

**FILED**  
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**COMMISSION ON**  
**JUDICIAL PERFORMANCE**

**STATE OF CALIFORNIA**  
**BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**

**INQUIRY CONCERNING  
FORMER JUDGE  
STEVEN C. BAILEY,**

**No. 202**

**DECISION AND ORDER IMPOSING  
PUBLIC CENSURE AND BAR**

**I.**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

This disciplinary matter concerns Judge Steven C. Bailey, a former judge of the El Dorado County Superior Court. Judge Bailey was elected to the bench in 2008, and retired on August 31, 2017.

The commission commenced this inquiry with the filing of its Notice of Formal Proceedings (Notice) on February 20, 2018. The Notice, as amended on May 7, 2018, charged Judge Bailey with: (1) improperly allowing a business to use his testimonial on its website, without assuring that it did not use his judicial title; (2) failing to disclose that his son worked on commission for CHI Monitoring, LLC (CHI) and made reports to the court, when, in five cases, the judge ordered criminal defendants to use CHI services; (3) ordering a defendant to pay restitution to CHI in violation of the law, based on a letter from his son; (4) failing to disclose that the owner of CHI, Charles Holland, was his friend and former client, and attended strategy meetings for the judge's judicial campaign; (5) appointing Attorney Bradley Clark as a special master in a matter pending before the judge, without disclosing that Clark was a personal friend; (6) improperly receiving gifts from Court Appointed Special Advocates (CASA), Attorney Clark, and Lincoln Law School; (7) failing to report and inaccurately reporting travel-related payments or reimbursements the judge received in connection with judicial education programs he attended; (8) commenting in the courthouse to a member of court staff and two judges that he knew his

shirt was nice because he bought it from a “gay guy” in Paris, and “gays only have nice clothes ... gays really know how to dress”; (9) between August 2016 and August 2017, while a sitting judge, using his judicial title and lending the prestige of judicial office to raise funds for and promote his campaign, potential campaign, or exploratory committee to run as a candidate for California Attorney General, and engaging in political and campaign activity that is inconsistent with the independence, integrity, and impartiality of the judiciary; (10) failing to file a Candidate Intention Statement to run for Attorney General until after his campaign had received at least \$17,749 in campaign contributions, in violation of the Political Reform Act; (11) while a sitting judge, authorizing or permitting his Southern California Campaign Coordinator, Martha Romero, to use his judicial title and the prestige of his judicial office to promote his candidacy by creating a “Judge Steven Bailey” Facebook page, with frequent references to his judicial title; and (12) while a sitting judge, allowing Romero to use her law firm’s Facebook page to promote the judge’s candidacy, with reference to his judicial title.

The Supreme Court appointed three special masters who held an evidentiary hearing and reported to the commission. The masters are Hon. Kenneth R. Yegan, Associate Justice of the Court of Appeal, Second Appellate District, Division Six; Hon. Louis R. Hanoian, Judge of the San Diego County Superior Court; and Hon. William D. Lehman, Judge of the Imperial County Superior Court. Judge Bailey 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 Mark A. Lizarraga, Esq., and Sei Shimoguchi, Esq.

A six-day evidentiary hearing was held before the special masters commencing September 4, 2018. The masters’ report to the commission, containing their findings of fact and conclusions of law, was filed on November 15, 2018. Oral argument before the commission was heard on January 30, 2019.

The masters found that Judge Bailey engaged in misconduct as to each of the charges in the Notice, with the exception of count three (appointing Attorney Clark as a special master). The masters also found, in aggravation, that Judge Bailey received a

strong advisory letter in 2013 for delaying 15 cases. The masters found no circumstances in mitigation.

The facts are largely undisputed. There is considerable disagreement between the parties, however, on the legal conclusions reached by the masters. As to many of the charges, Judge Bailey contends that his actions did not amount to misconduct or that he engaged in a lower level of misconduct than found by the masters. The examiner objects to the masters' conclusion that the judge did not engage in misconduct in appointing his friend as a special master without, at minimum, disclosing the relationship. As to a number of counts, the examiner objects to the masters' conclusion that the judge engaged in the lowest level of misconduct, improper action, rather than prejudicial conduct.

We adopt the factual findings of the masters, and, at times, include additional facts supported by clear and convincing evidence. For reasons we explain, we adopt the masters' legal conclusions in some instances, and reach our own independent legal conclusions in other instances. We respectfully disagree with the masters' determination that Judge Bailey did not engage in misconduct in appointing his friend as a special master without disclosure or disqualification. We conclude that Judge Bailey engaged in prejudicial conduct in seven of the counts charged in the Notice, which includes a course of prejudicial conduct over a period of a year while conducting an actual or exploratory campaign for nonjudicial office, and that he engaged in improper action in eight instances.

As the masters noted, Judge Bailey has his own views on appropriate conduct for a judge, and his views are misinformed and erroneous. Based on the breadth and nature of Judge Bailey's misconduct over the entire course of his judicial career, his prior discipline, and his failure to appreciate the impropriety of much of his misconduct, we conclude there is a strong likelihood that Judge Bailey would engage in subsequent misconduct if he were to serve in a judicial capacity in the future. In order to protect the public and maintain public confidence in the integrity and impartiality of the judiciary, the commission has determined to censure and bar former Judge Steven C. Bailey from seeking or holding judicial office, or accepting a position or an assignment as a judicial officer, subordinate judicial officer or judge pro tem with any court in the State of

California, or accepting reference of work from any California state court, at any time in the future. (Cal. Const., art. VI, § 18(d).)

## II.

### LEGAL STANDARDS

The examiner has the burden of proving the charges by clear and convincing evidence. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1090 (*Broadman*)). “Evidence of a charge is clear and convincing so long as there is a ‘high probability’ that the charge is true. [Citations.]” (*Ibid.*) Factual findings of the masters are entitled to special weight because the masters have “the advantage of observing the demeanor of the witnesses.” (*Ibid*; *Inquiry Concerning Freedman* (2007) 49 Cal.4th CJP Supp. 223, 232.) Legal conclusions of the masters are entitled to less deference because the commission has expertise with respect to the law of judicial misconduct. (See, e.g., *Broadman, supra*, 18 Cal.4th at p. 1090; *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 880 (*Adams*); *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 878 (*Fletcher*).)

A violation of the California Code of Judicial Ethics constitutes one of three levels of judicial misconduct: willful misconduct, prejudicial misconduct, or improper action. (Cal. Const., art. VI, § 18, subd. (d).) Willful misconduct is (1) unjudicial conduct that is (2) committed in bad faith (3) by a judge acting in his judicial capacity. The second most serious level of misconduct is prejudicial conduct, “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” (Cal. Const., art. VI, § 18, subd. (d).) Prejudicial conduct is either conduct that occurs in good faith but which nevertheless would appear to an objective observer to be “ ‘prejudicial to public esteem for the judicial office’ [citation],” or willful misconduct out of office. (*Broadman, supra*, 18 Cal.4th at p. 1092.) The least serious level of misconduct, improper action, occurs when the judge’s conduct violates the canons, but the circumstances do not rise to the level of prejudicial misconduct and do not bring the judiciary into disrepute. (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1,

82; *Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 89, citing *Adams, supra*, 10 Cal.4th at pp. 897-899.)

### III.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

##### A. Count One

In April 2016, Judge Bailey retained the Redd Group to survey voters about a local attorney's judicial campaign. After the election, Judge Bailey called David Cooper, an employee of the Redd Group, to compliment him on the survey results. Cooper asked the judge if he could use the judge's comments as a testimonial for the Redd Group. Judge Bailey agreed. He did not ask Cooper how the comments would be used or where they would be published. Cooper testified that he told the judge that the testimonial would be published on the Redd Group's website; the judge testified he did not remember receiving this information. Judge Bailey did not authorize Cooper to use his judicial title, but did not tell him to avoid using the title. The judge was not compensated for the testimonial.

The testimonial, published on two separate pages of the Redd Group website, stated:

I was helping a fellow attorney run for county judge. Our mail went out ahead of schedule and The Redd Group accommodated for our poll to be done accordingly with many more respondents than were promised. We got the detailed results in less than 24 hours. I recommend the Redd Group for all your polling needs. Excellent work!

– Steven C. Bailey

One page of the website included a link to the judge's personal website, which identified him as a judge. Headings on the Redd Group website identified Steven Bailey as a superior court judge. The website also featured a photograph of Judge Bailey in his judicial robe. The judge did not provide the photograph or authorize its use. Cooper did not inform the judge that his photograph would be used.

The masters concluded that the judge engaged in improper action by allowing his name to be used on the website, without reviewing the final text of the testimonial or instructing the Redd Group to avoid using his judicial title and photograph in judicial robes. The masters concluded that the judge violated canons 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and 2B(2) (judges are prohibited from using the prestige of judicial office or judicial title to advance the personal or pecuniary interests of the judges or others). We reach the same legal conclusions.

Neither party objects to these factual findings or legal conclusions.

## **B. Count Two A**

### **1. Findings of Fact**

In five cases, between October 2009 and April 2014,<sup>1</sup> Judge Bailey released a defendant charged with an alcohol-related crime on the defendant's own recognizance, on the condition that the defendant participate in the Secure Continuous Remote Alcohol Monitoring (SCRAM) program. SCRAM monitors alcohol consumption through a bracelet device provided to defendants. At the time the orders were made, CHI was the only local provider of alcohol monitoring services.

