

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE JOHN D. KIRIHARA

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge John D. Kirihara, a judge of the Merced County Superior Court since 2001. His current term began in 2009. Judge Kirihara and his attorney, James A. Murphy, appeared before the commission on May 8, 2012, to object to the imposition of a public admonishment, pursuant to rule 116 of the Rules of the Commission on Judicial Performance. Having considered the written and oral objections and argument submitted by Judge Kirihara and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based on the following statement of facts and reasons.

STATEMENT OF FACTS AND REASONS

1. Decisional Delay

Judges are required to dispose of all judicial matters promptly and efficiently. (Canon 3B(8).) The Supreme Court has found that California Constitution, article VI, section 19, and Government Code section 68210, discussed below, “reflect the judgment of the Legislature and the electorate that this period [90 days] affords a reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases.” (*Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 477, fn. 4.)

Judge Kiriara violated his duty to dispose of all judicial matters promptly and efficiently by failing to issue timely rulings in the following submitted matters:

(a) On January 22, 2010, Judge Kiriara took under submission the case of *Gregory Rodrigues v. CVP Acquisition Corp., et al.*, No. CU148156. Judge Kiriara failed to rule on the matter until December 8, 2010, 320 days after it was taken under submission.

(b) On June 18, 2010, Judge Kiriara took under submission the case of *Estate of Vernon E. Lustre*, No. P24707. Judge Kiriara was later reminded of the fact that the case was under submission and undecided for over 90 days. On December 13, 2010, Judge Kiriara received an email from a court clerk stating that an attorney had inquired about the status of the case, and that Judge Kiriara had taken the case under submission in June 2010. Judge Kiriara failed to rule on the matter until February 10, 2011, 237 days after it was taken under submission.

(c) On November 12, 2010, in *Petition of Family Trust of Ray Buie*, No. P23034, Judge Kiriara took under submission the Petition of Successor Trustee, John Van Curen, for Settlement of Third Account and Report. Judge Kiriara failed to rule on the petition until March 2, 2011, 110 days after it was taken under submission.

Judge Kiriara's failure to decide the above matters within 90 days after they were taken under submission violated canon 3B(8), which requires that judges dispose of all judicial matters promptly and efficiently.

2. Submission of False Salary Affidavits

The California Constitution provides that a judge may not receive a salary "while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." (Cal. Const., art. VI, § 19.) To be paid, the judge must sign an affidavit to that effect. (Gov. Code, § 68210.) Payment is

not forfeited, but simply postponed until the submitted matter is decided.

(Hassanally v. Firestone (1996) 51 Cal.App.4th 1241, 1244-1245.)

Judge Kirihara signed and caused to be submitted on his behalf, 11 salary affidavits that falsely stated that no cause remained pending and undetermined that had been submitted to him for decision for the period of 90 days prior to May 1, June 1, July 1, August 1, September 1, October 1, November 1, and December 1, 2010, and January 1, February 1, and March 1, 2011. Judge Kirihara allowed each of the salary affidavits to be processed, and received his salary for judicial office in violation of law, while a matter in at least one of the cases listed above was pending and undetermined for over 90 days.

Judge Kirihara failed to keep a list of cases he had under submission during the relevant time period, even when he was the presiding judge and had the duty under California Rules of Court, rule 10.603(c)(3), to compile and circulate a list of all matters that had been under submission for more than 30 days. The fact that a judge may be unaware that he or she has matters that have been under submission for more than 90 days, or signs the salary affidavits in advance at a time when the judge has no matters under submission for more than 90 days, is not a defense to a charge of filing false salary affidavits. "A judge who executes a salary affidavit affirming he or she has no overdue rulings should take care to ensure that the statement is true when it is made." *(Inquiry Concerning Freedman (2007) 49 Cal.4th CJP Supp. 223, 246.)*

Judge Kirihara's conduct violated canons 1 and 2. Canon 1 requires judges to personally observe "high standards of conduct ... so that the integrity and independence of the judiciary will be preserved." Canon 2 requires judges to avoid impropriety and the appearance of impropriety in all their activities. Canon 2A requires judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity ... of the judiciary."

