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COMMISSION ON
JUDICIAL PERFORMANCE

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING COMMISSIONER TAYLOR CULVER, No. 199.	**ANSWER BY COMMISSIONER TAYLOR CULVER TO NOTICE OF FORMAL PROCEEDINGS**

Following multiple Preliminary Investigations pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, each of which was answered with ample, reasonable response, the Commission on Judicial Performance has initiated formal proceedings that simply lack merit. Commissioner Taylor Culver believes that the Commission on Judicial Performance has unnecessarily singled him out, and it is engaged in a campaign of harassment and intimidation for the obvious purpose of making his professional life so difficult and miserable, through the constant and ongoing investigations, forcing him to walk away from the job that he has been appointed to perform. This is more than exemplified by several of the Commission's unfounded accusations in this case. There is no evidence of willful misconduct, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, nor improper action within

the meaning of article VI, section 18 of the California Constitution warranting removal, censure, or public or private admonishment of Commissioner Culver.

Some background regarding Commissioner Culver's professional experience is important to know. Commissioner Culver was admitted to the State Bar of California in December 1976. Prior to starting The Culver Law Firm in 1978, he was a Deputy District Attorney for the Alameda County District Attorney's Office. During his approximately 26 years of practice, he tried in excess of 100 cases, civil and criminal, to verdict. It should be pointed out that Commissioner Culver was never disciplined by the State Bar of California during his 26 years of practice and, as far as he knows, he was never subject to a State Bar investigation.

Notably, prior to becoming an attorney, Commissioner Culver was an extremely successful and award winning architect. He was a partner in a Washington, D.C. firm named October. He worked extensively in both the production of construction drawing and design phases of the buildings including both residential and commercial properties. Within his architectural experience a great deal of advocacy work was pursued on behalf of those who would not normally have access to such professionals. Several articles were authored regarding Commissioner Culver's professional accomplishments as an architect and his public service endeavors.

On a personal note, Commissioner Culver has been married for five (5) years to Melinda Fernhyhough Culver, DVM, PhD. Mrs. Culver is the Market Development Manager for Abitec.

COUNT ONE

In the following cases, you threatened to take actions that exceeded your authority and engaged in other misconduct, as noted:

A. On April 27, 2015, you arraigned Portia Frazier in four traffic court cases. (Nos. WWM465887, WWM563162, WWM585354, and WWM629342.) At the end of the hearing, you told Ms. Frazier, "Ma'am, let me tell you something 'cause we don't wanna get on the wrong side. You certainly don't want —" Ms. Frazier responded, "You talking to me like I'm a kid. I'm a person just like you." You replied, in a harsh tone of voice, as follows: "Let me tell you something, 'person!' When I'm talking, you're being quiet! That's what we do in court. Now you need to run your mouth, I have the sheriff come in here and send you outta here so you can run your mouth. When Ms. Frazier said that she was not disrespecting the court, you replied, "Then keep your mouth shut!" After Ms. Frazier cursed, you told her, "Cursin' now. Do another one and I'll have you in this door." After Ms. Frazier told you, "Just stop talking to me[,]" the following exchange ensued:

> *THE COURT: Who you talking to?*
>
> *DEFENDANT: I'm talking to you, 'cause — [unintelligible]*
>
> *THE COURT: I wish I didn't have this robe on.*
>
> *DEFENDANT: I wish you didn't either. So you're threatening me —*
>
> *THE COURT: We would straighten it out.*

Your statement, "Do another one and I'll have you in this door[,]" was an implied threat to put Ms. Frazier into a holding cell, which was beyond your authority as a subordinate judicial officer. Your statements, "I wish I didn't have this robe on[]" and "We would straighten it out[]" were implied threats to fight the litigant. Your statements quoted in the above paragraphs also reflected embroilment.

Presiding Judge Winifred Smith assigned Ms. Frazier's complaint to Supervising Judge Gregory Syren for investigation. On June 9, 2015, you misrepresented what had taken place at the hearing when you wrote to Judge Syren, "She [Portia Frazier] made some remark about my robe and I told her it was lucky I was wearing my robe."

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

As background, prior to the commencement of both the morning and separate afternoon sessions, Commissioner Culver's court attendant advises all of the parties and counsel of the courtroom rules and procedures. These rules include guidelines on courtroom etiquette including,

but not limited to, no hats, gum, food, drinks, cell phone usage, or talking while the judge is talking. These rules are also placed in written notices on the outside of the courtroom doors and in several locations around the courtroom itself. Furthermore, once the Commissioner takes the bench, he immediately informs the entire gallery, once again, of the courtroom rules regarding etiquette and demeanor while waiting for their case to be called and during the actual administration of their case. Notably, the rules read by the attendant and plastered throughout the courtroom are not limited to Commissioner Culver's court, but instead are utilized by several judges in the Alameda County Superior Court.

These rules are necessary because Commissioner Culver's exceptionally heavy caseload requires an efficiently run courtroom in order to provide all litigants equal access to the judicial system, and also because most of the litigants are unrepresented, non-lawyer parties appearing for traffic violations and, therefore, may be unaware of appropriate courtroom behavior. The duty to keep order and to control distracting and disruptive influences in the courtroom and to assure that a proper judicial atmosphere is maintained rests with the trial judge. (*See* Code Civ. Proc. § 128, subd. (a).) These rules, including the limitation on talking while the Commissioner is talking, is in no way intended to be demeaning or discourteous. On the contrary, a fair and judicious system can only operate where a judge maintains courtroom decorum by exercising control over the proceedings and those participating in them. The Court of Appeal made the point more bluntly: "The courtroom is not a circus; the trial judge owes a duty to see that proper demeanor is maintained." (*People v. Polite* (1965) 236 Cal.App.2d 85, 92.)

As an initial matter, the above transcription is both incomplete and inaccurately sets forth the exchange between Commissioner Culver and Ms. Frazier. The interpretation of the exchange between Commissioner Culver and the litigant that he challenged her to a fight is as offensive to

the Commissioner as it is absurd. The litigant was a woman and no such implication can be reasonably be drawn from the exchange. Commissioner Culver has never struck or threatened to strike a woman in his personal or professional life. Regardless, Commissioner Culver never became angry with Ms. Frazier. However, her overall Court demeanor was grossly inappropriate. She lacked respect and deference for both the bench and the judicial process as a whole, and openly displayed her contempt for the Court. In a vacuum, based on an incomplete transcript and without the benefit of having seen Ms. Frazier in person it may be difficult for the Commission to fully grasp how inappropriate she conducted herself.

B. On December 28, 2012, Alex Lindsey, Jr., appeared before you for trial on the charge of reversing his vehicle in an unsafe manner. (No. WWM256167.) After hearing the evidence, but without rendering a verdict, you asked Mr. Lindsey, "What you wanna do about the money?" The following colloquy ensued:

> *DEFENDANT: So I'm being stuck with a ticket because I'm backing up?*
>
> *THE COURT: What did I just ask you, man? Now you ain't in the street, you in my courtroom. I'm a tryin' —*
>
> *[Talking at the same time.]*
>
> *DEFENDANT: I didn't say I was in the street, sir. I'm being respectful to you, sir.*
>
> *THE COURT: No, you better be quiet while I'm talking to you. When I ask you about the money, you answer me about the money. You don't get to ask — act like we in the street. Now I'm gonna ask you one more time and I hope that you don't make me put you through door number two. What do you wanna do about the money?*

Your reference to "door number two" was an abuse of authority and an implied threat to remand Mr. Lindsey into custody.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(2), 3B(4), 3B(5), and 3B(8).

This is an occasion where the transcript does not accurately reflect the proceedings, including the tone and body language of the defendant at the time of the foregoing exchange.

Commissioner Culver attempted to diffuse the situation by explaining Court protocol during the arraignment process, and that court etiquette does not permit interrupting the Commissioner because it would impede the efficient progress of cases. Clearly, the defendant's sarcastic and disrespectful tone escalated the situation, whereby Commissioner Culver needed to maintain control of the proceedings and the courtroom. His colloquial response of "door number 2" was intended solely for that purpose. Commissioner Culver simply advised the defendant of the potential consequences of continuing in the same course of conduct and allowed the defendant time and opportunity to collect himself and regain his composure. The reference to door number two was to suggest that additional steps would be taken if the Defendant did not stop his disrespectful actions.

The Commissioner always attempts to diffuse situations himself, thereby eliminating the need to place anyone in custody. Nonetheless, given the litigants that frequent Commissioner Culver's department it is not an altogether avoidable situation, and Commissioner Culver handled this incident with the restraint, command and respect that the bench requires.

Moreover, while the Commission has taken issue with Commissioner Culver's word choice – "What you want to do about the money?" – it cannot be overlooked that the Commissioner was attempting to be judicial in relaying to the defendant that satisfaction of the fine needed to be resolved. Commissioner Culver could have used different language, but chose the aforementioned language so as to be fully comprehended and digested by Mr. Lindsey. Commissioner Culver's verbiage is meant to ensure that, while acting judicial, the non-lawyer litigants fully grasp the Court's rulings and the reasoning behind them. Commissioner Culver speaks to the litigant in his department so that there is not even the perception that the litigants were deprived of due process

because the legal process, charges against them, and rulings of the Court were not explained in a manner that they could readily understand.

COUNT TWO

You made statements that suggested prejudgment or bias and gave litigants the appearance that they could not receive a fair trial before a neutral arbiter in your department, as follows:

A. On March 5, 2015, you presided over the arraignment of Mignon Perry, who was charged with running a red light. (No. WWM662182.) After you played the red light camera video, Ms. Perry told you that the driver depicted in the video was male and was not her, and that she no longer owned the vehicle at the time the ticket was issued. You then replayed the video and the following colloquy took place. Many of your comments were made in a stern tone of voice:

> *THE COURT: That's you ma'am.*
>
> *DEFENDANT: No, that is not me. Here is the picture of the male and if you look at it on here —*
>
> *[unintelligible]*
>
> *THE COURT: That's you, ma'am.*
>
> *DEFENDANT: That is not me.*
>
> *THE COURT: Okay. You gonna take the ticket.*
>
> *DEFENDANT: Why would you put a ticket on me — ?*
>
> *THE COURT: Because that — that's you —*
>
> *DEFENDANT: That's not me.*
>
> *THE COURT: — and you just telling me a fable.*
>
> *DEFENDANT: I'm not, I'm not telling you a lie. I have a [sic] itinerary when I was out of town also that I can print out and bring back if you need me to.*
>
> *THE COURT: Let me explain, ma'am —*
>
> *DEFENDANT: This is a male.*
>
> *THE COURT: — 'cause you're confused. Let me explain.*
>
> *DEFENDANT: I'm not confused.*

THE COURT: Oh, see, now you don't, you know what I know already. You wearing this or not? You ought to be listening when I'm speaking to you instead of talking. It doesn't matter if you sold it to Santa Claus. Either that's your image or it isn't. And so transferring the vehicle has nothing to do with the ticket. Now the question of whether that's you, that's you or your twin. That's what this is about. Now you can tell me what's on your mind about you sold the vehicle, you got releases; either that's your image — and that's how this works — or it's not. Now, anything else you want to prove about that's not your image, I'll hear it. About the transfer of the vehicle, I don't care nor does the law. Now tell me what you'd like me to know.

DEFENDANT: Your Honor, that's —

THE COURT: Yes.

DEFENDANT: — not my image —

THE COURT: Okay.

DEFENDANT: — and I'm not standing here telling you a lie or a fable.

THE COURT: Okay.

DEFENDANT: That's not my image.

THE COURT: Let me explain to you. Six people looked at this, and the six people thought it was you. I'm looking at it, I think it's you. You have a right to come to trial and challenge that. And there will be — the police side will be here, they will explain to you how many people looked at that image and [unintelligible] it's you. They will explain that you had a right to say it was somebody else much earlier than the trial. And if you sent that in, they take it off the wrong person and put it on the right person. That's you in my mind. But at the trial you can bring up all these other things. I never saw anybody look so much like you that wasn't you in my life.

DEFENDANT: So you trying to tell me that that person looks just like me with no hair? That is a male. You can obviously see that. Anybody else in this courtroom, court, courtroom think that's me?

THE COURT: Oh.

(Man in background: "That's a man.")

DEFENDANT: That's definitely a man. You can —

THE COURT: I'm sorry —

DEFENDANT: — clearly see that that's a man.

THE COURT: I'm sorry, sir. Were you dressed up? Hey, my man in the T-shirt. Were you, are you doing this?

DEFENDANT: You can see the cheek bones is different. Here's my ID and everything. That's completely not me.

THE COURT: Ma'am, we'll set it for a trial. It is you and I don't care what "Sweatshirt" says there, ain't got nothing to do with it.

DEFENDANT: Can I get a trial date then?

THE COURT: I'm sorry, not guilty. When do you want a trial?

DEFENDANT: Within 45 days.

THE COURT: Okay.

DEFENDANT: Just don't tell me that's me.

THE COURT: See, ma'am, now you gonna keep runnin' your mouth, I'm gonna have to call somebody to have this dealt with. I understand you disagree and I respectfully disagree, but you not gonna keep runnin' your mouth and disrespect the court.

