Report to the Judicial Council of the Ninth Circuit

from the

Committee Convened Pursuant to 28 U.S.C. § 353 (a)

to Investigate the Allegations of Judicial Misconduct

in the Complaints Docketed Under 05-89097 and 04-89039

Pertaining to

Complaint 05-89097

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for Adoption by the Judicial Council

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I. INTRODUCTION

This unanimous report is submitted to the Judicial Council of the Ninth Circuit pursuant to 28 U.S.C. § 353(c) and rule 10(e) of the Rules of the Judicial Council of the Ninth Circuit Governing complaints of Judicial Misconduct or Disability ("the rules"), by the Special Committee appointed by Chief Judge Mary M. Schroeder to investigate complaints involving Manuel L. Real, United States District Judge for the Central District of California. Members of the Special Committee ("the Committee") are Circuit Judge Susan P. Graber, presiding officer; Circuit Judge Richard R. Clifton; District Judge Robert H. Whaley; District Judge Ronald M. Whyte; and Chief Judge Schroeder, *ex officio*. Judith Droz Keyes of Davis Wright Tremaine LLP was appointed counsel to the Committee pursuant to rule 10(c). Aaron Roblan and Michelle D. Fife, also of Davis Wright Tremaine LLP, have assisted Ms. Keyes. Judge Real is represented by Donald C. Smaltz, of counsel with Spiegel, Liao & Kagay, LLP; John J. Quinn, J. David Oswalt, Eric L. Dobberteen, and Sharon Douglass Mayo of Arnold & Porter LLP; and Stephen D. Miller of the Law Offices of Stephen D. Miller APC. Daniel Selmi entered an appearance for Judge Real at the hearing.

The task of the Committee is to investigate two complaints of judicial misconduct involving the district judge, one docketed under number 04-89039 ("2004 complaint"), and the other under number 05-89097 ("2005 complaint"), both filed by Stephen Yagman. For the reasons explained *infra* in Section I.A, this report addresses only the Committee's investigation of the 2005 complaint. As required by 28 U.S.C. § 353(c), the Committee has "conduct[ed] an

investigation as extensive as it considers necessary" and presents in this report "both the findings of the investigation and the Committee's recommendations for necessary and appropriate action by the Judicial Council" pertaining to the 2005 complaint.

A. Procedural History

On October 7, 2005, the Clerk of the United States Court of Appeals of the Ninth Circuit received the 2005 complaint. The complaint alleges that Judge Real was disingenuous and not forthright with the Judicial Council in his responses to a complaint of judicial misconduct Mr. Yagman filed against the judge in 2003, which was docketed under number 03-89037 ("2003 complaint"). The 2003 complaint alleged that the judge had engaged in judicial misconduct in proceedings involving Deborah Maristina Canter ("Ms. Canter" or "the debtor"), who was a probationer in Judge Real's court and a debtor in bankruptcy.

Pursuant to the rules, the Clerk promptly forwarded a copy of the 2005 complaint to Chief Judge Schroeder; District Judge Marshall, Chief Judge of the Central District of California; and Judge Real. On May 12, 2006, Chief Judge Schroeder informed Judge Real that she was considering whether to appoint a special committee pursuant to rules 4(e) and 9 to investigate both the 2004 complaint and the 2005 complaint, and she invited the judge to respond. On May 19, 2006, Judge Real responded through his counsel with respect to the 2005 complaint, arguing that there was no legal basis for the appointment of a special committee because the allegations in the complaint had already been resolved in the 2003 complaint and thus were "final and not subject to re-litigation."

On May 23, 2006, the chief judge ordered that the 2004 and 2005 complaints be consolidated and that a special committee be appointed to investigate them. Explaining that the 2005 complaint is "substantially and directly concerned with matters that became an issue as a result of the investigation by the Judicial Council" of the 2003 complaint, and that the Judicial

Conference of the United States decided that it was unable to review her decision to dismiss the 2003 complaint because a special committee had not been appointed, the chief judge ordered as follows:

> [T]he task of the special committee investigating the "facts and allegations" of [the 2005 complaint] is to "conduct an investigation as extensive as it considers necessary." [28 U.S.C.] § 353(c). The investigation should cover all matters reasonably within the scope of the "facts and allegations" of [the 2005 complaint], including the nature, extent and consequences of any *ex parte* contacts with the district judge, as well as any related matters raised by the Judicial Council in its remand to me after my first dismissal of [the 2003 complaint].

On May 31, 2006, Chief Judge Schroeder issued an order appointing the Committee members and designating Judge Graber as the presiding officer.

On July 10, 2006, the Committee informed Judge Real of its intent to convene a hearing pertaining to both the 2004 and the 2005 complaints on August 21, 2006, in Pasadena, California. On July 18, 2006, the Committee wrote to the district judge advising him of the issues to be addressed at the hearing and the witnesses whom the Committee anticipated would be called.

On July 28, 2006, Judge Real submitted to the Committee a "Motion to Abate or, in the Alternative, to Continue Hearing." As the Committee informed the district judge, there is no provision in the governing statute or the rules for the filing of motions; hence, the Committee considered the motion to be a written argument as provided for in rule 12(c). On August 1, 2006, the Committee advised the district judge that it found merit in his argument that the hearing on the 2004 complaint should be postponed because of the length of time it might reasonably take him to prepare. The Committee was not persuaded, however, that there was good reason to continue the hearing on the 2005 complaint. Accordingly, the hearing on the

2004 complaint has been re-scheduled for November 2006, and the hearing on the 2005 complaint went forward as scheduled on August 21, 2006.

On August 3, 2006, the district judge submitted a written argument called a "Motion to Dismiss Complaint No. 05-89097 for Lack of Jurisdiction" on the ground that "28 U.S.C. Section 352(c) unquestionably bars further consideration of the subject matter of this complaint, since the issues raised in the [complaint] are identical to those raised, decided and affirmed, in an earlier complaint of alleged judicial misconduct filed by the same Complainant," i.e., the 2003 complaint. The Committee took that argument under advisement and allowed Judge Real's counsel to argue his position orally at the hearing. The Committee recommends that the argument be rejected for the reasons presented in Section V.A *infra.*

B. Substance of the 2005 Complaint Investigation

In order to conduct the thorough investigation required by the statute, the rules, and the order of the chief judge, the Committee was required to examine both Judge Real's responses to the Judicial Council in the 2003 complaint and the facts of the Canter bankruptcy proceedings that gave rise to the 2003 complaint. Because the facts of the bankruptcy proceedings have, to a regrettable degree, been misstated in various prior writings, we state them here in careful detail. A chronological summary is provided in Appendix A to this report.

1. The Canter Litigation

Judge Real was the district judge in a 1998 criminal proceeding involving Deborah Canter, *U.S. v. Canter*, 2:98-cr-00576-R. In August 1998, Ms. Canter pleaded guilty before Judge Real to four felony counts of loan fraud and making false statements, following which a pre-sentence report was prepared for Judge Real by the United States Probation Office. Under United States District Court – Central District of California Local Criminal Rule 10.8, the pre-sentence report is a confidential record of the Central District court.

On April 13, 1999, Judge Real sentenced Ms. Canter to probation and community service on the condition that she report to Judge Real in his chambers with her probation officer every 120 days. This reporting obligation was pursuant to and consistent with Judge Real's long-established "120-day program."

In February 1999, shortly before she was sentenced, Ms. Canter's husband, Gary Canter, filed a divorce action in the Superior Court for the County of Los Angeles, California. *Gary Paul Canter v. Deborah Marie Canter*, Case No. BD 295236. The Canter marital residence had been a home at 446 S. Highland Avenue in Los Angeles ("the house") owned by the Canter Family Trust ("trust") established by Gary Canter's parents. On August 13, 1999, the trust filed an unlawful detainer action in the Municipal Court for the County of Los Angeles, California, seeking to evict Ms. Canter from the house because she had not paid rent since February 1999, when Gary Canter moved out. *Alan S. Canter v. Deborah Maristina Romano,* Case No. 99U18116.. That unlawful detainer matter, along with the property aspects of the divorce matter, were automatically stayed when Ms. Canter filed a Chapter 13 bankruptcy petition in the U.S. District Court for the Central District of California on October 26, 1999.[1] *In re Canter*, Case No. 2:99-bk-49126-AA. The bankruptcy petition was referred to the bankruptcy court, Judge Alan Ahart, pursuant to the standard procedures of the Central District.

On January 13, 2000, Judge Ahart ordered that the automatic stay be lifted in the divorce action pursuant to a stipulation signed by counsel for Deborah Canter and counsel for Gary Canter. On January 26, 2000, when Ms. Canter's lawyer did not oppose the trust's motion, Judge Ahart ordered that the automatic stay be lifted in the unlawful detainer action. This order was entered on January 27, 2000. Thereafter, on February 4, 2000, Deborah Canter signed a stipulation in the unlawful detainer action, allowing judgment to be taken against her and

[1] The bankruptcy was converted to a Chapter 7 on April 11, 2000.

providing, *inter alia*, that she would vacate the house by no later than March 5, 2000. The municipal court entered judgment pursuant to this stipulation on February 7, 2000.

Meanwhile, on August 23, 1999, and again on January 24, 2000, Ms. Canter and her probation officer, Randall Limbach, met with Judge Real in his chambers for the 120-day probationer meetings. The purpose of these meetings was for Judge Real to monitor the probationer's compliance with the conditions of probation and her progress with her community service obligation. In this context, personal issues that were problematic for the probationer were appropriately and routinely brought to the attention of the district judge. Thus, at the August 23, 1999, meeting, Ms. Canter told Judge Real of her pending divorce.[2]

At the meeting on January 24, 2000, Ms. Canter advised the district judge that she had filed for bankruptcy. She also told the district judge, as she had told her probation officer two weeks earlier, that the lawyer for the trust had filed in the bankruptcy case a copy of the pre-sentence report from her criminal case. At this meeting, Ms. Canter handed Judge Real a document from the bankruptcy file. Randall Limbach's file reports that it was the "cover sheet" from the bankruptcy file. Judge Real testified that it was a single sheet of paper from the bankruptcy file. Ms. Canter had no recollection. In any event, in response to what Ms. Canter reported, Judge Real told her that she should bring the matter to the attention of her criminal defense attorney, Assistant Public Defender Guy Iverson.

