosure on the record of his son's employment with the district attorney's office. (See Exhs. 96, 100, 103, 107, 109, 113, 125, 127, 129) The earliest minute order that contains a stamped disclosure message is from the March 17, 2016 hearing. (Exh. 121, CJP 2061) The minute order for the March 18, 2016 probation hearing also contains the stamped disclosure. (Exh. 121, 123) Victor E. was in custody and was not even transported to the March 17 hearing. (Exh. 121, CJP 2060)

In juvenile cases, however, Judge Laettner only made disclosure to the attorneys, and he did so only at the beginning of the calendar. (RT 1672:9-16) It is not clear that all of the attorneys would be present at that point. None of the juveniles or their families would be present when the judge made disclosure, as the cases came in "one at a time after" the judge purportedly made the oral disclosure. (RT 1672:9-16)

2. Conclusions of Law:

Canons 1, 2 and 2A mandate that a member of the judiciary uphold the integrity and independence of the judiciary and avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 3E(2)(a) provides that in "all trial court proceedings, a judge shall disclose on the record . . . information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." Section 170.1, subdivision (a)(6)(A) provides that a judge shall be disqualified if, for any reason, a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." As the Examiner points out in his proposed findings of fact and conclusions of law (April 24, 2019), several California Judges Association (CJA) Ethics Committee opinions specifically address the situation here: a judge whose adult child works or interns for the district attorney's office. (See CJA, Judicial Ethics Update (Jan. 2017), p. 2; CJA, supra, (Jun. 2007), p. 1; CJA Opinion 51 (Sept. 2001), p. 2.) The Special Masters recognize that the requirements surrounding disclosure and disqualification are problematic for many judicial officers.

As Judge Laettner admitted in his Answer to the Notice of Formal Proceedings, while going through discovery, he learned that, on one occasion, he presided over a matter where his son had previously appeared on an uncontested motion to continue pursuant to Penal Code section 1050, in the *In re Lauryn G.* matter. In reviewing the file, Judge Laettner missed that his son had indeed made an appearance in the case. Under this circumstance, Judge Laettner acknowledges he would have recused himself. (Answer to Notice of Formal Proceedings, p. 52) The Special Masters have no doubt Judge Laettner would have done so.

The Special Masters find Judge Laettner was diligent in his efforts to make the disclosure that his son was employed as a district attorney in Contra Costa County. He devised a series of checks and balances that would reasonably ensure he properly made his disclosures, including making a routine oral disclosure, which was backed up by a written disclosure in the form of a stamp on the minute order, which was backed up by the bailiff double-checking that each minute order he or she distributed carried the stamped disclosure. There was no evidence that Judge Laettner was careless or indifferent about his duty to disclose.

We acknowledge that Judge Laettner handled some of the busiest court calendars with significant numbers of cases. And, in juvenile matters, we agree that group "disclosures" are impractical due to the sequential nature of the minors' appearances in a courtroom that is not open to the public. (Welf. & Inst. Code, § 676.) Nevertheless, we find Judge Laettner omitted necessary on-the-record disclosures in several instances. Minute orders issued after a hearing, which bear the disclosure stamp, do not remedy the lack of an oral disclosure before a proceeding commences. It is at the outset of a hearing that the parties and attorneys must have the relevant disclosure, in order to decide whether to seek a disqualification before the matter is heard by the judge.

The Special Masters conclude Judge Laettner failed to recuse himself in the *In re Lauryn G.* matter and failed to timely disclose his son's employment with the district attorney's office in several instances in the *Vanessa W.* and *Victor E.* juvenile matters, as described above. However, under all of the circumstances, and weighing the court's significant caseload coupled with Judge Laettner's diligent and consistent efforts to

comply with the disclosure requirements, we cannot find by clear and convincing evidence that these failures even approached improper action in violation of Canons 1, 2, 2A and 3E(1) and 3E(2), let alone constituted prejudicial misconduct or willful misconduct as the Examiner urges.

IX. COUNT NINE

Count Nine – Summary of Charge (Blanket 170.6):

In early 2008, in response to peremptory challenges that deputy public defenders exercised against him, Judge Laettner made ex parte comments that would reasonably be perceived as sexual harassment or sexual discrimination and, at a minimum, gave the appearance that Judge Laettner was attempting to influence the attorneys not to exercise the challenges.

A. Summary of Charge (Explanation of sentence to Eiland):

In approximately 2008, DPD Nicole Eiland tried a sexual battery case before Judge Laettner. Later, after DPD Eiland began exercising peremptory challenges against Judge Laettner, pursuant to Code of Civil Procedure section 170.6, Judge Laettner asked her to approach the bench alone. He told DPD Eiland that he assumed she was challenging Judge Laettner because of his sentence. He told DPD Eiland that he wanted her to know what his thought process was when he was determining the sentence, and Judge Laettner explained that he had imagined that it could have been DPD Eiland or DPD Sarah MonPere who had been sexually assaulted.