By repeatedly telling Ms. Perry at arraignment that she was the driver depicted in the video and that she was telling a "fable" when she denied that it was her, you demonstrated prejudgment or gave the appearance that you had prejudged the matter. By telling Ms. Perry that six people looked at the video and thought she was the driver, you relied or gave the appearance of relying on facts not in evidence. Your comments also reflected a lack of patience, dignity, and courtesy.

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

The Commissioner believes the allegations are misplaced. The Commissioner was using language and examples that could be easily understood by the litigant before him, in order to fully explain his mental process, as the trier of fact, in finding that she was the driver in the video committing the alleged infraction. The Commissioner was not prejudging the defendant's case, but engaged in a discourse that would hopefully assist her in gathering relevant evidence to present to the Commissioner at trial in support of her defense to the ticket.

Additionally, this type of defense – litigants denying that they were operating the vehicle at the time of the infraction – is the most commonly used defense in traffic court involving cameras. Regardless, the Commissioner was extremely patient with the defendant because he wanted her to be able to say all that she could regarding the matter. Notably, this was the arraignment phase and not a trial, which means that the Commissioner was not required to receive evidence of the defendant's innocence at that time. Nonetheless, he specifically informed her that she could provide any information that helped prove she was not the driver of the car in the video. He also expressly informed her that she could gather additional information and present it at her trial, which would be scheduled for a later date. Thus, she likely would have had somewhere in the range of forty-five (45) days – between arraignment and trial – to gather said evidence including contacting the individual she allegedly sold the car to and anyone else who could confirm her story that she was out of town on the date and time of the video. There is also an Alameda County Superior Court process that provides anyone who believes he or she is improperly charged with the infraction to fill out a form and submit it to the vendor and police department regarding the apparent mistake. This process can be undertaken at any time before trial. If done properly, the defendant could have removed the ticket from her name and placed on the proper person. The Commissioner also made the defendant aware of this process so that she could avail herself of it and potentially eliminate the need for a trial altogether.

Further, the Commissioner was correct in that the defendant's contention that she sold the vehicle before the infraction date was not relevant to the proceedings; the infraction is charged against the driver of the vehicle caught on camera regardless of whether or not they own the vehicle. Thus, the Commissioner was attempting to direct the defendant to gather and provide

relevant information to the Commissioner, as the trier of fact, which would help prove she was not the driver captured on the red light camera.

Commissioner Culver also recalls that the defendant was further making a mockery of the proceedings by polling the other defendants in the gallery asking their opinion on the person in the video. This was causing a serious disruption in the courtroom. Generally, it also gives a window into the environment in an urban courtroom, which is dissimilar to a law and motion department. The Commissioner does not offer these facts as excuses, but rather to further explain the reasoning behind the particular discourse he engaged in with the defendant.

B. On March 4, 2015, you presided over the arraignment of Laron Ryan, who was charged with not having his license in his possession at the time of the stop. (No. WWM753262.) When you asked for Mr. Ryan's response, he stated, "I have proof that it wasn't me that actually incurred that ticket." You replied, "[W]e need the cops here `cause the cop gonna call you a liar." Telling Mr. Ryan that the "cop" was going to call him a "liar" reflected a lack of patience, dignity, and courtesy, and demonstrated prejudgment.

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

As an initial matter, Commissioner Culver's statement "[W]e need the cops here cuz the cop gonna call you a liar," was not intended to show bias towards the officers. In fact, nothing contained in the above statement shows an expression by Commissioner Culver of bias towards either the officer or the litigant. Nor did the Commissioner attempt to discourage the litigants from seeking trial. On the contrary, the Commissioner's explanation of the trial procedure was intended to be a statement of fact. The litigant was improperly attempting to introduce evidence during the arraignment phase. Regardless, the citing officer <u>must</u> appear and present himself or herself for potential cross-examination by the defendant on the date of trial. Absent such appearance by the law enforcement officer, the infraction must be immediately dismissed. Therefore, Commissioner Culver's statement was intended to inform the litigant that he would have an opportunity at trial to give testimony <u>and cross-examine the citing officer</u> who would likely contradict the defendant's

contention that he was not the individual who incurred the ticket. This process is also described during arraignment, in part, so that the litigants are aware they should not attempt to present evidence or testimony at the arraignment to contest the traffic infraction.

C. On March 4, 2015, you presided over the arraignment of Ryan Peters, who was charged with having an unregistered vehicle, failing to register the vehicle in California, and defective taillights. (No. WWM75593.) When you asked Mr. Peters whether he had moved here from somewhere else, he replied, "Arizona." When Mr. Peters said that he "wasn't actually living here then at the time[,]" you replied, "Everybody says that." Mr. Peters then pled guilty and you fined him $638. Telling Mr. Peters, "Everybody says that[,]" in response to his claim that he was not "living here" at the time he received the citation reflected a lack of patience, dignity, and courtesy, and demonstrated prejudgment.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), and 3B(8).

The Commissioner believes the allegations are misplaced. The Commissioner was using language and examples that could be easily understood by the litigant before him, in order to fully explain his mental process, as the trier of fact, in considering whether the defendant had committed the alleged infraction. As discussed *supra*, the Commissioner was not prejudging the defendant's case, but engaged in a discourse that would hopefully assist him in gathering relevant evidence to present to the Commissioner at trial in support of his defense. While this was the arraignment phase and introduction of evidence in support of a defense to the infraction is not permissible, at no time did the Commissioner attempt to dissuade the defendant from invoking his constitutional right to a trial. Stated another way, litigants often attempt to submit evidence at the arraignment even though each has already been warned that such conduct was inappropriate and will not be tolerated. The defendant was informed, via the arraignment video, that he would have an opportunity to present evidence in support of his defense at trial were he to plead not guilty. Commissioner Culver was simply providing the defendant insight into his mental process when examining the infraction so that the defendant could gather and present all relevant evidence in support of his defense at trial. Again, these are laypersons with no formal legal training. Absent

some guidance as to what information is relevant to a trier of fact, they will likely not arrive with the evidence necessary to adequately defend against the infraction.

Again, Commissioner Culver believes that the allegations set forth are based on a misconception of the Commissioner's intentions regarding the language he uses to communicate with the defendants in his department. Attempting to communicate with the Commissioner's litigants in the same manner as a judge would speak to attorneys in the law and motion department would do the litigants a disservice; they would not be made adequately aware of their rights and, therefore, would not be able to avail themselves of their constitutional entitlements. Commissioner Culver's chosen manner of speech is intended to ensure that does not happen.

D. On February 25, 2015, you presided over the case of Matthew Cataleta, who was charged with unsafe backing. (No. WWM857879.) After Mr. Cataleta pled no contest and stated that he wanted to go to traffic school, he added that he did not feel that the description of the violation was correct. When you asked, "In what regard?" Mr. Cataleta responded, "I was parked on a hill and I rolled back and I touched another car." You replied, "See, now, you want to tell your story when the cops are not here. Now, the cop is gonna call you a liar, and that's why I have to wait for him to show up." Your statement that the police officer was going to call Mr. Cataleta a "liar" reflected a lack of patience, dignity, and courtesy, and demonstrated prejudgment.

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

Again, Commissioner believes the allegations are misplaced. The Commissioner was using language and examples that could be easily understood by the litigant before him, in order to fully explain his mental process, as the trier of fact, in evaluating the veracity of his defense to the cited infraction. The Commissioner was not prejudging the defendant's case, but engaged in a discourse that would hopefully assist him in gathering relevant evidence to present to the Commissioner at trial in support of his defense to the ticket, including the ability to cross-examine the citing officer. Further, it is important that the litigant know the officer's likely position before the officer appears so that the litigant can properly prepare for cross-examination of the officer.

E. On December 10, 2014, you presided over the arraignment of Miguel Marin, who was charged with failing to stop at a red light at an intersection with a red light camera. (No. WWM809786.) Mr. Marin pled not guilty and showed you a picture. When you asked Mr. Marin why he was showing you the picture, the following colloquy took place:

> *DEFENDANT: Because it's not me [through interpreter].*
>
> *THE COURT: Oh, then we definitely gotta have a trial. 'Cause the cops think it is you. It looks like you to me.*
>
> *DEFENDANT: No.*
>
> *THE COURT: Yeah, right. Okay. It — there's somebody else took your car, committed a crime, and returned the car to you. It happens every day. We're seeking out those people. The return crooks. They do something bad and then they return the instrument of bad back to the owner.*

The italicized comments were sarcastic and reflected prejudgment.

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

Commissioner Culver speaks to the litigants that frequent his department in a straightforward manner that they understand and can relate to. Moreover, in the allegedly offending commentary, Commissioner Culver is actually attempting to describe the trial procedure and the mental process that the Commissioner will undertake as the trier of fact when considering Mr. Marin's case. The contention that the individual in the photo breaking the law is not the litigant present at trial (or arraignment) is a commonly used defense in these types of cases. Claiming that the driver is not the defendant is the only viable defense that can be successful. The video of the action is conclusive if the defendant is the driver. Here, the Commissioner used informal language to explain to Mr. Marin his burden at trial of establishing through admissible evidence that an unknown person misappropriated the litigant's vehicle, only to return it after committing the infraction.

F. On December 9, 2014, you presided over Denise Kess's trial for failing to stop at a red light at an intersection with a red light camera. (No. WWM508411.) After viewing the video, Ms. Kess asserted that her daughter was the driver depicted in the video. You stated that

Ms. Kess's daughter was not present in court and that the driver in the video looked "just like" the defendant. You also said that a person who is so closely related to the defendant as to look like her would not let the defendant be convicted of something the defendant did not do. You added, "[I]f my brother did this, he would step up and take what's [his] responsibility `cause he wouldn't want to hurt me." You also stated, "Some people bring the people to court so that they can take the ticket off you and put it on the daughter." When Ms. Kess responded that she no longer had contact with her daughter, you replied, "What's that got to do with me? I'm here just judging the case." You later told Ms. Kess:

> *I have a rationale as to how I determine this. And when it's a family member, it seems to me that person ought to come forward and take you off the hook. That just seems reasonable. As to whatever drama's going on in your family, that ain't got nothing to do with me.*

After a police department representative asked you whether you wanted to provide a "continuance for the affidavit," you told Ms. Kess, "Here's what can happen. I'll put it over 30 days. You can talk to the police department, and maybe they can in some way research it, or find her or something like that. But this `ain't me' [defense], if they can't find somebody else, it's you."

Your remarks made it appear that you would decide the case based on your personal experience with what your family member would do, rather than the facts presented by the litigant, and that you would reject the argument of any defendant who claimed that an absent family member was the driver. In addition, the italicized comments reflected a lack of patience, dignity, and courtesy.

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

The Commissioner believes the allegations are misplaced. As an initial matter, Commissioner Culver does not have a "brother." The Commissioner used the reference to "his brother" simply to illustrate a comparative relationship to the one being used as an excuse by the litigant. Again, Commissioner Culver was using language and examples that could be easily understood by the litigants before him, in order to fully explain his mental process, as the trier of fact, in finding that she was the driver in the photo committing the alleged infraction.

Specifically, the rudimentary example provided by Commissioner Culver certainly resonated with the litigant who agreed that ordinarily a person with a familial relationship would not let their close family member suffer the consequences of their actions. Under this illustration, the absence of Ms. Kess' daughter at the proceedings, taking responsibility for the infraction, lead

to the logical conclusion that Ms. Kess was actually the one photographed. Commissioner Culver's later story about his fictional "brother" was simply a more detailed manner of explaining his thought process to Ms. Kess so that she could provide additional information to the Commissioner in an effort to help him be fully informed before rendering a ruling on her traffic infraction. But the fact remains that he does not have a brother and was not pulling on any personal experiences to adjudicate Mr. Kess' case.

Additionally, the Commissioner was extremely patient with her because he wanted her to be able to say all that she could regarding the matter. While the continuance was allowed, it should be noted that it was by no means a requirement. Ms. Kess was certainly informed at the arraignment that she would have an opportunity to present any documentary and testimonial evidence at trial to support her defense of the allegations. She likely had somewhere in the range of forty-five (45) days – between arraignment and trial – to gather said evidence including contacting her daughter and asking her to appear at trial. Thus, she could and should have brought her daughter (or at least a photograph for comparison purposes) to the trial. She chose not to, or was unable to as a result of not being able to locate her daughter. There is also Alameda County Superior Court process that provides anyone who believes he or she is improperly charged with the infraction to fill out a form and submit it to the vendor and police department regarding the apparent mistake. This process can be undertaken at any time before trial. If done properly, Ms. Kess could have removed the ticket from her name and placed on the proper person (allegedly her daughter). Each defendant is responsible regarding the use of this process. Of course, Ms. Kess did not undertake this process before trial either. These failings are not of the Court's making.

Further, this type of defense – litigants denying that they were operating the vehicle at the time of the infraction – is the most commonly used defense in traffic court involving cameras. If

Commissioner Culver were to in every case allow a continuance to gather allegedly existing additional evidence these cases would never conclude and drastically impair the efficient progression of his docket. While the Commissioner by no means values efficiency over the fair administration of justice, the two competing judicial obligations must be weighed not only in each individual case but also when considering his extremely heavy caseload in its totality. The additional time did not originally seem warranted under the circumstances because the Commissioner was able to compare the litigant in Court to the photo of the infraction and, in his capacity as trier of fact, believed they were the same person.

These points notwithstanding, Commissioner Culver ultimately allowed a 30-day continuance, because he wanted her to be able to obtain and identify what additional evidence existed that would suggest that the ticket should be removed from her name and charged to her daughter.

