

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE ARIADNE J. SYMONS**

**DECISION AND ORDER IMPOSING
SEVERE PUBLIC CENSURE
PURSUANT TO STIPULATION
(Commission Rule 116.5)**

This disciplinary matter concerns Judge Ariadne J. Symons, a judge of the Santa Cruz County Superior Court. Judge Symons and her counsel, Kathleen M. Ewins of Long & Levit LLP, have entered into a stipulation with Gregory Dresser, Director-Chief Counsel of the Commission on Judicial Performance, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Symons by imposition of a severe public censure. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on May 8, 2019, pursuant to the following terms and conditions and stipulated facts and legal conclusions.

TERMS AND CONDITIONS

1. This agreement resolves the matters alleged in the commission's pending preliminary investigation involving Judge Symons.
2. The commission shall issue a severe public censure based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission's decision and order imposing severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.
4. Upon acceptance by the commission, this stipulation and the commission's decision and order shall be made public.
5. Judge Symons waives any further proceedings and review in this matter, including formal proceedings (rules 118, et seq.), and review by the Supreme Court (Cal. Rules of Court, rule 9.60).

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Ariadne J. Symons became a judge of the Santa Cruz County Superior Court in 2009, following election to that office. Her current term began in January 2015.

1. The red light ticket

On Tuesday, May 10, 2016, at 7:56 a.m., Judge Symons drove her 2007 Pontiac through a red light in violation of Vehicle Code section 21453(a). The violation was captured by a camera maintained by the City of Capitola Police Department. Judge Symons noticed a flash when she drove through the intersection and understood that she had triggered a red light camera. When Judge Symons arrived at the courthouse that morning, she told her colleague, Judge Jeffrey Almquist, that she had committed a red light violation that had been captured on camera. Judge Symons also told other people at court about the incident, and that she felt like a “scofflaw.”

About a month later, a Notice of Violation (Notice) concerning the incident was sent to the judge’s residence addressed to her husband. The Notice identified the registered owner of the vehicle as Judge Symons’s husband, whose last name is different from Judge Symons’s, “or Symoms [*sic*] Ariadne J.” The Notice included color photos of the driver, the vehicle, and the license plate, and identified a website where the photos and a video of the incident could be viewed (www.violationinfo.com). The Notice did not set forth a bail amount.

The Notice included specific language on what to do if the recipient was not the driver:

IF YOU WERE NOT THE DRIVER: If you were not the driver of the vehicle at the time of the violation, complete the “Affidavit of Non-Liability” below. By completing the Affidavit of Non-Liability, the citation issued to you will be cancelled after review and the approval of the court. The person named in the form will be cited and notified by mail.

The Affidavit of Non-Liability contained in the Notice included the following language:

IF YOU DO NOT OWN OR WERE NOT DRIVING THE VEHICLE AT THE TIME OF THE VIOLATION, PLEASE COMPLETE THIS FORM WITH THE INFORMATION OF THE ACTUAL DRIVER.

(Emphasis in original.)

Judge Symons subsequently approached a court clerk in the staff-only area of the Watsonville Courthouse, of the Santa Cruz County Superior Court, concerning the Notice. The judge asked for assistance in determining the bail amount for the violation. The clerk looked into the matter and told the judge that the citation had not yet been processed in the system, and to check back later.

On or about June 24, 2016, the Santa Cruz County Superior Court sent Judge Symons's husband a "courtesy notice," which stated that he had been cited for violating Vehicle Code section 21453(a) on May 10, 2016, and that the amount due was \$489.

Judge Symons and her husband discussed their options on how to handle the Notice. The judge's husband refused to provide information that the judge was the actual driver. The judge's husband prepared a Request for Trial by Written Declaration, which included a Statement of Facts wherein he denied responsibility for the citation, but did not identify the driver of the vehicle when the violation occurred. The Statement of Facts stated in full:

I work at the Pebble Beach golf course in Pebble Beach (located next to Carmel). It is usually an hour drive from my home to work, each way. On May 10, 2016, I arrived at work at 6:17 a.m. My first break was at 10:50 a.m. The ticket was issued for a violation occurring at 7:59:09 a.m. in Capitola. I was not driving in the car ticketed at the time. There is no possibility I could have been in both places at the same time. [¶] The car is a family car and a number of people, family and friends, drive it. I looked at the photo attached to the citation. It is rather unflattering and unclear. It could perhaps be any slightly pudgy white guy, but it is not me. [¶] I am attaching a copy of my time card slips that document that I was in fact at work at the times stated.

The judge and her husband were unable to print out the completed Request for Trial by Written Declaration form at home. As a result, the next day, the judge either printed it, or re-typed and printed it, from her computer at the courthouse. The judge admits that she reviewed the document, including the Statement of Facts, before it was submitted for filing.