Judge Bailey's son, John Bailey, was employed by CHI as a case manager and worked on commission. He received a percentage of the payments CHI received from every SCRAM participant he monitored. John Bailey installed the SCRAM device, monitored for violations, wrote reports for the court, and set up payments. In each of the five cases, John Bailey or another CHI employee sent correspondences directly to Judge Bailey concerning the defendants' participation in SCRAM.

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<sup>1</sup> The five cases and the dates of the orders are (1) *People v. Angelica Godinez*, April 16, 2014; (2) *People v. Julian Butler*, March 10, 2014; (3) *People v. Shawn Price*, February 19, 2014; (4) *People v. Jason Jacobsen*, October 30, 2009; and (5) *People v. Camille DeSpain*, October 23, 2009.

The judge did not disclose that his son was employed by CHI and might correspond with the court concerning defendants' participation in, and compliance with, the program.

In April 2009, Judge Bailey sought an ethics opinion from the California Judges Association (CJA) hotline, because he was confused about his responsibilities when referring defendants to the company where his son was employed. CJA gave Judge Bailey an informal opinion, based on the facts provided by the judge.

CJA's informal opinion stated:

**Inquiry:**

Newly appointed J's adult son is a commissioned salesperson with a company that provides monitoring ankle bracelets for J's county jail. The defendants utilizing this company's services all reside out of county. Son's company comes in contact with defendants when they are referred by the county probation department. Company assesses whether or not defendant meets the financial criteria to obtain the monitoring bracelet and if so, provides the bracelet and performs the monitoring function. Son occasionally comes in personal contact with a defendant. Neither J nor son has an ownership interest in Company. J asks whether there is anything about this arrangement that requires J to disqualify, disclose, or take any other action.

**Informal Response:**

No. However, J should disclose if son were to testify in J's court on an issue of violation of the terms and conditions of use of the bracelet by a defendant.<sup>2</sup>

The masters found the CJA opinion assumed that CHI comes into contact with the defendants when they are "referred by the county probation department." Further, the masters found that the judge did not inform CJA that his son corresponded directly with

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<sup>2</sup> Sometime after Judge Bailey received the informal opinion, the CJA ethics committee modified its opinion to state that Judge Bailey should disqualify himself if his son were to testify. The evidence does not establish whether Judge Bailey was made aware of this modification.

him concerning the defendants' enrollment and compliance in the program. We concur with these findings, which are supported by clear and convincing evidence.

Judge Bailey contacted the CJA hotline and spoke with Judge Robert Glusman. Judge Glusman testified that when he would receive a call from a judge, it was his practice to take notes and relay the facts back to the judge two or three times to make sure they were accurate. He further testified that Judge Bailey did not tell him that his son would provide written monitoring reports to the judge.

Judge Bailey asserts that he did not inform CJA that his son corresponded directly with him because, at the time he sought the opinion, he had not yet referred a defendant to SCRAM, and did not know he would be doing so. This is inconsistent with the judge's testimony and statement in his opening brief that he asked for an ethics opinion because he "was confused as to what his responsibilities were *when he made referrals to SCRAM . . .*" (Italics added.) Further, the issue is whether the judge was justified in relying on the CJA informal opinion at the time the five cases were before him. By that time, he knew his son was reporting directly to him. He could have asked for another opinion once it became apparent that he would be making the referrals and his son would be reporting directly to him.

Judge Bailey objects to the masters' finding that, in each of the five cases, he personally ordered the defendant to participate in SCRAM monitoring, because there was no objection from the defendant or the district attorney in any of the cases. The evidence established through minute orders and transcripts admitted into evidence that the judge made a SCRAM order in each case. The fact that no one objected does not change the fact that the judge made the order.

## **2. Conclusions of Law**

The masters concluded that the judge's conduct violated canon 3E(2), which requires a judge to disclose on the record all information relevant to disqualification. The masters further concluded that the judge engaged in improper action, rather than prejudicial conduct, because the failure to disclose was consistent with the advice he received from the ethics hotline. The examiner contends that the conduct constitutes



prejudicial conduct because the judge provided CJA with inaccurate and incomplete facts. Judge Bailey contends that he did not engage in any misconduct because he followed the advice he was given.

We conclude that the judge engaged in prejudicial conduct. Judge Bailey failed to provide CJA with important facts relevant to the question of whether he was required to disclose that his son worked at CHI – that he, rather than the probation department, would be making the referrals, and that his son would be reporting directly to him concerning monitoring and compliance. While judges should be encouraged to seek ethics opinions when uncertain about their ethical obligations, when doing so, the judge must provide complete and accurate facts relevant to the ethical question presented.

A judge has a duty to disclose on the record information that is reasonably relevant to disqualification, even if the judge believes there is no actual basis for recusal. (Canon 3E(2).) A judge is required to recuse when a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).)

We conclude that the fact that the judge's son worked on commission for CHI and reported directly to Judge Bailey concerning compliance with SCRAM was information reasonably relevant to disqualification and, thus, required disclosure before Judge Bailey ordered a defendant to participate in the program. Indeed, the CJA informal opinion specifically advised Judge Bailey that disclosure would be necessary if his son were providing testimony to the court. For these purposes, there is no meaningful distinction between written reports and testimony. They are merely different vehicles designed to provide relevant information to the court.

Further, we conclude that an objective person would find the judge's conduct in failing to disclose this information to be prejudicial to the public esteem for the judiciary. The fact that the judge relied on an ethics opinion that did not include pertinent facts would not, in our view, change the public's negative perception of the conduct. As such, we conclude that the judge violated canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2, 2A (a judge shall respect and comply with the law and

act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 3E(2), and engaged in prejudicial conduct.

**C. Count Two B**

Judge Bailey is charged in count two B with ordering a defendant to pay restitution to CHI in violation of the law, based on a letter from his son who worked for CHI, in violation of canons 1, 2, 2A, 2B(1) (a judge shall not allow family relationships to influence the judge’s judicial conduct or convey or permit others to convey the impression that any individual is in a special position to influence the judge), and 3B(2) (a judge shall be faithful to the law and maintain professional competence in the law). The masters did not address this count. We reach our own factual findings and legal conclusions based on our independent review of the record.<sup>3</sup>

**1. Findings of Fact**

The following undisputed facts are established by clear and convincing evidence.

On November 25, 2009, in the matter of *People v. Jacobsen*, a letter signed by John Bailey, Judge Bailey’s son, on CHI letterhead and addressed to Judge Bailey was faxed to the court. The letter indicated that the defendant had completed the SCRAM program, but still owed \$140 and had agreed to a payment plan, with payments to be completed on December 11, 2009.

On December 10, 2009, John Bailey faxed a letter to his father seeking restitution of \$140 from Jacobson, and stating that Jacobsen had verbally agreed to a payment plan but has since decided not to honor it.

Neither letter indicated that it was copied to the parties.

On December 18, 2009, Jacobsen appeared before Judge Bailey with counsel for further proceedings on a violation of probation. Judge Bailey ordered Jacobsen to pay “victim restitution” to CHI in the amount of \$140.

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<sup>3</sup> Our determination of the appropriate level of discipline would be the same without our findings of misconduct on counts two B and two C.

## **2. Conclusions of Law**

Direct victims of crime are entitled to restitution. (Cal. Const., art. I, § 28, subds. (b)(13) & (e).) CHI was not the victim of Jacobsen's crime, and thus was not entitled to restitution.

Judge Bailey asserts that he made an error in word choice, and that he was appropriately requiring the defendant to take responsibility for all aspects of his life, including paying his debts. The judge has not, however, cited any authority authorizing a court to order restitution or payment of a debt to a program that provided court-ordered services to a defendant.

Judge Bailey maintains that, at most, he committed legal error, not misconduct.

The judge's unauthorized order constituted more than legal error. Judge Bailey ordered victim restitution to CHI, a business that was clearly not a victim of the defendant's crime, based on a letter from his son who worked on commission for CHI. This created the appearance of favoritism, bias, and lack of impartiality.

We conclude that the judge violated canons 1, 2, 2A, 2B(1), and 3B(2). In our view, an objective person would find the judge's conduct in making an unauthorized restitution order to a company where his son was employed, based on a letter from his son, to be prejudicial to public esteem for the judiciary. As such, we conclude that the judge engaged in prejudicial conduct.

### **D. Count Two C**

Judge Bailey is charged in count two C with failing to disclose his relationship with Charles Holland, the owner of CHI, when ordering defendants in the five cases identified in count two A to participate in SCRAM, in violation of canons 1, 2, 2A, 2B(1) and 3E(2). The masters did not address this count. We reach our own factual findings and legal conclusions based on our independent review of the record, and undisputed facts.

#### **1. Findings of Fact**

The record establishes the following facts by clear and convincing evidence.

Charles Holland is the owner of CHI and employed the judge's son John Bailey during the period of the five cases identified in count two A. In those cases, the judge

ordered defendants to participate in SCRAM (two orders were made in 2009 and three orders were made in 2014). At the time, CHI was the only local provider of SCRAM.

Holland has known Judge Bailey for approximately 20 years. Over 11 years ago, before the judge took the bench in 2009, Holland retained the judge's services as an attorney. As a defense attorney, the judge referred clients to Holland, who at the time was a bail bondsman. Two of the judge's referrals to CHI occurred during the judge's first year on the bench.