G. On September 11, 2014, you presided over Nayo Miller's trial for violating the posted speed limit on the San Francisco-Oakland Bay Bridge. (No. WWM689465.) Mr. Miller represented himself at trial. A CHP officer testified that he had determined that Mr. Miller was speeding by pacing his vehicle. Mr. Miller's opening question on cross-examination was whether the officer had a videotape of the incident. The officer responded that he did and that he had it with him. Mr. Miller's next question was whether he could see the video. The following then occurred:

> *THE COURT: No. All of that should have taken place before trial.*
>
> *DEFENDANT: I ain't never get a chance to — to — I ain't never seen this gentleman.*
>
> *THE COURT: No. That's all part of being your own lawyer.*
>
> *DEFENDANT: I never even saw this gentleman until — from that night in March until right now, so how can I ask him if he had me on tape to see the evidence?*
>
> *THE COURT: Mr. Miller, listen to me because you in a space that you don't know anything about. When you are representing yourself, you are assumed to know the rules. You could have gotten that tape by making a request.*

You subsequently found Mr. Miller guilty.

Your refusal to allow Mr. Miller to see the CHP video constituted a failure to accord him a full right to be heard according to law and violated your duty to ensure that disposing of the matter promptly and efficiently did not take precedence over your obligation to dispose of the matter fairly and with patience.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), 3B(7), and 3B(8).

Court efficiency is of the utmost concern because of Commissioner Culver's exceptionally heavy caseload. That said, the Commissioner also has an obligation to ensure that all litigants are afforded the same access to the court. As it relates to discovery, the only manner in which to provide each litigant equal footing is by holding them all to the same procedural requirements. In this instance there was no process to see the tape because the video was not in the courtroom. As a matter of law that request was a discovery request and should have been made before trial. The Commissioner was fully within his authority to preclude the purported evidence as it was not requested through appropriate channels including, but not limited to, a subpoena or document demand. Fairness, to all litigants appearing before Commissioner Culver, required the Commissioner to preclude production of the CHP video to Mr. Miller where the request was untimely.

H. You presided over Kiera Einhorn's trial on January 7, 2013. (No. WWM212899.) Ms. Einhorn was charged with crossing a traffic cone pattern. A CHP officer testified that he stopped Ms. Einhorn after he observed her vehicle knock over a cone in a closed lane on Highway 80. During cross-examination, Ms. Einhorn asked the officer if he knew what kind of lights were in the construction zone (next to the cones), and stated that she wanted to show the officer, on her phone, the glare caused by the lights. The officer testified that he did not recall what type of lights they were. When Ms. Einhorn told you, "I don't need to talk to [the officer] anymore. I wanna show evidence[,]" you responded, "Ma'am, what I want you to do is listen to my instructions. When I tell you, 'you go,' you go. When I tell you, 'you stop,' you stop. Now, do you want to ask him questions about the lights on the phone? I need a 'yes' or 'no' and not a big instruction. Tell me, do you want to ask him questions about those lights?" When Ms. Einhorn said that the officer had already testified that he did not know, you responded in a raised voice, "I asked you a question! Do you or don't you?"

Near the end of the trial, Ms. Einhorn asked you how she would go about bringing in evidence of studies showing that the lights blur people's vision. When she interrupted you at one point with a reference to "the truth," you prefaced your next remarks by referring to her as "Madam Politician."

Ms. Einhorn later suggested that you took the officer's side every time and asked, "Then why do we bother coming in if you're automatically gonna go with the officer every time?" You responded, "First of all, you don't know if I'm going with the officer or not. That's not only something that you're ignorant about, but the fact that you wanna make a political speech about it makes me less tolerant of hearing from you." After you found Ms. Einhorn guilty, you told her in a harsh tone, "Sit over there and pay the fine."

Your comments reflected embroilment and a lack of patience, dignity, and courtesy, and violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5).

As a general proposition Commissioner Culver denies that during his service as a Commissioner he became embroiled with litigants or that he ever treated them with a lack of courtesy. Commissioner Culver made a concerted effort to treat everyone in his courtroom with dignity and respect. The statements attributed to him must be taken in the appropriate context in which the statements were made. The contentions she was raising in defense of the charges where not argument of the law or facts involved, but a political objection to the law, which is why Commissioner Culver referred to her as a "politician." Moreover, Commissioner Culver's statements "Madam Politician" and "you wanna make a political speech" were, at worst, jovial, and in no way intended to be discourteous. At worst, Commissioner Culver, in a further attempt to find common ground with Ms. Einhorn, had limited occasion to interject some very restrained levity into the proceedings. This was never done at the expense of the litigant and did not have a negative impact on her case.

The remainder of the discourse between Commissioner Culver and Ms. Einhorn was simply the Commissioner undertaking the necessary conduct to control his courtroom. As background, prior to the commencement of both the morning and separate afternoon sessions, Commissioner Culver's court attendant advises all of the parties and counsel of the courtroom

rules and procedures. These rules include guidelines on courtroom etiquette including, but not limited to, no hats, gum, food, drinks, cell phone usage, or talking while the judge is talking. These rules are also placed in written notices on the outside of the courtroom doors and in several locations around the courtroom itself. Furthermore, once the Commissioner takes the bench, he immediately informs the entire gallery, once again, of the courtroom rules regarding etiquette and demeanor while waiting for their case to be called and during the actual administration of their case. Notably, the rules read by the attendant and plastered throughout the courtroom are not limited to Commissioner Culver's court, but instead are utilized by several judges in the Alameda County Superior Court. It is also important that the Commission understands that not only are etiquette rules necessary because Commissioner Culver's exceptionally heavy caseload requires an efficiently run courtroom in order to provide all litigants equal access to the judicial system, but also because most of the litigants are unrepresented, non-lawyer parties appearing for traffic violations and, therefore, unaware of appropriate courtroom behavior. The duty to keep order and to control distracting and disruptive influences in the courtroom and to assure that a proper judicial atmosphere is maintained rests with the trial judge. (*See* Code Civ. Proc. § 128, subd. (a).) Here, Commissioner Culver was simply enacting those rules, including the limitation on talking while the Commissioner is talking, in an effort to maintain courtroom decorum by exercising control over the proceedings and those participating in them. Thus, Commissioner Culver's various statements putting an immediate stop to even the perception of arguing with the Commissioner during the proceedings was clearly in an effort to control the orderly and efficient disposition of his caseload and ensure that every party has the Court's full attention and consideration during their case.

I. On December 28, 2012, you presided over Teianne Miller's speeding trial. (No. WWM135108.) After the citing officer testified that Ms. Miller had been driving 82 miles per hour, the following colloquy took place:

> *DEFENDANT: [H]onestly, I don't feel that I was going 80 miles an hour. It was no room for me to go 80 miles an hour. He's right, the clock, there was not a lot of traffic but there was a vehicle in front of me and from, you know, to be honest from what I'm noticing —*
>
> *THE COURT: That's a good start, being honest in the courtroom.*
>
> *DEFENDANT: — would, I mean just from what I'm noticing, any officers that showing up for every — you're believing, pretty, taking their word as if, you know, I have the time to come in here and to lie to you about what —*
>
> *THE COURT: You can't be serious, ma'am. You think that merely because the officer testifies that makes his testimony [more] believable than yours. Yours doesn't sound believable to me.*
>
> *DEFENDANT: From what I've been seeing, that's pretty much the case —*
>
> *THE COURT: So you get to make the judgment about how I do my job? That's a mistake.*
>
> *DEFENDANT: In your opinion.*
>
> *THE COURT: No, in my job. I know what my sworn du — du — duties are. And you don't know 'ern.*
>
> *DEFENDANT: I didn't say that I did know them. What I said was is in my opinion every officer that have [sic] showed up, you have found the — the defendant guilty. That's been pretty much every — there's not been one yet that I've saw [sic] and there's not been —*
>
> *THE COURT: When you get my job —*
>
> *DEFENDANT: Excuse me?*
>
> *THE COURT: — you'll get to make decisions. When you get my job—*
>
> *DEFENDANT: I didn't say that I needed your job to make decisions; you asked me what I said and I explained that to you.*
>
> *THE COURT: Okay, now I'm gonna explain something to you: I don't care what you think.*

DEFENDANT: That's fine, you don't have to. Next —

THE COURT: That's true. Is there anything else you want me to know about the case other than your politics 'cause I don't care anything about them.

DEFENDANT: Well —

THE COURT: Is there something else you need to tell me about the case?

DEFENDANT: Don't speak to me that way, please. I'm just asking you questions and I'm just trying to understand. I'm not here to be, you know, spoken to with an attitude or anything, I'm just trying to understand and so what I was trying to explain is that I don't feel in — in the case here that I was doing 80 miles an hour on the freeway.

THE COURT: Two things, you don't tell me how to speak to anybody.

DEFENDANT: Well, I would a— I'm asking you, I didn't tell you anything, I asked you if you would speak to me differently.

THE COURT: I'm gonna speak to you like I do anybody that comes into this courtroom, which means 16,000 people a year. You're not special, you're just you.

DEFENDANT: I didn't say I was.

THE COURT: I didn't ask you whether you said it. I'm telling you what's up. You're just like anybody else....

The italicized remarks were discourteous and reflected embroilment.

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

Similar to the above allegations involving Ms. Einhorn, Commissioner Culver does not believe the charges of embroilment are valid. Commissioner Culver believes that a commissioner or judge must alert the litigants to his or her mainframe as the trier of fact in the litigant's trial. This allows the litigant to be able to direct his or her argument to meet the issues. Commissioner Culver in no way was intending to be discourteous or impatient with Ms. Miller. However, Commissioner Culver has an obligation to control his courtroom. While the language may be

viewed by the Commission as stern, it was necessary in order to dissuade Ms. Miller from continuing to argue with the Court instead of simply putting on evidence in support of her defense of the traffic citation.

J. On November 29, 2012, you presided over Anthony Mendez's trial for violating the posted speed limit on the San Francisco-Oakland Bay Bridge. (No. WWM227307.) After the citing officer testified, you invited Mr. Mendez to tell you what he thought you needed to know. Mr. Mendez testified that he was on his way to take his girlfriend to work, was "going the flow of traffic coming off the Bay Bridge," and was not "trying to go too slow," when he felt the officer picked him "out [of] the crowd." When you asked Mr. Mendez, "Why?," he responded, "I thought I was going too slow." The following colloquy then took place:

> *THE COURT: No, but here's the thing from my perspective as the person in — on the bench. I'm always looking for the people that have a motive because it makes it so much easier for me to think if there's some reason for him to get this wrong, then I just automatically will decide against him. But when you say, "I'm going with the flow of traffic," that means through all those people that were on the bridge, whether it's 9 or 10 o'clock, whatever, there's hundreds of people, now why would he pick you? Like, I'm trying to figure out, who are you?*
>
> *DEFENDANT: Well I feel like —*
>
> *THE COURT: See, if you're famous or something like that, then I'm interested 'cause I might wanna drive up there and stop your car. But if you're just Joe Schmo, why would he lie about you?*
>
> *DEFENDANT: 'Cause I felt I was being racially profiled, for one.*
>
> *THE COURT: What? As an almost looking white guy?*
>
> *DEFENDANT: ... Yeah, I mean just — just about looks.*
>
> *THE COURT: You mean that people are after the white people now?*
>
> *DEFENDANT: I mean, I mean, I'm Latin for one, sir.*
>
> *THE COURT: He would have been able to see that?*
>
> *DEFENDANT: Yeah, I mean, I was going so slow, I wasn't going no 70, whatever, miles an hour he said I was doing. I was doing the flow of traffic, which was very slow at that time 'cause it was early morning. Everybody was getting the sleep in their eye, and then*

after that I just felt he assassinated my character while yelling at me.... That was like the fastest ticket I ever got in my life. I was —

THE COURT: You had other tickets?

DEFENDANT: Yeah, of course. I mean, who hasn't been pulled over —

THE COURT: For being Latin?

DEFENDANT: No, not for that. Just —

THE COURT: Oh —

DEFENDANT: — for being pulled over.

THE COURT: I got it.

DEFENDANT: And then when I asked him for questions, he never really, he just had me sign the paper and drove off as fast as he could. So —

THE COURT: I got it. Well it might be true. But this is certainly a first for me and I've been — I heard probably close to 40,000 — uh — uh — cases —

DEFENDANT: I understand that.

THE COURT: — so I'm interested in when they start pulling over the white people, that's really, I'm really down with that.

You then found the defendant guilty.

The italicized comments were sarcastic and would reasonably be perceived as bias. Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5).

The allegedly sarcastic comments attributed to Commissioner Culver were, at worst, jovial, and in no way intended to be discourteous. At worst, Commissioner Culver, in a further attempt to find common ground with Mr. Mendez, had limited occasion to interject some very restrained levity into the proceedings. Again, this was never done at the expense of the litigant and did not have a negative impact on his case.