On July 14, 2016, the judge again approached the court clerk in the staff-only area of the courthouse and handed her the completed Request for Trial by Written Declaration form, signed by her husband under penalty of perjury, and a check for \$489. The judge told the clerk that Commissioner Kim Baskett, who handled traffic matters, did not know her husband's last name, so there was no conflict. The clerk told the judge that a Waiver of Arraignment form was missing, and, using a court computer, showed her how to obtain the form online. The judge said her husband would need to sign the waiver form and that she would bring the signed form to the clerk the next day, which she did. The clerk then sent the Request for Trial by Written Declaration and the Waiver of Arraignment forms to the Santa Cruz Courthouse, where Commissioner Baskett sat, by interoffice mail. Judge Symons did not inform the presiding judge, or the court executive officer, of either the citation or the Request for Trial by Written Declaration filed on behalf of her husband.

When Commissioner Baskett received the Request for Trial by Written Declaration, she noted that it concerned the husband of a judicial officer. Commissioner Baskett reported the matter to then-Presiding Judge Denine Guy, who commenced an investigation.

On July 20, 2016, the Capitola Police Department served by mail a Notice of Correction dismissing the citation "in the interest of justice."

On July 20 and 21, 2016, Judge Symons met with Judge Guy about the citation. Judge Symons admitted that she had run the red light. Judge Symons told Judge Guy that her husband was refusing to complete the Affidavit of Non-Liability because he believed he had a right to a trial without implicating her. Judge Guy told Judge Symons that she

needed to accept responsibility for the ticket by contacting the court and the citation-processing company.

Judge Symons sent letters to the court and the Capitola Police Department advising that she was the person responsible for the citation, not her husband. A new citation was never issued to Judge Symons.

On or about August 23, 2016, the County of Santa Cruz sent Judge Symons's husband a check for \$489, as refund of bail. He negotiated the check.

Judge Symons knowingly assisted her husband in filing the Request for Trial by Written Declaration with the court, which was designed to have the citation dismissed and which did not identify the judge as the actual driver. Prior to filing the document, the judge took no steps to notify the Capitola Police Department or the citation-processing company that she was the person responsible for the citation, despite language on the citation itself that set forth a procedure for identifying the responsible party. The judge also failed to notify the court that her husband had a matter pending before it that involved her. Additionally, the judge misused the prestige of her office by seeking information and assistance concerning the citation from a court clerk in the non-public areas of the courthouse, including giving the clerk the Request for Trial by Written Declaration for filing rather than filing the document herself at the filing window.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(1) (a judge shall not allow family, social, or other relationships to influence the judge's judicial conduct), and 2B(2) (a judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others). The judge's conduct constitutes, at a minimum, prejudicial misconduct.

2. *People v. Karl Peterson*, No. 18CR00369

From April 30, 2018 through May 3, 2018, Judge Symons presided over the jury trial of *People v. Karl Peterson*, No. 18CR00369. The defendant was charged with

felony violations of a protective order and special allegations concerning prior convictions. The defendant was in custody and represented by public defender Micha Rinkus. The People were represented by Deputy District Attorney Xavier Mitchell.

On May 2, 2018, at 3:20 p.m., following closing arguments, the jury retired to the jury room to begin deliberations. At 3:40 p.m., while Ms. Rinkus and Mr. Mitchell were still in the courtroom, the bailiff in charge of the jury, Deputy Travis Rakes, returned from the jury room with written questions from the jury. (The questions are contained in the court file as court exhibits nos. 1 and 2.) Judge Symons discussed the questions with the attorneys in the courtroom, and, in their presence, prepared written responses to the questions on court forms maintained for that purpose. A separate form was used for each question. On each form, the judge handwrote the question and the court's response, and signed her name. The written responses were then given to Deputy Rakes, who took them to the jury room. (The responses are contained in the court file as court exhibits nos. 3, 4, and 5.) The process of responding to these questions took 20 minutes or less.

Later that afternoon, after Ms. Rinkus and Mr. Mitchell had left the courtroom, another written question from the jury was brought to the courtroom by Deputy Rakes. The question concerned the definition of the term "violence." Thereafter, at 4:20 p.m., the courtroom clerk, Georgina Robles, placed a call to Ms. Rinkus's cell phone. Ms. Rinkus did not answer and Ms. Robles left a voice message stating that the jury had a question, and asking that Ms. Rinkus come to court or call back. At 4:21 p.m., Ms. Robles placed a call to Mr. Mitchell's cell phone. Mr. Mitchell answered the call and Ms. Robles informed him that the jury had a question. During the call, Judge Symons got on the line and spoke with Mr. Mitchell about the jury's question. The judge told Mr. Mitchell that the jury had a question regarding the legal definition of violence, and that her inclination was to respond by referring them to the jury instructions and advising them that if the instructions did not contain a specific definition, they were to give the term its ordinary, everyday meaning. Mr. Mitchell responded, "O.K., sounds good." Mr. Mitchell was not asked to return to the courtroom. Judge Symons subsequently prepared a written response to the jury's question that directed the jury to refer to their previous

instructions. The written response was transmitted to the jury that afternoon by Deputy Rakes. Judge Symons took no steps to notify Ms. Rinkus of her telephone conversation with Mr. Mitchell, or of her written response to the jury's question.