Holland considers the judge to be his friend. Judge Bailey describes his relationship with Holland as "more of a relationship professionally and within the community," than a social relationship.

Holland has been to the judge's house on at least two occasions, once for a campaign kickoff event and once to pick up a gun safe. He attended two strategy meetings for Judge Bailey's judicial campaign in 2008. Holland had lunch with the judge and Clark after the judge took the bench. Judge Bailey is Holland's Facebook "friend," one of hundreds of Holland's Facebook "friends."

## **2. Conclusions of Law**

A judge has a duty to disclose on the record information that is reasonably relevant to disqualification, even if the judge believes there is no actual basis for recusal. (Canon 3E(2).) Here, the applicable disqualification standard is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).)

For purposes of our analysis, we accept Judge Bailey's characterization of his relationship with Holland as being more professional than social. That relationship, however, went further than being members of the same professional organization or having contacts at professional events. Prior to taking the bench, Judge Bailey had represented Holland, and Holland had referred clients to him. Further, Holland had been to the judge's home, had attended strategy meetings for the judge's judicial campaign, and included the judge as one of his Facebook friends. Even if each of these facts taken alone did not require disqualification, we conclude that the totality of these circumstances

was reasonably relevant to disqualification and required disclosure.<sup>4</sup> As such, we conclude that the judge violated canon 3E(2) by failing to disclose his prior contacts and relationship with Holland when he ordered defendants to participate in a CHI program.

In the commission’s view, the conduct does not create an appearance of impropriety or diminish public respect for the judiciary in violation of canons 1, 2, and 2A, or convey the impression that any individual is in a special position to influence the judge in violation of canon 2B(1). We view the judge’s failure to disclose his relationship with Holland differently than his failure to disclose that his son worked for CHI. The public is more likely to question a judge’s integrity and impartiality when the judge fails to disclose a relationship with an immediate family member. Further, Holland was not monitoring SCRAM program participants or reporting to the court. As such, we conclude that the disclosure violation constitutes improper action.

## **E. Count Three**

### **1. Findings of Fact**

On June 28, 2011, in *Dorcich v. Tahoe Keys Property*, No. SC20090034, Judge Bailey appointed Attorney Bradley Clark as a special master, at the rate of \$350 per hour in a matter concerning shared pier and access easements for the beneficial use of five lots located in the Tahoe Keys development in South Lake Tahoe. Judge Bailey had previously modified a preliminary injunction that had been in place for several months. Clark was appointed “to investigate violations of this order, review, approve and submit to the Court for approval all tentatively approved applications for docks, piers, and floating structures.” Clark was not on a court-approved list of special masters, and was appointed without input from counsel.

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<sup>4</sup> In this regard, we note that Holland was not a party or an attorney in these matters. (See Code Civ. Proc., § 170.1, subd. (a)(2)(B)(i) [Disqualification is required if *a party* in the proceeding was a former client of the judge within the past two years]; *Public Admonishment of Judge Jeff Ferguson* (2017) [a judge has a duty to disclose being Facebook “friends” with attorneys who have cases pending and who appear regularly before the judge].)

At the time of the appointment, Clark and the judge were friends and socialized together, many times with their spouses. The judge had stayed overnight at Clark's house on at least one occasion. Clark had given the judge gifts of tickets to charity events. Judge Bailey officiated at Clark's wedding. One of the judge's nephews was an associate attorney at Clark's law firm. Clark contributed to and consulted on the judge's campaign for judicial office. Judge Bailey did not disclose his personal relationship with Clark when he appointed him as a special master.

None of the parties in the litigation objected to Clark's appointment. At the time, Clark had a general civil practice in El Dorado County, and was also a real estate broker. The case settled shortly after Clark was appointed. He did not participate in the settlement discussions. On August 9, 2011, the judge approved Clark's fee of \$1,715, to be paid by the defendant. Clark received payment of his fee.

## **2. Conclusions of Law**

The masters concluded that the examiner did not prove that the appointment constitutes misconduct, because the judge had authority to appoint a special master and Clark was qualified. The masters were not convinced that the appointment of Clark was based on friendship, rather than competence. Based on this finding, to which we defer, we agree with the masters that Judge Bailey did not violate canon 2B(1), which prohibits a judge from allowing personal relationships to influence the judge's conduct. We respectfully disagree, however, with the masters' conclusion that the judge did not have a duty to, at minimum, disclose the nature of the relationship before making the appointment.

As previously noted, a judge has a duty to disclose on the record information that is reasonably relevant to disqualification, and disqualification is required when a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc., § 170.1, subd. (a)(6)(A)(iii).) Clear and convincing evidence establishes that the judge and Clark were friends who socialized together, at times with their spouses; the judge received gifts from Clark; the judge's nephew was employed by Clark; and the judge officiated over Clark's wedding. We concluded that, at minimum, these facts required disclosure on the record before Judge Bailey appointed

Clark as special master. Knowing these facts, a party might have thought the judge would be more inclined to approve Clark's findings and recommendations because of their friendship.

In finding no misconduct, the masters relied on the absence of an objection to the appointment from the parties and the fact El Dorado County is a "small legal community," and that most of its members, "are likely to have known about the social relationship between the judge and Clark." The examiner contends that these factors are not relevant to the issue of disclosure. We agree.

In determining the need to disclose, the same standard applies regardless of the size of the community. In *Inquiry Concerning Wasilenko* (2005) 49 Cal.4th CJP Supp. 26, 46, the commission stated:

By their terms, the canons impose uniform statewide standards. Whenever an assigned case involves a party the judge "knows," the judge must be particularly vigilant to ensure the appearance and reality of independence and impartiality. The situation may arise more frequently in a small town than a major metropolitan area, but the judge's ethical duties are the same irrespective of population statistics.

The risk of applying a different disclosure standard in a small community based on the assumption that the parties and the attorneys know the judge's relationships "is that there may be someone involved in the proceeding who, in fact, does not know about the relationships." (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7:75, p. 500.) Moreover, the purpose of disclosure is not only to inform the attorneys and parties of information that may be relevant to disqualification but to uphold the integrity and impartiality of the judiciary. (See *Id.* § 7:73, p. 495.)

The fact that there was no objection from the attorneys in the *Dorcich* case did not relieve the judge of his obligation to disclose. There is no evidence that the attorneys and parties were aware of the extent of the judge's relationship with Clark at the time the judge made the appointment.

Thus, we conclude that the judge's failure to, at minimum, disclose his relationship with Clark constitutes a violation of canons 2, 2A, and 3E(2). In view of the masters finding that the appointment was not made on the basis of friendship, we conclude that the judge engaged in improper action, rather than prejudicial conduct.

## **F. Count Four**

### **1. Findings of Fact**

Between 2009 and 2012, Judge Bailey reported on his Fair Political Practices Commission (FPPC) Statement of Economic Interests (Form 700) that he received gifts from CASA, Bradley Clark, and Lincoln Law School.

#### CASA Gifts

The gifts from CASA were: (1) tickets to the September 2009 CASAblanca event, valued at \$35; (2) tickets to the December 2009 Snowball fundraising event valued at \$50; and (3) in January 2011, tickets to another CASA fundraising event valued at \$200.

Judge Bailey worked closely with CASA in his capacity as presiding juvenile court judge. CASA volunteers routinely appear on behalf of children in adversary proceedings before juvenile court judges. There is no evidence that the judge ever acted in a judicial capacity to favor the organization.

#### Gifts from Bradley Clark

Clark gave Judge Bailey the following gifts: (1) in January 2010, \$50 tickets to a fundraiser for MORE (Mother Lode Rehabilitation Enterprises, Inc.); (2) in September 2010, \$150 ticket to a CASA fundraiser; (3) in January 2011, \$50 tickets to MORE charity event; (4) in September 2011, a round of golf at Clark's country club, valued at \$42; and (5) in January 2012, \$50 ticket to another MORE event. The judge attended these events as Clark's guest. Both Clark and the judge had long supported the charities at issue.

At the time, Clark and the judge were friends.



### Gift from Lincoln Law School

In March 2011, Judge Bailey accepted tickets to the Barristers Ball at his alma mater, Lincoln Law School. He was an honored guest because he is an alumnus and a local judge.

## **2. Conclusions of Law**

Judges are precluded from accepting gifts from anyone, except under limited circumstances, which we have determined are not applicable here. (Canon 4D(6).) Even when the gift falls within one of the specified exceptions, the judge may not accept the gift if it could create an appearance of impropriety. (Canons 2, 2A.)<sup>5</sup>

### Gifts from CASA

The masters concluded that Judge Bailey violated canons 1, 2, 2A, and 4D(6),<sup>6</sup> and engaged in prejudicial misconduct in accepting gifts from CASA. The masters reasoned that because CASA volunteers are frequent participants in juvenile court proceedings, Judge Bailey's acceptance of gifts from the organization could cause an objective observer to doubt his impartiality in matters concerning those volunteers. We agree and reach the same legal conclusions.

Judge Bailey maintains that his acceptance of tickets to the 2009 Snowball Event was proper because he was invited to that CASA event by his brother-in-law, Supervisor Ron Briggs, the event speaker. As such, he contends the gift fell within the exception for gifts from a relative whose appearance or interest in a case would require the judge's disqualification (former canon 4D(6)(f)).<sup>7</sup> The judge, however, identified the gift to have

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<sup>5</sup> Canon 4D(6) was amended, effective 2013, to state that the exceptions to the gift prohibition apply only if acceptance of the gift "would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties."