Three days after the 120-day meeting, on January 27, 2000, Judge Real *sua sponte*, and without any form of notice or explanation to the parties, withdrew the reference of Ms. Canter's

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[2] Ms. Canter testified in a deposition in the divorce case on August 25, 26, and 30, 1999, that Judge Real had informed her that she did not have to disclose any of the facts surrounding her criminal conviction and sentence, and she refused to answer such questions. At the hearing before the Committee, Ms. Canter testified that the only information Judge Real ever gave her in this regard was in open court. Judge Real testified that he gave no instruction to Ms. Canter as she had described in her deposition testimony. The Committee finds that Judge Real did not personally give Ms. Canter any instruction regarding the confidentiality of her criminal record.

bankruptcy petition to the bankruptcy court and took jurisdiction of the matter himself. Judge Real's explanation for taking this action was the subject of Judicial Council inquiry in 2003 and of the Committee's inquiry at the hearing. The judge's response will be examined in Section IV *infra*. The transfer was effected on February 16, 2000. *In re Canter*, Case No. 2:00-cv-01185-R.

On February 29, 2000, three days after Ms. Canter had stipulated in the municipal court that judgment could be taken against her in the unlawful detainer action and five days before she was to have moved out of the house, Judge Real *sua sponte,* and without any form of notice or explanation to the parties, issued an order staying the enforcement of the municipal court's judgment "pending further proceedings in this Court" ("stay order"). The district judge's explanation for taking this action was the subject of Judicial Council inquiry in 2003 and of Committee inquiry at the hearing and will be examined in Section IV *infra.*

On March 27, 2000, Guy Iverson filed an application in the Canter criminal proceeding on behalf of Ms. Canter, seeking an order requiring counsel for the trust in the bankruptcy action and counsel for Gary Canter in the divorce action to show cause why they should not be held in contempt for filing Ms. Canter's pre-sentence report in their respective matters, in violation of the local rule. Judge Real issued the order to show cause on April 7, 2000. A hearing was held on April 17, 2000, with both counsel appearing through their respective lawyers. The order as to the bankruptcy counsel was dismissed at the hearing, when it was agreed that the pre-sentence report would be removed from the bankruptcy file. The order as to the divorce counsel was dismissed on June 26, 2000, following the June 16, 2000, filing of a status report and a stipulation by divorce counsel attesting that the pre-sentence report had been removed from the superior court file in the divorce action and that Mr. Iverson was satisfied that the superior court judge in that action had not been influenced by the report.

On June 19, 2000, the trust filed a motion seeking to persuade Judge Real to lift the stay order so that the municipal court judgment could be implemented. The motion was fully briefed by counsel for the trust and for Ms. Canter. At the hearing on July 24, 2000, without stating his reasons, Judge Real ordered that the motion be denied. In its investigation of the 2003 complaint, the Judicial Council did not ask Judge Real to explain this ruling. In response to this Committee's questions, Judge Real testified that this ruling resulted from his desire to "f[ind] out the use that was made of those probation reports." Hearing Transcript, August 24, 2006, p.54, 1.24. The Committee's investigation revealed that Judge Real's law clerk, who had received no prior instruction or direction from Judge Real on the point, had submitted a bench brief to Judge Real recommending that the motion be denied because Ms. Canter had demonstrated the "existence of serious issues" involving the ownership of the house and, treating the stay order as the injunction it actually was, "the balance of harms greatly favor[ed]" allowing her to remain in the house pending resolution of those issues in the divorce court.

On January 5, 2001, as the trial in the divorce action was approaching, Deborah Canter filed a complaint in the Central District ("adversary action"). *Canter et al. v. Canter et al.*, Case No. 01-00139-R. That complaint sought a determination that Ms. Canter had an ownership interest in the house for a variety of factual reasons having to do with the way the house had been purchased and her husband's financial arrangement with his parents. As the adversary action related to the ongoing bankruptcy matter, it was routinely and properly assigned to Judge Real.

On February 20, 2001, Ms. Canter filed an *ex parte* application in the adversary action seeking an order staying the trial in the divorce action. That same day, Judge Real denied the application, handwriting on it: "Denied. This Court cannot interfere with State Court's jurisdiction over marital property." Hence, the divorce trial went forward. On May 1, 2001, the

superior court entered its judgment holding that neither Gary Canter nor Deborah Canter had any ownership interest in the house.

Meanwhile, on February 1, 2001, the trust and other defendants responded to the adversary action by filing a motion to dismiss. The trust argued that the state court, rather than the federal court, was the proper forum to resolve the ownership issue because (a) the action was related to but did not arise under Ms. Canter's bankruptcy, and (b) the claim was based on state law and an action on the issue had already been commenced in state court. Then, on May 16, 2001, following the entry of the divorce judgment, the trust filed its second motion to vacate the February 7, 2000, stay order. Both the motion to vacate and the motion to dismiss were fully briefed by the parties. At the consolidated hearing on June 18, 2001, Judge Real granted the motion to dismiss the complaint in the adversary action with leave to amend, but denied the motion to vacate the stay order. When counsel for the trust asked Judge Real for an explanation, his only response was, "Because I said it."

In the 2003 complaint investigation, the Judicial Council did not ask Judge Real to explain these rulings. In response to the questions of this Committee, Judge Real testified that he ruled as he did because of his continuing concern about the misuse of the pre-sentence report in the divorce action. He further explained that it was his understanding that, although the divorce court had resolved the marital property issue, it had not resolved the property issue that Ms. Canter had raised in the adversary action. Judge Real testified that even though the divorce judge determined that Ms. Canter did not have a community property interest in the house, "it was not decided as to whether or not [Ms. Canter] had in essence – and it turned out as a later fact – that she may have had a promissory estoppel interest in that property." Hearing Transcript, August 24, 2006, p.55, l.24 – p.56, l.1. The Committee's investigation disclosed that Judge Real's law clerk, who was a different law clerk from the one who had advised him the

previous year, had recommended to Judge Real that the adversary action be dismissed because it did not state a viable legal claim to ownership in the house, but that Ms. Canter should be given an opportunity to amend her complaint to state an equitable claim. The law clerk recommended that the motion to vacate the stay order either be granted or continued to see whether Ms. Canter could state a viable claim of ownership. When asked why he decided to deny the motion rather than to continue it, Judge Real testified, "That may be a personality thing with me. I don't continue things if I can help it."[3] Hearing Transcript, August 24, 2006, p. 99, l. 3-4.

About a month before this hearing, sometime in May 2001, Judge Real had spoken with District Judge David O. Carter of the United States District Court, Central District of California in Santa Ana, to ascertain Judge Carter's availability and willingness to take over the Canter bankruptcy. That conversation is described *infra* at Section IV.A.2. Judge Real thought of Judge Carter because Judge Carter had recently presided over the Anna Nicole Smith bankruptcy, and thus had expertise in the area. On July 9, 2001, about three weeks after the June 18 hearing, Judge Real *sua sponte,* and without any form of notice or explanation to the parties, transferred the bankruptcy case - both the bankruptcy petition and the adversary action - to Judge Carter. Judge Real did not, however, vacate the stay order, which remained in place by virtue of his June 18 denial of the motion to vacate.

On July 23, 2001, Judge Carter accepted the transfer, and the parties were notified. On September 21, 2001, Judge Carter granted the trust's motion to re-refer case to the bankruptcy court, stating that "none of the factors justifying withdrawal are present." On December 10, 2001, Bankruptcy Judge Alan Ahart, who once again had the bankruptcy proceeding in his court, granted the trust's motion to dismiss the amended complaint Ms. Canter

[3] Judge Real had continued the hearing on the motion to dismiss the adversary action three times for a total of more than three months. He also had continued the hearing on the motion to vacate the stay order once for one week.

had filed in the adversary action on June 26, 2001, based on the judgment of the state court that Ms. Canter had no ownership interest in the house. On April 24, 2002, the bankruptcy case was closed.

Meanwhile, on July 17, 2001, the trust filed a notice of appeal of the denial of its motion to vacate the stay order. As the parties had been given an explanation neither for the imposition of the stay order nor for the denial of either of the two motions to vacate it, both counsel for the trust and counsel for the debtor considered the matter to be properly presented to the appellate court and thus no longer before either Judge Carter or the bankruptcy judge. The appeal was argued on March 7, 2002. The Ninth Circuit issued its decision on August 15, 2002, finding that the matter was properly before the court of appeals, that Judge Real had erred when he withdrew the reference of the bankruptcy petition to the bankruptcy court without showing cause, and that he had abused his discretion when he issued the stay order.[4] *In re Canter*, 299 F.3d 1150, 1152, 1155-56 (9th Cir. 2002).

2. 2003 Complaint Investigation

In the 2003 complaint, Complainant Stephen Yagman, who was not involved in any way in any of the Canter cases, alleged that Judge Real had acted for inappropriate personal reasons in placing Deborah Canter, a "comely" female criminal defendant, on probation "to himself, personally," and in withdrawing the reference in the bankruptcy proceeding in order to "benefit an attractive female." The chief judge investigated the allegations and dismissed the complaint on the basis of the complainant's failure "to include any objectively verifiable proof supporting the allegations of misconduct." Additionally, the chief judge found that Judge Real's decisions

[4] On December 16, 2002, Judge Carter held a hearing to ask counsel for Ms. Canter and for the trust why the decision of the Ninth Circuit had not become moot. As the parties explained to Judge Carter, the re-referral of the bankruptcy matter to the bankruptcy court had had no impact on the stay order.

pertaining to the bankruptcy case had been reviewed and reversed by the court of appeals, and "a judicial misconduct complaint will generally be dismissed if it is directly related to the merits of a judge's ruling or decision in the underlying case."

