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NOV 16 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

IN RE COMPLAINT OF	)	No. 05-89097
JUDICIAL MISCONDUCT	)	ORDER AND MEMORANDUM

Before: SCHROEDER, KOZINSKI, THOMPSON, GRABER, WARDLAW, and BERZON, Circuit Judges, and BREYER, HATTER, MOLLOY, STRAND, and WINMILL, District Judges.

On October 7, 2005, a complaint of judicial misconduct was filed against District Judge Manuel Real. Previously, on March 19, 2004, a separate complaint against Judge Real had been filed. The complaints were consolidated on May 23, 2006. Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to Section 358 of Title 28 of the United States Code.

Pursuant to 28 U.S.C. § 353 and Misconduct Rule 9, the chief judge appointed a special committee to investigate the consolidated complaints. In response to an argument of the judge, the special committee bifurcated the two complaints and investigated first the complaint filed in 2005, complaint no. 05-89097. This matter now comes before the Council upon the filing of the special committee's report in that matter.

Judge Real's motion before the Council to disqualify Judge Kozinski from considering this matter is denied.

After due consideration of the special committee's report, the Council adopts the findings and recommendations of the committee with the three exceptions identified as Substitutions A, B, and C, and attaches as part of this order the special committee's report as so modified. For the reasons stated by the committee the Council reprimands Judge Real for his conduct, having concluded that such conduct is prejudicial to the effective administration of the business of the courts.

This order shall be made public, and the name of the judge shall be disclosed, when the order is no longer subject to review, or within 30 days of this order if no petition for review has been filed with the Judicial Conference of the United States. 28 U.S.C. §§ 354 (a)(1)(C) and 354 (a)(2)(A)(iii); Misconduct Rules 14 (f)(1) and 17 (a)(3), (d).

The complainant's name shall also be disclosed. Misconduct Rule 17 (a)(4).

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IN RE COMPLAINT OF JUDICIAL MISCONDUCT	No. 05-89097 PARTIAL CONCURRENCE AND PARTIAL DISSENT

Hatter, Senior District Judge, Concurring In Part and Dissenting In Part

The Special Investigative Committee is to be applauded for its fine efforts in handling the further investigation of the subject complaint with its tortured history. Nevertheless, I am compelled to concur only partially with its findings, and I dissent from its recommendation of a public reprimand of Judge Manuel L. Real.

I concur fully with the findings that the allegations of misconduct made by attorney Stephen Yagman are untrue. Since Mr. Yagman had no personal connection with or knowledge of the facts underlying his complaint, the result reached by the Special Committee, after an exhaustive and complete investigation, is not surprising! Indeed, there was no salacious or improper relationship with a female probationer. Further, the judge was not found to have received a letter, declaration, or other form of improper communication from the probationer.

The Special Committee, however, made findings as follows:

1. The judge made inaccurate and misleading responses to the Judicial Council and the Committee.

I simply ask, how many individuals can relate all details of a complex set of facts three years after the events and six years after the events? I ask as well, if you

are 82 years old and the events are from one case of more than 31,000 that you have handled in your career, would it be unusual that three to six years later details were inaccurate? The Special Committee has reached too far.

2. Judge Real committed misconduct by withdrawing the bankruptcy reference based on information received *ex parte.*

Judge Real readily accepts this finding, and he has apologized to the Chief Judge and Circuit Council. He assures it will not happen again. Should this, therefore, subject Judge Real to further public reproval? I suggest not, for the following reasons.

The judge already has been subjected to personal and public humiliation over charges that have proven to be false. He has endured investigations by the Chief Judge of the Circuit, investigations by the Judicial Council of the Circuit, a review by a select committee of the Judicial Conference of the United States, and, most recently, the extended investigation of the Special Committee that heard from some eighteen witnesses, collected more than 8,500 pages of documents, with 136 exhibits introduced.

As well, The Ninth Circuit Court of Appeals rendered an opinion vacating Judge Real's bankruptcy reference order and found that the trial court had abused its discretion. This was a published opinion. [1]

Judge Real also has been subjected to a widely published 39 page, strongly-worded dissent to an order of the Ninth Circuit Judicial Council. Further, there has been wide-spread media attention to the matter that has continued over months and, now, years; much of it fed by aggressive and misleading reporting by Judge Real's hometown press, the *Los Angeles Times.*

This is not all. As has been stated by one of Judge Real's lawyers, "Judge Real

has become the 'poster child' for the House Judicial Committee Chairman James Sensenbrenner's efforts to legislate the creation of an inspector general to oversee the federal judiciary."[2] The judge was summoned to a hearing on Capitol Hill before a subcommittee of the House Judiciary Committee to determine if Articles of Impeachment should be brought against him. At the public hearing various salacious and otherwise inappropriate questions were directed to Judge Real.

What next? Is there to be a further review by the Select Committee of the Judicial Conference of the United States? Will the Congressional Subcommittee call Judge Real back for more hearings? Will non-party, non-witness Steve Yagman demand further review? Will this Council, having dismissed this matter previously, stand firm and deliver a final private reprimand in the face of the politicizing of this matter? This distinguished federal judge who has served our nation, and its judiciary, for forty (40) years – longer than any other judge now in active service and has had unfounded charges already made public against him, deserves no less. Enough!

I concur in the remainder of the findings and in that part of the sanction order that recommends against impeachment or referral to the Judicial Conference.

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1. In Re Canter, 299 F.3d 1150 (9th Cir. 2002)

2. From a pleading filed by attorney Donald C. Smaltz on behalf of Judge Real during the most recent investigation.