B. Summary of Charge (Conversation with Osborn & Cuthbertson):

In early 2008, DPDs Matthew Cuthbertson and Brooks Osborne started exercising peremptory challenges against Judge Laettner, pursuant to Code of Civil

Procedure, section 170.6. Judge Laettner told DPDs Cuthbertson and Osborne that, although he would never tell them not to represent their clients to the best of their abilities and that the attorneys should challenge the judge if they thought that it was in their clients' best interests, the challenges hurt his feelings and did not feel good. Judge Laettner asked DPDs Osborne and Cuthbertson whether it would have upset them if the defendant in that case had touched or grabbed DPD Sarah MonPere's breasts.

1. Findings of Fact - paragraphs A and B:

***People v. Hector Ignacio*:**

Count Nine, paragraphs A and B, arise from the outcome of the trial and sentencing in *People v. Hector Ignacio*. In that case, Mr. Ignacio was charged with a violation of Penal Code section 243.4, sexual battery. Mr. Ignacio was represented at trial by DPD Nicole Eiland. (RT 30:22-24;1285:17-19)

According to Judge Laettner, *People v. Hector Ignacio* involved a woman who was scratching lotto tickets in front of a convenience store, when she was approached by two men. One man stroked the woman's cheek, and the other, Mr. Ignacio, fondled her breast twice. (RT 1286:7-17)

At trial, the jury acquitted Mr. Ignacio of the sexual battery charge, but convicted him of the lesser included crime of simple battery. (RT 31:8-10;1287:2-22) Judge Laettner then sentenced Mr. Ignacio to be incarcerated for 60 days in county jail, and probation for three years. (RT 31:14-22;1287:14-19) The maximum penalty for a violation of Penal Code section 242, simple battery, is six months in county jail. (Pen. Code, § 243, subd. (a).)

Paragraph A – Explanation of Sentence to Eiland:

DPD Eiland considered Judge Laettner's sentence in the *People v. Ignacio* matter to be unduly harsh for a first-time offender. (RT 32:5-13) In response, DPD Eiland began filing 170.6 challenges against Judge Laettner (see fn. 6, *ante*): "out of concern that he would sentence clients that had been acquitted of more serious charges as if they had been found guilty of that, basically disregarding the jury's finding." (RT 32:14-21) In Contra Costa County, public defenders had the individual discretion to file a 170.6 challenge, without obtaining a supervisor's approval. (RT 30:10-15)

According the DPD Eiland, three or four weeks after she began filing 170.6 challenges as to Judge Laettner, he called her up to the bench and indicated that he had noticed there had been challenges filed against him and that he "couldn't help but think it had something to do with the last case that we had together." (RT 33:16-20) He indicated that he was referring to the case where he had imposed a 60-day sentence. (RT 34:2–5) DPD Eiland testified:

> "He told me that he wanted me to think about, you know, what if this person that had suffered this harm, in this case it was a woman who had had her breast grabbed at a convenience store. And he told me what if this had been you or what if this had been Ms. MonPere?"

(RT 34:11–18)

DPD Eiland testified that Judge Laettner never explicitly said do not file challenges against him, but that "I felt like I was being called into the principal's office and told to not do this anymore." (RT 35:11-21)

Judge Laettner testified, at some point in time after the sentencing in *People v. Ignacio*, he became aware that DPD Eiland was filing 170.6 challenges against him. (RT 1288:21-1289:4; 1710.10-12) Judge Laettner denies discussing with DPD Eiland the 170.6 challenges she had been filing. (RT 1289:5-8) Judge Laettner admitted that he did have a conversation with DPD Eiland concerning whether his sentence in the *Ignacio* case was unduly harsh or not. (RT 1287:23-1288:1) According to Judge Laettner, he called her up to the bench:

> "Because I could see, you know—I could tell by how she was interacting with me that she was still very upset with me, even though it had been some time. You know, it was like—it was amazing that she was still upset. And I—and so all I did was call—call her up and tell her that you need to consider the victims. And you know, that's—that was the sum and substance of it. I didn't say—I didn't talk to her about the sentence. I didn't say anything about the sentence in the *Ignacio* case. . . ."