The complainant petitioned the Judicial Council for review of the dismissal. Concluding that additional information was needed, on September 10, 2003, the Judicial Council wrote to Judge Real asking him to explain why he had withdrawn the bankruptcy reference; how the bankruptcy case had been assigned to him following the withdrawal of the reference; why he had imposed the stay order; and whether, during his supervision of Ms. Canter's probation, he had had any communications with her regarding the bankruptcy matter, the unlawful detainer action, the lifting of the automatic bankruptcy stay, the possibility of withdrawing the reference of the bankruptcy case, or any other matter concerning the bankruptcy. Judge Real responded to each of the Judicial Council's inquiries in an unsigned memorandum dated October 9, 2003. Judge Real acknowledged to this Committee that this response was inaccurate in material respects. See *infra* at Section IV.

After considering Judge Real's submission and conducting its own further inquiry, the Judicial Council vacated the dismissal and remanded the complaint to the chief judge for further investigation. The chief judge had not participated in the Judicial Council's inquiry or deliberations, due to council procedures that were in effect at the time. Accordingly, her knowledge of the Judicial Council's inquiry was limited to what was written in the remand order. The chief judge sent the remand order to the district judge, inviting his response. On August 13, 2004, Judge Real responded by way of a brief from his lawyers, attached to which were, *inter alia*, declarations under oath from Judge Real's secretary and Ms. Canter's probation officer, Randall Limbach, and a letter from Judge Real to his counsel, not under oath, responding to three specific questions that his counsel had posed.

After receiving the district judge's submission, the only issue that appeared to the chief judge to require further investigation was whether Deborah Canter had delivered a letter to Judge Real, as it appeared from the remand order that Michelle Smyth, the secretary of Ms. Canter's lawyer, had represented to the Judicial Council she had. The chief judge thereafter obtained a declaration, under oath, from Ms. Canter in which Ms. Canter said that she had not created, possessed, or delivered such a letter. Based on that evidence and on the evidence and explanation Judge Real had submitted, on November 4, 2004, the chief judge again dismissed the 2003 complaint, explaining that both Ms. Canter and Judge Real had "firmly denied that any such letter was written or delivered." The chief judge found there to be no evidence of any "secret meetings or communications" between Ms. Canter and Judge Real, and found that the district judge's newly provided explanation for his decision to withdraw the bankruptcy reference -- that he had become aware at the January 24, 2000, probationer meeting that Ms. Canter's pre-sentence report had been filed impermissibly in the bankruptcy proceeding -- constituted "at least an 'arguably legitimate basis' for such action." Finally, the chief judge reiterated that there was no evidence that any inappropriate personal relationship existed between Judge Real and Ms. Canter.

The complainant once again sought review of the chief judge's order. On review for the second time, the Judicial Council concluded that there was no merit to the allegation that Judge Real's handling of Ms. Canter's probation was for an inappropriate personal reason. The Judicial Council stated that it could not be certain whether the district judge had received a letter from the debtor, but that it was clear Judge Real had learned about the debtor's bankruptcy in the course of his supervision of her probation and that he had issued the stay order without explaining his actions or notifying the trust. Without determining whether that conduct amounted to misconduct, the Judicial Council concluded that appropriate corrective action would

be for Judge Real "to acknowledge [his] improper conduct, apologize for it and pledge not to repeat it."

A letter from Judge Real's lawyer to the council dated June 17, 2005, contained the following statement:

> Upon reflection, [Judge Real] recognizes that if he had articulated his reasons for withdrawing the reference and re-imposing the stay, and his underlying concerns that led to those actions, misunderstandings by the parties could have been prevented. As would any dedicated jurist, he believes those types of misunderstandings should be avoided whenever possible, and he recognizes that it was unfortunate they occurred in this situation. He does not believe that any similar situation will occur in the future.

On September 29, 2005, a majority of the members of the Judicial Council accepted that statement as appropriate corrective action and affirmed the chief judge's dismissal of the complaint. Three members dissented, at least in part. The Judicial Council's opinion, with dissents, was published as *In re Complaint of Judicial Misconduct*, 425 F.3d 1179 (9th Cir. 2005).

The complainant petitioned the Judicial Conference of the United States for review. The United States Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders issued its decision on April 28, 2006, stating that, under the controlling statute, it had no jurisdiction to review the chief judge's order of dismissal because a special committee had not been appointed. Thus ended the 2003 complaint. In May 2006, the chief judge appointed this Committee to investigate the related matters contained in the 2005 complaint.

II. INVESTIGATION AND HEARING PROCESS

A. Pre-Hearing Witness Interviews

Counsel to the Committee telephoned the complainant on July 10, 2006, and informed him of the Committee's intention to hold a hearing on the 2004 and 2005 complaints

commencing on August 21, 2006. The complainant stated that he saw no need to testify at the hearing, because he possessed no first-hand knowledge of the facts that the Committee was investigating. Committee counsel confirmed this conversation in a letter to the complainant, and she invited him to contact her should he have suggestions for witnesses. The complainant did not submit any witness suggestions, and he did not testify at the hearing.

On July 18, 2006, the Committee informed Judge Real in writing that it considered eighteen individuals, including the district judge and Ms. Canter, potentially to have relevant information. Over the ensuing weeks, Committee counsel conducted interviews of the potential witnesses and, in so doing, identified additional witnesses, each of whom was promptly disclosed to counsel for Judge Real. Committee counsel provided notes from its witness interviews to counsel for Judge Real, but the Committee has not seen those notes, and they are not part of the Committee's file.

B. Hearing

The hearing on the 2005 complaint took place on August 21, 22, 23, 24, and 29, 2006, at the United States Court of Appeals, 125 South Grand Avenue, Pasadena, California. A court reporter was present and a transcript of the hearing was prepared. In all, eighteen witnesses, including Judge Real, testified at the hearing, all under oath. A list of the witnesses is attached as Appendix B to this report. The Committee had issued subpoenas to nineteen witnesses to testify at the hearing; three additional witnesses agreed to testify voluntarily. One subpoenaed witness and one voluntary witness were determined not to be necessary to the investigation and were released from their obligation to testify; a third was released due to a family emergency,

with his testimony being received by stipulation.[5] Judge Real was given the opportunity to add witnesses to the Committee's list; he did not do so.

Subpoenas duces tecum were issued to several witnesses compelling the production of documents before or at the hearing. The Committee thus received 8,692 pages of documents, all of which were provided promptly to Judge Real and made a part of the Committee's file. In addition to the subpoenaed documents, the Committee's file contains the entire Judicial Council file from the 2003 complaint investigation, as well as the complaint, orders, and correspondence pertaining to the 2005 complaint investigation. From among these documents, augmented by additional documents introduced by Judge Real, 136 exhibits were made a part of the hearing record. A list of hearing exhibits is attached as Appendix C to this report.

At the conclusion of the hearing on August 24, 2006, Judge Real's counsel orally argued his client's position.

C. Post-Hearing Submission

Following the hearing, Judge Real was given the opportunity to object to any hearing exhibits or documents in the Committee's file. He did so with respect to hearing exhibits only, and the Committee ruled on those objections. Judge Real was also given the opportunity to submit written argument. He did so, and the Committee has considered that argument.

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[5] One of the released witnesses was Robin Donoghue, the Assistant Circuit Executive for Legal Affairs, Office of the Circuit Executive, who had done the investigatory work for the Judicial Council and the chief judge on the 2003 complaint. Memoranda that Ms. Donoghue prepared, memorializing her investigatory interviews, were introduced by Committee counsel as hearing exhibits. In response to a hearsay objection by counsel for the district judge, the Committee decided that these memoranda would not be considered for their truth unless a witness attested to them or they came within an exception to the hearsay rule. The Committee further decided that, because Ms. Donoghue had no first-hand knowledge of anything relevant to its investigation, she would not testify. A post-hearing offer of proof made by counsel for the district judge confirmed the Committee's determination that Ms. Donoghue's testimony would have been either hearsay or irrelevant to the investigation. However, in response to a request made in the district judge's post-hearing brief, the Committee entered into a stipulation with the district judge addressing the circumstances of the chief judge's obtaining Ms. Canter's declaration in 2004.

III. JUDICIAL MISCONDUCT STANDARDS

A. General Principles Governing Misconduct Proceedings

The purpose of the judicial misconduct statute, 28 U.S.C. §§351-364, is to provide a means and a method for complaints of judicial misconduct to be investigated so that public confidence in the judiciary may be maintained. A federal judge's conduct is sanctionable under the statute and the rules if it is "prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a); Rule l(c). This definition "was intended to include willful misconduct in office, willful and persistent failure to perform duties of office, habitual intemperance, and other conduct prejudicial to administration of justice that brings judicial office into disrepute." *In re Complaint of Judicial Misconduct*, 366 F3d 963, 965 (9th Cir. 2004) (quoting S. Rep. No. 96-362, at 3, *reprinted in* 1980 U.S.C.C.A.N. at 4317).

A variety of sanctions and corrective actions may be imposed by the Judicial Council or the Judicial Conference of the United States against a judge who has engaged in misconduct. 28 U.S.C. §§ 354(a)-(b), 355(a); Rule 14 (a). The Judicial Council may "conclude the proceeding" on the grounds that corrective action has been taken or that intervening events have made Judicial Council action unnecessary. Rule 14(a),(d). The Judicial Council may refer a complaint to the Judicial Conference with the Judicial Council's recommendations for action. 28 U.S.C. § 354(b), Rule 14(e). Such a referral is required if the Judicial Council determines that a district judge engaged in misconduct that might constitute grounds for impeachment or that, in the interest of justice, is not amenable to resolution by the Judicial Council. *Id.* The Judicial Council may itself order corrective action, including public or private reprimand or censure of the judge, ordering that no new cases be assigned to the judge for a fixed temporary period, and requesting the judge to retire voluntarily. 28 U.S.C. §354(a)(2); Rule 14(f).