Further, nothing contained in the above statement shows an expression by Commissioner Culver of bias towards either the officer or the litigant. Commissioner Culver's responsibility as trier fact is to weigh the evidence and credibility of witnesses with impartiality and to reach a fair and unbiased verdict. He is unwavering in his adherence to this principle regardless of the race, sex, or religious beliefs of the litigants appearing before him. Included in his impartial approach to the traffic violations is a lack of any bias towards or predisposition to believe law enforcement officers. In asking Mr. Mendez why the officer would lie, the Commissioner, as the trier of fact, is attempting to gather additional information to help him evaluate the credibility of the witness (the police officer) and the case as a whole. Included in this information gathering endeavor is whether there is a preexisting personal relationship between the defendant and the citing officer or any other information the litigant has regarding the citing officer that the Court may not be aware of, upon which a legitimate claim of retaliation or profiling could be based. The Commissioner's questions to Mr. Mendez are only intended to ascertain whether or not the defendant has such relevant information, which the defendant may not voluntarily offer absent being specifically asked by Commissioner Culver. Again, these are self-represented litigants and are likely unaware of the information that is relevant to the trier of fact in reaching a verdict. Commissioner Culver's questions are his way of probing to make sure he has any and all of the relevant information so that he can render an informed verdict.

K. On November 27, 2012, you presided over Alex Park's trial for failing to come to a full stop at a flashing red light. (No. WWM230164.) When the defendant testified that he made a full stop, you stated:

> *You know, I don't believe it, because I'm interested in why a cop would put his career on the line to lie about you. That's what I — I never understand it. He can't get any more money, he doesn't know you, he's not mad, he's not a friend of yours or an enemy. Why would he just make up stuff about you?*

By stating that the officer "can't get any more money" from issuing the ticket, you relied on facts not in evidence and gave the appearance of prejudgment in favor of law enforcement witnesses.

After you found that Mr. Park was responsible for the citation, and asked him what he wanted to "do about the money[,]" the following colloquy took place:

> *DEFENDANT: So the basis of the decision is simply because —*
>
> *THE COURT: Oh, oh, I didn't tell you, when I make a decision, that's the end of the talk about the facts. When I ask you about the money, the next thing out of your mouth ought to be how you gonna pay.*
>
> *DEFENDANT: No, no, I'm not disputing your decision, I'm just —*
>
> *THE COURT: No, you don't get to debate. I said the case is over and you're responsible. That's the end of that. Now, I asked you, how are you gonna pay the money?*

The italicized comments were spoken in a harsh tone of voice.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), and 3B(8).

As discussed *supra*, the allegations of bias are misplaced. Nothing contained in the above statement shows an expression by Commissioner Culver of bias towards either the officer or the litigant. Commissioner Culver's responsibility as trier fact is to weigh the evidence and credibility of witnesses with impartiality and to reach a fair and unbiased verdict. He is unwavering in his adherence to this principle regardless of the race, sex, or religious beliefs of the litigants appearing before him. Included in his impartial approach to the traffic violations is a lack of any bias towards or predisposition to believe law enforcement officers. In asking Alex Park why the officer would lie, the Commissioner, as the trier of fact, is attempting to gather additional information to help him evaluate the credibility of the witness (the police officer) and the case as a whole. Further, Commissioner Culver did not show any discourtesy in concluding the trial after a verdict had been rendered.

L. On the morning of November 27, 2012, in Jaleel Hanif's absence, you found Mr. Hanif guilty of running a red light. (No. WWM178481.) When Mr. Hanif appeared in your

department that afternoon, he told you that he had received a document indicating that the trial was scheduled to take place at 2:00 p.m. You responded that the day after Mr. Hanif had received that document, he received a letter to come to court at 8:30 a.m. You also told him that he had been found guilty, and added, "We're not throwing out anything, unless you have some enormously compelling reason to do it." Mr. Hanif replied, "Well, my compelling reason is that I never received this letter, ever." You responded in an impatient tone, "Man, do you know how many times I hear that in a year? Thousands! Do you think I believe it?" After Mr. Hanif replied to your comment, you responded, "Really? Do I look 12?" After Mr. Hanif told you that he was telling the truth when he said that he never received the notice of the 8:30 a.m. appearance, you responded in a harsh, loud, and lecturing manner:

Let me just say this to you so that you and I understand each other. I hear 16,000 cases a year. And I hear that excuse about "I didn't get it" 2,000 times. Nineteen hundred and ninety-nine of people are lying, that's what it happens [sic]. They never seem to get the document that says they have to do something. Now I'm sure if there's a thousand dollars in the mail, it would have come through. But for some reason they always tend to not get the thing sent to the address at the DMV, and for which the car is registered. I never get to understand that, you understand where I am? Now, everybody says, "Oh, Your Honor, I don't have any reason to lie...."

Your statements were impatient, undignified, and discourteous, and would reasonably be perceived as bias or prejudice.

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

None of Commissioner Culver's statements were in any way intended to reflect a bias against defendants as a whole. On the contrary, Commissioner Culver, in his role as trier of fact, was intending to elicit from the defendant any additional explanations for why he was not guilty of the alleged infraction. One of the most common excuses used when one does not appear is that the notice was not received. The law is not that it must be received but rather it must be properly mail served. There was no contention by the litigant that the notice was improperly addressed and, as such, improperly served because it was sent to the wrong address or included the wrong name. There, the contention of non- receipt was irrelevant to the resolution of the infraction. Regardless, Commissioner Culver's statements about what everybody says in his Court was intended to evidence the lack of uniqueness of the defendant's particular defense, and on that basis acknowledges how it may have given the impression of a prejudgment as to the credibility of

defendants appearing before him and the merits of their arguments. That was an unforeseen and unintended consequence of his statement, which he has ceased using.

M. On November 26, 2012, you presided over Brandon Lewis's trial on a charge of driving with a defective brake light. (No. WWM207243.) Mr. Lewis claimed, "[M]y vehicle works properly. It has no violation. It has nothing — I keep everything straight with my car." You asked Mr. Lewis why the citing officer would lie about the violation. Among other things, you stated:

> *But out of all the choices, he makes up a thing about little kibble and bits as brake light [sic]. And this is gonna be the lie he tells. He puts his badge on the table to lie about you for 204 dollars; is that reasonable? You think that's what went down?*

When Mr. Lewis said that he did not know why he was issued the ticket, you responded:

> *Let me say this. I used to be a prosecutor and certainly there were times in which people would say the officer didn't tell the truth. But for 204 dollars, I've got to go with the officer, 'cause this is too junky. If a person's gonna lie, they gonna benefit from it. He can't get nothing. He doesn't know you. He won't get any juice from writing the ticket. And the money ain't nothing. It's 204.*

Your statements suggested that you would believe the officer over the defendant in cases in which you believed that the fine amount listed in the uniform bail and penalty schedule was relatively low.

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

As addressed above in the other allegations of bias towards police officers, Commissioner Culver's responsibility as trier fact is to weigh the evidence and credibility of witnesses with impartiality and to reach a fair and unbiased verdict. He is unwavering in his adherence to this principle regardless of the race, sex, or religious beliefs of the litigants appearing before him. Included in his impartial approach to the traffic violations is a lack of any bias towards or predisposition to believe law enforcement officers. In asking why the officer would lie, the Commissioner, as the trier of fact, is attempting to gather additional information to help him evaluate the credibility of the witness (the police officer) and the case as a whole. Included in this information gathering endeavor is whether there is a preexisting personal relationship between the

defendant and the citing officer or any other information the litigant has regarding the citing officer that the Court may not be aware of, upon which a legit claim of retaliation or profiling could be based. Commissioner Culver needs to have some basis to believe there is error or a motive to lie about the condition for which the ticket was issued. The Commissioner's questions are only intended to ascertain whether or not the defendant has such relevant information, which the defendant may not voluntarily offer absent being specifically asked by Commissioner Culver. Again, these are self-represented litigants and are likely unaware of the information that is relevant to the trier of fact in reaching a verdict. Commissioner Culver's questions are his way of probing to make sure he has any and all of the relevant information so that he can render an informed verdict.

N. On September 26, 2012, you presided over Sonia Scott's trial on a charge of failing to yield to a pedestrian in a crosswalk. (No. WWM198315.) The citing officer testified that he also warned Ms. Scott about speeding and failing to stop at a stop sign. Ms. Scott denied that she committed the charged or uncharged violations. You asked Ms. Scott what she thought about the officer "not getting any of the assertions right." You added, "Either he's lying or he's the worst cop that's appeared before me this year." Ms. Scott did not claim that the officer was lying. You later stated:

> *I'm thinking he's telling the truth because he doesn't have any reason to lie, he can't get anything from lying; he doesn't get a raise, there's no money involved, he doesn't have any motive.*

By making the italicized statement, you relied or gave the appearance of relying on facts not in evidence and, at a minimum, gave the appearance of prejudgment in favor of law enforcement witnesses.

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

As addressed above in the other allegations of bias towards police officers, Commissioner Culver's responsibility as trier fact is to weigh the evidence and credibility of witnesses with impartiality and to reach a fair and unbiased verdict. He is unwavering in his adherence to this principle regardless of the race, sex, or religious beliefs of the litigants appearing before him. Included in his impartial approach to the traffic violations is a lack of any bias towards or

predisposition to believe law enforcement officers. In asking why the officer would lie, the Commissioner, as the trier of fact, is attempting to gather additional information to help him evaluate the credibility of the witness (the police officer) and the case as a whole. Included in this information gathering endeavor is whether there is a preexisting personal relationship between the defendant and the citing officer or any other information the litigant has regarding the citing officer that the Court may not be aware of, upon which a legit claim of retaliation or profiling could be based. The Commissioner's questions are only intended to ascertain whether or not the defendant has such relevant information, which the defendant may not voluntarily offer absent being specifically asked by Commissioner Culver. Again, these are self-represented litigants and are likely unaware of the information that is relevant to the trier of fact in reaching a verdict. Commissioner Culver's questions are his way of probing to make sure he has any and all of the relevant information so that he can render an informed verdict.

COUNT THREE

You have had a pattern of violating your duty to be patient, dignified and courteous to litigants and their witnesses, as exemplified by the following:

A. On August 25, 2015, you presided over Vanya Bukova's trial for failing to stop for a red light. (No. WWM838672.) After the evidence was presented, you and Ms. Bukova engaged in the following exchange:

> *THE COURT: Do you have anything else you think I need to know from your perspective regarding the event?*
>
> *DEFENDANT: Yeah, I don't think that — ah — you're very fair, but that's of course my opinion. And I think — I feel like from the first moment I sat, that everything is like — decided already, so it's not —*
>
> *THE COURT: It is decided because we have proof. We don't have people lyin'. We have proof.*
>
> *DEFENDANT: Then why we waste this time? Why we have to come here?*

THE COURT: Then why didn't you just send in the check —

DEFENDANT: Because I thought, because —

THE COURT: — and admit what you did?

DEFENDANT: You took my money a long time ago. I thought that —

THE COURT: Then why would you come now —

DEFENDANT: Because, I thought —

THE COURT: when you knew that you broke the law?

DEFENDANT: Because — I didn't —

THE COURT: Why?

DEFENDANT: Because I thought that this exactly is a place to discuss and to —

THE COURT: Discuss what? You broke the law and you knew it when you walked in here.

DEFENDANT: No.

THE COURT: No, what?

DEFENDANT: No, I did not absolutely.

THE COURT: I guess, okay, you didn't know it. Everybody else knows it, but you didn't know it.

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

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes in his department bears direct correlation to an intent to clearly communicate with the litigants that appear before him. As a result, Commissioner Culver's form of communication cannot be removed from the circumstances; Commissioner Culver tailors his language to be the most effective for the receiving audience, which may not be the same language that would be used when addressing a completely different demographic. Commissioner Culver's efforts to be judicial necessitate the use of a less formal dialogue so as to ensure the litigants understand both the Court's

legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction. It should be kept in mind that Commissioner Culver is of the community that he presides over. His presentation is a compilation of his rearing and education. His cultural experiences and upbringing have given him significant insight into the attitudes and thought processes of the similarly situated litigants of his department, and how to best explain the judicial process to them without causing any offenses.

Here, this is a situation where the litigant began to become unruly and started to argue with the Commissioner. Her overall Court demeanor was inappropriate. She lacked respect and deference for both the bench and the judicial process as a whole, and openly displayed her contempt for the Court. Commissioner Culver's communicative style was intended to maintain control of the courtroom, and conclude the trial in an efficient manner given a judgment was rendered against the defendant.

B. On February 25, 2015, you presided over the case of Folani Brumfield. (No. WWM820129.) Ms. Brumfield was charged with failing to obey a traffic sign, transporting a child without properly securing the child with a safety belt, and failing to furnish evidence of financial responsibility. You told Ms. Brumfield that the "amount is 1677." After Ms. Brumfield furnished proof of insurance, you told her that the "insurance part is dismissed and goes down to 25 dollars." After Ms. Brumfield pled no contest to the other charges, you told her that the total amount owed was $862 and asked her how she was going to pay the money. When Ms. Brumfield asked whether she could perform community service, you responded, "[Y]ou can do it for the 530 plus 248, the actual tickets. The other stuff you actually have to pay." When Ms. Brumfield responded, "I thought the 1600 was reduced because I had insurance[,]" you replied, "Okay, ma'am, see that's because you're running your mouth when you should run your ears. And if you were listening, you wouldn't have said that."

