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

[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. May 25, 2017

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 impartiality 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

[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-

[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.

[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.

[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