A special committee is empowered to investigate complaints of "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. §351(a); Rule 1(c). As the United States Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders has noted, although special committee "proceedings have an adjudicatory aspect, they also have an administrative and managerial character not present in traditional adjudication by courts. As Rule 1(a) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability makes clear, the purpose of [the judicial misconduct statute] 'is essentially forward-looking and not punitive. The emphasis is on correction of conditions that interfere with the proper administration of justice in the courts.'" *In re Complaints of Judicial Misconduct*, 9 F.3d 1562, 1566 (U.S. Jud. Conf. 1993).

B. Code of Judicial Conduct

While focus is often directed to whether a particular judge has violated the Code of Judicial Conduct ("the canons"), it is not the case that a violation of the canons necessarily would subject the offending judge to discipline. See *In re Charge of Judicial Misconduct,* 91 F.3d 1416 (10th Cir. 1996) (based on investigator's findings, magistrate judge's conduct did not constitute judicial misconduct, although it may have violated canons of judicial conduct); see also Commentary to Rule 1 of the Misconduct Rules.

The canons pertinent to this investigation are the following.

Canon 1:

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2A:

> A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3A (4)

> A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding.

IV. FINDINGS

Substitution A

[After thorough investigation, the Committee unanimously finds that Judge Real engaged in acts of misconduct. Before specifying those findings, however, there are certain preliminary issues that must be addressed.

First, there is no evidence, credible or otherwise, that Judge Real ever engaged in a personal, salacious, or improper relationship of any kind with Deborah Canter. We find that there was no such relationship and that, accordingly, such a relationship did not and could not have influenced any of Judge Real's decisions.

Second, we cannot find that Deborah Canter delivered a letter, declaration, or any other form of correspondence or written communication to Judge Real. The Committee finds Ms. Smyth to have been credible in her testimony, which was consistent with her prior statement to the Judicial Council, that she had prepared such a letter or declaration at Ms. Canter's request and under Ms. Canter's direction. Ms. Canter's denial, conversely, was not credible in light of, among other things, her defensive demeanor and her flat denial of any discussion with Ms. Smyth about the preparation of a letter or declaration on her behalf. However, there is no direct

evidence that such a document was delivered to or received by Judge Real.[6] The testimony of the judge's secretary, court clerk, and law clerks, as well as the testimony of Ms. Canter and Judge Real, is consistent that no letter or declaration was delivered to or received by the district judge outside the normal course of court filings.]

Third, we find that Judge Real did not act improperly by ordering Deborah Canter to participate in his 120-day program as a condition of her probation. To the contrary, the Committee finds that Judge Real's 120-day program not only is proper, but also is commendable and worthy of respect.

What follows is what the Committee unanimously finds did constitute acts of misconduct.

A. Inaccurate and Misleading Responses to the Judicial Council and the Committee

The Committee unanimously finds that the responses of Judge Real to the 2003 complaint and to this Committee in its investigation of the 2005 complaint have been inaccurate and misleading in material and significant respects. The responsibility that has been given to the chief judge and the Judicial Council to enforce the judicial misconduct statute creates a concomitant responsibility that every judge take seriously his or her obligation to respond candidly to complaints of misconduct when called upon to do so. To do otherwise undermines the integrity of, and public confidence in, the judiciary and thus violates the canons and implicates the judicial misconduct statute. The Committee unanimously finds that Judge Real's

[6] Ms. Smyth's testimony, and her prior statement to the Judicial Council, that Ms. Canter had told her shortly after Judge Real withdrew the reference that "it worked" was also credible. Ms. Canter's denial was not credible. However, it is not possible to know what the "it" was to which Ms. Canter referred. Further, Ms. Smyth may have been mistaken as to the details of this conversation or Ms. Canter may have embellished events for Ms. Smyth's benefit.

misleading and inaccurate responses, as described below, therefore constitute sanctionable misconduct.

1. Judge Real Gave Inaccurate and Misleading Responses to the Judicial Council in 2003

In his October 9, 2003, submission to the Judicial Council ("2003 submission"), Judge Real stated that he had withdrawn the reference of the Canter bankruptcy from the bankruptcy court and that he had issued the stay order because:

> I felt it was related to my program of working with probationers to help their rehabilitation. I have been doing this for more than 25 years and have been told by the Probation Officer that it is a successful program. In this case a person who was a probationer in a criminal case informed me that the home in which she and her husband were living at the time of their divorce had been given to them by her husband's parents. She was still living in the house with her eight year old daughter and was in divorce proceedings. She was contesting her right to occupancy in the divorce court and I felt it should be finalized there so I re-imposed the stay to allow the state matrimonial court to deal with her claim. From her explanation of the proceedings in the state court it appeared to me that her counsel had abandoned her interest so that it could not be adequately presented to the state court. Counsel for her husband had asked the Probation Officer to release Ms. Cantor's [sic] probation report so it would be used in the divorce proceedings. I denied that request upon the recommendation of the Probation Officer.

At the hearing before this Committee, Judge Real acknowledged that much of the 2003 submission was inaccurate. For example, Judge Real had no information that the ownership of the house was a disputed issue until well *after* he withdrew the bankruptcy reference and issued the stay order. There were no "proceedings in the state court" that Ms. Canter had described to Judge Real, before he withdrew the reference and issued the stay, evidencing that her counsel had "abandoned her interest." It was not accurate that Ms. Canter was "contesting her right to occupancy" in the divorce court, but it was accurate that she was claiming an ownership interest in the house in the state divorce court and, contrary to Judge Real's later actions and assertion to

the chief judge and to the Committee, it is accurate that Judge Real felt the ownership issue should be decided in the "state matrimonial court." Finally, the Committee finds that the probation officer did not, at any time, convey to Judge Real a request from Gary Canter's counsel that Ms. Canter's pre-sentence report be released.[7]

Judge Real's explanation for the inaccuracies in the 2003 submission is that he wrote it in anger and haste. He explained that he was angry because he thought the request came from Judge Kozinski as a result of the complainant's inappropriately having sent a copy of the 2003 complaint to Judge Kozinski. Judge Real also explained that he did not verify the facts because he did not have the bankruptcy file.

The Committee finds this explanation lacking in several respects. First, if Judge Real had needed more time to respond to the Judicial Council's request, he easily could have asked for it. Second, being angry at the complainant does not excuse asserting as fact that which is untrue. Third, the omission of any mention of the misuse of the pre-sentence report cannot be explained by not having access to the bankruptcy file. While it is true that Judge Real did not have possession of that file, he did have the criminal file and, indeed, the 2003 submission refers to his having reviewed that file. The Committee verified that the criminal file in Judge Real's chambers contained the record of the 2000 order to show cause proceeding, including (1) the declaration from Gary Canter's divorce lawyer asserting her ignorance of the local rule making the pre-sentence report confidential and (2) declarations from the same divorce lawyer and Guy

[7] Judge Real identified Robert Latta as "the Probation Officer" to whom he referred in the 2003 submission. Officer Latta testified that he had no recollection of such a request, but that he could not be certain one way or the other. Had Officer Latta made such a request on behalf of Gary Canter's divorce lawyer, the issue surely would have been mentioned during the order to show cause proceedings, because that lawyer's use of the report would have been in defiance of Judge Real's purported denial of permission. The Committee has reviewed the record of the order to show cause, including the transcript of the hearing, and there was no mention by anyone of a request having been made of the probation officer.

Iverson giving the district judge the assurance he sought from the state court divorce judge that, in effect, he had no memory of having read the pre-sentence report. Had the pre-sentence report truly been the motivation for Judge Real's actions in the bankruptcy case, as he asserted at the hearing, it is more likely than not that he would have mentioned it in his 2003 submission.

2. Judge Real Gave Inaccurate and Misleading Responses to the Committee

Judge Real twice denied motions, filed by the trust, seeking to vacate the stay order he had issued on February 29, 2000. These denials were a subject of the investigation not with respect to the legal merit therefor, but with respect to whether there was an improper motivation. The Committee's unanimous finding on that point is presented *infra*. What the Committee also unanimously finds is that Judge Real's testimony at the hearing on the issue of his motivation was inaccurate and misleading.

In the first motion, filed in June 2000, the trust argued that Ms. Canter had no ownership interest in the house and that the eviction judgment -- to which she had stipulated -- should therefore be allowed to proceed. Ms. Canter argued that she did have an interest in the house by virtue of things her estranged husband and his family had said and done, and she asserted that her interest should be determined in the divorce proceeding. Judge Real denied the motion, without explanation to the parties.

Judge Real testified to the Committee that he denied the motion because of his lingering concern about the effects of the misuse of the pre-sentence report. At another point in his testimony, Judge Real added that he thought the debtor should be permitted to live in the house pending resolution of ownership in the divorce court, although when asked what this consideration had to do with the bankruptcy proceeding at a time when there was no adversary action pending, the district judge had no explanation.

Some seven months after Judge Real denied the first motion to vacate, in February 2001, *after* the adversary action had been filed, Ms. Canter sought a stay of the divorce trial so that the house-ownership issue would be decided in that action rather than in the divorce action. Judge Real denied the request for the stated reason that "[t]his Court cannot interfere with State Court's jurisdiction over marital property." The divorce trial that thus went forward resulted in a determination by the state court judge that Ms. Canter had no ownership interest in the house. A judgment to that effect was entered on May 1, 2001. With that judgment in hand, the trust filed its second motion to vacate the stay order.

On June 18, 2001, when Judge Real denied that motion (rather than granting it or continuing it, as his law clerk had recommended), he gave no explanation to the parties other than "because I said it counsel." This remark left both the trust at the time, and the Committee now, to wonder as to his reasons. Logically, it could no longer have been because home-ownership should be decided in the state court, because the state court had already ruled. It could no longer have been because of concern about the improper use of the pre-sentence report, because Judge Real had dismissed the order to show cause more than a year earlier and had had jurisdiction of the bankruptcy himself for almost a year and a half.

At the hearing, Judge Real insisted that the reason he denied the motion was that he still had lingering concern about the misuse of the pre-sentence report. It is hard for the Committee to imagine what the concern could have been by this time. At one point in his testimony, Judge Real added that it was "for the reasons" stated in his law clerk's bench memorandum, which does not help the analysis inasmuch as the clerk had recommended that the motion to vacate be granted or, at worst from the trust's point of view, be continued to be taken up once it was known whether Ms. Canter could state a viable claim in the adversary action.