<sup>6</sup> The masters also concluded that the judge violated canon 4D(5), which prohibits judges from accepting gifts from a "party" whose interests have come or are reasonably likely to come before the judge. While CASA has an interest in matters that come before Judge Bailey, CASA is not a party. Therefore, we do not find a violation of canon 4D(5).

come from CASA on his Form 700, without any reference to Briggs. Further, even if the ticket came from Briggs, the judge's acceptance of the gift was improper because Briggs was a CASA director.

The judge contends that his acceptance of the other CASA tickets was proper because there is no evidence that he acted in a judicial capacity in favor of CASA. The gift was improper under canon 4D(6), regardless of whether there was favorable judicial action in return for the gift.

Moreover, accepting gifts, even nominal gifts, from entities with interests that are reasonably likely to come before the court creates an appearance of impropriety and lack of impartiality in violation of canons 1, 2, and 2A.<sup>8</sup> CASA volunteers frequently appear in court and advocate for children. They may be called to testify and they may take a position contrary to the position or interests of parties in the proceedings, such as the parents. The CJA Ethics Committee has issued ethics opinions stating that a judge who sits in a juvenile court may not accept a gift of attendance at a CASA fundraiser event. (CJA, 2011/2012 Jud. Ethics Update, p. 5 [juvenile court judge may not accept an invitation to attend CASA fundraiser as guest of CASA]; CJA, 2003/2004 Jud. Ethics Update, p. 5 [commissioner in dependency court may attend CASA fundraiser but may not accept luncheon as gift from CASA].)

Judge Bailey argues that, given the laudable service CASA provides, acceptance of the gifts did not prejudice public esteem for the judiciary and does not constitute prejudicial conduct. He contends that judges should be involved in organizations that

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<sup>7</sup> Former canon 4D(6)(f) was in effect at the time this gift was accepted. A similar exception is now in canon 4D(6)(a), which provides an exception for gifts from “a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person.”

<sup>8</sup> In 2018, canon 4D(6) was amended to include subsection (i), which provides an exception to the gift prohibition for nominal gifts “provided the gift is not from a lawyer, law firm, or other person likely to appear before the court on which the judge serves.” The commentary states a judge should carefully weigh acceptance of any nominal gift to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office.

support at-risk children. The issue here is not the judge's involvement in a program for at-risk youth, but his acceptance of free attendance to CASA events as gifts.

We agree with the masters that acceptance of three gifts, even nominal gifts, from an organization that frequently appears in court proceedings before the judge could cause an objective observer to doubt the judge's impartiality in matters involving those volunteers.

*Gifts from Bradley Clark*

The masters concluded that acceptance of the gifts from Clark constitutes improper action. We agree, and also conclude that the judge violated canons 1, 2, 2A, and 4D(6).

Judge Bailey contends that he did not commit misconduct because the gifts from Bradley fell within the exception under former canon 4D(6)(f) for gifts from close personal friends whose appearance before the court would require the judge's disqualification. We disagree. Clark testified that he considers the judge a friend, but not a close friend. Moreover, Judge Bailey's position is inconsistent with the position he took concerning count three, in which he maintained that he was not disqualified from appointing Clark to be a special master in *Dorcich*.

Further, gift exceptions are not absolute; a judge may not accept a gift if to do so would create an appearance of impropriety (canons 2, 2A).<sup>9</sup> Judge Bailey accepted a round of golf from Clark a few months after he appointed Clark as a special master in *Dorcich* and a month after he approved his fees. The judge asserts that there is no evidence that the round of golf was a gift for appointing Clark. The question, however, is whether it could have created that appearance. In the commission's view, it could reasonably create that appearance.

The examiner urges the commission to conclude that the judge engaged in prejudicial misconduct. While accepting the gifts could have created an appearance of

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<sup>9</sup> Canon 4D(6) currently states that the gift exceptions apply provided "that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties."

impropriety, we agree with the masters that there is not clear and convincing evidence that the conduct would appear to an objective observer, knowing all the facts, to be “prejudicial to public esteem for the judicial office.” (See *Broadman, supra*, 18 Cal.4th at p. 1092.) In this regard, we have considered that there is no evidence that Clark appeared before the judge as a party or an attorney representing a party, and that the judge reported the gifts on his Form 700, indicating that he was not attempting to conceal the gifts from the public.

*Gift from Lincoln Law School*

The masters concluded that Judge Bailey’s acceptance of a ticket from Lincoln Law School violated canon 4D(6), and constitutes improper action. Neither party objects to this conclusion, which we adopt.<sup>10</sup>

**G. Count Five**

**1. Findings of Fact**

In November 2009, Judge Bailey attended a judicial education program at Northwestern University School of Law. The program paid for his travel, lodging, group meals, and related expenses. The judge did not report these payments on his 2009 Form 700.

In 2011, Judge Bailey attended a judicial education program at George Mason University School of Law (GMU) in Arlington, Virginia. The program paid for his lodging and group meals and reimbursed him for his travel expenses. The judge did not report the payments and reimbursements on his 2011 Form 700.

In his Answer to the Notice, the judge stated that he thought his attendance at the 2009 Northwestern program and 2011 GMU program did not have to be reported on his Form 700.

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<sup>10</sup> As did the masters, we note that canon 4D(6)(h) provides an exception for invitations to events sponsored by educational institutions with which the judge is associated, if the same invitation is offered to persons who are not judges and are similarly situated. There is no evidence that other alumni were offered free tickets to this event.

The judge also attended two educational programs at GMU in March and October of 2014. The programs paid for his lodging and group meals and reimbursed him for his travel expenses.

In 2014, before he submitted his 2014 Form 700, Judge Bailey was informed by emails from both a court clerk and Presiding Judge Suzanne Kingsbury that any travel expenses associated with judicial education programs must be declared on the judge's Form 700.

On March 6, 2015, Judge Bailey filed his 2014 Form 700. On schedule E (Travel Payments, Advances and Reimbursements), he listed the two GMU programs he attended in 2014, and described the business activity of the source of income as "Judicial Education – tuition," but he did not fill in the amount of the payments received, or answer whether they were gifts or income. The programs did not charge tuition.

On March 11, 2015, the FPPC sent Judge Bailey a letter indicating that the judge had not reported the amount and type of payment. On April 1, 2015, the judge filed an amended Form 700 for 2014. On his amended Form 700, the judge inaccurately reported that he received \$527.93 for the October GMU program. He actually received \$1,348.51 for lodging and meals and \$459.20 for travel.

The masters found that the judge inadvertently forgot to include some of his expenses. We defer to this finding.

## **2. Conclusions of Law**

The masters concluded that Judge Bailey's incomplete and inaccurate reporting of payments on his Form 700 constitutes improper action, rather than prejudicial conduct, because his actions were inadvertent and negligent. Based on the masters' factual findings, to which we defer, we reach the same conclusion for the reasons discussed below.

The examiner contends that the judge engaged in prejudicial conduct in submitting inaccurate information on his amended 2014 Form 700, which was signed under penalty of perjury. In *Inquiry Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1, 10, the commission found that Judge Kreeep engaged in prejudicial conduct in submitting a Form 700, which erroneously stated he was chairman of a political action committee and

received salary from that committee. More than a year later, the judge filed an amended Form 700 and stated that he erroneously listed himself as chairman, and that the money he received was for legal services. The masters found that the judge acted with reckless disregard for the truth. The commission concluded that the judge committed prejudicial conduct, because, “an objective person would find a judge’s conduct in signing an official document under penalty of perjury with a reckless disregard for the truth to be prejudicial to public esteem for the judicial office.” (*Id.* at pp. 14-16.)

We agree with the examiner that a judge should be expected to take exceptional care in filling out FPPC forms, particularly when signed under penalty of perjury. Here, however, unlike in *Kreep*, the masters did not find that the judge acted with a reckless disregard for the truth. Instead, they found that Judge Bailey inadvertently forgot to include some of the income he received relating to the October 2014 program. Based on this finding, we are not convinced that an objective observer would find the judge’s conduct to be prejudicial to public esteem for the judiciary. This does not mean Judge Bailey did not engage in misconduct. He violated canons 2, 2A, and 3 (judge shall perform the duties of the judicial office competently and diligently [a judge is required to file a Form 700]), and engaged in improper action.

## **H. Count Six**

### **1. Findings of Fact**

In May 2015, Judge Bailey had a conversation with administrative analyst Suzanne Thurman, Judge Vicki Ashworth, and Judge Dylan Sullivan, while standing in Thurman’s cubicle in the court’s administration building. Judge Sullivan complimented the judge on the outfit he was wearing. Judge Bailey said he bought the outfit in France, and the salesperson who put it together for him was gay. He explained that he knew it looked good because gay men are “snappy” dressers. The conversation took place in an open office area where other county employees would have been able to overhear the conversation.

The tone of the conversation was lighthearted. Judge Ashworth and Thurman testified they were offended by the comments, but Judge Sullivan was not offended.

## **2. Conclusions of Law**

The masters concluded that the judge violated canons 2, 2A, and 3C(1) (judge to behave impartially in the performance of administrative duties and shall not engage in speech that would reasonably be perceived as bias or prejudice), and engaged in improper action. We concur and reach the same conclusions.