At 4:40 p.m., Ms. Robles contacted both Ms. Rinkus and Mr. Mitchell by phone, and advised them that the jury was being excused for the day.

On May 3, 2018, at 2:45 p.m., the jury returned with a verdict finding the defendant guilty on all charges. After the jury was excused, some of the jurors discussed the case with the attorneys and raised the jury's question concerning the definition of violence and the court's response. Ms. Rinkus and Mr. Mitchell immediately went to see Judge Symons in chambers. Ms. Rinkus told the judge that it had just come to her attention that a question from the jury had been asked, and answered, without her knowledge. The judge told Ms. Rinkus that there was nothing she could do at that point, and that Ms. Rinkus's recourse was to file a motion for new trial.

On July 10, 2018, Ms. Rinkus filed a motion for new trial on behalf of the defendant. The motion alleged that the defendant's due process rights had been violated by the court answering the jury's question about the definition of violence while defense counsel was not present.

On or about August 14, 2018, Judge Symons called Ms. Rinkus and Mr. Mitchell to the bench for a sidebar conference. The judge told the attorneys the motion for new trial raised issues that she assumed each side recognized may possibly have merit, and that in such circumstances the parties frequently explore whether a negotiated resolution was possible. The judge proposed, as a potential compromise, that she give the defendant a suspended prison sentence, conditioned on successful completion of two years in the Delancey Street drug program, in exchange for a waiver of appellate rights and withdrawal of the motion for new trial.

On August 31, 2018, the case was on calendar for sentencing and the motion for new trial. Prior to the hearing, Mr. Mitchell informed Ms. Rinkus of a new offer; a four-year suspended prison sentence, conditioned on successful completion of two years in the

Delancey Street drug program. (Prior to trial, the offer was four years state prison.) The defendant accepted the offer and was sentenced accordingly that day.

Judge Symons's telephone conversation with Mr. Mitchell on May 2, 2018, and her written response to the jury's question constituted improper ex parte communications as they both occurred outside the presence of the defendant and Ms. Rinkus, and without their knowledge.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(5) (a judge shall not engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice), 3B(7) (a judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications), and 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law). The judge's conduct constitutes prejudicial misconduct.

3. *Hernandez v. Lopez*, No. 16FL01113

On August 28, 2016, Judge Symons presided over the matter of *Jeannette Hernandez v. Jesus Lopez*, No. 16FL01113. Ms. Hernandez had filed a request for a domestic violence restraining order against Mr. Lopez, who was the father of their three children. Ms. Hernandez alleged that Mr. Lopez would drink alcohol before visiting the children and engage in behavior that scared them. Mr. Lopez admitted that was true. During the hearing, Judge Symons ordered Mr. Lopez not to consume alcohol before visiting the children or while visiting them. The judge told Mr. Lopez, "You can't down a couple of 40s before you go pick them up before a visit because that's not good. Do you understand?" Mr. Lopez responded, "I don't drink 40s."

Judge Symons's conduct violated the Code of Judicial Ethics, canons 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the

judiciary), and 3B(4) (a judge shall be patient, dignified, and courteous to those with whom the judge deals in an official capacity). The judge's conduct constitutes improper action.

4. Kinda v. Carpenter, No. CV171252

In May 2013, Judge Symons presided over the civil jury trial of *Margaret Kinda v. Scott Carpenter*, No. CV171252, which involved a dispute between the owners of a rug cleaning business, Margaret Kinda and Aaron Kinda, and their landlord, Mr. Carpenter.

On May 21, 2013, while Margaret Kinda was testifying during the plaintiffs' case, Judge Symons questioned her about a matter in a manner that reflected disbelief in her testimony. The transcript reflects the following colloquy.

THE COURT: All right. Now, Ms. Kinda, I have some questions. [¶] You made a reference to Exhibit Number 53, a notice of preservation of evidence.

THE WITNESS [MS. KINDA]: I know what you're talking about. I'm flipping to it right now.

THE COURT: All right. This is from the Baskin and Grant law firm, it's dated June 20th, and it puts you on notice to preserve documents and evidence which may be important or relevant to the litigation; right?

THE WITNESS: Yes, among other things.

THE COURT: This is absolutely standard in every single civil case that's filed, is it not?

THE WITNESS: I can't answer that.

THE COURT: You're an attorney, Ms. Kinda.

THE WITNESS: I am.

THE COURT: Come on.

THE WITNESS: I have never done a civil case in my life.

THE COURT: And you have absolutely no knowledge about this?