The Committee is persuaded that the true explanation for the denial of the second motion to vacate is revealed by what Judge Real told Judge Carter. It was while the second motion to vacate was pending, in the month of May 2001, that Judge Real talked with Judge Carter about his taking over the bankruptcy matter. According to Judge Carter, Judge Real was "concerned about the person on his probationary calendar . . . .; I received information from him that there was a person on his probationary calendar, and that he was concerned about the stability of that person," which Judge Carter understood to mean her "living conditions, being out on the street." As Judge Carter further explained:

> He [Judge Real] said, 'I'm concerned and would like one of the judges to take a second look at this case. Would you be willing to take a look at a case?' And he described to me that he had a person on the check-in probation calendar . . . . He went on, I think, to explain to me – and this is where I have to qualify it – I think he said he was concerned about her stability/living arrangement or whatever that came out of the criminal case; and that she was going to be possibly coming out of a home or a housing situation that would put her into an unstable position."

Hearing Transcript, August 23, 2006, 116:12-13, 16-18; 152: 10-22. That is to say, and the Committee unanimously finds, that Judge Real took the judicial actions he took for the purpose of assisting one party in the bankruptcy litigation, the debtor, for whom he had both sympathy and concern by virtue of her being a probationer in his court, to the substantial detriment of the opposing parties in that litigation.[8]

There is an additional reason why Judge Real's explanation that the misuse of the pre-sentence report was what motivated his denial of both motions to vacate the stay order is not believable. In April 2000, before the hearing on the first motion, Judge Real issued the order to show cause and held a hearing to look into the misuse of the pre-sentence report and to hold the

[8] The trust was unable either to possess the house or to collect rent from the occupant "for almost three years, resulting in a $35,000 loss of rental income." (*In re Canter*, 299 F.3d 1150, 1154 (9th Cir. 2002)

offending attorneys accountable. The district judge was obviously satisfied with the explanation and the remedy presented to him at that time because, in June 2000, he dismissed the order. It simply is not credible that a month later, let alone more than a year later, the misuse of the pre-sentence report was the reason he refused to lift the stay order he had imposed *sua sponte* a year and a half earlier.

B. Actions Based on Information Received *Ex Parte* or Based on Personal Knowledge

It is well established that a judge may not exercise judicial power based on communications from one party to a dispute without the knowledge of the other party. *United States v. Thompson*, 827 F.2d 1254, 1258-59 (9th Cir. 1987). The constitutional right to due process commands that parties receive notice and opportunity to be heard in adversarial proceedings. *Id.* In addition, although parties do not have a due process right to the random assignment of cases, a judge may not assign a case in order to affect its outcome. *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir. 1987).

Consistent with these principles, Canon 3A(4) provides:

> A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding.

The judicial recusal statute requires a federal judge to "disqualify himself in the following circumstances: (1) Where he has [. . .] personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. §455(b). Most cases dealing with this statutory provision concern extrajudicial communications. But, as stated by the Seventh Circuit Court of Appeals in a case involving a district judge's ex parte meeting with a panel of experts whom the judge had appointed:

> The point of distinguishing between "personal knowledge" and knowledge gained in a judicial capacity is that information from the latter source enters the record and may be controverted or tested by the tools of the adversary process. Knowledge received in other ways, which can be neither accurately stated, nor fully tested, is "extrajudicial." [. . .] Off-the-record briefings in chambers, [. . .] leave no trace in the record – and in this case the judge has forbidden any attempt at reconstruction. What information passed to the judge, and how reliable it may have been, are now unknowable. This is "personal knowledge" . . . .

Edgar v. K.L., 93 F.3d 256, 259 (7th Cir. 1996).

1. Judge Real Committed Misconduct by Withdrawing the Bankruptcy Reference Based on Information Received *Ex Parte*

The Committee unanimously finds that constitutional due process considerations, the canon prohibiting *ex parte* contacts, and the recusal statute all obligated Judge Real to refrain from making decisions with respect to the Canter bankruptcy case based on information that he received *ex parte* from Ms. Canter as his probationer in the criminal case. With respect to this finding, the Committee does not pass judgment on Judge Real's reason for withdrawing the reference, but rather on his taking judicial action affecting the rights of all parties to a proceeding based on information available to only one of the parties.

Judge Real's receipt of the information from Ms. Canter about her bankruptcy and his subsequent perusal of the bankruptcy docket were not improper and would not have been misconduct had the matter ended there. However, when the district judge signed an order withdrawing the reference, he took a judicial action in the bankruptcy case based on a communication with the debtor as to which the creditor was neither privy nor on notice. The Committee unanimously finds this to have been an act of misconduct.

2. Judge Real Committed Misconduct by Ordering a Stay of the Unlawful Detainer Judgment Based on Information Received *Ex Parte* and on Personal Knowledge

After withdrawing the reference, Judge Real took jurisdiction of Ms. Canter's bankruptcy case and reviewed the file.[9] In that file, he found reference to the state court unlawful detainer action, and he saw that the automatic stay as to that action had been lifted following a motion filed by the trust, a motion that included the confidential pre-sentence report. Judge Real thereupon instructed his secretary to call the municipal court to determine the status of the unlawful detainer case. The secretary did so and learned that a judgment had been entered. She obtained a copy of the docket sheet and gave it to Judge Real. Judge Real testified that he had no knowledge as to what the judgment was, or even in whose favor it was, but that upon seeing that judgment had been entered, he felt the need immediately, *sua sponte* and without notice, to issue the stay order barring the enforcement of the judgment "pending further proceedings in this Court." What those proceedings were to have been was not specified or explained to the parties then or later.

Substitution B

[It is clear that Judge Real's decision to stay the enforcement of the unlawful detainer judgment emanated from the information he had received *ex parte* from Ms. Canter at the January 24, 2000, 120-day meeting, augmented by the independent investigation that his secretary had conducted at his behest. Accordingly, the Committee unanimously finds that Judge Real's issuance of a stay in the bankruptcy matter derived from the information he had

[9] The Committee finds that Judge Real's taking jurisdiction of the bankruptcy case himself rather than seeing that it was randomly assigned following his withdrawal of the reference is not an independent act of misconduct. While his recusing himself and having the case assigned to another Article III judge surely would have been prudent and likely would have prevented the problems addressed here, there is no statute or rule of court that was violated with respect to the assignment, apart from the withdrawal itself.

received from Ms. Canter as a probationer in the criminal matter and that this constitutes misconduct.]

V. RECOMMENDATIONS

A. Motion to Dismiss

Pursuant to the May 23, 2006, order of the chief judge, the Committee has investigated both the allegations of the 2005 complaint (lack of candor in the 2003 complaint investigation) and the issues left unanswered by the 2003 complaint ("the nature, extent, and consequences of any *ex parte* contacts [Ms. Canter had] with the district judge, as well as any related matters raised by the Judicial Council in its remand to me after my first dismissal" of the 2003 complaint). In the written argument taken under advisement, Judge Real argues that the Committee and the Judicial Council are without jurisdiction to investigate the 2005 complaint, let alone any matters encompassed within the 2003 complaint, because of the finality created by 28 U.S.C. § 352(c):

> A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge's order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

The Committee unanimously recommends that the Judicial Council reject this argument for the following reasons.

<u>Substitution C</u>

[First, the investigation undertaken by this Committee is not a "review" of the chief's judge's order dismissing the 2003 complaint, as proscribed by the statute. The chief judge herself explains in her May 23, 2006, order that she was constrained in the actions she could take when the 2003 complaint was remanded to her and she did not, therefore, consider the issues that she has instructed this Committee to consider.

Second, rule 10(a) gives a special committee, on which the chief judge sits *ex officio*, the right to expand its investigation if it "develops reason to believe that the district judge has engaged in misconduct beyond the scope of the complaint." The only proviso is that the district judge be given written notice of the expansion. Judge Real was given ample notice, in writing, of the Committee's intention to investigate fully both the 2005 and the 2003 complaint.]

Finally, and more fundamentally, accepting Judge Real's argument would mean that a judge could avoid findings of misconduct by responding to Judicial Council inquiries with intentionally or negligently erroneous information and then, when the errors were identified, claim that he was insulated from the consequences of his own misrepresentation. The judicial misconduct statute is designed to protect the integrity of the judiciary and to protect the public from misconduct of federal judges. Immunizing judges from an analysis of their own conduct in complaint proceedings, or from a thorough reanalysis of a claim of misconduct based on accurate information, would be at odds with the purpose of the judicial misconduct statute.

B. Sanctions

1. The Committee Does Not Recommend Impeachment or Referral to the Judicial Conference

The misconduct that this Committee has found as a result of its investigation of the 2005 complaint does not warrant consideration of impeachment. In part, the Committee so concludes because the evidence does not show that Judge Real's initial acts of misconduct (Sections IV.B.1 and IV.B.2 *supra*) were motivated by self-interest or malice, but rather were motivated by a desire, however misguided, to help a probationer. And, with regard to Judge Real's misconduct involving deception (Sections IV.A.1 and IV.A.2 *supra*), the Committee concludes that Judge Real was motivated more by anger and self-deception than by a deliberate attempt to deceive others.

Additionally, in the history of the United States, few federal judges have been impeached. Sixty-one federal judges or Supreme Court Justices have been investigated for impeachment, of whom fourteen have been impeached and seven convicted.[10] Each of the seven convictions was for extraordinary acts: Judge Pickering (drunkenness and senility), Judge Humphreys (incitement to revolt and rebellion against the nation), Judge Archbald (bribery), Judge Ritter (kickbacks and tax evasion), Judge Claiborne (tax evasion), Judge Hastings (conspiracy to solicit a bribe), and Judge Nixon (false statements to a grand jury).[11] The misconduct that the Committee has found Judge Real to have committed, as a result of the Committee's investigation of the 2005 complaint, does not involve the type of extraordinary acts that have historically resulted in impeachment.