Because his remarks did not perpetuate invidious or hateful stereotypes, we agree with the masters that an objective observer would not view the remarks as prejudicial to public esteem for the judiciary, and thus the remarks constitute improper action, rather than prejudicial misconduct. This does not mean that such remarks are proper. As observed by the masters, the judge's comments "reflect stereotypical attitudes about gay men." It is improper for a judge to make remarks that reflect stereotypes based on sexual orientation, whether negative or positive. We agree with the masters that "[s]uch remarks indicate that the speaker has preconceived ideas about a particular group, a characteristic that is contrary to the qualities of impartiality and propriety required of judges by our Code of Judicial Ethics."

### **I. Counts Seven and Nine**

#### **1. Summary of Charges and Legal Issues**

Count seven alleges in general terms that between August 2016 and August 2017, Judge Bailey used his judicial title and lent the prestige of judicial office to raise funds for his campaign, potential campaign, or exploratory committee to run for California Attorney General in 2018, personally solicited funds in support of his campaign for nonjudicial office, and accepted campaign contributions for a nonjudicial office without taking an unpaid leave of absence from his judicial office.

Count nine charges Judge Bailey with engaging in political and campaign activity that is inconsistent with the integrity, independence, and impartiality of the judiciary, and using his judicial title and prestige of his judicial office to promote his candidacy for Attorney General, including but not limited to 25 specific instances of campaign or potential campaign activity. In his Answer to the Notice, Judge Bailey admitted that he attended and participated in each of the events specified in count nine.

The California Code of Judicial Ethics prohibits an active judge from using the prestige of judicial office or the judicial title to advance the judge's own pecuniary and personal interests, and from personally soliciting funds for a nonjudicial candidate or engaging in political or campaign activity that creates an appearance of impropriety or lack of impartiality. (Canons 2B(2), 5, 5A(3).) A judge may, however, fundraise and campaign for nonjudicial office by taking an unpaid leave of absence. (Cal. Const., art. VI, § 17; canon 6H [a judge who is on leave while running for public office is exempt from complying with canons 2B(2), 4C(1) (appearance at public hearing) and 5].)

The masters concluded that the judge engaged in prejudicial conduct by raising funds and campaigning for a partisan, nonjudicial office while working as a judge, explicitly referring to his judicial title, and relying on the prestige of judicial office. This conduct, the masters concluded, is fundamentally inconsistent with the independence, impartiality and integrity of the judiciary. We agree.

Judge Bailey alleges that he did not engage in misconduct because he was conducting an exploratory, rather than actual, campaign. Further, he asserts that if the canons are interpreted to prevent him as a sitting judge from campaigning for nonjudicial office, without first taking an unpaid leave of absence, the canons violate his First Amendment rights. The masters rejected these arguments, as do we. Judge Bailey violated the Code of Judicial Ethics by soliciting contributions and conducting both an exploratory and actual campaign for nonjudicial office, and using the prestige of judicial office to do so. The applicable canons further a compelling state interest in preserving public confidence in the integrity and impartiality of the judiciary, and fostering the appearance that judicial decisions are not politically motivated.

## **2. Findings of Fact**

On September 7, 2016, Judge Bailey personally signed and filed California Form 410, Statement of Organization Recipient Committee for Judge Steven Bailey – Attorney General 2018. He solicited campaign contributions beginning in October 2016. The Judge Steven Bailey – Attorney General 2018 committee filed three campaign statements (Form 460) with the Secretary of State. Each statement was signed by Judge



Bailey. The statements indicated that the judge received the following contributions: \$8,224 for the period January 1, 2016 through December 31, 2016; \$15,353 for the period January 1, 2017 through June 30, 2017; and \$3,609 for the period July 1, 2017 through December 31, 2017.

Between August 2016 and August 30, 2017, the judge's exploratory and actual campaigns made frequent use of his judicial title and photographs of himself wearing his judicial robe. He used email addresses and maintained a campaign website that featured the user names "judgestevenc.bailey" and "judgestevenbailey.ag2018." He distributed campaign donation envelopes and "rack cards" that referred to him as a "sitting judge" and stated that his "judicial experience and his legal and legislative skills make him uniquely qualified to be California's Attorney General in 2018."

Prior to his judicial retirement, Judge Bailey spoke at numerous political events, including in Whittier, Long Beach, Torrance, and Santa Fe Springs. He also attended the Patriots Award Breakfast and Charity Banquet in Whittier in September 2016, and the Mexican American Bar Association Judges Night & Awards Dinner in Los Angeles in November 2016. At these events, he usually handed out donation envelopes that referred to him as a sitting judge. Announcements for these events referred to his judicial title, and some included a summary of his judicial background and stated that Judge Bailey would be introducing his candidacy for California Attorney General. At the Santa Fe Springs event on October 7, 2016, he handed out flyers, identifying him as "Judge Steven Bailey," with photographs of himself in his judicial robe and judge's gavels.

When introduced at these events, Judge Bailey was referred to as both a sitting judge and a candidate or prospective candidate for California Attorney General. The judge did not instruct campaign staff members or the hosts of these events to avoid using his judicial title. His stump speech, delivered on some of these occasions, also referred to his judicial office and experience as a sitting judge. His speeches often included comments about his opinion on criminal justice legislation.

Between August 2016 and August 2017, Judge Bailey met or communicated with community, church, and Republican Party leaders to solicit support and endorsement for

his candidacy or potential candidacy. Individuals associated with the Republican Party introduced the judge to supporters in Santa Clara County and San Mateo County. The judge held face-to-face meetings with a lobbyist for the California Building Industry Association and with the director of faith and public policy at a large evangelical church in Chino Hills in August 2016. The judge often arranged these meetings using his campaign email accounts that referenced his judicial title. During the meetings, he referred to himself as a judge.

In seeking a meeting with the lobbyist for the Building Industry Association, the judge sent an email with the signature line “Judge Steven Bailey,” which stated, “While it might appear that the Office of the Attorney General has minimal impacts on the building industry, the Attorney General is the chief law officer for the people of this state. As such, the Attorney General is responsible for enforcing or not enforcing state air and water quality standards, CEQA and climate change. Having someone who has common sense is critical. The business community can no longer afford the selective enforcement of the law ... I will be bringing my experience as a Judge to this office. As a Judge, I am committed to the fair application of the law using common sense.”

In November 2016, Judge Bailey sought advice from Former Judge Julie Conger, a fellow director of the Alliance of California Judges (Alliance) and an expert on judicial ethics, about ethical prohibitions and standards he would be required to follow during his campaign. Judge Conger counseled Judge Bailey that he should not distribute flyers that included a photograph of him in his judicial robe, and urged him to remove his judicial title from emails related to his campaign and to avoid using the title in campaign literature until after he took a leave of absence from the bench. In May 2017, Judge Conger received a flyer from Judge Bailey’s campaign that made numerous references to his judicial title and included a link for making monetary contributions. Judge Conger sent the judge an email stating that he had completely dismissed her advice and was using his judicial title inappropriately. She further suggested that he immediately take a leave of absence from his judicial office and resign his directorship with the Alliance. The judge resigned his directorship, but did not take a leave of absence from the bench and

continued to use his judicial title to solicit support and contributions to his campaign for Attorney General.

Judge Bailey filed his Candidate Intention Statement with the Secretary of State on April 27, 2017. (The failure of the judge to file this statement before accepting contributions is the basis of the charges in count eight.)

Judge Bailey retired on August 31, 2017.

Judge Bailey filed his declaration of candidacy on February 25, 2018.

The masters found the evidence clearly established that Judge Bailey engaged in an exploratory campaign and an actual campaign for California Attorney General while he was a sitting superior court judge. Judge Bailey objects to the finding that he engaged in an actual campaign. He contends that he only engaged in an exploratory campaign and did not become an actual candidate until he filed his declaration of candidacy on February 25, 2018.

Based on our own review of the record, we find that the masters' finding is supported by clear and convincing evidence. The record is replete with references by the judge or his campaign staff to Judge Bailey's "campaign" for Attorney General. For instance, the block signature on some emails from his Southern California Campaign Coordinator included "Candidate for California Attorney General." In August 2016, the judge sent an email to numerous individuals stating that he would be introducing his new Southern California coordinator for "the campaign" and that she would be a great addition to the "campaign." In September 2016, the judge sent an email to "Andrea," stating that he would "like the opportunity to sit down and discuss [his] campaign for California Attorney General with [her]." Invitations to the Patriot Awards dinner stated "Congratulations to the 2016 Patriot Awards Honorees - Judge Steven Bailey California Attorney General Candidate November 2018." In an email to Douglas Boyd, the treasurer of the Los Angeles County Lincoln Club, the judge stated in reference to his appearance at an upcoming event, "As a candidate for Attorney General, I would plan on discussing . . . ." As early as October 7, 2016, the judge and/or his Southern California

Campaign Coordinator sent out business cards with the inscription, “Judge Steven Bailey, Candidate FOR CALIFORNIA ATTORNEY GENERAL.”