(RT 1289:14-23)

During his bench conversation with DPD Eiland, Judge Laettner denies making reference to DPD MonPere or grabbing her breasts, as being too graphic. He testified that he might have said, what if it had been a family member or friend that had been a victim in a case? (RT 1290:2-8) He told her this because he "wanted her to have empathy for the victim—the victims of crime." (RT 1290:9-17)

Judge Laettner testified that he had the conversation with DPD Eiland about the sentence in the *Ignacio* case (but not about her 170.6 challenges), "basically to *defend myself*." (RT 1291:1-2) (Italics added.) He was questioned and testified:

Q. And why did you think you needed to instruct her on this issue that she needed to consider victims?

A. Because she had a hostile demeanor to me as she's one—she's a person that wears her emotions on her sleeves. It was obvious it had become uncomfortable in my court. *And in fairness to me*, since I was considering the victim who had been essentially molested by two men, that she should consider victims.

(RT 1708:15-22) (Italics added.)

The Special Masters found DPD Eiland's testimony credible. Judge Laettner partially corroborates DPD Eiland's testimony, admitting that he asked her, what if the assault in the *Ignacio* case had involved a friend or family member, this in the context of a case involving an allegation that the defendant had grabbed the victim's breast. DPD Eiland's testimony was further corroborated by the testimony of DPD Brooks Osborne and DPD Matthew Cuthbertson, to the extent that they testified Judge Laettner made similar comments to them. (See Findings of Fact, Count Nine, paragraph B, *post*)

The Special Masters also find that Judge Laettner indirectly referenced DPD Eiland's filing of 170.6 challenges against him. DPD Eiland testified that when Judge Laettner called her to the bench, he said that he noticed that challenges had been filed against him and he couldn't help thinking it had something to do with his sentence in the last case they had had together. Judge Laettner admits calling DPD Eiland to the bench after he became aware she was filing 170.6 challenges and spoke to her about considering the victims of crimes, "since I was considering the victim who had been essentially molested by two men," the fact situation in the *Ignacio* case. The Special

Masters find that although Judge Laettner may not have explicitly said not to file challenges against him, DPD Eiland's testimony that "I felt like I was being called into the principal's office and told to not do this anymore," was credible and a reasonable interpretation of the nature of the bench conversation.

Paragraph B – Conversation with Osborne and Cuthbertson:

After the trial and 60-day sentence in the *People v. Ignacio* sexual battery matter, DPD Brooks Osborne began filing 170.6 challenges against Judge Laettner. DPD Osborne probably filed dozens of challenges because he was concerned his clients would not be sentenced fairly by Judge Laettner. (RT 152:18-153:8)

DPD Matthew Cuthbertson also began filing 170.6 challenges against Judge Laettner following the 60-day sentence in *People v. Ignacio*. (RT 298:2-8) According to DPD Cuthbertson, after Mr. Ignacio was acquitted of the more serious charge of sexual battery, "it was sort of shocking that he received such a significant sentence." (RT 298:9-18) Consequently, DPD Cuthbertson began challenging Judge Laettner because he thought it best for his clients that Judge Laettner not be allowed to sentence them. (RT 298:19-22)

Judge William Kolin was the supervising judge of the Walnut Creek courthouse. (RT 94:6-8) According to DPD Cuthbertson, at some point, after they began filing 170.6 challenges as to Judge Laettner, DPD Osborne had a conversation with Judge Kolin. According to DPD Cuthbertson, the 170.6 challenges against Judge Laettner jammed up the three-judge Walnut Creek courthouse, which led to the conversation with Judge Kolin. (RT 328:16-329:4) The outcome of the conversation was that he and DPD Osborne agreed to pretry cases with Judge Laettner, because Judge Kolin made

assurances he would review any pretrial offers made by Judge Laettner. (RT 329:10-330:11)

According to DPD Osborne, a month or so after the sentence in the *Ignacio* case, he, DPD Cuthbertson, and a prosecutor were pretrying cases in front of Judge Laettner. DPD Osborne testified that Judge Laettner asked the prosecutor to leave, and then:

> "So Judge Laettner said that, you know, *he wasn't trying to tell us to—to not challenge him on cases*, but he could tell that we were upset with him. And so he—I started telling him about why I was—why I was challenging him on those cases. [¶] And I told him that the sentence for Ms. Eiland's client was grossly unfair and disproportionate to the crime that he was convicted of. And—you know, and after that, Judge Laettner said, well, you know, *what if it had been Ms. MonPere's breast that this man had—had grabbed?*"
>
> (RT 155:3-13.) (Italics added.)

DPD Osborne testified that at no point during the conversation did Judge Laettner say, do not file any more challenges against him. DPD Osborne got the sense that Judge Laettner was trying to smooth things over with the public defenders. (RT 155:14-25)

According the DPD Cuthbertson, at some time after the conversation with Judge Kolin, he and DPD Osborne were in Judge Laettner's chambers pretrying cases. Judge Laettner asked the district attorney to leave, and then brought up their 170.6 challenges, saying: "I would never tell you not to represent your clients to the best of your ability. But I would be lying if I told you that being challenged didn't hurt my feelings or didn't hurt." (RT 302:3-7) DPD Cuthbertson further testified:

"I think the basic accusation of—in Ms. Eiland's trial was that her client had grabbed someone's breasts and he referenced Ms. MonPere's breasts in talking about that case saying, *what if that was Ms. MonPere's breasts that he grabbed*?