2. The Committee Recommends Public Censure or Reprimand

Notwithstanding the conclusion in Section V.B.1. *supra*, the Committee unanimously concludes that Judge Real's misconduct warrants the corrective action of "censuring or reprimanding [the] judge by means of public announcement." 28 U.S.C. § (a)(2)(A)(iii); see also rule 14(f)(1). The Committee reaches this conclusion because the misconduct continued over a substantial period of time, was repeated, and caused significant harm to a litigant. The potential sanctions short of a public censure or reprimand do not sufficiently protect the public interest.

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[10] NATIONAL COMM'N ON JUDICIAL DISCIPLINE AND REMOVAL, REPORT OF THE NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL at 29-30 (1993). Of the seven Article III judges convicted and removed from office, six were district judges and one was a circuit judge.

[11] See *Id.*; see also Eleanore Bushnell "*Crimes, Follies and Misfortunes: The Federal Impeachment Trials*" 19 (1992) (analyzing impeachment process and questioning whether act must be one committed in official capacity and whether willfulness is necessary in determining impeachability of offenses).

Nothing in this report on the investigation of the 2005 complaint is intended to limit the scope of the sanctions that may be recommended after the Committee completes its investigation of the 2004 complaint.

Respectfully submitted,

Susan P. Graber, Presiding Officer
Richard R. Clifton
Robert H. Whaley
Ronald M. Whyte
Mary M. Schroeder, ex officio

Appendix A

Chronology

The 2005 complaint investigation addressed events that took place over a period of almost four years, in five separate legal matters (criminal, divorce, unlawful detainer, bankruptcy petition, and adversary complaint), some involving multiple judges. The following timeline reflects the events most significant to the investigation.

June 19, 1998	Deborah Maristina Canter ("Ms. Canter") indicted on ten felony counts.
August 24, 1998	Ms. Canter entered a guilty plea before Judge Manuel Real.
February 10, 1999	Gary Canter filed dissolution of marriage action against Ms. Canter.
February 25, 1999	Gary Canter filed Ms. Canter's pre-sentence report in divorce action in support of application for restraining order against Ms. Canter.
April 2, 1999	Ms. Canter's pre-sentence report filed under seal with Judge Real. Report contained personal information, including information regarding Ms. Canter's daughter and impending divorce from her husband, Gary Canter.
April 13, 1999	Ms. Canter sentenced by Judge Real and placed on probation in Judge Real's 120-Day Program.
August 13, 1999	The Canter Family Trust ("the trust") filed an unlawful detainer complaint alleging that Ms. Canter should be evicted from the residence at 446 S. Highland ("the house") for failure to pay rent of $1,000 per month.
August 23, 1999	Ms. Canter appeared before Judge Real for her first 120-day probationer meeting. Some conversation about the Canter divorce occurred during the meeting.
August 24, 1999	Gary Canter filed pre-sentence report in the divorce action in support of an *ex parte* application for an order compelling Ms. Canter to appear for deposition.
August 25, 26, and 30, 1999	Ms. Canter was deposed in the divorce proceeding.
September 24, 1999	Proof of service of unlawful detainer complaint filed.
October 26, 1999	Trial in unlawful detainer action was set for this date.

October 26, 1999	Ms. Canter filed a petition in bankruptcy. The filing stayed the trial in the unlawful detainer action. Case was assigned to Bankruptcy Judge Alan Ahart.
December 30, 1999	The trust filed a motion for relief from the automatic bankruptcy stay in the unlawful detainer action. The trust attorney attached a copy of Ms. Canter's pre-sentence report to the motion.
January 10, 2000	Ms. Canter and Gary Canter stipulated to relief from the automatic stay in the divorce action.
January 13, 2000	Judge Ahart lifted the stay in the divorce action.
January 24, 2000	Ms. Canter appeared before Judge Real for her second 120-day probationer meeting. She handed him a "cover sheet" related to the bankruptcy proceeding. She told Judge Real that her pre-sentence report had been filed in her bankruptcy case and "state" case. Judge Real told Ms. Canter to consult with her criminal attorney, Guy Iversen.
January 26, 2000	Judge Ahart granted the trust's motion to lift the automatic stay in the unlawful detainer action. Ms. Canter's attorney, Andrew Smyth, did not oppose the motion.
January 27, 2000	Judge Real signed the order withdrawing reference of Ms. Canter's bankruptcy matter to Judge Ahart and took jurisdiction himself. At or about the same time, Judge Real suspended Ms. Canter's appearances before him in the 120-day program.
February 4, 2000	Ms. Canter signed a stipulated judgment in the unlawful detainer action providing that she would vacate the house by March 5, 2000.
February 24, 2000	Judge Real received Ms. Canter's bankruptcy file from the bankruptcy court. Sometime between February 4, 2000 and February 29, 2000, Judge Real directed his assistant, Loyette Lynn Fisher, to call the state court in which the unlawful detainer action was filed. Ms. Fisher did so, and obtained and then presented the docket sheet from that case to Judge Real. The docket sheet showed that judgment had been entered.
February 29, 2000	Judge Real imposed a stay of proceedings in the state court unlawful detainer action. The stay prevented enforcement of the stipulated judgment.
March 28, 2000	In the criminal action, Ms. Canter, through her attorney, Guy Iversen, filed a motion for an order to show cause (OSC), seeking sanctions against attorneys for Gary Canter and for the trust related to their filing of Ms. Canter's pre-sentence report in the divorce and bankruptcy actions.

April 17, 2000	The parties appeared at the OSC hearing and entered into a stipulated order providing that the pre-sentence report would be expunged from the attorneys' files and court records. Judge Real dismissed the OSC as to Mark Brenner, counsel for the trust, who had filed the pre-sentence report in the bankruptcy action. Judge Real continued the OSC hearing as to Lauren Nemiroff, Gary Canter's divorce attorney until the parties could hold a conference call with Judge Denner (the marital court judge) to determine whether he had been prejudiced against Ms. Canter by the filing of the pre-sentence report.
May 24, 2000	A conference call was held with Judge Denner. Guy Iversen was satisfied that Judge Denner was not prejudiced by the report and signed a declaration so stating.
June 16, 2000	Judge Real received the declaration and other documents indicating the terms of the OSC had been satisfied. Judge Real dismissed the OSC and the matter was closed.
June 19, 2000	The trust, by its new attorney Herbert Katz, filed a motion to vacate the February 29, 2000, stay order.
July 24, 2000	A hearing was held at which Judge Real denied the trust's motion to vacate the stay order.
January 5, 2001	Ms. Canter filed an adversary complaint in the bankruptcy proceeding, alleging an ownership interest in the house. Case was assigned to Judge Real.
February 1, 2001	The trust filed a motion to dismiss the adversary action.
February 5, 2001	Ms. Canter filed a declaration in the bankruptcy action averring reasons to stay the divorce trial.
February 20, 2001	Ms. Canter filed, and Judge Real denied, an application to stay the divorce trial. Judge Real's handwritten order stated that the federal court could not interfere with the state court's determination of marital property.
May 1, 2001	Divorce judgment was entered following trial. Judgment provided that neither Gary Canter nor Ms. Canter had any ownership interest in the house.
May 16, 2001	The trust filed a second motion to vacate the stay order of February 29, 2000.
May 2001	Sometime during the month of May 2001, Judge Real talked with District Judge David Carter about the Canter bankruptcy case. Judge Real indicated he was concerned regarding the "stability" of his probationer with respect to housing.

June 18, 2001	Judge Real granted the trust's motion to dismiss the adversary complaint and gave Ms. Canter 10 days leave to amend. Judge Real denied the trust's second motion to vacate the February 29, 2000, stay order.
June 26, 2001	Ms. Canter filed an amended complaint in the adversary action.
July 6, 2001	The trust filed a motion to dismiss the amended complaint in the adversary action.
July 9, 2001	Judge Real signed an order transferring the bankruptcy case to Judge Carter.
July 17, 2001	The trust filed a notice of appeal of Judge Real's second denial of its motion to vacate the February 29, 2000, stay order.
July 19, 2001	Judge Real's order transferring the bankruptcy case was filed in Judge Carter's court.
July 23, 2001	Judge Carter signed the order accepting the bankruptcy case.
September 14, 2001	Judge Carter re-referred the Canter cases to the bankruptcy court and removed the motion to dismiss the adversary proceeding from his calendar.
October 24, 2001	Judge Carter filed an order clarifying that the order of September 14, 2001 included <u>all</u> cases involving the Canter bankruptcy.
October 31, 2001	Transfer of the Canter file to the bankruptcy court was effective.
December 11, 2001	Judge Ahart granted the trust's motion to dismiss the adversary complaint.
January 14, 2002	Judge Ahart filed an order approving abandonment of Ms. Canter's alleged interest in the house and Canter's Deli.
February 19, 2002	Discharge of Debtor filed in the Canter bankruptcy.
March 7, 2002	Oral argument in Ninth Circuit Court of Appeals on the trust's appeal of Judge Real's denial of the second motion to vacate the February 29, 2000, stay order.
April 24, 2002	Order closing the Canter bankruptcy was issued.
April 29, 2002	Ms. Canter's third 120-day probationer meeting with Judge Real.
August 15, 2002	Court of appeals issued opinion on the trust's appeal. *In re Canter*, 299 F.3d 1150 (9th Cir. 2002)
December 16, 2002	Hearing before Judge Carter regarding appeal having been moot.
December 8, 2003	Ms. Canter's remaining community service hours waived due to financial problems after completing 1395.5 of 2000 assigned hours. Probation ended.