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

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes in his department bears direct correlation to an intent to clearly communicate with the litigants that appear before him. As a result, Commissioner Culver's form of communication cannot be removed from the circumstances; Commissioner Culver tailors his language to be the most

effective for the receiving audience, which may not be the same language that would be used when addressing a completely different demographic. Commissioner Culver's efforts to be judicial necessitate the use of a less formal dialogue so as to ensure the litigants understand both the Court's legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction. It should be kept in mind that Commissioner Culver is of the community that he presides over. His presentation is a compilation of his rearing and education. His cultural experiences and upbringing have given him significant insight into the attitudes and thought processes of the similarly situated litigants of his department, and how to best explain the judicial process to them without causing any offenses.

C. On October 31, 2014, you presided over the case of Felicia Wallace- Day. (No. WWM32996777.) During the hearing, you told the defendant that she had failed to pay a civil assessment that she owed. The following colloquy ensued:

> *DEFENDANT: Okay, and I don't know anything about that.*
>
> *THE COURT: I don't know, either you don't read your mail or you not [sic] living in the right place. When people tell me they don't know, that means they don't read because people — you know how many hundreds of thousands of notices you think they send out? Why would they not send you yours? Why would that happen?*
>
> *DEFENDANT: That's a very good question.*
>
> *THE COURT: It is. They would pick you out of a hundred thousand people and not give you a notice. That's terrible. And they must know you. Because why else would they do it? They send them out blindly to everybody else. But today, I find they didn't send you yours. What do you think?*

Your comments were sarcastic and violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3B(4).

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes in his department bears direct correlation to an intent to clearly communicate with the litigants that appear before him. As a result, Commissioner Culver's form of communication cannot be

removed from the circumstances; Commissioner Culver tailors his language to be the most effective for the receiving audience, which may not be the same language that would be used when addressing a completely different demographic. Commissioner Culver's efforts to be judicial necessitate the use of a less formal dialogue so as to ensure the litigants understand both the Court's legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction. It should be kept in mind that Commissioner Culver is of the community that he presides over. His presentation is a compilation of his rearing and education. His cultural experiences and upbringing have given him significant insight into the attitudes and thought processes of the similarly situated litigants of his department, and how to best explain the judicial process to them without causing any offenses.

Here, Commissioner Culver, upon hearing Ms. Wallace's defense to the claim that she should not have to pay the fine, explained to the litigant through informal illustration the burden she would need to overcome; i.e., evidence contradicting the fact that the Department of Motor Vehicles routinely sends the litigants notice that they are delinquent in the payment of their civil assessment fines. Commissioner Culver essentially provided her insight into the mental process he undertakes when litigants allege in defense of paying these fines that they never received notice of the delinquency from the DMV. His conduct was not intended to be gratuitous or sarcastic, but to speak in a manner that was relatable to and understood by the litigant so that she could produce relevant, admissible evidence in her defense.

D. On September 18, 2014, you presided over Jamshid Fallahi's trial for failing to come to a complete stop at a stop sign. (No. WWM696595.) The officer who issued the ticket testified that Mr. Fallahi slowed his vehicle to five miles per hour but did not come to a complete stop. Mr. Fallahi disputed that he had not come to a stop. During Mr. Fallahi's case presentation, the following occurred:

> *DEFENDANT: How I could have — not have stopped and coming through the intersection — be in the middle of the intersection — intersection with [sic] five miles per hour? How is that possible?*

> *THE COURT: Because that — not only is it possible, it's almost invariably what happens every single day and thousands of people do it. And I don't know why you — uh — uh — you have suffering wonderment. That's exactly how people go through the stop sign. They don't speed through it, they slow up, don't stop, and they move through it between five and eight miles an hour, which makes sense because what jackass would go through the stop sign at full speed?!*

Your use of the word "jackass" constituted a failure to be dignified and courteous, and a failure to maintain courtroom decorum. In addition, your reference to the defendant's "suffering wonderment[]" was sarcastic and reflected a lack of patience, dignity, and courtesy.

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

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes is in an effort to use less formal dialogue so as to ensure the litigants understand both the Court's legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction.

Here, the use of the term "jackass" was in no way intended to be rude or discourteous to the litigant. In fact, it was not directed at the litigant; the term was pointed at hypothetical individuals who "would go through the stop sign at full speed," thereby not only breaking the law but also risking the lives of other motorists and pedestrians, as well as their own lives. It was intended as nothing more than a poignant statement to point out that Mr. Fallahi's defense – people can only be cited for failing to stop at a stop sign when they travel through the intersection at full speed – was impractical.

E. On September 18, 2014, you presided over Qi Bin Chen's trial for violating the posted speed limit on the San Francisco-Oakland Bay Bridge. (No. WWM740284.) The officer who issued the ticket testified that he was monitoring speed just west of the toll plaza and had determined Mr. Chen to be driving 71 miles per hour by using LIDAR (Light Detection and Ranging). Mr. Chen testified that he had checked his speed before he got on the bridge and had been driving only 50 miles per hour. You responded sarcastically as follows:

> *Yeah, I understand, so the LIDAR is wrong by 21 points. The radar device is just wrong 'cause it's goin' around making you speed, when you weren't really speeding. We gonna throw that LIDAR unit out as soon as this trial is over.*

You then found Mr. Chen guilty.

Your comments were sarcastic and violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3B(4).

Similar to Mr. Fallahi's case, upon hearing Mr. Chen's defense that he was going 21 mph slower than recorded on the LIDAR, Commissioner Culver dispelled the implication being asserted by the litigant that the device was faulty. Absent disputing the recorded speed, the litigant presented no evidence that the LIDAR malfunctioned or that the device was inherently inaccurate, and certainly not by more than 20 mph. It was the only device in use and the only device pointed to regarding the officer reaching his conclusion that that the litigant was speeding. LIDAR has been in use for 15 years and, its detractors aside, never been discredited. Thus, failure to dispute the accuracy of the LIDAR'S findings would result in a guilty verdict. Commissioner Culver's conduct was not intended to be gratuitous or sarcastic, but to speak in a manner that was relatable to and understood by the litigant so that he could produce relevant, admissible evidence in his defense if he had any.

F. On May 17, 2013, you presided over the trial of Randall Stovall. (No. WWM329945.) Mr. Stovall was charged with running a red light and using the center turn lane without making a left turn. While cross-examining the citing officer, Mr. Stovall stated, "I'm trying to figure out what — what was your position — um — you say I passed you?" You interrupted the officer's response and stated, "No, no, hold on. Ask him, if you wanna know his position, you say what was your position, then — " Mr. Stovall then asked the officer, "What was the position of your vehicle at the time — " You then told Mr. Stovall, in a raised voice, "Oh, Mr. Stovall, this is court. We do this one at a time. It's not a song; when I'm speaking, you're listening. Do you understand me? That means don't talk over me! Are we clear?"

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

As an initial matter, Commissioner Culver believes the transcription throughout the Commission's notice of formal proceedings contains glaring inaccuracies. As exemplar, the above transcription of "wanna" instead of being transcribed as "want to," inaccurately transcribes Commissioner Culver's taped statements. The wording is important because the transcribed

version of "wanna" has the unintended effect of portraying the Commissioner as an uneducated jurist. When, on the contrary, Commissioner Culver is a very accomplished architect, lawyer, and Commissioner. Thus, Commissioner Culver's portrayal as an ignorant, uneducated jurist is disheartening. The transcription inaccuracies should be cured, or at least considered, when reviewing the allegations raised against Commissioner Culver.

Regardless, Commissioner Culver was required to speak to the defendant using a vocabulary that the litigant could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. The Commissioner cannot allow the litigants to argue and/or speak over him as it would severely decrease the efficiency of the courtroom as well as cause the Commissioner to lose control of the litigants. The defendant in question had failed to comply with the conventional court rules that are explained to the litigants at the beginning of every session, which includes not arguing with the Court. Again, Commissioner Culver's attempt to maintain courtroom etiquette and civility is not intended to be discourteous or condescending, but instead based on the substantial volume of his caseload and the need to keep the arraignments and trials streamlined to include only relevant, admissible information so that all of the litigants have equal access to the judicial system.

G. On February 19, 2013, you presided over Vincent Lo's trial for failing to stop at a red light at an intersection with a red light camera. (No. WWM308624.) The defendant denied that he was the person depicted in the video. After you found the defendant guilty, you asked him how he was going to pay the fine. The defendant then asked you if you were saying that all Asians look alike. When the defendant said that he disagreed with the decision, you told him he could appeal. When the defendant said, "I would like to appeal then[,]" you responded in a loud voice, "Well, whatever. No, I don't give instructions about how to appeal. You wanna appeal, go get a lawyer or get some instructions." When the defendant asked, "So am I found guilty because of your word?," you angrily responded, "You're found guilty `cause that's my judgment. That's why I dress like this. Now is there some confusion about that, or you think I look the same as somebody else that's not dressed like this?"

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

The evidence does not support the allegations raised against Commissioner Culver. Commissioner Culver was required to speak to the defendant using a vocabulary that the litigant could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. The Commissioner cannot allow the litigants to argue and/or speak over him as it would severely decrease the efficiency of the courtroom as well as cause the Commissioner to lose control of the litigants. The defendant in question had failed to comply with the conventional court rules that are explained to the litigants at the beginning of every session, which includes not arguing with the Court. Again, Commissioner Culver's attempt to maintain courtroom etiquette and civility is not intended to be discourteous or condescending, but instead based on the substantial volume of his caseload and the need to keep the arraignments and trials streamlined to include only relevant, admissible information so that all of the litigants have equal access to the judicial system.

H. On December 28, 2012, Ossie B. Holt, Jr., appeared before you for arraignment on charges of failure to have registration and failure to have evidence of financial responsibility. (No. WWM320422.) Although you told him that you do not hear stories at arraignment, Mr. Holt tried to explain his defense. You then said, "What part do — is there a hearing problem — you got a hearing problem? When I say no,' it's no."

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

Commissioner Culver was required to speak to the defendant using a vocabulary that the litigant could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. The Commissioner cannot allow the litigants to argue and/or speak over him as it would severely decrease the efficiency of the courtroom as well as cause the Commissioner to lose control of the litigants. The defendant in question had failed to comply with the conventional court rules that are explained to the litigants at the beginning of every session, which includes not arguing with the Court. Again, Commissioner Culver's attempt to maintain courtroom etiquette and civility is not intended to be discourteous or

condescending, but instead based on the substantial volume of his caseload and the need to keep the arraignments and trials streamlined to include only relevant, admissible information so that all of the litigants have equal access to the judicial system.

I. On December 28, 2012, Shareefah Joseph appeared before you for arraignment on a charge of failing to stop at a red light. (No. WWM126115.) After viewing the video, Ms. Joseph told you, "I would like to explain that, but I can't here so I'm gonna go with not guilty." You responded, "Okay, I'm sure there's something very compelling although the video is gonna answer the question." When Ms. Joseph replied, "I'm gonna bring my evidence, Your Honor, sir[,]" you stated, "Okay, oh, I'm glad. It's entertaining. Not guilty. When you wanna have a trial?"

Your conduct, including your sarcastic comments that you were "sure there's something very compelling" and "I'm glad. It's entertaining[,]" violated the Code of Judicial Ethics, canons 1, 2, 2A, and 3B(4).

This allegation arises out of traffic violations recorded on video. Commissioner Culver informs the defendants, as he did here, of the infractions by showing them the video and still shots showing the allegedly illegal conduct. After having an opportunity to review the infraction video, the defendant entered a not guilty plea. Defendant Joseph's understanding of the process is evident given her concession that she could not enter evidence during the arraignment that explains why she did not commit the infraction or should be excused for the conduct. Commissioner Culver followed the appropriate protocol when arraigning defendants on tickets issuing from red light video violations. Moreover, Commissioner Culver's statement regarding the defendant's illegal cell phone use while operating the vehicle was a statement of fact. It was an observation made by the trier of fact of illegal conduct occurring in a piece of evidence appropriately before the Court on another charge. It is also Commissioner Culver's hope to dissuade the defendant from continuing to commit the illegal conduct in the future by pointing out that it is observable on the traffic cams. Regardless, it had no bearing on the ultimate disposition of the case because, as the Commissioner noted during the hearing, the defendant was not charged with that offense, only for

running the red light. Finally, the Commissioner was nothing but respectful throughout the proceeding, which is, in part, evidenced by his continuously calling the defendant ma'am.

J. On November 30, 2012, you presided over Jiaying Song's trial for impeding traffic and failing to comply with the direction of a peace officer. (No. WWM282852.) When you instructed Ms. Song's interpreter, "[T]ell your client to speak slower. And softer. We're not at an auditorium[,]" Ms. Song responded in English, "Sorry." You said in an impatient tone, 'Sorry?' Why you talking about 'sorry,' you got an interpreter. Cut it out. Use the interpreter like I told you."

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

Commissioner Culver was required to speak to the defendant using a vocabulary that the litigant could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. Further, once a litigant requests an interpreter, the Commissioner thereafter only communicates with the litigant through the interpreter to ensure that the litigant's due process rights are met by having the proceedings conducted in a language in which she is fluent. Stated another way, Commissioner Culver no longer communicates with the litigants in English, once they requested an interpreter in another language, because he does not want to give even the impression the litigant was not afforded their due process rights because they were ignorant of the language in which the proceedings were conducted. Thus, requiring the defendant to speak only through an interpreter was not only an attempt by Commissioner Culver to maintain courtroom etiquette and civility, but also to ensure that the defendant had complete access to the judicial system by making sure she understood what was being said during those proceedings.