The Examiner then asked: "How is it that you remember Judge Laettner's statement about grabbing MonPere's breast after all these years?"

DPD Cuthbertson replied:

"I guess for a couple of reasons. One, it was—it sort of stuck out. I thought it was inappropriate. And she's my friend, so I remember that. [¶] And then second, it was sort of like the *power dynamics in the room* were such that I felt what was happening wasn't right. And so I sort of remember a lot about that day, where I was sitting, who was there."

(RT 303:13-304:2) (Italics added.)

Judge Laettner testified that he did have an in-chambers discussion with DPD Osborne and DPD Cuthbertson relating to the *People v. Ignacio* matter. (RT 1292:3-11) He denies telling the district attorney who had also been in his chambers to leave. (RT 1292:15-17) Judge Laettner testified that he asked DPD Osborne and DPD Cuthbertson to talk to him because: "They were less friendly, and I could tell that something was bothering them." (RT 1292:24-25) He denies being aware at the beginning of the conversation that DPD Osborne and DPD Cuthbertson had been filing 170.6 challenges against him. (RT 1291:16-1292:2;1293:4-9) Judge Laettner testified that be began the conversation saying, "so what's going on you guys." (RT 1292:19-20) He was then asked: "Okay. When you asked them what is going on, when you made

that statement, were you aware that they had been challenging you pursuant to CCP 170.6?" Judge Laettner testified: "I was not. I was not. I was shocked because these were--*these were kind of my guys*. I thought we were okay." (RT 1293:4-9) (Italics added.)

According to Judge Laettner, DPD Osborne told him that they had been challenging him because of his sentence in the *Ignacio* case, at which point he said that he could not discuss challenges with them, and that they should challenge a judge if they thought it was in their client's best interest. (RT 1293:10-1294:3) Then, according to Judge Laettner:

> "Well, Mr. Osborne said that he felt that the sentence was unfair. And that's—they kind of went back to that. That's why we're challenging you. And—and then I said something similar which is, well, you know, you have to consider victims. You know, that—you know, what if it had been a family member or friend or Ms. Eiland or Ms. MonPere that had been the victim? I said something like that. Somebody that they knew, you know, to bring it home that, you know, this was—this is serious stuff. You know, it's not appropriate.

(RT 1294:5-14)

Judge David Flinn, a former judge of the Contra Costa Superior Court, testified that when he was on the bench, he and seven or eight judges, including Judge Laettner, would have lunch together. (RT 2199:17-23) Judge Flinn related that at one time when Judge Laettner was receiving 170.6 challenges from public defenders for a week or two, Judge Laettner spoke to him, for advice about his experience with such challenges. (RT 2200:18-2201:25) The advice Judge Flinn gave was: "And that I felt, and I told him

I felt, that by reaching out and being friendly to the public defenders that they would stop." (RT 2203:13-16) Judge Flinn related that Judge Laettner "was frustrated and understood that he couldn't stop them in the hall and say, why are you doing this? Or, you know, explain himself and say, you know, look the reason I ruled as I did is such and such." (RT 2203:23-2204:2)

The Special Masters, based upon their demeanor while testifying and the surrounding circumstances, found the testimony of DPD Osborne and DPD Cuthbertson credible, that Judge Laettner engaged them in a discussion about their filing of 170.6 challenges and that they should consider if it had been DPD MonPere's breast that had been grabbed.

Judge Laettner's testimony that he was unaware that DPD Osborne and DPD Cuthbertson had been filing 170.6 challenges against him, until his in-chambers conversation with them, is not credible. The supervising judge of the three-judge Walnut Creek courthouse, Judge Kolin, had a conversation with DPD Osborne, apparently to resolve the log-jam created by the challenges. Judge Laettner admits that he was aware of the challenges being filed by DPD Eiland. (RT 1288:21-1289:4; 1710:10-12) It is not credible to suggest that in a three-judge courthouse, where two judges are having to do the work of three, and the supervising judge takes it upon himself to intercede with the public defenders, that Judge Laettner was unaware that he was being blanket challenged.

Further, DPD Cuthbertson's testimony that Judge Laettner said, "I would be lying if I told you that being challenged didn't hurt my feelings or didn't hurt," is consistent with the frustration Judge Laettner expressed to Judge Flinn, concerning his inability to

tell the public defenders not to file challenges, because of the "power dynamics in the room," as felt by DPD Cuthbertson, and DPD Eiland's feeling that she "was being called into the principal's office and told to not do this anymore," the act of explaining his sentencing decision, in the context of a blanket challenge, was for a purpose other than the discharge of his judicial duties, that is, willful misconduct. (*Broadman*, *supra*, 18 Cal.4th at p. 1092.)