### **3. Conclusions of Law**

#### *Canon Violations and Level of Misconduct*

The masters concluded that by using his judicial title and lending the prestige of his judicial office to raise campaign funds and to promote his exploratory campaign and actual campaign for Attorney General, Judge Bailey violated canons 2B(2), 4A (a judge shall conduct all of the judge’s extrajudicial activities so that they do not cast reasonable doubt on a judge’s capacity to act impartially, demean the judicial office, interfere with the proper performance of judicial duties, or lead to frequent disqualification), 5 (a judge shall not engage in political activity that may create the appearance of political bias or impropriety), and 5A(3) (a judge shall not personally solicit funds for a nonjudicial candidate). We concur, and also conclude that the same conduct violated canons 2 and 2A.

A judge “considering running for nonjudicial office” may only engage in “private planning during time away from the courthouse” until the judge takes a leave of absence from the bench. (Rothman, *supra*, § 11:23, p. 747; see also Cal. Judges Assn., Judicial Ethics Update (2005), p. 2 [a judge “considering running for non-judicial office may not seek endorsements before taking [a] leave of absence.”]) Further, canon 2B(2) prevents a sitting judge from using his or her judicial title to raise money in connection with a campaign for nonjudicial office. (*Public Admonishment of Former Judge Paul E. Zellerbach* (2011) [the judge took a leave of absence to campaign for nonjudicial office, but, when he returned to the bench, he allowed his judicial title to be used to solicit money to retire his campaign debt].) Judge Bailey went far beyond private planning. He actively solicited campaign contributions and endorsements, and spoke frequently at political and campaign events as a candidate or potential candidate for Attorney General.

Further, as the masters observed, Judge Bailey clearly used his judicial title and the prestige of his judicial office to promote his campaign:

[Judge] Bailey's judicial title featured prominently in all of his campaign communications, from his Facebook page, email address and website names to his flyers, rack cards, and donation envelopes. He used his judicial title when seeking speaking engagements and introductions to potential supporters. [Judge] Bailey's campaign literature described him as a 'sitting judge' and stated his 'judicial experience' made him 'uniquely qualified' for the office of Attorney General. Even before he retired from the bench, [Judge] Bailey solicited and received thousands of dollars in campaign contributions.

We agree with the masters that Judge Bailey engaged in prejudicial conduct by raising funds and campaigning for a partisan, nonjudicial office while working as a judge, explicitly referring to his judicial title and relying on the prestige of his judicial office. This conduct is fundamentally inconsistent with the independence, impartiality and integrity of the judiciary, and is prejudicial to public esteem for the judicial office. (See, e.g., *Williams-Yulee v. Florida Bar* (2015) \_\_ U.S. \_\_ [135 S.Ct. 1656] (*Williams-Yulee*); *Broadman, supra*, 18 Cal.4th at p. 1103.)

The examiner requests that the commission find that Judge Bailey engaged in prejudicial conduct as to each of the 25 subcounts in count nine. The masters did not make specific factual findings or legal conclusions as to each subcount. We view the events and activities alleged in subcounts A through Y as evidence that the judge engaged in improper campaign and political activity on an ongoing basis for an extended period of time before he retired. As such, we conclude that between August 2016 and August 2017, the judge engaged in a course of prejudicial conduct by, without taking an unpaid leave of absence from judicial office, engaging in political and campaign activity that is inconsistent with the independence and integrity of the judiciary, and by using his judicial title and the prestige of his office to raise funds and promote his candidacy for Attorney General. The masters' factual findings, which we have adopted, support this conclusion.

#### *First Amendment Challenge*

Judge Bailey contends that enforcement of the prohibitions on political fundraising and campaigning in the California Code of Judicial Ethics, as applied to his campaign for

Attorney General, violates the First Amendment of the United States Constitution. The masters found this argument unpersuasive, as do we.

We agree with and adopt the following analysis by the masters.

‘The right to speak on political matters is the quintessential subject of our constitutional protections of the right of free speech. “Public discussion about the qualifications of those who hold or who wish to hold positions of public trust presents the strongest possible case for applications of the safeguards afforded by the First Amendment.” [Citation.]’ (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548; see also *Macias v. Hartwell* (1997) 55 Cal.App.4th 669, 673.)

But the Supreme Court has also long recognized that ‘the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.’ (*Pickering v. Board of Education* (1968) 391 U.S. 563, 568 (*Pickering*); see also *Broadman, supra*, 18 Cal.4th at pp. 1102-1103 [applying *Pickering* balancing test to claim that former Canon 3A(6) violated judge’s First Amendment rights].)

A government entity may not strike this balance to prohibit an employee from speaking on issues of public concern in a manner that does not interfere with the employee’s performance of his or her duties. (*Pickering, supra*, 391 U.S. at pp. 572-573.) It may, however, prohibit employees from actively participating in political activities such as becoming a candidate for elective office, fundraising, campaigning for another partisan candidate or managing such a campaign. (*Civil Service Commission v. Letter Carriers* (1973) 413 U.S. 548, 556, 564.) A state may also forbid civil servants from soliciting contributions to partisan campaigns, taking part in political rallies or meetings, soliciting votes and distributing partisan campaign literature. (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 616-617.)

Even greater restrictions may be imposed on elected office holders and members of the judiciary. For example, *Clements v. Fashing* (1982) 457 U.S. 957 (*Clements*), upheld a Texas state constitutional provision that prohibited elected officials, including judges, from running for the state Legislature during the official's term of office, even if the official resigned before becoming a candidate. In rejecting an equal protection challenge to the provision, the Supreme Court characterized the candidacy ban as a 'de minimis burden on the political aspirations of a current officeholder.' (*Id.* at p. 967, italics omitted.) The Court noted the provision furthers Texas' legitimate interest in safeguarding the integrity of its elected judiciary because a judge campaigning for legislative office might neglect his or her duties or 'be tempted to render decisions and take actions that might serve more to further his [or her] political ambitions than the responsibilities of his [or her] office.' (*Id.* at p. 968.)

The Court rejected a First Amendment challenge to the provision for similar reasons. It concluded the provision imposed an 'insignificant' burden on judges' First Amendment interests in candidacy because it required only that they wait until the end of their term in judicial office to run for the legislature. (*Clements, supra*, 457 U.S. at p. 972.)

*Williams-Yulee, supra*, \_\_\_ U.S. \_\_\_ [135 S.Ct. 1656] upheld against a First Amendment challenge a canon of judicial ethics that prohibited judges and judicial candidates from personally soliciting campaign funds. The Court acknowledged that a state, 'may restrict the speech of a judicial candidate only if the restriction is narrowly tailored to serve a compelling interest.' (*Id.* at p. 1665.) States with elected judges have a 'compelling interest in preserving public confidence in the integrity of the judiciary . . . .' (*Id.* at p. 1666; see also *Broadman, supra*, 18 Cal.4th at p. 1103 [finding 'a compelling public interest in maintaining a judicial system that both is in fact and is publicly perceived as being fair, impartial, and efficient.'].) A canon of judicial ethics that prohibits a judge or judicial candidate from personally soliciting campaign donations is narrowly tailored to serve that compelling interest. (*Williams-Yulee, supra*, at p. 1666.) 'The way the Canon advances those interests is intuitive: Judges, charged with exercising strict neutrality and

independence, cannot supplicate campaign donors without diminishing public confidence in judicial integrity.’ (*Ibid.*)

By contrast, Minnesota violated the First Amendment when it adopted a canon of ethics stating that a ‘ ‘candidate for a judicial office, including an incumbent judge,” shall not “announce his or her views on disputed legal or political issues.” ’ (*Republican Party of Minnesota v. White* (2002) 536 U.S. 765, 768.) Although the state has a compelling interest in preserving the impartiality of its judiciary and the appearance of judicial impartiality, the regulation was not narrowly tailored to serve that interest. (*Id.* at pp. 775, 788.) As Justice Kennedy explained in a concurring opinion, Minnesota may not ‘ censor what the people hear as they undertake to decide for themselves which candidate is most likely to be an exemplary judicial officer. Deciding the relevance of candidate speech is the right of the voters, not the State.’ (*Id.* at p. 794.)

The Canons of Ethics at issue here – Canons 2B(2), 4A, 5 and 5A(3) — are more like those at issue in *Clements, supra*, and *Williams-Yulee, supra*, than *Republican Party of Minnesota v. White, supra*. Unlike the regulation at issue in *Republican Party of Minnesota v. White, supra*, our Canons of Ethics do not prohibit a judge from expressing an opinion on an issue of public concern. Instead, our Canons of Ethics strive to preserve both the reality and the appearance of judicial impartiality, integrity and independence, particularly from partisan politics. To that end, they require a judge to avoid extrajudicial activities that ‘ cast reasonable doubt on the judge’s capacity to act impartially[,]’ or ‘ may create the appearance of political bias or impropriety.’ (Canon 4A, 5.) A judge may not use his or her judicial title or the prestige of judicial office to ‘ advance the pecuniary or personal interests of the judge [,]’ including a personal interest in holding nonjudicial office. (Canon 2B(2), 5.) A judge may not personally solicit funds for a nonjudicial candidate. (Canon 5A(3).) Each of these restrictions falls away when a judge, seeking election to nonjudicial office, takes a leave of absence without pay from his or her judicial office. (Cal. Const., art. VI, § 17; Canon 6H.)



Like the candidacy ban at issue in *Clements, supra*, article VI, section 17 of the Constitution and the Canons of Ethics require a judge to take an unpaid leave of absence or complete his or her term in judicial office before embarking on a campaign for nonjudicial office. California’s compelling interest in preserving the independence, impartiality and integrity of its judiciary (*Broadman, supra*, 18 Cal.4th at pp. 1102-1103), is ‘sufficient to warrant the de minimis interference with [judges’] interests in candidacy.’ (*Clements, supra*, 457 U.S. at pp. 971-972, italics omitted.)