THE WITNESS: I had no knowledge of what this was. They don't do this in divorce law. But the – my point was –

(R.T. 147:14-148:12, bold added.)

Plaintiffs rested their case on May 21, 2013.

On May 22, 2013, Mr. Carpenter was called as the first defense witness. At the conclusion of Mr. Carpenter's examination by counsel, Judge Symons allowed questions to be asked that the jurors had previously submitted in writing, and that the judge had reviewed and discussed with counsel. Before the jurors' questions were asked by counsel, the judge stated, and commented on, one of the questions, as follows:

THE COURT: Ladies and gentlemen, there are a number of questions from our jurors. And [Counsel] will ask them on your behalf of Mr. Carpenter. [¶] I will share with you one question. "I'm unsure what the judgment award will or might be." That is a question indeed. We'll just have to keep listening carefully to the evidence to see if it's ever answered.

Judge Symons's comments created the appearance that the judge was conveying to the jury that she had not seen any evidence to support a damages award in plaintiffs' favor.

On December 10, 2013, Judge Symons presided over a hearing on Mr. Carpenter's post-trial motions for attorney fees and costs. Mr. Carpenter was represented by counsel at the hearing; Ms. Kinda appeared in pro per. During the hearing, the judge provided a lengthy explanation for why she found Mr. Carpenter to be the "prevailing party" in the case. In connection with her explanation, the judge read into the record some responses the jurors had given to a questionnaire sent to them by the court after the trial concluded. The responses the judge read focused on how the jurors viewed the case. Immediately after reading the last juror response, the judge made the following remark:

So the Court has rarely received such strongly worded negative reactions, not merely to the case, but to the fact that the case was allowed to proceed at all; and I think the

information's valuable. **I cannot avoid the observation that the party who represents himself has a fool for a client.** That is a well-known quote. It's too bad that someone did not perform the older and more gracious function, not simply of attorney, but counselor at law. Counselors at law used to advise people not to go to court, to let the matter go and resolve it outside of court. And that might have been a kindness in this situation.

(R.T. 34:16-35:2, bold added.)

The judge's statement, "the party who represents himself has a fool for a client," was directed at Ms. Kinda, who had filed the initial complaint in pro per and was self-represented at the hearing.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5) (a judge shall not engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice). The judge's conduct constitutes prejudicial misconduct.

5. Prior discipline

In 2013, Judge Symons received an advisory letter for serving as an auctioneer at a fundraising event for CASA of Santa Cruz.

In 2015, Judge Symons received a private admonishment for (1) publicly discussing a factual scenario of a case pending before her for sentencing, (2) comments creating the appearance of bias against transients, and (3) creating the appearance of embroilment in connection with an Order to Show Cause against an attorney.

The matters for which Judge Symons received prior discipline serve as aggravating factors for the misconduct discussed herein.

6. Mitigation

By entering into this stipulation, Judge Symons has now admitted, accepted responsibility for, and expressed remorse for, her conduct as set forth herein.

A number of Judge Symons's colleagues, including her presiding and assistant presiding judges, submitted letters and declarations attesting to her work ethic, diligence, and her fair administration of justice.

Judge Symons has worked as a public servant, initially as an Assistant United States Attorney, then as a prosecutor in district attorney's offices, and then as a judge, since 1983.

Judge Symons's agreement to enter into this stipulation avoids the expenditure of time and resources that formal proceedings would entail.

Judge Symons admits that the foregoing facts are true and agrees with the stated legal conclusions.

DISCIPLINE

The commission has determined to accept the Stipulation and impose this severe public censure, which is the strongest sanction that may be imposed on a judge short of removal from the bench, because it fulfills the commission's mandate of protecting the public, enforcing rigorous standards of judicial conduct, and maintaining public confidence in the integrity of the judicial system, and it resolves this matter without the delay and expense of further proceedings. (See *Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112; Cal. Const., art. VI, § 18, subd. (d).)

Judge Symons's handling of the red light ticket, including her failure to accept responsibility for the ticket until instructed to do so by her presiding judge, her knowing participation in her husband's actions, which resulted in the citation being dismissed, and her misuse of court staff in connection with the ticket, reflect an egregious disregard for the dignity of the very court where Judge Symons serves as a judicial officer. When a judge does not respect the law or the processes of the court, public respect for the judiciary is seriously undermined. Judge Symons concedes that her actions in connection with the red light ticket constitute, at a minimum, prejudicial misconduct.

Judge Symons also engaged in several other acts of misconduct that erode public confidence in the integrity of the judiciary. She engaged in two instances of improper ex parte communication during a jury trial, which she concedes constitute prejudicial misconduct. In addition, Judge Symons made an inappropriate remark to a litigant in a restraining order proceeding, which she admits constitutes improper action. Further, she made several remarks that reflected poor demeanor and bias to a different litigant, who

was self-represented in a civil proceeding. Judge Symons acknowledges that those remarks constitute prejudicial misconduct.