As to Count Nine, the Special Masters find that Judge Laettner violated Canons 1, 2, 2A, 3B(2), 3B(4) and 3B(7), and that his conduct constituted willful misconduct.

ADDITIONAL FACTORS

A. Factors in Mitigation:

1. It is noteworthy that Judge Mary Ann O'Malley and Judge Thomas Maddock (ret.) testified in support of Judge Laettner. By their service on the Judicial Council of California, Judge Maddock's service on the Commission on Judicial Performance, and Judge O'Malley's dedication to judicial education, as a member of the governing board for the Center for Judicial Education and Research (CJER), both judges have demonstrated their dedication to the integrity of the judicial system in California. Presumably, their comments regarding Judge Laettner's character as a judge were made in light of their commitment to Canon 1, to "participate in establishing, maintaining, and enforcing high standards of conduct." Judge O'Malley and Judge Maddock testified that Judge Laettner is and was an asset to the Contra Costa County Superior Court, is a hard worker, a great judge, responsible, and conscientious. (RT 2333-2334; 2362-2363) Judge Jill Fannin, a past presiding judge of Contra Costa County similarly testified that Judge Laettner was a hard worker, diligent and an asset to

the court. (RT 1913-1914) Other attorneys who have appeared before Judge Laettner also attested to his work ethic and diligence.

2. Judge Laettner does not have a prior disciplinary history with the Commission on Judicial Performance. Further, there is no evidence that any of the conduct that is the subject of this Commission inquiry, which covers nearly a 10-year span of time, was brought to the attention of Judge Laettner's presiding or supervising judges (with the exception of the conversation with Presiding Judge Barry Goode, regarding his "women can drive you crazy" comment, addressed *ante*) prior to the commencement of this inquiry. Judge O'Malley, Judge Maddock and Judge Fannin have all served as presiding judges of the Contra Costa County Superior Court during Judge Laettner's tenure on the bench. All three judges testified that they received no complaints regarding Judge Laettner's conduct on the bench. (RT 1913; 2332; 2364-2365) Judge Maddock testified he received no complaints concerning Judge Laettner's impartiality, patience, dignity, courtesy or respect

3. Attorney Thomas Wolfrum testified at the Hearing. Mr. Wolfrum has practiced law in excess of 50 years. His practice is "99.99 percent" in family law, and he is a member or fellow of the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers. (RT 2433-2434) He estimates he has appeared before 60 family law judges, having handled cases in a variety of jurisdictions in California. (RT 2435-2436) He has appeared before Judge Laettner 10 to 15 times since Judge Laettner transferred to the family law panel in April 2018. (RT 2438-2439) According to Mr. Wolfrum, Judge Laettner has shown no embroilment, impartiality or

bias, and he is courteous and dignified. Mr. Wolfrum puts Judge Laettner in the top 10 percent of judges before whom he's appeared. (RT 2439; 2442-2443)

B. Factors in Aggravation:

1. The Special Masters found Judge Laettner not credible or not truthful as it relates to his testimony concerning several of the events making up this inquiry. His lack of candor regarding several of the allegations is troubling. On the other hand, Judge Laettner admitted to or conceded many of the allegations regarding his conduct, in his Answer to the Notice of Formal Proceedings and in his testimony during the Hearing. Indeed, he admitted to the substance of several unrecorded one-on-one conversations he had, particularly with DPD Della-Piana, admissions that were significant factors in determining the truth of some allegations.

2. In his Answer, Judge Laettner argued that "only as a result of the circumstances" of a "campaign against Judge Laettner" by the Contra Costa County Public Defender, does he "find[] himself facing disciplinary action." Although Judge Thomas Maddock (ret.) testified that he had a long conversation with Judge Laettner about the Commission charges, and he expressed the belief that Judge Laettner "understands it now" (RT 2374:10-18), Judge Laettner continued to point the finger at a public defender campaign all the way through his counsel's closing argument. As noted in the Summary of Findings and Conclusions, the Special Masters have made their findings based upon the evidence presented in the Hearing.

3. Two person's employment circumstances changed as a byproduct of Judge Laettner's conduct. After the June 8, 2017, in-chambers meeting (Count Two, paragraph E), DPD Della-Piana did not appear in front of Judge Laettner again and was

transferred to a different courthouse in the county. (RT 1203:11-1204:10) After 11 years of reporting for Judge Laettner, court reporter Jennifer Michel stopped working with him because she "couldn't take the years of unwelcome and inappropriate comments towards [her]self and others." (RT 639:15-16)

4. Judge Laettner has been on the bench for over 10 years. Presumably during that time he received ethics and conduct training, in the form of CJER's New Judge Orientation, and qualifying ethics courses, elective and mandatory, every three years. His misconduct occurred in this context.

