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DEC 19 2019

COMMISSION ON
JUDICIAL PERFORMANCE

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

**INQUIRY CONCERNING
JUDGE MORRIS D. JACOBSON,**

No. 205

**DECISION AND ORDER
IMPOSING PUBLIC ADMONISHMENT
PURSUANT TO STIPULATION
(Commission Rule 127)**

I. INTRODUCTION AND SUMMARY

This disciplinary matter concerns Judge Morris D. Jacobson, a judge of the Alameda County Superior Court. On October 29, 2019, the commission filed its Notice of Formal Proceedings (Notice) against Judge Jacobson.

By Stipulation for Discipline by Consent (Stipulation), Judge Jacobson and his counsel, Edith R. Matthai, Esq., of Robie and Matthai, and the examiner for the commission, Mark A. Lizarraga, Esq., proposed that the commission resolve this matter by imposition of a public admonishment. Pursuant to the Stipulation, Judge Jacobson waives any further proceedings and review in this matter, including formal proceedings (Rules of Com. on Jud. Performance, rule 118 et seq.) and review by the Supreme Court (Cal. Rules of Court, rule 9.60). (The Stipulation is attached to this decision.)

Pursuant to commission rule 127, the Stipulation was approved by the commission on December 16, 2019. Accordingly, the commission issues this public admonishment based on the terms and conditions of the Stipulation and based on the following Stipulated Facts and Legal Conclusions.

II. STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Jacobson became a judge of the Alameda County Superior Court in 2005. His current term began in January 2015.

Count One

On June 29, 2011, Deputy Public Defender Romany McNamara appeared before Judge Jacobson in Department 11, where he was filling in for another judge that day. Ms. McNamara, who was new to the felony trial department, had a number of matters set on the morning calendar, including *People v. Eric Hale*, No. 166264. During the hearing, Judge Jacobson spoke sharply to Ms. McNamara when she asked for a moment before proceeding. The following exchange occurred between Judge Jacobson and Ms. McNamara:

THE COURT: Is this Mr. Hale? Are you Mr. Hale?
Good morning, sir. [¶] 166264. [¶] Ms. McNamara is here with Mr. Hale; Mr. McCannon for the People.

MS. MCNAMARA: Just a moment, please.

THE COURT: Is formal arraignment waived?

MS. MCNAMARA: So waived.

THE COURT: Do you have the Information only, or do you have the preliminary hearing as well?

MS. MCNAMARA: I have the Information only.

THE COURT: Is the plea not guilty to all charges?

MS. MCNAMARA: I need just a moment, please.

THE COURT: Ms. McNamara. I am proceeding with the arraignment. I'm not giving you a moment. So if you want to put this over for a different day so you can visit with your client out of court, that's fine. If you anticipate you are going to be pleading guilty to a robbery and a burglary at this point, please let me know. I am assuming you are going to be pleading not guilty. [¶] I need to move this along; I have a lot of cases left on the calendar. I'm not giving you time right now.

THE COURT: Plea is not guilty on all charges.

MS. MCNAMARA: Plea is not guilty on all charges.

THE COURT: All clauses and priors are denied?

MS. MCNAMARA: Yes.

THE COURT: Okay. Would you guys take a moment to figure out if you want to waive time or if you don't. Either way is okay.

MS. MCNAMARA: Thank you, Judge.

(Other cases were handled)

THE COURT: Ms. McNamara, going back to Mr. Hale, what do you guys prefer to do about time?

MS. MCNAMARA: So we will not waive time, your Honor.

THE COURT: Okay. Time is not waived. August 29 is the 60th day. August 15 is the jury trial date. [¶] And would you like to have a D & S as well?

MS. MCNAMARA: Yes, please. Could I ask for July 7th?

THE COURT: Madam Clerk, is that a good date?

THE CLERK: July 8th is better.

THE COURT: Does it make a difference to you Ms. McNamara?

MS. MCNAMARA: I can't be here July 8th in the morning. Can we do July 11th? Does that work?

THE CLERK: July 11th.

THE COURT: July 11th.

MS. MCNAMARA: Thank you.

(R.T. 2:4-3:26.)

After hearing the *Hale* matter, Judge Jacobson asked to speak with Ms. McNamara, who came forward and placed her hand on the bench. Judge Jacobson apologized to Ms. McNamara for speaking sharply to her during the arraignment, and hit her hand, and inadvertently used enough force to leave a visible impression.

The conduct described above constituted, at a minimum, prejudicial misconduct and violated canons 2 (judge shall avoid impropriety and the appearance of impropriety), 2A (judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 3B(4) (judge shall be patient, dignified, and courteous to those persons with whom the judge deals in an official capacity), and 3B(5) (judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice).

Count Two

In 1986 and 1987, Judge Jacobson clerked for a federal judge in Texas who presided over a civil rights action filed by the Justice Department against a Tarrant County judge, who was charged with coercing female prisoners to have sexual relations with him in return for leniency in court. Judge Jacobson was present throughout the trial of the case, which received a great deal of publicity at the time.

In early 2016, while Judge Jacobson was the presiding judge, a female court administrator was talking to Judge Jacobson at the Hayward Courthouse. Judge Jacobson engaged the court administrator in a discussion about Tarrant County, Texas. Judge Jacobson asked the court administrator, who had previously worked in the Tarrant County Court, whether she knew of the case against the Tarrant County judge, and, when she said she did not, told her that prostitutes performed sex acts on the judge in chambers in exchange for a better outcome in their cases. The language the judge used was crude and inappropriate.

The conduct described above constituted, at a minimum, improper action and violated canons 2, 2A, and 3B(4).