In determining that a severe public censure is the appropriate sanction, the commission considered Judge Symons's history of prior discipline (an advisory letter and a private admonishment) as aggravating factors. The commission also considered as mitigating factors that Judge Symons acknowledges engaging in multiple acts of misconduct and has expressed remorse, as stated in the Stipulation.

Commission members Nanci E. Nishimura, Esq.; Hon. Michael B. Harper; Hon. William S. Dato; Mr. Eduardo De La Riva; Ms. Sarah Kruer Jager; Ms. Kay Cooperman Jue; Hon. Lisa B. Lench; Dr. Michael A. Moodian; Mr. Richard Simpson; and Mr. Adam N. Torres voted to accept the Stipulation and to issue this severe public censure. Commission member Anthony P. Capozzi, Esq. did not participate.

Date: May 20, 2019

On behalf of the
Commission on Judicial Performance,



Nanci E. Nishimura
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE ARIADNE J. SYMONS

STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Ariadne J. Symons of the Santa Cruz County Superior Court, represented by counsel Kathleen M. Ewins, and commission trial counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letters dated September 16, 2016, July 11, 2017, January 3, 2018, and January 2, 2019. The parties request that the commission resolve this matter by imposition of a severe public censure. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Symons because, among other reasons, in light of the stipulated facts and legal conclusions, a severe public censure adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

1. This agreement resolves the matters alleged in the commission’s pending preliminary investigation involving Judge Symons.
2. The commission shall issue a severe public censure based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission’s decision and order imposing severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

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

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

6. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted by Judge Symons.

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

STIPULATED FACTS AND LEGAL CONCLUSIONS

Judge Ariadne J. Symons became a judge of the Santa Cruz County Superior Court in 2009, following election to that office. Her current term began in January 2015.

1. The red light ticket

On Tuesday, May 10, 2016, at 7:56 a.m., Judge Symons drove her 2007 Pontiac through a red light in violation of Vehicle Code section 21453(a). The violation was captured by a camera maintained by the City of Capitola Police Department. Judge Symons noticed a flash when she drove through the intersection and understood that she had triggered a red light camera. When Judge Symons arrived at the courthouse that morning, she told her colleague, Judge Jeffrey Almquist, that she had committed a red light violation that had been captured on camera. Judge Symons also told other people at court about the incident, and that she felt like a "scofflaw."

About a month later, a Notice of Violation (Notice) concerning the incident was sent to the judge's residence addressed to her husband. The Notice identified the registered owner of the vehicle as Judge Symons's husband, whose last name is different from Judge Symons's, "or Symoms [*sic*] Ariadne J." The Notice included color photos of the driver, the vehicle, and the license plate, and identified a website where the photos

and a video of the incident could be viewed (www.violationinfo.com). The Notice did not set forth a bail amount.

The Notice included specific language on what to do if the recipient was not the driver:

IF YOU WERE NOT THE DRIVER: If you were not the driver of the vehicle at the time of the violation, complete the "Affidavit of Non-Liability" below. By completing the Affidavit of Non-Liability, the citation issued to you will be cancelled after review and the approval of the court. The person named in the form will be cited and notified by mail.

The Affidavit of Non-Liability contained in the Notice included the following language:

IF YOU DO NOT OWN OR WERE NOT DRIVING THE VEHICLE AT THE TIME OF THE VIOLATION, PLEASE COMPLETE THIS FORM WITH THE INFORMATION OF THE ACTUAL DRIVER.

(Emphasis in original.)

Judge Symons subsequently approached a court clerk in the staff-only area of the Watsonville Courthouse, of the Santa Cruz County Superior Court, concerning the Notice. The judge asked for assistance in determining the bail amount for the violation. The clerk looked into the matter and told the judge that the citation had not yet been processed in the system, and to check back later.

On or about June 24, 2016, the Santa Cruz County Superior Court sent Judge Symons's husband a "courtesy notice," which stated that he had been cited for violating Vehicle Code section 21453(a) on May 10, 2016, and that the amount due was \$489.

Judge Symons and her husband discussed their options on how to handle the Notice. The judge's husband refused to provide information that the judge was the actual driver. The judge's husband prepared a Request for Trial by Written Declaration, which included a Statement of Facts wherein he denied responsibility for the citation, but did

not identify the driver of the vehicle when the violation occurred. The Statement of Facts stated in full:

I work at the Pebble Beach golf course in Pebble Beach (located next to Carmel). It is usually an hour drive from my home to work, each way. On May 10, 2016, I arrived at work at 6:17 a.m. My first break was at 10:50 a.m. The ticket was issued for a violation occurring at 7:59:09 a.m. in Capitola. I was not driving in the car ticketed at the time. There is no possibility I could have been in both places at the same time. [¶] The car is a family car and a number of people, family and friends, drive it. I looked at the photo attached to the citation. It is rather unflattering and unclear. It could perhaps be any slightly pudgy white guy, but it is not me. [¶] I am attaching a copy of my time card slips that document that I was in fact at work at the times stated.