K. At the end of the calendar on November 30, 2012, a defendant (Andrew Videau) who may have been absent when his matter was called entered the courtroom. (No. WWM206947.) The defendant claimed to have been present earlier and to have checked in. The courtroom clerk told him that he probably left and came back in. While the defendant was speaking to the clerk, you told the defendant, "Hey, my man, stop it, quit playing us. Jesus!" and "Let's don't act like you are a child or am I! You weren't here all the time and we'd have no reason to lie about it!" You later remarked sarcastically, in the defendant's presence, "Everybody's got a game, we're all stupid."

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

The abovementioned transcript provides an incomplete account of the proceedings on the day in question.

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes in his department bears direct correlation to an intent to clearly communicate with the litigants that appear before him. As a result, Commissioner Culver's form of communication cannot be removed from the circumstances; Commissioner Culver tailors his language to be the most effective for the receiving audience, which may not be the same language that would be used when addressing a completely different demographic. Commissioner Culver's efforts to be judicial necessitate the use of a less formal dialogue so as to ensure the litigants understand both the Court's legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction. It should be kept in mind that Commissioner Culver is of the community that he presides over. His presentation is a compilation of his rearing and education. His cultural experiences and upbringing have given him significant insight into the attitudes and thought processes of the similarly situated litigants of his department, and how to best explain the judicial process to them without causing any offenses.

It is also important that the Commission understands that not only are etiquette rules necessary because Commissioner Culver's exceptionally heavy caseload requires an efficiently run courtroom in order to provide all litigants equal access to the judicial system, but also because most of the litigants are unrepresented, non-lawyer parties appearing for traffic violations and, therefore, unaware of appropriate courtroom behavior. The duty to keep order and to control distracting and disruptive influences in the courtroom and to assure that a proper judicial atmosphere is maintained rests with the trial judge. (See Code Civ. Proc. § 128, subd. (a).) These rules, including the limitation on talking while the Commissioner is talking, is in no way intended

to be demeaning or discourteous. On the contrary, a fair and judicious system can only operate where a judge maintains courtroom decorum by exercising control over the proceedings and those participating in them. The Court of Appeal made the point more bluntly: "The courtroom is not a circus; the trial judge owes a duty to see that proper demeanor is maintained." (*People v. Polite* (1965) 236 Cal.App.2d 85, 92.) Thus, Commissioner Culver's various statements mandating silence in the gallery and putting an immediate stop to parties arguing with the Commissioner during his rulings is clearly in an effort to control the orderly and efficient disposition of his caseload and ensure that every party has the Court's full attention and consideration during their case.

L. On November 28, 2012, you presided over Sukhjinder Randhawa's trial for speeding. (No. WWM32402098.) The citing officer testified that he measured Mr. Randhawa's speed as 85 miles per hour. Mr. Randhawa testified, "I feel I was going with the speed of the traffic, just going with the traffic. I don't think I was going 85." The following colloquy then took place:

> *THE COURT: Why would he pick you? This is always curious to me when people say, "I don't know what he was doing. I was going like the traffic." Then I wonder, out of all the thousands of people he could have picked, he come up on you and start lying about your speed. Why would he do that?*
>
> *DEFENDANT: I don't —*
>
> *THE COURT: You know what I mean? Like, if they picked me, I'd want to know, "What's up, why you pick me?" And I want you to tell me, why would he pick you, if you were righteous? Why would he pick you out of all the people he could have picked?*
>
> *DEFENDANT: Your Honor —*
>
> *THE COURT: Hundreds of people. What do you think?*
>
> *DEFENDANT: Well, I was getting off work and —*
>
> *THE COURT: Oh, is that the key?*
>
> *DEFENDANT: That's not the key.*

THE COURT: He only catch the people getting off of work. I hear you. Go on.

The italicized comments were sarcastic.

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

Commissioner Culver's responsibility as trier fact is to weigh the evidence and credibility of witnesses with impartiality and to reach a fair and unbiased verdict. In asking the litigants "why would [the officer] lie about you," "why would he pick you," and similar inquiries, the Commissioner, as the trier of fact, is attempting to gather additional information to help him evaluate the credibility of the witnesses (including the police officers) and the case as a whole. Included in this information gathering endeavor is whether there is a preexisting personal relationship between the defendant and the citing officer or any other information the litigant has regarding the citing officer that the Court may not be aware of, upon which a legitimate claim of retaliation or profiling could be based. The Commissioner's questions to the litigants are only intended to ascertain whether or not the defendant has or believes he has such relevant information, which the defendant may not voluntarily offer absent being specifically asked by Commissioner Culver. Again, these are self-represented litigants and are likely unaware of the information that is relevant to the trier of fact in reaching a verdict. Commissioner Culver's questions are his way of probing the litigants to make sure he has any and all of the relevant information so that he can render an informed verdict. His inquiries are in no way intended to be discourteous or reflect an impatience with the litigant's presentation of evidence in defense of the traffic citations. Additionally, if the litigant were to offer such evidence it could influence the verdict.

M. On November 27, 2012, Angelica Chiong appeared before you for trial for failing to stop at a red light at an intersection with a red light camera. (No. WWM230065.) A witness for Ms. Chiong testified that unlike Ms. Chiong, who turned right from a dedicated right turn lane, some drivers in that lane "go straight and nothing happens." You responded, "Actually, you should bring a ticket against them. That's possible. A citizen's arrest." When the witness

responded, "I wouldn't do that[,]" you replied, "Okay. Then I guess those dangerous criminals gonna keep going." Your comments were sarcastic and belittled the witness.

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

This allegation is similar to those discussed *supra*, wherein Commissioner Culver was required to speak to Ms. Chiong using a vocabulary that she could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. The defendant egregiously attempted to lessen her own infraction and fine by alluding to conduct committed by non-present, unidentified third parties. Commissioner Culver is fully aware that this information is inadmissible hearsay and irrelevant to the proceedings; it is time consuming to hear and respond to, and does not aid him in evaluating the defendant's case in his capacity as trier of fact. Again, based on the substantial volume of his caseload, he must keep the arraignments and trials streamlined to include only relevant, admissible information.

These points notwithstanding, Commissioner Culver concedes that it is often difficult to make sense of the typed word out of context. None of the allegedly offensive statements was intended to be discourteous to the defendant. At worst, Commissioner Culver, in a further attempt to find common ground with the parties that appear before him, had limited occasion to interject some very restrained levity into the proceedings. Again, this was never done at the expense of the parties and did not have a negative impact on their cases. Asa an aside, Commissioner Culver believes the levity works in a traffic courtroom. Commissioner Culver very seldom uses the word "guilty" to describe the verdict being rendered against a litigant. His nomenclature is almost always "holding the person responsible." Commissioner Culver has received hundreds of positive comments regarding how much the litigants appreciated his manner of dealing with their cases. This is true even when he has found the litigants "responsible."

N. On November 27, 2012, Too Kasala Too appeared before you for trial for failing to stop at a red light at an intersection with a red light camera. (No. WWM195699.) After the

video was played, you offered Mr. Too an opportunity to ask the video technician questions. Mr. Too asked whether he could see the "numbers that you can see when the camera is running." He later added, "Because you can actually see the number of the — when the camera is running — you can see the numbers, you know, the sequence of a camera running." You responded as follows:

> *That has nothing to do - either you stopped or you didn't. What numbers got to do with it? Either the car stopped at the line, behind the line, or it didn't. Now, we could add numbers or cartoons, that has nothing to do with whether you stopped or didn't. It is your testimony that you stopped and, if so, what video can you show me that shows that you stopped? This is real simple. It used to be in the old days, the cops lyin', the litigants lyin', this, that, this, that. Now we just use our eyeballs. Did the car stop? No, end of case. What part of it is a confusing puzzle? Do you have other things you want me to know?*

The comment that "we could add numbers or cartoons" and the reference to a "confusing puzzle" were sarcastic and reflected a lack of patience, dignity, and courtesy.

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

Commissioner Culver was required to speak to the defendant using a vocabulary that the litigant could easily understand and in a tone that demanded the orderly and efficient administration of the courtroom's heavy caseload. The Commissioner cannot allow the litigants to argue and/or speak over him as it would severely decrease the efficiency of the courtroom as well as cause the Commissioner to lose control of the litigants. His conduct was not intended to be gratuitous or sarcastic, but to speak in a manner that was relatable to and understood by the litigant so that he could produce relevant, admissible evidence in his defense, instead of pointing to irrelevant information that would not be persuasive to the trier of fact.

O. On November 27, 2012, Monique Gonzalez appeared before you for trial on a charge of failing to stop at a red light at an intersection with a red light camera. (No. WWM225365.) After Ms. Gonzalez was convicted, she asked for time to pay and for traffic school. She then asked whether community service work was available on the weekends. You said that you could give her community service and she could try to "work it out with them in terms of what [her] obligations are for work." When Ms. Gonzalez started to ask another question ("And if I cannot find one, can I —"), you became impatient and discourteous. At first, you stated, "Oh, ma'am, I'm not your lawyer." When the defendant responded, "I know, but —," you replied: "No, no. No, no. You don't get to ask me questions about what you supposed to do. I make offers. You

make acceptances or you make requests regarding what you would like. Now, do you want community service or not?"

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

The foregoing statement occurred in response to a litigant potentially asking for legal advice from the Commissioner. The Commissioner has an obligation not to provide legal advice to the defendants that appear in his courtroom. The statement was in no way intended to be impatient or discourteous. Stated simply, the Commissioner could not answer a question pertaining to legal advice and was simply making the defendant aware of that fact.

P. On November 26, 2012, Mario Martinez appeared for arraignment on charges of driving without registration, a license, and evidence of financial responsibility. (No. WWM33074241.) After the defendant pled guilty, he asked, "If I fill this out, will I be able to get my identification?" You responded "I don't know. That's a DMV lawyer question. I ain't got a clue." The remark, "I ain't got a clue," was flippant, undignified, and discourteous.

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

The foregoing statement occurred in response to a litigant asking for legal advice from the Commissioner. The Commissioner has an obligation not to provide legal advice to the defendants that appear in his courtroom. Furthermore, in listening to the statement on the CD, versus simply reviewing the written transcript, it is clear that Commissioner Culver intended to express his lack of knowledge about the subject matter of the defendant's question. The statement was in no way intended to be flippant or discourteous. Stated simply, the Commissioner did not have an answer to the question (though he would have been precluded from answering even if he did), and he expressed his ignorance of that topic to the defendant.

Q. On September 26, 2012, during your introductory remarks before calling the arraignment calendar, you stated forcefully, "Hey, my man, you confused about my other instruction? You. Are you? Then why you runnin' your mouth? Cut it out."

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

Again, the vocabulary, tone, and overall manner of speech Commissioner Culver utilizes in his department bears direct correlation to an intent to clearly communicate with the litigants that appear before him. As a result, Commissioner Culver's form of communication cannot be removed from the circumstances; Commissioner Culver tailors his language to be the most effective for the receiving audience, which may not be the same language that would be used when addressing a completely different demographic. Commissioner Culver's efforts to be judicial necessitate the use of a less formal dialogue so as to ensure the litigants understand both the Court's legal obligations as far as evidentiary presentation and the process that the trier of fact (Commissioner Culver) undertakes when considering the resolution of an infraction. It should be kept in mind that Commissioner Culver is of the community that he presides over. His presentation is a compilation of his rearing and education. His cultural experiences and upbringing have given him significant insight into the attitudes and thought processes of the similarly situated litigants of his department, and how to best explain the judicial process to them without causing any offenses.

It is also important that the Commission understands that not only are etiquette rules necessary because Commissioner Culver's exceptionally heavy caseload requires an efficiently run courtroom in order to provide all litigants equal access to the judicial system, but also because most of the litigants are unrepresented, non-lawyer parties appearing for traffic violations and, therefore, unaware of appropriate courtroom behavior. The duty to keep order and to control distracting and disruptive influences in the courtroom and to assure that a proper judicial atmosphere is maintained rests with the trial judge. (See Code Civ. Proc. § 128, subd. (a).) These rules, including the limitation on talking while the Commissioner is talking, is in no way intended to be demeaning or discourteous. On the contrary, a fair and judicious system can only operate where a judge maintains courtroom decorum by exercising control over the proceedings and those

participating in them. The Court of Appeal made the point more bluntly: "The courtroom is not a circus; the trial judge owes a duty to see that proper demeanor is maintained." (*People v. Polite* (1965) 236 Cal.App.2d 85, 92.) Thus, Commissioner Culver's various statements mandating silence in the gallery and putting an immediate stop to parties arguing with the Commissioner during his rulings is clearly in an effort to control the orderly and efficient disposition of his caseload and ensure that every party has the Court's full attention and consideration during their case.

COUNT FOUR

In each of the following cases in which a misdemeanor was charged, you abused your authority by adjudicating the case without obtaining a stipulation from the defendant permitting you to do so. In each case, you also failed to protect the defendant's rights by accepting a plea of guilty or no contest without informing the defendant that the charge was a misdemeanor and without informing the defendant of, or receiving the defendant's explicit waiver of, the right to counsel, the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confrontation.

A. On March 4, 2015, in People v. Eduardo Zamudio, No. WWM831249, you accepted the defendant's plea of guilty to driving without a license, a misdemeanor in violation of Vehicle Code section 12500, subdivision (a), and fined him $485 on that charge.