CONCLUSION

The Special Masters assessed the substance of the testimony of the 60 witnesses, and their credibility, weighed the testimony and admissions of Judge Laettner, at the Hearing and in the records presented, reviewed the 332 exhibits admitted into evidence, considered court reporter's transcripts and other contemporaneous records made at or near the time of the events at issue. We conclude that Judge Laettner committed willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution.

Respectfully submitted: Dated: June 14, 2019

/s/

Hon. M. Kathleen Butz
Presiding Special Master

/s/

Hon. Russell L. Hom
Special Master

/s/

Hon. Douglas Hatchimonji
Special Master

Appendix D

Appellate Courts Case Information

Supreme Court

Change court

Court data last updated: 11/05/2020 09:45 AM

Disposition

LAETTNER v. COMMISSION ON JUDICIAL PERFORMANCE
Division SF
Case Number S260482

Only the following dispositions are displayed below: Orders Denying Petitions, Orders Granting Rehearing and Opinions. Go to the Docket Entries screen for information regarding orders granting review.

Case Citation:
none

Date	Description
06/10/2020	Petition for review denied

Click here to request automatic e-mail notifications about this case.

Appendix E

Declaration of Scott Reed

1.) I, Scott Reed, do hereby swear under penalty of perjury that the foregoing to be true:
2.) That I was the courtroom bailiff for the Honorable John T. Laettner for the time period July 2014 through January 2018;
3.) I have read the report from the special masters and it helped me remember what happened as to some of the incidents that are alleged, though I understood I was going to be recalled as a witness and was not questioned on most of these;
4.) As to the setting of bail after remand in the matter of Stephanie Imlay on 5/18/17; Judge Laettner entered the courtroom;
5.) Ms. Della-Piana was talking with the clerks in the well;
6.) It is often customary in our courts in these arraignment departments for defense counsel to come to the well during breaks to talk with the clerks;
7.) The Judge came out and was standing by his chair;
8.) He then exonerated Ms. Imlay's bail, and set bail at $25,000 in each case;
9.) Ms. Della-Piana was there and voiced no objection to the bail that was set;
10.) There was a senior DA, either Mr. Fernandez or Mr. DeFerrari, who was within a few feet of me and he also voiced no objection to the bail being set;
11.) Bail was set in open court and in the presence of all of the parties;
12.) Judge Laettner made clear to the parties what he was doing;
13.) Ms. Imlay had not been taken to jail yet as we needed bail set before we could take her; she was still highly emotional and under the influence of narcotics;
14.) There was no further discussion regarding bail;
15.) I do not know if the court reporter was in the court room or not, as Judge Laettner made his ruling on Imlay when Ms. Della-Piana was in the well and Judge Laettner was standing up, it felt informal, and I do not know if Jennifer Michel captured it on the transcript or not;
16.) As to the minute orders, Ms. Della-Piana was known for not getting her minute orders;
17.) As to the matter of Lauryn G., I also remember that case;
18.) Ms. Della-Piana wanted the case to proceed on a time not waived basis;
19.) I did not see any preferential or flirty behavior on the part of Judge Laettner; though as I testified, Ms. Della-Piana was often flirtatious and coy with the judge;
20.) That Ms. Della-Piana wanted the case to proceed on a time not waived basis and then tried to get the case heard on particular days that were not convenient for the court;
21.) One day was past the ten day period, and one day was stated by the court to conflict with his schedule;
22.) We did the criminal juvenile cases (602's) on certain days, and the dependency cases (300 cases) on other days;
23.) We did not set 602 matters on 300 days because the DA's are scheduled to be in other courts and because we had full 300 calendars;

24.) Judge Laettner's normal clerk was Lisa Humiston, who was intelligent but messy and disorganized;

25.)Judge Laettner was usually very amenable to setting dates, but on this occasion, he was firm, and that is one of the reasons that I remember it, I remember thinking, "Oh my goodness";
26.)I understood the situation to be "if you want to proceed on a time not waived basis, then it will be when it's convenient for the court's calendar, if you don't, then we'll pick a time when it will be convenient for all parties." Ms. Delapeanna wanted to proceed time not waived;
27.)The public defender's interchange on their cases all of the time and it appeared customary and normal;
28.)With regard to the allegation of the ex parte communication with Jun Fernandez, our courtroom deputy district attorney, I remember the following:
29.)Judge Laettner was attempting to get the Arbuckle problem scheduled before Judge Mills;
30.)He told the parties this in open court;
31.)Judge Laettner was proprietary about his courtroom deputy district attorney and didn't want him to leave his court as we had further arraignments and bail hearings to do;
32.)He wanted to make sure that Jun Fernandez stayed in his courtroom;
33.)I don't know if Ms. Della-Pianna was there or not;
34.)Oftentimes attorneys would leave the courtroom and we couldn't proceed and they wouldn't tell me where they were going;