The judge and her husband were unable to print out the completed Request for Trial by Written Declaration form at home. As a result, the next day, the judge either printed it, or re-typed and printed it, from her computer at the courthouse. The judge admits that she reviewed the document, including the Statement of Facts, before it was submitted for filing.

On July 14, 2016, the judge again approached the court clerk in the staff-only area of the courthouse and handed her the completed Request for Trial by Written Declaration form, signed by her husband under penalty of perjury; and a check for \$489. The judge told the clerk that Commissioner Baskett, who handled traffic matters, did not know her husband's last name, so there was no conflict. The clerk told the judge that a Waiver of Arraignment form was missing, and, using a court computer, showed her how to obtain the form online. The judge said her husband would need to sign the waiver form and that she would bring the signed form to the clerk the next day, which she did. The clerk then sent the Request for Trial by Written Declaration and the Waiver of Arraignment forms

to the Santa Cruz Courthouse, where Commissioner Baskett sat, by interoffice mail. Judge Symons did not inform the presiding judge, or the court executive officer, of either the citation or the Request for Trial by Written Declaration filed on behalf of her husband.

When Commissioner Baskett received the Request for Trial by Written Declaration, she noted that it concerned the husband of a judicial officer. Commissioner Baskett reported the matter to then-Presiding Judge Denine Guy, who commenced an investigation.

On July 20, 2016, the Capitola Police Department served by mail a Notice of Correction dismissing the citation “in the interest of justice.”

On July 20 and 21, 2016, Judge Symons met with Judge Guy about the citation. Judge Symons admitted that she had run the red light. Judge Symons told Judge Guy that her husband was refusing to complete the Affidavit of Non-Liability because he believed he had a right to a trial without implicating her. Judge Guy told Judge Symons that she needed to accept responsibility for the ticket by contacting the court and the citation-processing company.

Judge Symons sent letters to the court and the Capitola Police Department advising that she was the person responsible for the citation, not her husband. A new citation was never issued to Judge Symons.

On or about August 23, 2016, the County of Santa Cruz sent Judge Symons’s husband a check for \$489, as refund of bail. He negotiated the check.

Judge Symons knowingly assisted her husband in filing the Request for Trial by Written Declaration with the court, which was designed to have the citation dismissed and which did not identify the judge as the actual driver. Prior to filing the document, the judge took no steps to notify the Capitola Police Department or the citation-processing company that she was the person responsible for the citation, despite language on the citation itself that set forth a procedure for identifying the responsible party. The judge also failed to notify the court that her husband had a matter pending before it that involved her. Additionally, the judge misused the prestige of her office by seeking

information and assistance concerning the citation from a court clerk in the non-public areas of the courthouse, including giving the clerk the Request for Trial by Written Declaration for filing rather than filing the document herself at the filing window.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1 (a judge shall uphold the integrity and independence of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(1) (a judge shall not allow family, social, or other relationships to influence the judge's judicial conduct), and 2B(2) (a judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others). The judge's conduct constitutes, at a minimum, prejudicial misconduct.

2. *People v. Karl Peterson*, No. 18CR00369

From April 30, 2018 through May 3, 2018, Judge Symons presided over the jury trial of *People v. Karl Peterson*, No. 18CR00369. The defendant was charged with felony violations of a protective order and special allegations concerning prior convictions. The defendant was in custody and represented by public defender Micha Rinkus. The People were represented by Deputy District Attorney (DDA) Xavier Mitchell.

On May 2, 2018, at 3:20 p.m., following closing arguments, the jury retired to the jury room to begin deliberations. At 3:40 p.m., while Ms. Rinkus and Mr. Mitchell were still in the courtroom, the bailiff in charge of the jury, Deputy Travis Rakes, returned from the jury room with written questions from the jury. (The questions are contained in the court file as court exhibits nos. 1 and 2.) Judge Symons discussed the questions with the attorneys in the courtroom, and, in their presence, prepared written responses to the questions on court forms maintained for that purpose. A separate form was used for each question. On each form, the judge handwrote the question and the court's response, and signed her name. The written responses were then given to Deputy Rakes, who took them to the jury room. (The responses are contained in the court file as court exhibits nos. 3, 4, and 5.) The process of responding to these questions took 20 minutes or less.