As discussed *supra*, immediately upon Commissioner Culver taking the bench he advises the litigants that they will be *required* to watch a video which explains all of their rights and obligations arising as a result of their traffic infraction; i.e., the arraignment process. Specifically, the video explains the arraignment and trial procedure from start to finish including, but not limited to, a right to have a reading of the charges, entering of a plea and what each plea means, potential for community service or traffic school in lieu of paying a fine, presentation of evidence at trial and not during arraignment, right to an attorney, and trial setting. All of the commissioners in Alameda County Superior Court use this video for purposes of conducting the arraignment process because it is extremely efficient and satisfies all requirements for arraignments in traffic court. The Commission is encouraged to review the arraignment video. A full review of that video will

help to resolve any of the Commission's concerns that Commissioner Culver is not in full compliance with the proper arraignment protocols.

Here, the allegations do not appear to be supported by the evidence. The 26-year Alameda County Superior Court Commissioner who made the original arraignment videotape indicated in the video that all misdemeanors will be reduced to infractions unless the litigant objects. The video further advises the parties that unless they object, it will be assumed that they want their misdemeanor charges changed to an infraction. Thus, a litigant failing to object to having Commissioner Culver hear his case is thereby stipulating to having the misdemeanor heard by the Commissioner with the understanding that the charge will be immediately converted into an infraction. The Alameda County Superior Court has a process by which a misdemeanor will be put into the system under the equivalent charge as an infraction, even though originally cited as a misdemeanor. This way, the litigant was never charged with a misdemeanor. As exemplar, in the case of a VC § 14601.1 charge, which is a misdemeanor for driving on a suspended license, Commissioner Culver's department, in line with the process setup by the Alameda County Superior Court, routinely characterizes the charge as a VC §12500 violation, which is an infraction for driving without a license. These downgrades in charges are all done for the express benefit of the litigants; it eradicates the possibility of the litigant doing jail time unless the litigant wants that as an option which they ordinarily do not. Additionally, the charge being cited as an infraction, instead of a misdemeanor, does not increase the amount of the applicable fine. Further, it allows a litigant to avoid having a misdemeanor on his or her record even in the case of a guilty plea.

In this case, had the defendant objected during the initial portions of the proceedings to the infraction process, Commissioner Culver would have immediately transferred the case to Department 107 to be arraigned as a misdemeanant. However, since no objections were raised the

Commissioner proceeded with the arraignment process. The case would have been converted from misdemeanor to infraction and, thus, the allegation of a failure to give the defendant notice of a misdemeanor charge is misplaced.

B. On February 25, 2015, in People v. Irene Cruz-Barragan, No. WWM33160876, you accepted the defendant's plea of no contest to all of the charges, including the misdemeanor offense of driving without a license (Vehicle Code § 12500, subdivision (a)). You continued the case for a week to allow the defendant to furnish proof of insurance. On March 4, 2015, when the defendant provided proof of insurance, you dismissed the charge of violating Vehicle Code section 16028, subdivision (a) (driving without evidence of financial responsibility), fined the defendant approximately $1,055, and assessed a transaction fee of $25 for the dismissed charge.

Again, the litigant was informed, via the arraignment video, of his right to object to his misdemeanor charge being reduced to an infraction. No objection was made on the record and, as such, the litigant stipulated to having the charge reduced to an infraction that could heard by Commissioner Culver.

C. On the morning of September 26, 2014, in People v. Daniel Santos, No. WWM781589, you accepted the defendant's plea of guilty to furnishing alcohol to a minor, a misdemeanor in violation of Business and Professions Code section 25658, subdivision (a), and fined him $2,000. You permitted Mr. Santos to withdraw his plea only after he told you that afternoon that he had not known he had been accused of a misdemeanor and that he wanted to see an attorney.

Again, as discussed *supra*, had Daniel Santos objected during the initial portions of his proceedings to the infraction process, Commissioner Culver would have immediately transferred his case to Department 607 to be arraigned as a misdemeanant. However, since no objections were raised the Commissioner proceeded with the arraignment process. Once Mr. Santos did object his case was converted back to a misdemeanor and transferred to Dept. 607 and, thus, the allegation of improperly overseeing a misdemeanor case is misplaced.

D. On October 23, 2013, in People v. Luis Paez, No. WWM530719, you accepted the defendant's plea of guilty to furnishing alcohol to a minor, a misdemeanor in violation of Business and Professions Code section 25658, subdivision (a), and fined him $4,170. Later that day, you permitted Mr. Paez to plead not guilty only after he told you that he had not known that the charged offense was a misdemeanor.

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

Again, as discussed *supra*, had Luis Paez objected during the initial portions of his proceedings to the infraction process, Commissioner Culver would have immediately transferred his case to Department 107 to be arraigned as a misdemeanant. However, since no objections were raised the Commissioner proceeded with the arraignment process. Once Mr. Paez did object his case was converted back to a misdemeanor and transferred to Dept. 107 and, thus, the allegation of improperly overseeing a misdemeanor case is misplaced.

COUNT FIVE

You accepted pleas of guilty in the following cases without informing the defendants of the charges:

*A. On March 5, 2015, you presided over the arraignment of defendant Trent Taylor. (No. WWM833139.) He was charged with a violation of Health and Safety Code section 11357, subdivision (b), making him eligible for a program (Options) by which a defendant charged with certain alcohol or marijuana infractions may resolve the case by attending a lecture at the courthouse. Without informing Mr. Taylor of the charge, you told him, "We have a program here at the courtroom that allows you to go to class for two hours and if you complete the class, then they dump your case. You can either get the class which is called Options or you can get a trial." When Mr. Taylor asked you, "What are the hours of the class?," you rudely responded, "I don't know, man, I'm not your lawyer. You wanna go to this class and get this thing off of you or not?" Mr. Taylor replied, "Nah, **I'll** just pay in installments." You then entered judgment against Mr. Taylor without taking a plea and imposed a fine of $485.*

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(2), 3B(4), 3B(7), and 3B(8).

As discussed *supra*, immediately upon Commissioner Culver taking the bench he advises the litigants that they will be required to watch a video which explains all of their rights and obligations arising as a result of their traffic infraction; i.e., the arraignment process. Specifically, the video explains the arraignment and trial procedure from start to finish including, but not limited to, a right to have a reading of the charges, entering of a plea and what each plea means, potential for community service or traffic school in lieu of paying a fine, right to have trial within 45 days, right to conduct discovery in advance of trial, presentation of evidence at trial and not during

arraignment, right to an attorney, and trial setting. All of the Commissioners in Alameda County Superior Court use this video for purposes of conducting the arraignment process because it is extremely efficient and satisfies all requirements for arraignments in traffic court. In addition to the video, Commissioner Culver also explains how cases proceed in his department. His description includes community service calculation; the amount of community services hours is comparable to 10% of the citation amount.

Additionally, in "Options" cases, the Commissioner's practice is to allow the choice of options which provides that the litigant can attend a class for two hours and have the case dismissed or have a trial and contest the charges. Specifically, misdemeanors are not handled in Commissioner Culver's department. With Options cases, the misdemeanors are reduced to infractions unless the litigant raises an objection to that process. If the litigant wishes for the case to remain a misdemeanor the case is sent to Department 107 for arraignment and trial. Notably, since there are no misdemeanors handled in Commissioner Culver's department, certain entitlements including a right to a jury trial in misdemeanor cases and a right to a public defender do not apply to the litigants being arraigned in Commissioner Culver's department. Again, litigants would be informed of these entitlements when they are arraigned in Department 107.

If there is no objection to reducing the charge to an infraction and the litigants agree to participate in Options, Commissioner Culver proceeds with handling of the case. Litigants are informed that they have the right to a trial, but virtually always opt for the two hour class that, once completed, results in immediate dismissal of the case.

The defendant was present for the video arraignment and Commissioner Culver's opening speech, and was aware of the charges against him by virtue of the written citation. In lieu of having them read aloud in Court, the defendant opted to plead guilty by requesting installment payments

of the fine as his preferred method of resolving the infraction; in lieu of Options, the defendant simply wanted to pay the fine. This represents the efficient administration of justice, where a litigant is provided with all of the relevant information to make an informed decision about how to best dispose of the case against them.

B. On November 26, 2012, you presided over the arraignment of defendant Crisoforo Ramirez. (No. WWM307137.) He was charged with possession of an open container of alcohol in a public place, making him eligible for the Options program. You told Mr. Ramirez, through an interpreter, that his case was "different," but did not inform him of the charge or ask him how he wished to plead. You also told the defendant that his options include attending a three- to four-hour lecture, after which the case would be dismissed. Through an interpreter, Mr. Ramirez asked, "There is no way to pay it with community service?" Without receiving a plea of guilty or no contest, you then ordered Mr. Ramirez to perform 48 hours of community service and gave him 150 days to do the work. Although Mr. Ramirez clearly did not understand that the better choice was the lecture, you made no effort to ensure, before you entered judgment, that Mr. Ramirez understood that he would not have to pay the cost of the ticket if he chose Options or that the number of hours involved would be significantly less.

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

The allegations do not appear to be supported by the evidence. Commissioner Culver does not have a specific recollection of defendant Cristoforo Ramirez or his case. Moreover, there would be no occasions to reference blood alcohol levels in the Commissioner's department as he is not responsible for handling Driving Under the Influence ("DUI") or Driving While Intoxicated ("DWI") cases. Commissioner Culver only hears traffic infractions. Thus, it is a factual impossibility that a DUI or DWI case, where blood alcohol level would be relevant, was occurring at the time of the referenced allegation. This point notwithstanding, it is always the Commissioner's practice to read the infractions to the defendant and then give them an opportunity to enter a plea. Similarly, the Commission's allegations themselves reflect that all of the options for handling the infraction were presented to the defendant. Commissioner Culver cannot comment or speculate on the defendant's subjective intent on deciding to do community service instead of the lecture, but that was the option he chose. Further, Commissioner Culver has no

preference over which option the defendant ultimately proceeded with; just that "compensation" in the form of a paid fee, community service, traffic school, or a lecture is completed to fully satisfy the guilty plea or adverse verdict.

COUNT SIX

You also failed to properly arraign the defendants in the following cases:

A. Micky Shulman was cited for a violation of Vehicle Code section 22349, subdivision (a) (violating 65 mile-per-hour speed limit). (No. WWM173126.) Mr. Shulman posted bail and the arraignment and court trial were set for November 30, 2012. On that date, you did not inform Mr. Shulman of the charge or ask for a plea before proceeding with the hearing. Instead, you took evidence, found Mr. Shulman guilty, and imposed a fine of $410.

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

The Commission's allegations are not supported by the evidence because the cited transcript occurs during a trial, not an arraignment. An arraignment would have occurred several weeks, if not months, before the trial date and, therefore, the arraignment procedure is irrelevant to the allegation. Regardless, defendant Micky Shulman acknowledged that he was present during the Court's explanation of the procedure for trial, which is what was occurring on November 30, 2012, the date of the allegation. Further, it is always the Commissioner's practice to read the infractions to the defendant and then give them an opportunity to enter a plea, which he has no reason to believe did not occur in this case.

B. On November 30, 2012, you presided over arraignments without informing the defendants of the charges in the following three cases. In each case, the defendant chose to participate in the Options program:

1. People v. Theodore Vergis, No. WWM313623;
2. People v. Jose Alonso, No. WWM300886; and
3 People v. Andria Davies, No. WWM295155.

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

As discussed *supra*, it is always the Commissioner's practice to read the infractions to the defendants and then give them an opportunity to enter a plea. The Commissioner does not have any intendent recollection of the following cases, but believes his standard practice and protocol was followed in these matters. Additionally, it appears that the litigants were informed of their right to trial but opted to participate in Options; litigants virtually always opt for the two hour class that, once completed, results in immediate dismissal of the case.

COUNT SEVEN

During your traffic calendar, you have had a practice of telling defendants that you do not want to hear any arguments about the amount of the fine, including their ability to pay, and have refused to exercise your discretion to depart from the uniform bail and penalty schedule in sentencing, thus reflecting prejudgment. For example, before arraigning defendants on September 11, 2014, you stated:

> *One of the things that comes up, I think, it doesn't come up in my courtroom `cause we clean it up right now. Many times people come to court and they have a plan, they might even work on the plan while they were shavin' this morning and they have an idea they gonna tell me some drama about what's going on at their house so they can pay less on the ticket. Don't bother, don't waste my time or whatever your personal problems are, we don't care. If you got a ticket, everybody in here is gonna be treated exactly the same. That's true whether you black, white, tall, short, fat, thin, cute or ugly. If you did X, you gonna pay Y and so is everybody else. So there's no point in telling me about oh, woe me, I didn't get support, this, that, this, that. I don't care and the law doesn't either. At this day and age 200 years since we've been treated differently, everybody in here on my watch gonna be treated the same. So don't waste any time talking about your drama `cause nobody in here cares about it. There's nobody special in here but me.*

When defendants asked for reductions in their fine amounts, you told them you would not reduce any fines. For example, on March 4, 2015, defendant Sangh Sullivan appeared before you in case number WWM275678. You told him that the ticket, which involved three charges, was "1,970." After Mr. Sullivan pled no contest, he asked you, "Can I please ask you for a reduction, sir?" You replied, "We don't have any reductions. I didn't tell you — you didn't hear the black, white thing?" After the defendant apologized, you responded, "Nobody's gonna be arrested, but we got rules." You then fined Mr. Sullivan $1,970.