Appendix B

Hearing Witness List
(in order of testimony)

Andrew Smyth:	Lawyer for Deborah Canter in unlawful detainer action and bankruptcy action Transcript: August 21, 2006, p. 52, l. 4 – p. 147, l. 21.
Michelle Smyth:	Andrew Smyth's wife and secretary Transcript: August 21, 2006, p. 149, l. 6 – p. 173, l. 21.
Lawrence Slavett:	Lawyer for Deborah Canter in divorce action Transcript: August 21, 2006, p. 176, l. 9 – p. 206, l. 7.
Michael LeBoff:	Judge Real's law clerk: 1999 – 2000 Transcript: August 21, 2006, p. 207, l. 21 – p. 216, l. 8.
Deborah Canter:	Judge Real's probationer; debtor in the bankruptcy action Transcript: August 22, 2006, p. 7, l. 10 – p. 75, l. 12.
Randall Limbach:	Deborah Canter's United States Probation Officer Transcript: August 22, 2006, p. 76, l. 19 – p. 119, l. 11.
Robert Brodney:	Lawyer for Canter Family Trust, Alan Canter and Elizabeth Canter in unlawful detainer action Transcript: August 22, 2006, p. 148, l. 20 – p. 163, l. 22.
Mark Brenner:	Lawyer for Creditors Canter Family Trust, Alan Canter and Elizabeth Canter in Deborah Canter bankruptcy from 1999 to May 2000; Respondent to Order to Show Cause Transcript: August 22, 2006, p. 165, l. 10 – p. 292, l. 5.
Herbert Katz:	Lawyer for Creditors Canter Family Trust, Alan Canter and Elizabeth Canter in Deborah Canter bankruptcy from May 2000 through appeal Transcript: August 23, 2006, p. 11, l. 16 – p. 70, l. 7.
Lauren Nemiroff:	Lawyer for Gary Canter in divorce action; Respondent to Order to Show Cause Transcript: August 23, 2006, p. 74, l. 1 – p. 109, l. 25.
Judge David Carter:	District Judge, Central District of California; Recipient of Deborah Canter's bankruptcy action in July 2001 Transcript: August 23, 2006, p. 111, l. 1 – p. 180, l. 3.

Guy Iverson:	Public Defender, represented Deborah Canter in criminal action, including Order to Show Cause Transcript: August 23, 2006, p. 181, l. 12 – p. 211, l. 19.
Gregory Ellis:	Judge Real's law clerk: 1999-2000 Transcript: August 23, 2006, p. 214, l. 23 – p. 234, l. 20.
Judge Manuel Real:	Respondent in Complaint of Judicial Misconduct Nos. 05-89097 and 03-89037 Transcript, August 24, 2006, p. 4, l. 11 – p. 60, l. 6; p. 71, l. 21 – p. 100, l. 19; p. 113, l. 13 – p. 163, l. 13.
Melissa Brunner:	Judge Real's law clerk: 2000-2001 Transcript: August 24, 2006, p. 61, l.14 – p. 71, l. 10.
William Horrell:	Judge Real's deputy clerk presently and during all proceedings involving Deborah Canter Transcript: August 24, 2006, p. 104, l. 10 – p. 111, l. 18.
Loyette Lynn Fisher:	Judge Real's administrative assistant presently and during all proceedings involving Deborah Canter Transcript: August 24, 2006, p. 5, l. 16 – p. 51, l. 2.
Robert Latta:	Chief Probation Officer for the United States Probation Department in Los Angeles during Deborah Canter's probation Transcript: August 24, 2006, p. 52, l. 1 – p. 74, l. 20.

* * * *

David Bozanich:	Judge Real's law clerk: 2000-2001 Stipulation in lieu of testimony due to family emergency during hearing SC Exhibit 209; see also Transcript: August 24, 2006, p. 101, l. 7 – p. 102, l. 2.
Robin Donoghue:	Assistant Circuit Executive for Legal Affairs, Judicial Council of the Ninth Circuit. Did not testify due to Committee's decision that her testimony was not relevant to the investigation. Respondent's counsel submitted an offer of proof (in the hearing record). Stipulation regarding aspects of testimony. See Transcript: August 22, 2006, p. 119, l. 17 - p. 135, l. 1.

Appendix C

Hearing Exhibit List

Exhibit 1: Judgment and Probation/Commitment Order (April 13, 1999)

Exhibit 2: Letter from Guy Iverson to Deborah Canter confirming that the April 13, 1999 sentencing proceedings are under seal (April 16, 1999)

Exhibit 3: Ex Parte Order to Show Cause, Compelling Respondent to Attend Her Deposition (Aug. 24, 1999)

Exhibit 4: Order After Hearing On Ex Parte Application Compelling Respondent To Attend Her Deposition (Aug. 24, 1999)

Exhibit 5: Deposition Transcripts of Deborah Maristina Canter (August 25, 26 and 30,1999)

Exhibit 6: Notice of Automatic Stay (bankruptcy case filed) (Nov. 11, 1999)

Exhibit 7: Letter from Robert Brodney to Remo Tabello (Dec. 1, 1999)

Exhibit 8: Transcript of Deborah Canter's 341(a) Hearing

Exhibit 9: Notice of Motion & Motion for Relief from Automatic Stay under 11 U.S.C. § 362 (Feb. 24, 2000)

Exhibit 10: Request for Judicial Notice filed with Motion for Relief from Automatic Stay (Feb. 24, 2000) (incomplete)

Exhibit 10A: Request for Judicial Notice filed with Motion for Relief from Automatic Stay (Feb. 24, 2000) (complete)

Exhibit 11: Stipulation to Relief From Automatic Stay, Order Thereon (Jan. 13, 2000)

Exhibit 12: Notice of Entry of Judgment or Order on Stipulation to Relief from Automatic Stay (Jan. 13, 2000)

Exhibit 13: Letter from Robert Brodney to Remo Tabello (Jan. 20, 2000)

Exhibit 14: Central District of California Docket for Case No. 99-49126

Exhibit 15: Order Granting Motion for Relief from Stay (Unlawful Detainer) (Jan. 27, 2000)

Exhibit 16: Order Withdrawing Reference (Jan. 27, 2000)

Exhibit 17: Stipulation for Judgment Unlawful Detainer Possession Only (Feb. 4, 2000)

Exhibit 18: Substitution of Attorney – Civil (Feb. 8, 2000)

Exhibit 19: Declaration of Deborah Canter in Support of Motion to Increase Spousal and Child Support (Feb. 24, 2000)

Exhibit 20: Notice of Motion and Motion to Convert Chapter 13 to Chapter 7, etc. (Feb. 25, 2000)

Exhibit 21: Order Staying L.A. Municipal Court No. 99U18116 (Feb. 29, 2000)

Exhibit 22: *Ex Parte* Application for Order to Show Cause and For Hearing on Order Re: Violation of Local Rule 10.8; Declaration of Counsel (Mar. 28, 2000)

Exhibit 23: Order to Show Cause and Order Setting Hearing (April 7, 2000)

Exhibit 24: Order on Debtor's Motion to Convert Chapter 13 Case to a Chapter 7 Case (April 11, 2000)

Exhibit 25: Notice of Motion and Motion to Vacate Order of Feb. 29, 2000 Staying Judgment in L.A. Municipal Court Case No. 99U18116, etc. (Jun 19, 2000)

Exhibit 26: Opposition to Motion Vacating Stay Order of Feb. 29, 2000 (June 27, 2000)

Exhibit 27: Declaration of Debbie Canter in Opposition to Motion Vacating Stay Order of Feb. 29, 2000 (June 28, 2000)

Exhibit 28: Deposition Transcript of Deborah Canter (July 6, 2000)

Exhibit 29: Response to Opposition to Motion to Vacate Order Staying Judgment in Case No. 99U18116, etc. (July 10, 2000)

Exhibit 30: Declaration of Andrew E. Smyth in Reply to Opposition to Motion to Vacate Order of Feb. 29, 2000; Points and Authorities (June 22, 2000)

Exhibit 31: Declaration of Debbie Canter in Reply to Declarations of Alan Canter & Gary Canter

Exhibit 32: Civil Minutes Re Order Denying Motion to Vacate Order of Feb 29, 2000 Staying Judgment in Case No. 99 U18116

Exhibit 33: Order Denying Motion to Vacate Order of Feb. 29, 2000 Staying Judgment in Case no. 99U18116 (July 31, 2000)

Exhibit 34: Substitution of Attorney (Aug. 18, 2000)

Exhibit 35: Substitution of Attorney – Civil Case No. BD 295236(Aug. 18, 2000)

Exhibit 36: Notice of Trustee's Application to Employee Danning, Gill, Diamond & Kollintz, LLP as General Counsel and Order Denying Application (Nov. 13, 2000)

Exhibit 37: Complaint to Determine that the Real Property at 446 South Highland Avenue, Los Angeles, California and Canter's Fairfax (Restaurant) are Property of the Bankruptcy Estate 11 U.S.C. 502 (Jan. 5, 2001)

Exhibit 38: Notice to Counsel that Case No. CV-01-139-R has been assigned to Judge Manuel L. Real (Jan. 8, 2001)

Exhibit 39: Deborah Canter's Notice of Motion for Attorney Fees & Costs and Continuance of Trial; Reopen Discovery (Jan 30, 2001)

Exhibit 40: Deborah Canter's Memorandum of Points and Authorities in Support of Respondent's Motion to Reopen Discovery and Continue Trial (Jan. 30, 2001)

Exhibit 41: Notice of Motion and Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6), etc.; Declarations of Alan Canter and Lauren Nemiroff (Feb. 1, 2001)

Exhibit 42: Declaration of Deborah Canter in Request for Enforcement of Bankruptcy Stay to Stay Marriage Dissolution Trial on Feb. 15, 2001 (Feb. 5, 2001)

Exhibit 43: Response of Defendant, Richard K. Diamond, as Chapter 7 Trustee, to Notice of Motion and Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6), etc. (Feb. 15, 2001)

Exhibit 44: Application for Order Staying State Court Determination of Property Issues (and Order Denying Application) (Feb. 20, 2001)

Exhibit 45: Opposition to Motion to Dismiss or Abstain Adversary Complaint (Feb. 19, 2001)

Exhibit 46: Request for Continuance; Response to Defendants Supplemental Motion to Dismiss (March 9, 2001)

Exhibit 47: Supplement to Notice of Motion and Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6) or in the Alternative to Abstain, etc. MPA; Decl. of Lauren Nemiroff

Exhibit 48: Civil Minutes – Defendants' Motion to Dismiss or in the Alternative to Abstain (March 15, 2001)