Later that afternoon, after Ms. Rinkus and Mr. Mitchell had left the courtroom, another written question from the jury was brought to the courtroom by Deputy Rakes. The question concerned the definition of the term "violence." Thereafter, at 4:20 p.m., the courtroom clerk, Georgina Robles, placed a call to Ms. Rinkus's cell phone. Ms. Rinkus did not answer and Ms. Robles left a voice message stating that the jury had a question, and asking that Ms. Rinkus come to court or call back. At 4:21 p.m., Ms. Robles placed a call to Mr. Mitchell's cell phone. Mr. Mitchell answered the call and Ms. Robles informed him that the jury had a question. During the call, Judge Symons got on the line and spoke with Mr. Mitchell about the jury's question. The judge told Mr. Mitchell that the jury had a question regarding the legal definition of violence, and that her inclination was to respond by referring them to the jury instructions and advising them that if the instructions did not contain a specific definition, they were to give the term its ordinary, everyday meaning. Mr. Mitchell responded, "O.K., sounds good." Mr. Mitchell was not asked to return to the courtroom. Judge Symons subsequently prepared a written response to the jury's question that directed the jury to refer to their previous instructions. The written response was transmitted to the jury that afternoon by Deputy Rakes. Judge Symons took no steps to notify Ms. Rinkus of her telephone conversation with Mr. Mitchell, or of her written response to the jury's question.

At 4:40 p.m., Ms. Robles contacted both Ms. Rinkus and Mr. Mitchell by phone, and advised them that the jury was being excused for the day.

On May 3, 2018, at 2:45 p.m., the jury returned with a verdict finding the defendant guilty on all charges. After the jury was excused, some of the jurors discussed the case with the attorneys and raised the jury's question concerning the definition of violence and the court's response. Ms. Rinkus and Mr. Mitchell immediately went to see Judge Symons in chambers. Ms. Rinkus told the judge that it had just come to her attention that a question from the jury had been asked, and answered, without her knowledge. The judge told Ms. Rinkus that there was nothing she could do at that point, and that Ms. Rinkus's recourse was to file a motion for new trial.

On July 10, 2018, Ms. Rinkus filed a motion for new trial on behalf of the defendant. The motion alleged that the defendant's due process rights had been violated by the court answering the jury's question about the definition of violence while defense counsel was not present.

On or about August 14, 2018, Judge Symons called Ms. Rinkus and Mr. Mitchell to the bench for a sidebar conference. The judge told the attorneys the motion for new trial raised issues that she assumed each side recognized may possibly have merit, and that in such circumstances the parties frequently explore whether a negotiated resolution was possible. The judge proposed, as a potential compromise, that she give the defendant a suspended prison sentence, conditioned on successful completion of two years in the Delancey Street drug program, in exchange for a waiver of appellate rights and withdrawal of the motion for new trial.

On August 31, 2018, the case was on calendar for sentencing and the motion for new trial. Prior to the hearing, Mr. Mitchell informed Ms. Rinkus of a new offer; a four-year suspended prison sentence, conditioned on successful completion of two years in the Delancey Street drug program. (Prior to trial, the offer was four years state prison.) The defendant accepted the offer and was sentenced accordingly that day.

Judge Symons's telephone conversation with DDA Mitchell on May 2, 2018, and her written response to the jury's question constituted improper ex parte communications as they both occurred outside the presence of the defendant and Ms. Rinkus, and without their knowledge.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(5) (a judge shall not engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice), 3B(7) (a judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications), and 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters

fairly adjudicated in accordance with the law). The judge's conduct constitutes prejudicial misconduct.

3. *Hernandez v. Lopez*, No. 16FL01113

On August 28, 2016, Judge Symons presided over the matter of *Jeannette Hernandez v. Jesus Lopez*, No. 16FL01113. Ms. Hernandez had filed a request for a domestic violence restraining order against Mr. Lopez, who was the father of their three children. Ms. Hernandez alleged that Mr. Lopez would drink alcohol before visiting the children and engage in behavior that scared them. Mr. Lopez admitted that was true. During the hearing, Judge Symons ordered Mr. Lopez not to consume alcohol before visiting the children or while visiting them. The judge told Mr. Lopez, "You can't down a couple of 40s before you go pick them up before a visit because that's not good. Do you understand?" Mr. Lopez responded, "I don't drink 40s."

Judge Symons's conduct violated the Code of Judicial Ethics, canons 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 3B(4) (a judge shall be patient, dignified, and courteous to those with whom the judge deals in an official capacity). The judge's conduct constitutes improper action.

4. *Kinda v. Carpenter*, No. CV171252

In May 2013, Judge Symons presided over the civil jury trial of *Margaret Kinda v. Scott Carpenter*, No. CV171252, which involved a dispute between the owners of a rug cleaning business, Margaret Kinda and Aaron Kinda, and their landlord, Mr. Carpenter.

On May 21, 2013, while Margaret Kinda was testifying during the plaintiffs' case, Judge Symons questioned her about a matter in a manner that reflected disbelief in her testimony. The transcript reflects the following colloquy.

THE COURT: All right. Now, Ms. Kinda, I have some questions. [¶] You made a reference to Exhibit Number 53, a notice of preservation of evidence.

THE WITNESS [MS. KINDA]: I know what you're talking about. I'm flipping to it right now.