Second, the restriction on fundraising for nonjudicial campaigns passes First Amendment muster for the reasons stated in *Williams-Yulee, supra*. As the Court noted, ‘A State may assure its people that judges will apply the law without fear or favor - and without having personally asked anyone for money.’ (*Williams-Yulee, supra*, 135 S.Ct. at p. 1662.)”

Judge Bailey contends that the masters incorrectly concluded that the canons are narrowly tailored to serve a compelling state interest (the strict scrutiny test). The examiner contends that this First Amendment issue here should be analyzed under the *Pickering* balancing test, a more permissive test than the strict scrutiny test.

We conclude that the canons pass constitutional muster under either test. As the Supreme Court pointed out in *Williams-Yulee*, since the judiciary’s authority “depends in large measure on the public’s willingness to respect and follow its decisions,” public perception of judicial integrity is “a state interest of the highest order.” (*Williams-Yulee, supra*, 135 S.Ct. at p. 1666, citation omitted.)

When an active judge runs for nonjudicial office, particularly an office that litigates in state courts, there can be an appearance that the judge will make judicial decisions in a manner that will help his or her campaign, rather than based on the rule of law. This concern is illustrated in Judge Bailey’s comments to the lobbyist for the Building Industry Association. The judge informed the lobbyist that the Attorney General has impact on the building industry through “enforcing or not enforcing state air and water quality standards, CEQA and climate change.” A reasonable person could interpret this comment as suggesting that the judge would apply these laws in a manner

favorable to the building industry while sitting as a judge running for Attorney General. Moreover, the concern may be even more pronounced when the judge is running for a position that includes criminal prosecution, such as the Attorney General, while presiding over criminal cases. This could lead to a perception that the judge will make rulings that appear to be “tough on crime” to promote the judge’s candidacy.

In *Wolfson v. Concannon* (9th Cir. 2016) (en banc) 811 F.3d 1176, the Ninth Circuit Court of Appeals upheld an Arizona law prohibiting judges and judicial candidates from, among other things, personally endorsing or making speeches on behalf of other candidates for public office. The court concluded the law served a compelling state interest in preserving public confidence in the integrity of the judiciary, noting that “[w]hen a judicial candidate actively engages in political campaigns, a judge’s impartiality can be put into question, and the public can lose faith in the judiciary’s ability to abide by the law and not make decisions along political lines.” (*Id.* at p. 1185.)

Judge Bailey also argues that even if there is a compelling state interest, the canons are not narrowly tailored to serve that interest. The *Williams-Yulee* Court stated that the First Amendment required that the canon be “narrowly tailored, not that it be ‘perfectly tailored.’” (*Williams-Yulee, supra*, 135 S.Ct. at p. 1671, citation omitted.) “The impossibility of perfect tailoring is especially apparent when the State’s compelling interest is as intangible as public confidence in the integrity of the judiciary . . . . [M]ost problems arise in greater and lesser gradations, and the First Amendment does not confine a State to addressing evils in their most acute form.” (*Ibid.*, citation omitted.) By applying canons 2B(2), 4C(1), and 5 only to judges who have not taken a leave of absence, the canons have been narrowly tailored to achieve the goals of preserving public confidence in the fairness and integrity of the judiciary, and fostering the appearance that judges do not make decisions for political reasons.

Judge Bailey contends that the canons are unconstitutionally vague. “A rule is not void for vagueness if it provides fair notice to those to whom [it] is directed.” (*Broadman, supra*, 18 Cal.4th at pp. 1103-1104, quoting *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1048, original brackets, interior quotation marks omitted.) The

applicable canons provide fair notice to judges of their ethical obligations while campaigning for nonjudicial office. Canon 6H makes clear when a judge can use his or her judicial title and the prestige of judicial office in a campaign for nonjudicial office – when the judge takes a leave of absence without pay pursuant to article VI, section 17 of the California Constitution. In addition, canon 6H defines “political activity” to include “soliciting and accepting campaign contributions for the other [nonjudicial] public office.”

The judge further contends that the canons are underinclusive and applied unequally because a judge running for judicial office in California can personally solicit funds, whereas a judge running for nonjudicial office cannot, without taking a leave of absence. With respect to a law being underinclusive, the United States Supreme Court has stated: “Although a law’s underinclusivity raises a red flag, the First Amendment imposes no freestanding ‘underinclusiveness limitation.’ [Citation.] A State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns.” (*Williams-Yulee, supra*, 135 S.Ct at p. 1668.)

Moreover, there are compelling interests in treating judges differently when they are involved in nonjudicial campaigns. Solicitation of campaign funds for nonjudicial office may encroach on separation of powers and the independence of the judiciary. When a judge solicits funds for a nonjudicial political campaign, there can be a heightened perception that the judge’s decisions will be politically motivated. Campaigns for nonjudicial office are inherently more political in nature than judicial campaigns. Candidates for judicial office are running for an office in which they are expected to follow the law, regardless of public opinion. Candidates for nonjudicial office, however, are running for office with a political point of view and are expected to express their political opinion. As the *Williams-Yulee* Court stated, “Judges are not politicians, even when they come on the bench by way of the ballot.” (*Williams-Yulee, supra*, 135 S.Ct. at p. 1662.)

There is another compelling, and practical, reason for treating judges running for judicial office differently than judges running for nonjudicial office. Given that

California judges are subject to periodic contested elections, requiring judges to take a leave of absence in order to campaign for and solicit funds for judicial office would be a significant burden on the administration of the judiciary, and could be subject to abuse. An attorney who is displeased with a judge's rulings could force the judge to take a leave of absence by running against the judge.

For these reasons, as did the masters, we reject Judge Bailey's First Amendment challenge to the Code of Judicial Ethics as applied to him.

## **J. Count Eight**

### **1. Findings of Fact**

Judge Bailey filed a Candidate Intention Statement (Form 501) for the Office of Attorney General on April 27, 2017. Government Code section 85200, a provision of the Political Reform Act, provides that, "[p]rior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective state office . . . shall file with the Secretary of State an original statement, signed under penalty of perjury, of intention to be a candidate for a specific office." Judge Bailey's campaign committee organized in September 2016, and accepted monetary contributions of \$17,749 before April 27, 2017.

Judge Bailey acknowledges that the campaign committee for his Attorney General campaign solicited and accepted contributions before he filed the Form 501 for that campaign. He asserts that the untimely filing was inadvertent and caused by the then-treasurer of his campaign. When the campaign hired a new treasurer, she discovered the mistake and filed a Form 501 for the campaign. The masters found the judge's untimely filing was an oversight, and the result of Judge Bailey's failure to properly supervise his campaign staff and attend to the administrative requirements of his campaign. We adopt this finding.

### **2. Conclusions of Law**

Judge Bailey violated Government Code section 85200 by soliciting and accepting campaign contributions before filing his Candidate Intention Statement. In so doing, he

violated canon 5, which requires judges to “comply with all applicable election, election campaign, and election campaign fundraising laws and regulations,” and canon 2A.

The masters concluded that the judge’s misconduct constitutes improper action. The examiner asks the commission to conclude that the judge engaged in prejudicial conduct.

A purpose of Political Reform Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed in order that voters may be fully informed and improper practices inhibited. (Gov. Code, § 81002(a).) The commission has stated that even unintentional violations of campaign reporting laws can undermine public respect for the judiciary. (*Public Admonishment of Judge Tara M. Flanagan* (2017); *Public Admonishment of Judge Charles R. Brehmer* (2012).) In this case, however, the judge filed a campaign statement reporting contributions he received before he filed his Candidate Intention Statement. Thus, because the violation of the Political Reform Act was inadvertent and did not deprive the public of important information, we adopt the masters’ conclusion that the judge engaged in improper action.

## **K. Count Ten**

### **1. Findings of Fact**

In 2016, Martha Romero, Judge Bailey’s Southern California Campaign Coordinator, created the “Judge Steven Bailey” Facebook page for the judge’s Attorney General campaign. Romero informed the judge that she had created the page by the end of 2016. In November and December 2016, she had made several posts on the page referring to Judge Bailey by his judicial title and promoting his campaign. Judge Bailey was informed of the Facebook page in a supplemental preliminary investigation letter from the commission dated December 16, 2016. He did not instruct Romero to stop using his judicial title in the posts.

Romero is a Los Angeles-area attorney who has known Judge Bailey since 2000. In August 2016, Judge Bailey told Romero that he was thinking of running for Attorney General and asked her to help with the exploratory campaign. The judge gave Romero

the title of Southern California Campaign Coordinator. On August 13, 2016, Judge Bailey sent an email to numerous individuals introducing Romero by this title.

As the Southern California Campaign Coordinator, Romero made arrangements for the judge to meet people in Southern California, attended events with him, and made contacts with people on the judge's behalf. In September 2016, Judge Bailey, by email, tried to set up meetings with Southern California Republicans. He included Romero on the emails and asked the recipients to work with her to schedule the meetings. Romero's responsibilities included arranging for Judge Bailey to attend the Patriots Award event in Whittier and for his campaign to buy an advertisement in the event program; setting up other meetings with Republican groups; corresponding with people who attended the events and expressed interest in the campaign; and arranging for Judge Bailey to attend the Mexican American Bar Association Judges' Night and Awards Dinner in Los Angeles.