35.)As to the issue of the Judge's discussion with Emi Young, this occurred sometime before we changed assignments in 2018 and before his son's upcoming wedding, in 2018, which he often talked about;
36.)Judge Laettner was in the courtroom by his door;
37.)He asked Ms. Young if he could ask her a personal question regarding her heritage;
38.)She thought about it for a second and then said, "go ahead";
39.)It was the case that not many people were in the courtroom;
40.)He definitely did not say, "What kind of Asian are you?"
41.)Ms. Young's response, that she was "half Japanese and half-European" was an unusual response, and that is one of the reasons that I remember this discussion;

42.)As to Jennifer Michel, I testified that "she was unprofessional" when I testified at the hearing before the special masters;
43.)Some of what I am referring to are her "making faces" when she didn't agree with what the judge was saying and she would also " roll her eyes";
44.)The judge was unable to see these faces, but I could, and it was undermining the judge;
45.)I had no problem with what the judge was saying, with most of this occurring when he would talk with juveniles;
46.)It is my opinion, that Jennifer Michel is a negative person, was nosy and a gossip;
47.)It is true that sometimes we would have to hunt Jennifer down or call her in from her separated office;
48.)Sometimes Jennifer Michel would be typing and she would ask if we were on the record;
49.)As to the allegation about "fat people and tattoos", I was not at that hearing, but this would definitely be out of character for the judge; and I have never heard him comment on any person being overweight;

50.)As I testified at the hearing, Judge Laettner was very professional;

51.)I never saw Judge Laettner remand someone without letting the attorneys know;

52.)As to Nicole Herron, and her likeness to a BBC comedy actress, I remember the judge saying something about this approximately three times, but she did not seem uncomfortable about it and didn't appear to have much to say about it;

53.) As to Judge Laettner's hearing, I recall that he had considerable more difficulty hearing before he got his hearing aids in 2016, when he turned 60; he often commented in open court that he was deaf in his left hear;

54.)Although he attempted to make sure that he heard things correctly, Judge Laettner often would clarify what he thought he heard or ask the person to repeat the statement; on occasion, he would miss things that he didn't know were said;

55.)Judge Laettner did not appear to have a bias against anybody, for or against, and I did not see any favoritism towards "tall,skinny, blondes, etc.," and I disputed this to Jennifer Michel when she made that allegation to me.

Executed at Martinez, California on June 28th, 2019.

Scott Reed, Deputy Sheriff, Contra Costa County

DECLARATION OF William M. Kolin,

Judge (ret.)

I, William M. Kolin, do hereby declare under penalty of perjury, the following:

I am a retired California Superior Court Judge, having served in Contra Costa County. I retired in 2014 after serving twenty years on the bench, entirely in Contra Costa County. During my tenure on the bench my assignments included Civil, Juvenile and Criminal.

At one point on the bench I was asked to be the Supervising Judge for the Walnut Creek Court. Three judges were assigned to that Court, including myself. I do not recall the specific dates that I served in that Court but I believe that I was the Supervising Judge of that Court from 2005 until the Walnut Creek Courthouse was closed.

Different Judges were assigned by the Presiding Judge to the Walnut Creek Court while I was Supervising Judge. Each Judge usually stayed in that Court for two years. I recall that one of the Judges I supervised was Judge John T. Laettner. I believe Judge Laettner was assigned to the Walnut Creek Court in the years 2007 and 2008. In my opinion, Judge Laettner was one of the best judges that I supervised in Walnut Creek.

I do recall that Judge Laettner was experiencing some issues with several Public Defenders that appeared in his department, primarily as to procedural issues. I met informally with those Public Defenders in an attempt to resolve the issues. I agreed to talk to Judge Laettner about the concerns expressed by the Public Defenders. I believed at that time that the problems expressed by the Public Defenders had been resolved.

I recall that Judge Laettner was challenged periodically by the Public Defender's office on various cases. I do not recall how many times he was challenged pursuant to CCP 170.6 by the Public Defender's Office. I do not recall Judge Laettner being "blanket" challenged under CCP 170.6 on all public defender cases. I believe I would have recalled such a situation. However, I do recall the Public Defender's Office challenged me on all cases handled by their office for a period of several months. I do not recall the time frame of those challenges against me.

My recollection of my time as Supervising Judge in Walnut Creek was that CCP 170.6 challenges to a specific Judge were either made in writing and filed with the court before the date of the hearing, or personally by an attorney before that judge in writing or orally under oath. If a timely challenge under CCP 170.6 was made to a specific judge, the case would be reassigned to a different judge.