THE COURT: All right. This is from the Baskin and Grant law firm, it's dated June 20th, and it puts you on notice to preserve documents and evidence which may be important or relevant to the litigation; right?

THE WITNESS: Yes, among other things.

THE COURT: This is absolutely standard in every single civil case that's filed, is it not?

THE WITNESS: I can't answer that.

THE COURT: You're an attorney, Ms. Kinda.

THE WITNESS: I am.

THE COURT: Come on.

THE WITNESS: I have never done a civil case in my life.

THE COURT: And you have absolutely no knowledge about this?

THE WITNESS: I had no knowledge of what this was. They don't do this in divorce law. But the – my point was –

(R.T. 147:14-148:12, bold added.)

Plaintiffs' rested their case on May 21, 2013.

On May 22, 2013, Mr. Carpenter was called as the first defense witness. At the conclusion of Mr. Carpenter's examination by counsel, Judge Symons allowed questions to be asked that the jurors had previously submitted in writing, and that the judge had reviewed and discussed with counsel. Before the jurors' questions were asked by counsel, the judge stated, and commented on, one of the questions, as follows:

THE COURT: Ladies and gentlemen, there are a number of questions from our jurors. And [Counsel] will ask them on your behalf of Mr. Carpenter. [¶] I will share with you one

question. "I'm unsure what the judgment award will or might be." That is a question indeed. We'll just have to keep listening carefully to the evidence to see if it's ever answered.

Judge Symons's comments created the appearance that the judge was conveying to the jury that she had not seen any evidence to support a damages award in plaintiffs' favor.

On December 10, 2013, Judge Symons presided over a hearing on Mr. Carpenter's post-trial motions for attorney fees and costs. Mr. Carpenter was represented by counsel at the hearing; Ms. Kinda appeared in pro per. During the hearing, the judge provided a lengthy explanation for why she found Mr. Carpenter to be the "prevailing party" in the case. In connection with her explanation, the judge read into the record some responses the jurors had given to a questionnaire sent to them by the court after the trial concluded. The responses the judge read focused on how the jurors viewed the case. Immediately after reading the last juror response, the judge made the following remark:

So the Court has rarely received such strongly worded negative reactions, not merely to the case, but to the fact that the case was allowed to proceed at all; and I think the information's valuable. **I cannot avoid the observation that the party who represents himself has a fool for a client.** That is a well-known quote. It's too bad that someone did not perform the older and more gracious function, not simply of attorney, but counselor at law. Counselors at law used to advise people not to go to court, to let the matter go and resolve it outside of court. And that might have been a kindness in this situation.

(R.T. 34:16-35:2, bold added.)

The judge's statement, "the party who represents himself has a fool for a client," was directed at Ms. Kinda, who had filed the initial complaint in pro per and was self-represented at the hearing.

Judge Symons's conduct violated the Code of Judicial Ethics, canons 1, 2, 2A, 3B(4), and 3B(5) (a judge shall not engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice). The judge's conduct constitutes prejudicial misconduct.

5. Prior discipline

In 2013, Judge Symons received an advisory letter for serving as an auctioneer at a fundraising event for CASA of Santa Cruz.

In 2015, Judge Symons received a private admonishment for (1) publicly discussing a factual scenario of a case pending before her for sentencing, (2) comments creating the appearance of bias against transients, and (3) creating the appearance of embroilment in connection with an OSC against an attorney.

The matters for which Judge Symons received prior discipline serve as aggravating factors for the misconduct discussed herein.

6. Mitigation

By entering into this stipulation, Judge Symons has now admitted, accepted responsibility for, and expressed remorse for, her conduct as set forth herein.

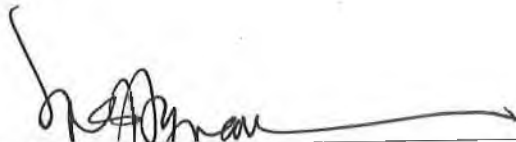
A number of Judge Symons's colleagues, including her presiding and assistant presiding judges, submitted letters and declarations attesting to her work ethic, diligence, and her fair administration of justice.

Judge Symons has worked as a public servant, initially as an Assistant United States Attorney, then as a prosecutor in district attorney's offices, and then as a judge, since 1983.


Judge Symons's agreement to enter into this stipulation avoids the expenditure of time and resources that formal proceedings would entail.

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

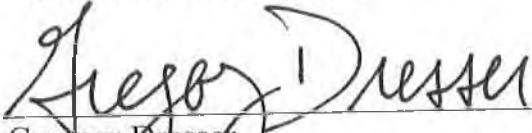
Dated: 19 April, 2019


Ariadne J. Symons

Dated: April 22, 2019


Kathleen M. Ewins
Attorney for Judge Symons

Dated: April 23, 2019


Gregory Dresser
Director-Chief Counsel