3. Failure to Circulate List of Cases Under Submission as Presiding Judge

While Judge Kiriara was presiding judge of the Merced County Superior Court between April 30, 2007, and December 31, 2010, he failed to circulate each month to each judge of the court a complete list of all causes that had been under submission for more than 30 days, as required by California Rules of Court, rule 10.603(c)(3)(C). Rule 10.603(c)(3) provides that the presiding judge, among other things,

must supervise and monitor the number of causes under submission before the judges of the court and ensure that no cause under submission remains undecided and pending for longer than 90 days. As an aid in accomplishing this goal, the presiding judge must:

(A) Require each judge to report to the presiding judge all causes under submission for more than 30 days and, with respect to each cause, designate whether it has been under submission for 30 through 60 days, 61 through 90 days, or over 90 days;

(B) Compile a list of all causes under submission before judges of the court, designated as the submitted list, which must include the name of each judge, a list of causes under submission before that judge, and the length of time each cause has been under submission; [and]

(C) Circulate monthly a complete copy of the submitted list to each judge of the court....

By failing to circulate the submitted lists during his tenure as presiding judge, Judge Kiriara violated canon 3C(1), which requires that a judge “shall diligently discharge the judge’s administrative responsibilities ... in a manner that promotes public confidence in the integrity of the judiciary.”

4. Failure to Respond to Email Inquiring of Submitted Matters

On December 30, 2010, and January 31, February 28, and March 30, 2011, a judicial assistant sent emails to Judge Kirihara asking that he let her know if he had any cases under submission and the dates they were taken under submission. The purpose of the emails was to assist the presiding judge in fulfilling his duties under California Rules of Court, rule 10.603(c)(3). Judge Kirihara failed to respond to the emails even though he had cases that had been under submission for more than 30 days at the time he received each email. Judge Kirihara's conduct violated canon 3C(1), which requires that judges "cooperate with other judges and court officials in the administration of court business."

Judge Kirihara's conduct described above was, at a minimum, improper action and dereliction of duty pursuant to article VI, section 18, subdivision (d)(3) of the California Constitution.

In the commission's view, Judge Kirihara's conduct demonstrates a lack of regard for his obligation to decide matters in a timely manner and ensure the accuracy of his salary affidavits. Over a period of less than a year, Judge Kirihara had three matters that were delayed beyond 90 days, two that were significantly delayed, and allowed 11 false salary affidavits to be processed on his behalf. His indifference is reflected in his failure to keep a list of submitted matters, failure to respond to emails from a judicial assistant asking that he let her know if he had cases under submission, and failure to circulate a list of submitted matters to other judges while he was presiding judge. These are not simply technical requirements for the sake of administrative process. Rather, they are procedures designed to alert judges to decisional delays and prevent the filing of false salary affidavits. Delays in issuing decisions can cause significant financial and emotional harm to litigants and the filing of false salary affidavits lowers public esteem for the judiciary.

Further aggravating the judge's misconduct in the commission's view is the fact that Judge Kirihara had delayed matters and allowed false salary affidavits to

be processed on his behalf while he was presiding judge. Presiding judges have the responsibility of monitoring the cases under submission in their county and ensuring that no cases remain undecided for more than 90 days. (Cal. Rules of Court, rule 10.603(c)(3).) Consequently, a presiding judge should be particularly vigilant about monitoring his or her own submitted matters.

For the foregoing reasons, the commission determined to impose this public admonishment.

Commission members Mr. Lawrence J. Simi, Ms. Mary Lou Aranguren, Hon. Frederick P. Horn, Hon. Judith D. McConnell, Nanci E. Nishimura, Esq., Ms. Sandra Talcott, Mr. Adam N. Torres, and Mr. Nathaniel Trives voted for a public admonishment. Commission members Honorable Erica R. Yew and Anthony P. Capozzi, Esq. were recused from this matter. Commission member Ms. Maya Dillard Smith did not participate.

Dated: MAY 16, 2012



Lawrence J. Simi
Chairperson