Prior discipline

In 2010, Judge Jacobson received an advisory letter for abuse of authority, embroilment, and poor demeanor. The judge ordered an attorney to his courtroom when no matter requiring the attorney's presence was pending, chastised the attorney for a perceived ex parte communication, ordered him to remain there while opposing counsel in one of the attorney's cases was contacted, and then conducted an uncalendared hearing.

In 2012, Judge Jacobson received a public admonishment for abuse of authority, abuse of the contempt power, and poor demeanor. The judge ordered an attorney to "spend every waking moment" working on a case, and, when the attorney said she did not need the court's advice on how to be competent, ordered her to stay in the courtroom, where she remained for an hour and a half, after which he ordered her to return later that afternoon for a contempt hearing. Although the judge did not find the attorney in contempt, ordering her to remain in the courtroom was found to be tantamount to punishing her for contempt without a hearing.

III. DISCIPLINE

The commission has determined to accept the Stipulation and impose this public admonishment, because it fulfills the commission's mandate of protecting the public, and it resolves this matter without the delay and expense of further proceedings. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112; Cal. Const., art. VI, § 18, subd. (d).)

Count One of the Stipulation addresses Judge Jacobson's 2011 conduct toward a female attorney, Romany McNamara, who was new to the felony trial department. Judge Jacobson's sharp speech toward Ms. McNamara, combined

with his act of hitting her hand at the bench, was a gross breach of demeanor, and would reasonably be perceived as a demonstration of bias.

Judge Jacobson's act of hitting Ms. McNamara's hand, and doing so with enough force, albeit inadvertent, to leave a visible impression, constitutes particularly serious misconduct. No attorney should fear being hit by the judge, whose duty it is to maintain a courtroom free of such conduct by any of the participants. Judges have at their disposal many tools for carrying out their judicial duties; hitting an attorney's hand is unequivocally not among them.

Judge Jacobson's conduct toward Ms. McNamara was, at a minimum, "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).)

Judge Jacobson engaged in further misconduct in his conversation with a court administrator about a case involving sexual misconduct by a judge in another state. The commission notes that, while judges can, and sometimes must, discuss sensitive case-related facts with court personnel, it is improper to use crude and inappropriate language when doing so. In this instance, Judge Jacobson's conversation with the court administrator did not pertain to a case before him. Judge Jacobson's use of crude and inappropriate language constituted, at a minimum, improper action.

In determining that a public admonishment is the appropriate sanction, the commission took into consideration Judge Jacobson's acknowledgment that he engaged in misconduct in both instances set forth in the Stipulation, and his history of prior discipline, an advisory letter and a public admonishment. Judge Jacobson's 2012 public admonishment for abuse of authority, abuse of the contempt power, and poor demeanor toward an attorney was issued a year after his conduct toward Ms. McNamara, in Count One. His conduct in Count Two, which does not concern misconduct toward attorneys, but rather the judge's use of crude and inappropriate language, took place after both instances of prior discipline.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Kay Cooperman Jue; Hon. Lisa B. Lench; Dr. Michael A. Moodian; Mr. Richard Simpson; and Mr. Adam N. Torres voted to issue this decision and order imposing a public admonishment pursuant to the Stipulation. Commission members Anthony P. Capozzi, Esq., and Ms. Sarah Kruer Jager voted to reject the Stipulation, because Count Two did not contain the specific language the judge used.

Date: December 19, 2019

A handwritten signature in cursive script, reading "Nanci E. Nishimura", written in black ink. The signature is positioned above a horizontal line.

Nanci E. Nishimura
Chairperson

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STATE OF CALIFORNIA
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INQUIRY CONCERNING
JUDGE MORRIS D. JACOBSON

No. 205

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 127)

Pursuant to Rules of the Commission on Judicial Performance, rule 127, Judge Morris D. Jacobson of the Alameda County Superior Court, represented by counsel Edith R. Matthai, Esq. of Robie & Matthai, and the examiner (“the parties”) submit this proposed disposition of Inquiry No. 205. The parties request that the commission resolve this matter by imposition of a public admonishment. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Jacobson because, among other reasons, in light of the stipulated facts and legal conclusions, a public admonishment adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the Inquiry Concerning Judge Morris D. Jacobson, No. 205.
2. The commission shall issue a public admonishment based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission’s decision and order imposing public admonishment may

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

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

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

6. The commission may reject this proposed disposition and resume formal proceedings. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Jacobson.

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

STIPULATED FACTS AND LEGAL CONCLUSIONS

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

Dated: Dec. 10, 2019.




Judge Morris D. Jacobson
Respondent

Dated: DEC 6, 2019.



Edith R. Matthai, Esq.
Attorney for Respondent

Dated: 12/11, 2019.



Mark A. Lizarraga, Esq.
Examiner for the Commission

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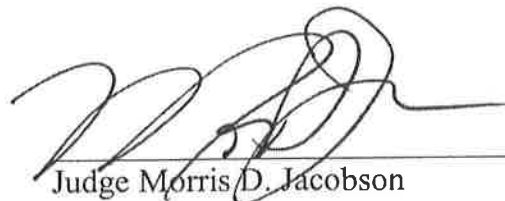
AFFIDAVIT OF CONSENT
FOR DISCIPLINE

No. 205

Pursuant to Rules of the Commission on Judicial Performance,
rule 127(d), Judge Morris D. Jacobson submits the following affidavit of
consent in Inquiry No. 205:

1. I consent to a public admonishment, as set forth in the Stipulation
for Discipline by Consent.
2. My consent is freely and voluntarily rendered.
3. I admit the truth of the charges as modified by the Stipulation for
Discipline by Consent.
4. I waive review by the Supreme Court.

I declare under penalty of perjury that the foregoing is true and
correct. Executed this 10th day of December, 2019.



Judge Morris D. Jacobson
Respondent