## **2. Conclusions of Law**

The masters concluded that Judge Bailey violated canon 2B(2) and engaged in prejudicial misconduct by failing to supervise Romero and take any measures to guard against the impermissible use of his title. The masters noted: "Even after he learned about the Facebook page, [Judge] Bailey took no action to cure the improper use of his judicial title. He did not ask Romero to delete the page, edit her posts or even to avoid using his title in the future." We concur and reach the same legal conclusions, and find that the judge violated canons 2 and 2A, in addition to 2B(2).

Judge Bailey asserts that he cannot restrict the First Amendment rights of others to free speech. The examiner acknowledges that if Romero had no connection to Judge Bailey, he could not be held responsible for anything she posted on her personal Facebook pages. As the masters point out, however, Romero was the judge's Southern California Campaign Coordinator, and very involved in the judge's campaign. As such, we concur with the masters that the judge had an obligation to take some action to prevent the improper use of his title in connection with campaign communications and events, even if it was just to instruct Romero to ensure that the Facebook page did not

refer to his judicial title and position. (Cal. Com. Jud. Ethics Opns., Opinion 2016-008, p. 21 [“[j]udges have an affirmative obligation to guard against impermissible uses of their judicial titles”].)

Judge Bailey further argues that he did not engage in prejudicial conduct because the public would have no way of knowing if he asked Romero not to use his title. The standard for prejudicial conduct, however, assumes that an objective observer is familiar with the facts. (*Inquiry Concerning Van Voorhis* (2003) 48 Cal.4th CJP Supp. 257, 266, citing *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 312.) In the commission’s view, the judge’s failure to supervise a campaign staffer and take any measures to guard against impermissible use of his judicial title would be considered prejudicial to public esteem for the judiciary in the eyes of an objective observer.

## **L. Count Eleven**

### **1. Findings of Fact**

Romero also maintained a Facebook page for her law firm, the Romero Law Firm. In a post on that page, dated October 29, 2016, Romero included photos of Judge Bailey and wrote, “My friend Judge Steven Bailey is running for California Attorney General 2018 [*sic*] He is not a politician. Please Help us!” and “Judge Steven Bailey. Candidate for Attorney General 2018. He will be the next Attorney General!!! Please repost. We need to win this!!”

Judge Bailey became aware of this post in December 2016, when he received a supplemental preliminary investigation letter from the commission. At that time, the judge asked Romero to remove any photographs she had posted of him in his judicial robes. He did not, however, ask her to make any other changes to her posts.

### **2. Conclusions of Law**

For the reasons discussed with respect to count ten, the masters concluded that Judge Bailey engaged in prejudicial conduct in failing to take any measures to guard against the improper use by Romero of his judicial title. We reach the same conclusion and conclude that the conduct violated canons 2, 2A, and 2B(2).

As did the masters, we acknowledge that Judge Bailey could not force Romero to edit her posts about him or to avoid using his judicial title in future posts. He could, however, have asked her to modify her posts to be in compliance with his ethical obligations.

Judge Bailey suggests that by disciplining him for Romero’s posts, the commission infringes on Romero’s First Amendment rights. That is not the case. Romero’s First Amendment rights are not implicated by requiring the judge to ask her to comply with a request to remove the Facebook posts.

#### **IV. DISCIPLINE**

In determining the appropriate level of discipline, we first and foremost consider our mandate to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and impartiality of the judiciary. (See *Broadman, supra*, 18 Cal.4th at pp. 1111-1112.) We have determined that this purpose is best served by imposition of a censure and bar based on the following considerations.<sup>11</sup>

The appropriate level of discipline depends to a large extent on the nature and number of incidents of misconduct. (*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1307, fn. 2.) We look to see whether the misconduct is an isolated incident or reflects a pattern of misconduct indicating that the judge lacks the integrity, impartiality, and temperament required of a judge. (See *Fletcher, supra*, 19 Cal.4th at p. 918.) In this matter, Judge Bailey has engaged in numerous incidents of misconduct spanning the entire course of his judicial career, including a course of prejudicial conduct involving improper campaign activity over a period of a year. In

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<sup>11</sup> Article VI, section 18(d) of the California Constitution provides that the commission may “censure a judge or former judge ... for action ... that constitutes willful misconduct in office, ... or conduct prejudicial to the administration of justice that brings the judicial office into disrepute . . . .” The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. (Cal. Const., art. VI, § 18(d).) The acts of prejudicial conduct in this matter support our determination to censure and bar Judge Bailey.



addition, in 2013, he received a strong advisory letter for delays in ruling on at least 15 matters.

The extent and nature of the judge's misconduct reflects an inability or unwillingness to comply with the standards of judicial conduct expected of every judge. Judge Bailey has violated the Code of Judicial Ethics both on the bench and off the bench. His misconduct involves a broad spectrum of ethical violations, including making judicial orders and an appointment without disclosing personal relationships reasonably related to disqualification, improper receipt of gifts, failing to make complete and accurate disclosures to the FPPC as required by law, making comments reflecting bias, and using the prestige of his judicial office to campaign for and solicit funds for his campaign for nonjudicial office, without taking a leave of absence from the bench. Judge Bailey demonstrated a conscious disregard of his ethical obligations by continuing to campaign for Attorney General without taking a leave of absence after being advised by a judicial ethics expert that he was in violation of the canons, and by failing to ask Romero to stop referring to him by his judicial title on Facebook posts after being alerted to the posts by the commission.

Significantly, the masters observed, "Judge Bailey has his own view on 1. being a judge, 2. acting with proper judicial demeanor, 3. Superior Court administration, and 4. appropriate conduct on the bench. We believe that his views are misinformed and erroneous." The masters also note that he is lacking in judicial temperament. Our own review of the record and observation of the judge at his appearance reveal a judge who plays by his own rules with little concern for whether his conduct comports with the rules applicable to all judges under the Code of Judicial Ethics.

Another important factor we consider is whether the judge has shown an appreciation for the impropriety of his conduct. "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; see Policy declaration 7.1(2)(a).) Judge Bailey contends that much of his conduct was proper and in accordance

with his ethical obligations. In our view, he interprets the canons in an unreasonably liberal manner in order to justify his conduct.

Judge Bailey claims he has “suffered a continuous onslaught of allegations from the Commission and Presiding Judge Suzanne Kingsbury.” He suggests that Judge Kingsbury and the “toxic environment in the El Dorado Superior Court” are to blame for the charges he faced. Judge Bailey fails to recognize it is his improper conduct that is the basis of this inquiry, regardless of the motivations of those who brought forth the allegations. There is no evidence that a toxic environment in the court or any animosity between Judge Bailey and Judge Kingsbury resulted in misinformation being provided to the commission or inaccuracies in the evidence presented against the judge.

Another aggravating factor is Judge Bailey’s failure to cooperate fully with the commission’s investigation on one issue. (Policy declaration 7.1(2)(b).) During the preliminary investigation, the judge denied that he created the “Judge Steven Bailey” Facebook page. In a supplemental preliminary investigation letter and a follow up email, the judge was asked for the identity of the person or persons who created or maintained the “Judge Steven Bailey” Facebook page. The judge did not provide the requested information in response to either inquiry, even though he knew Romero was the person who created and controlled the Facebook page.

Whether the misconduct undermines the integrity of and respect for the judiciary is another factor the commission considers in determining the appropriate discipline. “The maintenance of the integrity and impartiality of the judiciary is severely impaired” when a judge uses the title or prestige of judicial office to obtain a personal advantage. (Rothman, *supra*, § 8.40, pp. 530-531.) Here, Judge Bailey used the prestige of his judicial office extensively to promote his own candidacy for Attorney General. Further, the judge repeatedly failed to abide by the Code of Judicial Ethics and requirements of the Political Reform Act. Citizens are expected to comply with the rule of law. Public respect for the judiciary cannot help but be eroded when a judge fails to abide by laws and rules applicable to the judiciary.

We believe there is a very high probability that Judge Bailey will engage in future misconduct if he were to return to the bench. There is little likelihood of reform when a judge has engaged in multiple ethical violations on and off the bench during the entire course of his or her judicial career, fails to appreciate the impropriety of the misconduct, and continues to engage in the same conduct despite being advised of the ethical impropriety.

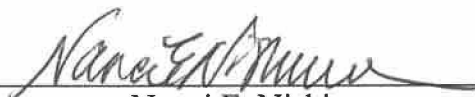
In order to fulfill our mandate to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity of the judiciary, we have determined that Judge Bailey should be censured and barred from sitting in a judicial capacity in the future.

### **ORDER**

Good cause appearing, the commission hereby censures former Judge Steven C. Bailey and bars him from seeking or holding judicial office, or accepting a position or an assignment as judicial officer, subordinate judicial officer or judge pro tem with any court in the State of California, or accepting reference of work from any California state court, at any time in the future.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Anthony P. Capozzi, Esq.; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Sarah Krueger Jager; Ms. Patti A. Kasparian; Dr. Michael A. Moodian; Mr. Richard Simpson; and Hon. Erica R. Yew voted to issue this decision and order imposing a public censure and bar. Mr. Adam N. Torres did not participate in deliberations or vote in this matter.

Dated: February 27, 2019

  
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Nanci E. Nishimura  
Chairperson