I do not recall ever receiving any complaints concerning any inappropriate comments made by Judge Laettner to attorneys appearing in his department. If there had been any such complaints as to him, I would have discussed it with him, as well as with the Presiding Judge of the Court.

Executed at Walnut Creek, California, on June 30, 2019.

William M. Kolin

William M. Kolin, Judge (ret.)

I, Deputy Sheriff Lisa Berry, declare that:

1. I am a Deputy Sheriff at the Contra Costa County Sheriff's Department. I have personal knowledge of the information set forth herein below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge.
2. I worked as a bailiff in Judge Laettner's department during his assignment to the Walnut Creek Courthouse from approximately mid-2007 to mid-2008. 7 months of this time I was out on maternity leave, returning 6 weeks after the birth of my son, who was born towards the end of February 2008.
3. While performing my duties as a bailiff for Judge Laettner, I do not recall observing any inappropriate behavior or comments from Judge Laettner to any attorney or party appearing before him.
4. During this period of time, Court Reporter Jennifer Michel (at the time, Jennifer Lent) was the assigned Court Reporter in Judge Laettner's department.
5. I do not recall observing Judge Laettner having any inappropriate interaction with Ms. Michel or any other member of the court staff.
6. Contra Costa County Public Defenders handled many of the matters heard by Judge Laettner. He treated the public defenders and their clients with respect.
7. I am familiar with the challenge of a judge pursuant to Code of Civil Procedure, Section 170.6. I do not recall, while assigned to Judge Laettner's department, the public defenders or any other office or attorney, challenge Judge Laettner on *every* matter to which he was assigned.
8. I enjoyed my time working with Judge Laettner and believe that the rest of courthouse staff in Walnut Creek enjoyed their time working with Judge Laettner.

I, Mr. Jun Fernandez, declare that:

1. I am a Deputy District Attorney at the Contra Costa County District Attorney's Office. I have personal knowledge of the information set forth herein below, unless noted as based on information and belief, all of which is true and correct of my own personal knowledge, and if called upon to testify, I could and would competently testify thereto.

2. In regards to the May 25, 2017 incident from which the claim of ex parte communication arose, when Judge Laettner asked me to speak to him in chambers, he did not ask me specifically, "What do you want to do on these matters?" He made the general question in referring to the Imlay matters, "How did these cases get here without an Arbuckle waiver? What to do?" Then Judge Laettner said that he was sending the cases out to a different department.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on this 10th day of July 2019, in San Francisco, California.

DATED: July 10, 2019

By _____
Deputy District Attorney Jun Fernandez

Appendix F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in pertinent part: "Congress shall make no law...abridging the freedom of speech..."

The Fifth Amendment provides in pertinent part: "No person shall be...deprived of life, liberty and property without due process of law..."

The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation."

The Fourteenth Amendment provides in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 118(b) of the California Commission on Judicial Performance provides: "The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based..."

Rule 123 (b). (Consideration of failure to answer, appear, or respond to questions) (b) "The failure of the judge to answer the charges or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for censure, removal, retirement, or public or private admonishment. In accordance with California Evidence Code Section 413, in reviewing the evidence and facts in the case against

the judge, the commission and the masters may consider the judge's failure to explain or deny evidence or facts in the case..."

Rule 126. Procedural Rights of Judge in Formal Proceedings

(a) (Enumeration of rights, subpoenas)

When formal proceedings have been instituted, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses...

Rule 128. Amendments to Notice or Answer; Dismissals

The masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, which occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his or her defense against the matters charged thereby.

Rule 133: Hearing Additional Evidence

(a) The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing.

(b) In any case in which masters have been appointed, the hearing of additional

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN T. LAETTNER, Petitioner,

v.

CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, Peter R. Silten, a member of the Bar of this Court, hereby certify that my business address 2255 Contra Costa Blvd, Suite 305, Pleasant Hill, CA 94523, in the County of Contra Costa and the City of Pleasant Hill, California, Telephone (925) 939-5300; that on November 6, 2020 I served pursuant to Supreme Court Rule 29, one true copy of the PETITION FOR A WRIT OF CERTIORARI in the above-entitled matter on the following parties by placing same in an envelope addresses as follow:

Mark A. Lizzaraga, Esq.	
Trial Counsel	
Commission on Judicial Performances	
Mark.lizarraga@cjp.gov	
455 Golden Gate Avenue	
Suite 14400	
San Francisco, CA 94102	

Each envelope was then sealed and deposited in the United States mail at Walnut Creek, California with first class postage thereon fully prepaid. All persons required to be served have been served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on January **November 7, 2020**, at Atherton, CA.

/s/ Peter R. Silten

PETER R. SILTEN
Counsel of Record