Exhibit 49: Notice of Entry of Judgment in Dissolution of Marriage Proceeding (May 1, 2001)

Exhibit 50: Notice of Motion and motion to Vacate Order of February 29, 2000 Staying Judgment in Los Angeles Municipal Court Case No. 99U18116, etc. (May 16, 2001)

Exhibit 51: Minute Order (in Chambers) continuing Deborah Canter's Motion to Vacate Order of 2/29/00 (in CV-00-1185); Defendants' Motion to Dismiss or to Alternatively to Abstain (in CV-01-139) (May 23, 2001)

Exhibit 52: Notice of Trustee's Proposed Sale or Abandonment of Property (11 U.S.C. §§ 363, 554)(May 30, 2001)

Exhibit 53: Response to Second Supplement to Notice of Motion and Motion to Dismiss Adversary Complaint (June 6, 2001)

Exhibit 54: Opposition to Trustee's Motion to Sell or Abandon (June 8, 2001)

Exhibit 55: Reply to Debtor's Response to Second Supplement to Notice of Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6)/to Abstain, etc.; Decl. of Herbert Katz (June 7, 2001)

Exhibit 56: Opposition to Trustee's Proposed Sale or Abandonment of Property; Request for Hearing; Decl. of Lauren Nemiroff (June 5, 2001)

Exhibit 57: Response to Opposition to Motion to Vacate Order of February 29, 2000 Staying Judgment in Los Angeles Municipal Court Case No. 99U18116; Declaration of Herbert Katz (June 7, 2001

Exhibit 58: Points and Authorities in Opposition to Vacate order of February 29, 2000 Staying Los Angeles Municipal Court Case No. 99U18116 (June 8, 2001)

Exhibit 59: Transcript of June 18, 2001 Hearing

Exhibit 60: Request for Judicial Notice of Motion and Motion to Dismiss Amended Complaint, etc. (Jul. 9, 2001)

Exhibit 61: Civil Minute Order Granting Motion to Dismiss Amended Complaint with 10 Days Leave to Amend (June 18, 2001)

Exhibit 62: Order on Motion to Dismiss complaint Pursuant to FRCP 12(B)(6), etc. (June 20, 2001)

Exhibit 63: Order on Motion to Vacate Order of Febr. 29, 2000 Staying Judgment in Los Angeles Municipal Court Case No. 99U18116

Exhibit 64: Amended Complaint to Determine that the Real Property and Canter's Fairfax are Property of the Bankruptcy Estate

Exhibit 65: Order Transferring Action Under Section 3.1 of General Order 224 (July 19, 2001)

Exhibit 66: Opposition to Motion to Dismiss Amended Complaint (July 31, 2001)

Exhibit 67: Response to and Request to Strike, Motion and Motion to Dismiss Amended Complaint Pursuant to FRCP 12(b)(6), etc.

Exhibit 68: Brief of Appellants Submitted in *In re Canter* (Aug. 14, 2001)

Exhibit 68A: Brief of Appellee Submitted in *In re Canter* (Sept. 12, 2001)

Exhibit 69: Reply Briefs Submitted in *In re Canter* (Sept. 21, 2001)

Exhibit 70: Civil Minutes on Hearing Wherein Judge Carter Granted Defendant's Motion to Re-Refer All Matters (Sept. 21, 2001)

Exhibit 71: Clarification of Order Dated Sept. 14, 2001 (Oct. 24, 2001)

Exhibit 72: Order on Motion to Dismiss Complaint Pursuant to FRCP 12(b)(6) (Dec. 11, 2001)

Exhibit 73: Randall Limbach Chronological Record/Notes

Exhibit 74: U.S. District Court Criminal Docket Case No. 2:98-cr-00576-R

Exhibit 75: L.A. Superior Court Docket Case No. BD295236

Exhibit 76: L.A. Superior Court Docket Case No. 99U18116

Exhibit 77: Central District Docket Regarding Bankruptcy Petition No.: 2:99-bk-49126-AA

Exhibit 78: Central District Docket Case No. 2:00-cv-01185-R

Exhibit 79: Central District Docket Case No. 2:01-cv-00139-R

Exhibit 80: Central District Docket Case No. 8:01-cv-00687-DOC

Exhibit 81: Central District Docket Case No. 8:01-cv-00688-DOC

Exhibit 82: Letter from Judge Kozinski to Judge Real (Sept. 10, 2003)

Exhibit 83: Judge Real's Response to Request of the Judicial Council (Oct. 9, 2003)

Exhibit 84: Robin Donoghue Memo to Judicial Council (Oct. 14, 2005)

Exhibit 85: Robin Donoghue Memo to Judicial Council (Nov. 4, 2003)

Exhibit 86: Robin Donoghue Memo to Judicial Council (Nov. 11, 2000)

Exhibit 87: Robin Donoghue Memo to Judicial Council (Nov. 20, 2003)

Exhibit 88: Letter from Judge Carter to Judge Schroeder Re: Complaint No. 03-89037 (Jan. 24, 2004)

Exhibit 89: Judge Real's Brief in Response to Council's Order (Aug. 13, 2004)

Exhibit 90: Exhibits to Judge Real's Brief in Response to Council's Order (Aug. 13, 2004)

Exhibit 91: Letter from Judge Real to Don Smaltz (Aug. 10, 2004)

Exhibit 92: Declaration of Loyette Lynn Fisher (Aug. 6, 2004)

Exhibit 93: Declaration of Randall Limbach (Aug. 5, 2004)

Exhibit 94: Declaration of Deborah Canter (Sept. 9, 2004)

Exhibit 95: Civil Case Cover Sheet for Unlawful Detainer (August 13, 1999)

Exhibit 96: Letter from Andrew Smyth to Lauren Nemiroff with Proposed Complaint in Superior Court attached (Feb. 22, 2000)

Exhibit 97: Reporter's Transcript re First Motion to Vacate Order Staying UD Judgment (July 24, 2000)

Exhibit 98: Transcription of Audiotape of Oral Argument before the Ninth Circuit

Exhibit 99: Memo by Michael Leboff to Judge Real re Debtor's Motion to Convert Chapter 13 to Chapter 7 (April 10, 2000)

Exhibit 100: Status Report for Judge Real's Appearance Hearing re Deborah Canter (Aug. 23, 1999)

Exhibit 101: Objection to Confirmation of Ch. 13 Plan (Feb. 24, 2000)

Exhibit 102: Order Granting Trustee's Motion to Abandon (Jan. 14, 2002)

Exhibit 103: Discharge of Debtor in a Chapter 7 Case (Feb. 19, 2002)

Exhibit 104: Order Closing Bankruptcy Case (April 24, 2002)

Exhibit 105: *In re Canter*, No. 01-56151, D.C. No. CV 00-1185-R Opinion (Aug. 15, 2002)

Exhibit 106: Notice of Motion and Motion to Dismiss Amended Complaint, etc. (July 6, 2001)

Exhibit 107: Transcript of Proceedings on Judge Carter's Court (Dec. 16, 2002)

Exhibit 108: No Exhibit

Exhibit 109: *Real v. Yagman*, Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (October Term, 1987)

Exhibit 110: *Real v. Yagman*, Brief for Respondent in Opposition (October Term, 1987)

Exhibit 111: *Real v. Yagman*, Reply Brief of Petitioner (October Term, 1987)

Exhibit 112: *Standing Committee on Discipline of the United States District Court for the Central District of California v. Yagman*, No. CV 94-6448 (C.D. Cal., May 18, 1994)

Exhibit 113: *Standing Committee on Discipline of the United States District Court for the Central District of California v. Yagman*, No. CV 92-6448 (C.D. Cal., July 8, 1994)

Exhibit 114: *Standing Committee on Discipline of the United States District Court for the Central District of California v. Yagman*, No. CV 94-55918 (Ct. App. 1995)

Exhibit 115: No Exhibit

Exhibit 116: Letter from Cathy Catterson to Stephen Yagman (April 18, 2003)

Exhibit 117: No Exhibit

Exhibit 118: No Exhibit

Exhibit 119: Letter from Cathy Catterson to Stephen Yagman (January 27, 2004)

Exhibit 120: Letter from Cathy Catterson to Gwendolyn Baptiste (January 30, 2004)

Exhibit 121: No Exhibit

Exhibit 122: No Exhibit

Exhibit 123: Reporter's Transcript of Proceedings (April 17, 2000)

Exhibit 124: Timeline re Yagman Complaints

Exhibit 125: Timeline (chronology of Canter matter)

Exhibit 126: No Exhibit

Exhibit 127: Complaint of Judicial Misconduct No. 05-89097

Exhibit 128: Declaration of Lauren Nemiroff (April 14, 2000)

Exhibit 129: Chief Judge Schroeder's Supplemental Order and Memorandum re Complaint of Judicial Misconduct No. 03-89037

Exhibit 130: Notice of Motion and Motion for Simplified Motion for Modification of Order of Child, Spousal or Family Support (February 24, 2000)

Exhibit 200: Greg Ellis' Memo to Judge Real re Motion to Vacate Order Staying UD Judgment

Exhibit 201: Memo from Melissa Brunner to Judge Real re Defendants' Motion to Dismiss or, in the Alternative, Abstain (June 18, 2001)

Exhibit 202: Memo from Melissa Brunner to Judge Real re Motion to Vacate Order of Febr. 29, 2000 Saying Judgment in Case No. 99U18116

Exhibit 203: Application and Declaration for Restraining Order Against Deborah Canter (Feb. 25, 1999)

Exhibit 204: Proof of Service re Summons and Petition, etc., as to Ex Parte Notice of Feb. 25, 1999 (Feb. 24, 1999)

Exhibit 205: General Order No. 224-C

Exhibit 206: 1998 California Rules of Court – Rule 4

Exhibit 207: Table of Contents for Special Committee Binder

Exhibit 208: Withdrawn

Exhibit 209: David Bozanich Stipulation

Exhibit 210: Criminal Matter Order re OSC Hearing (June 26, 2000)

Exhibit 211: Status Report and Stipulation in Criminal Matter to Take Continued OSC Hearing Off Calendar