On March 5, 2015, you presided over the arraignment of defendant Sandra Cerra. (No. WWM837662.) The defendant was charged with failure to stop at a red light. After watching the

red light camera video, Ms. Cerra asked you, "If I was to say 'not guilty' and come back, is there a way — uh - opportunity I can tell it to the judge if he can lower it down or —" You replied, "I'm gonna be the judge and we not lowering anything."

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

Here, the allegations do not appear to be supported by the evidence. Commissioner Culver believes the allegation that he prevents defendants from presenting evidence on the issue of ability to pay results from a misconstrued analysis of his courtroom demeanor and discourse with the litigants that appear before him. Commissioner Culver has never prevented a defendant from presenting evidence of financial hardship. On the contrary, it has been his experience that defendants always avail themselves of this right if it is applicable to their particular circumstances.

Moreover, litigants are apprised of their right to do community service in lieu of paying the fine by virtue of the arraignment video they are all required to watch before their proceedings commence. Commissioner Culver, in compliance with the aforementioned vehicle codes, certainly takes into account a litigant's change in circumstance or inability to satisfy a fine through the payment of money by, instead, allowing them to work off the debt through community service. Specifically, it is very important to recognize that no one has to actually pay any money to satisfy his or her obligation. Commissioner Culver estimates that approximately 70% of the litigants that appear before him satisfy the fine by completing community service and paying no money whatsoever. Commissioner Culver is, therefore, in compliance with the letter and spirit of the Vehicle Code because he always considers the defendants' ability to pay to satisfy a fine and alleviates them of that requirement by allowing them to instead perform community service.

COUNT EIGHT

If the uniform bail and penalty schedule calls for a total fine of $1,000 or more, your practice has been to deny community service and require the defendant to pay the fine, regardless of the defendant's ability to pay, as exemplified by the following cases;

1. On March 5, 2015, Donald Wayne Simmons appeared before you in case numbers WWM369512, WWM397034, WWM32403204, and WWM32496666. After Mr. Simmons pled no contest in case number WWM369512, you imposed a fine of $1,594 and asked him how he was going to pay it. Mr. Simmons responded, "I was wondering if I could do community service along with monthly installments." You denied the request to perform community service on the ground that the "number's too big to do community service." You subsequently imposed additional fines totaling $3,502 in Mr. Simmons's three other cases.

2. On March 4, 2015, in case number WWM858168, you fined Maria Lizardo-Hernandez $1,440 and denied her request to perform community service in lieu of fine on the ground that the "amount of the money is too much...."

3. On October 24, 2014, you presided over the case of Fernando Ramirez. (No. WWM129215.) Mr. Ramirez pled guilty to running a red light and driving without a license. The following exchange then occurred, through an interpreter:

> *THE COURT: How do you want to pay the 1,043?*
>
> *DEFENDANT: I'd like to see if I could do community service?*
>
> *THE COURT: You can't. The money is too much.*
>
> *DEFENDANT: Well, the thing is, I can't pay a lot. I can't pay it. I don't have it. I have a big family.*
>
> *THE COURT: Whatev— Then you got to stop breaking the law. You don't have any money. No, you gonna have to pay the ticket. Something's gonna have to happen. 'Cause we're not gonna let you break the law, walk out `cause you made a bunch of kids. That ain't got nothing to do with it. If you broke the law, you gonna pay a fine, one way or the other. Big family doesn't have anything to do with it.*

You then ordered the defendant to pay the $1,043 fine in installments.

Your statements in the above cases reflected a blanket sentencing policy that if application of the uniform bail and penalty schedule resulted in a fine that exceeded $1,000, community service would be denied and the fine would not be reduced. The announcement and application of a blanket sentencing policy reflected prejudgment.

In addition, the italicized statement to Mr. Ramirez was discourteous and undignified.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), and 3B(8).

Here, the allegations do not appear to be supported by the evidence. Commissioner Culver's aforementioned rulings comply with the practices of the Alameda County Superior Court

in denying community service for fines in excess of $1,000. Alameda County Superior Court has a policy to not allow community service for fines greater than $1,000 because it would require that the defendant work 100 hours of community service. It has been the practice of the Alameda County Superior Court not to allow 100+ hours of community service because the defendants were not satisfying their hourly requirements and, thus, habitually violating the court imposed community service hours. The Commissioner that trained Commissioner Culver alerted him to the $1,000 limitation on allowing community service, sat in traffic court in Alameda County for 26 years and asserted that his experience was such that allowance of community service for fines in excess of $1,000 would never result in the full satisfaction of the dictated 100 hours. Thus, Commissioner Culver simply followed the Alameda County Superior Court mandate already in place before his appointment for refusing to allow community service for fines in excess of $1,000. Notably, the Alameda County Superior Court is considering an increase in the hourly community service work being attributed against a fine; i.e., up from 10% of the fine, which would thereby decrease the amount of community service necessary to satisfy the amount of the fine. However, the matter has not been settled by the presiding judge of the Alameda County Superior Court. Assuming the increase is implemented, potentially 50% fewer hours will have to be performed in order to satisfy a fine.

COUNT NINE

If the defendant has posted bail in order to have a trial, your practice has been to deny community service and require the defendant to pay the fine, regardless of the defendant's ability to pay, as exemplified by the following cases:

1. Kimpo Ngoi was charged with failing to stop at a red light at an intersection with a red light camera. (No. WWM231181.) He posted bail, waived arraignment, and appeared before you for trial, which was set for November 27, 2012. After the video was played on that day, Mr. Ngoi told you that he had intended to plead no contest and that the "main reason" he had come to court that day was to get permission to satisfy the judgment through community service based on financial hardship. You responded, "No. You already paid the money, we don't return any money." When the defendant persisted, you told the defendant that if he had said at

arraignment that he was guilty and wanted to do community service, you would have ordered it, but that when he wanted a trial, he was required to "put up the money" and "that's it."

2. Jeremy Smith was charged with failing to stop at a red light at an intersection with a red light camera. (No. WWM194615.) Mr. Smith posted $480 in bail and appeared before you for trial, which took place on November 27, 2012. On that day, you found Mr. Smith guilty, imposed a fine of $480 and asked Mr. Smith how he wanted to pay it. Mr. Smith responded that it was already paid, but that he wanted to do community service because he was "on unemployment" at the time. You replied that once Mr. Smith paid the money, he could not get it back.

3. Laura Wainer was charged with failing to stop at a red light at an intersection with a red light camera. (No. WWM266014.) Ms. Wainer posted $480 in bail and appeared before you for trial, which took place on November 27, 2012. On that day, you found Ms. Wainer guilty, stated that the fine would be $480, confirmed that she had already paid it, and asked her if she wanted to attend traffic school. The following colloquy ensued:

> *DEFENDANT: Um, so I work for a nonprofit and I'm wondering if I can make arrangements with community service with them, or how that would work?*
>
> *THE COURT: I don't have instructions for that.*
>
> *DEFENDANT: Okay.*
>
> *THE COURT: Your question to me — my question to you is, do you wanna do community service? What you're trying to do is negotiate something.*
>
> *DEFENDANT: No, I'm just wondering how —*
>
> *THE COURT: No.*
>
> *DEFENDANT: — how would that work.*
>
> *THE COURT: No, you can't do any wondering, you need to answer my question, do you want community service — I mean, not community service, but traffic school? Yes or no?*
>
> *DEFENDANT: Yes.*
>
> *THE COURT: Okay. You have to put up 57 bucks. You got 30 days to do that and then they'll assign you to work at some place that's a nonprofit organization.*
>
> *DEFENDANT: Oh, they assign — I'm sorry, they assign me for where I have to conduct —*
>
> *THE COURT: Ma'am.*

DEFENDANT: — the community service?

THE COURT: You're trying to do something that you don't have a right to. In the courtroom when you're engaged with the judge, the judge makes decisions. Now what you want to do is act like I'm your lawyer. I'm not. If you have questions that are lawyer questions, you ask your lawyer or somebody else, not me. I've explained it to you, that's it.

DEFENDANT: I just wanted — I'm sorry, sir, Your Honor, I just wanted clarification what community service actually meant, or how that goes —

THE COURT: I didn't tell that —

DEFENDANT: — in the system.

THE COURT: — in the beginning? About community service, it's working for a nonprofit organization, although that's not our issue. Your issue is, the issue about traffic school. You don't work — oh, I must have misspoken when I said you have community service. You actually put up the money already —

DEFENDANT: Correct.

THE COURT: — so there's no community service.

Your statements in the above cases reflected a blanket sentencing policy that if a defendant asked for a trial, posted bail, and was convicted, community service would be denied, and the bail would be forfeited. The announcement and application of this blanket sentencing policy reflected prejudgment.

In addition, your response to Ms. Wainer's question ("they assign me for where I have to conduct the community service?") was impatient, undignified, and discourteous.

Your conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), 3B(5), and 3B(8).

There is a policy set at the Alameda County Superior Court wherein once a defendant posts bail, even in the face of a not guilty plea and a request for trial, that they cannot thereafter request return of the bail money in exchange for community service on a guilty verdict. Conversely, where there is a not guilty finding the money is returned to the litigant. Commissioner Culver did not set, nor does he have any control over the dispensation of this policy. This policy has been in place since the Commissioner took the bench eleven years ago. Further, he is not responsible for

collecting or waiving the fee required to have a trial date set, which occurs immediately following the defendant's arraignment. The Commissioner is simply complying with the policy in place at the Alameda County Superior Court.

Moreover, any allegation of prejudgment based on the bond posting requirement is misplaced given that Commissioner Culver is not even aware that money had been posted until after rendering a verdict. Therefore, the fact that the defendant posted a bond could not have had any bearing on the Commissioner's impartiality, or even given the impressions of impartiality, because it was not known to him at the time of issuing his ruling.

Further, Commissioner Culver's response to Ms. Wainer's question ("they assign me for where I have to conduct the community service?") was appropriate. Originally, he perceived the question as seeking legal advice from the Commissioner. The Commissioner has an obligation not to provide legal advice to the defendants that appear in his courtroom. Once the question was clarified by the litigant, Commissioner Culver explained the community service, traffic school, fine payment system to the litigant.

COUNT TEN

A. On October 20, 2011, an earthquake was felt in your courtroom. On or about that day, you made comments of a sexual nature to court staff about what you would do if it were your last day on earth. You made comments to the effect that if that had been a big earthquake and you thought you were going to die, you would have jumped into the well of the courtroom (where your two clerks sit) and get "some kissing going on," "see that [you] got taken care of," or "make sure [you] went out happy." You also made statements to the effect that you might need to, or were going to, hire an agent and have a plaque or bumper sticker put on your car pertaining to your ability to sustain an erection.

B. You also referred to courtroom clerk Cheryl Nieto, who is Caucasian, as an "honorary black girl" or clerk and as "white girl." Your comments were made in the courtroom and in her presence. When Ms. Nieto came into your department, you asked her, "Where they been keeping the white clerks?" and made comments to the effect of, "You are okay for a white girl" or "You're the only white person I feel comfortable around."

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

In reconstructing what actually occurred on October 21, 2011, Commissioner Culver believes that no such statements were ever made to or in the presence of courtroom staff. While there was an earthquake felt in the courtroom on October 21, 2011, Commissioner Culver did not make any statements of a sexual nature to or in the presence of anyone. Commissioner Culver has been a happily married man since 2012, and was in a relationship with Mrs. Culver for years preceding their marriage. Finally, Commissioner Culver does not recall any occurrences in which he referred to Mrs. Nieto by any moniker other than her given name, or clerk of the Court.

Of considerable note, the presiding judge of the Alameda County Superior Court conducted an independent and thorough investigation into these claims during the relevant time period. That investigation resulted in the claims being completely dropped when no evidence was discovered substantiating any of the allegations sexual harassment and racial bias raised above.

DATED: November 3, 2016

MURPHY, PEARSON, BRADLEY & FEENEY

By _____

James A. Murphy
Arthur J. Harris
Attorneys for Commissioner Taylor Culver

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VERIFICATION

I, TAYLOR CULVER, declare that I am the Responding Commissioner in the instant inquiry, that I have read the foregoing ANSWER, and know the contents thereof, that I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: November 3, 2016

Taylor Culver
TAYLOR CULVER

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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING COMMISSIONER TAYLOR CULVER, No. 199.	**PROOF OF SERVICE**

PROOF OF SERVICE

CERTIFICATE OF SERVICE

I, Alice Kay, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled case. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On November 3, 2016 I served the following document(s) on the parties in the within action:

ANSWER BY JUDGE TAYLOR CULVER TO NOTICE OF FORMAL PROCEEDINGS

	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as follows:
X	**BY HAND:** The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by , addressed as follows:
	VIA FACSIMILE: The above-described document(s) will be transmitted via facsimile, and a copy of same will be mailed, on this same date to the following:
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:

Janice M. Brickley
Legal Advisor to Commissioners
Commission on Judicial Performance
455 Golden Gate Ave, Suite 14400
San Francisco, CA 94102

Mark Lizarraga
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Sei Shimoguichi
Assistant Trial Counsel
Commission on Judicial
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I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on November 3, 2016.

By: _____
Alice Kay