

STATE OF CALIFORNIA  
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**FILED**  
**APR 10 2015**  
COMMISSION ON  
JUDICIAL PERFORMANCE

INQUIRY CONCERNING  
JUDGE JAMES PETRUCELLI,  
NO. 193.

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW OF THE  
SPECIAL MASTERS

The Commission on Judicial Performance (the commission) charged Fresno County Superior Court Judge James Petrucelli (Petrucelli) with willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution. The Chief Justice of California appointed us as special masters to hear and take evidence in this matter. We conducted an evidentiary hearing February 2 through February 4, 2015, in Fresno, California, at which we heard testimony from 22 witnesses, received stipulations as to what an additional 28 witnesses would testify, and received 56 exhibits into evidence. After carefully considering all of the evidence, including our evaluation of the credibility of the witnesses and the arguments of counsel, we submit this final report containing our unanimous findings of fact and conclusions of law in accordance with rule 129(c) of the Rules of the Commission on Judicial Performance.

**Summary of Charges and Answer**

The notice of formal proceedings charges Petrucelli with violating several canons of the California Code of Judicial Ethics by ordering the own recognizance (OR) release of a person with whom he was acquainted socially, Jay Ghazal, who had been arrested on charges of spousal abuse. The notice also alleges that Petrucelli engaged in a conversation with Ghazal the evening of his release. The notice alleges that this conduct constituted a violation of canon 1 (a judge shall uphold the integrity of the judiciary), canon 2 (a judge shall avoid impropriety and appearance of impropriety), canon 2A (a

judge shall respect and comply with the law), canon 2B(1) (a judge shall not allow social relationships to influence judicial conduct), canon 2B(2) (a judge shall not lend the prestige of judicial office to advance the personal interest of others), canon 3B(2) (a judge shall be faithful to the law), canon 3B(7) (a judge shall accord to every person who has a legal interest in the proceeding the right to be heard) and canon 3E (a judge shall disqualify himself in any proceeding in which disqualification is required by law and shall disclose information relevant to disqualification). The examiner contends that this conduct constitutes willful misconduct or “at a minimum” prejudicial misconduct.

Petrucelli admits the essential facts concerning his ordering the OR release of Ghazal, and he acknowledges that in doing so he violated the cited canons other than canon 3E. He contends that he acted in good faith, believing at the time that his action was lawful and proper. He denies that his action constituted willful misconduct, but acknowledges that the action constituted prejudicial misconduct. He denies there was any impropriety in the few words he spoke with Ghazal following his release.

### **Factual Background**

The significant facts concerning the OR release are undisputed. Petrucelli has acknowledged these facts from the time he self-reported the incident. The following is a condensed version of the relevant facts.

Petrucelli served as a deputy sheriff in Fresno for 15 years, between 1974 and 1989, with assignments that included working as a deputy in the county jail and as a courtroom bailiff. He then graduated from law school and worked as an attorney in private practice for some 10 years. He was elected to the municipal court in 1998, the same time at which the courts were unified and he became a judge of the Fresno County Superior Court. From March 2000 through early 2006 he served as presiding judge of the family law division. Since then he has served in various assignments within the court, including felony trials, in which he was engaged in July 2013. (R.T. 327-337)

On the night of Friday, July 12, 2013, Fresno businessman Jay Ghazal was arrested by the Fresno Police Department for a reported domestic violence incident involving his wife. He was transported to the Fresno jail around 11:30 p.m. and placed in

a holding cell to await booking. Ghazal contacted his close friend, local attorney Jonathan Netzer, from the holding cell. Around 1:00 a.m., Netzer went to the jail and met with Ghazal, but was unable to arrange for bail because Ghazal had not yet been booked. Netzer stated that the jail that evening was extremely crowded and Ghazal was “scared and frazzled.” (R.T. 273, 279-281) During the following early morning hours Ghazal called Netzer several times expressing his frustration and growing anxiety because he had not yet been booked. After the last of these calls, just after 9:00 a.m. on Saturday July 13, Netzer sent the following text message to Petrucelli:

“Good morning Jim. One of our HBC members was arrested last night on a domestic violence claim. He’s asked that I bail him out this morning. In 22 years of practice, th[is] is a first for me. Do you have any suggestions for me before I head down to jail? Thanks.” (R.T. 283; Exh. e, p. CJP 16)

Petrucelli promptly responded to the text message by telephoning Netzer. Netzer told Petrucelli that the arrested person was Ghazal, that Ghazal had been arrested after an incident with his wife in which he had grabbed her by the wrist, that he had been in custody for some 12 hours and had not yet been booked, and that he was frustrated and scared because of the inability to obtain his release on bail. Petrucelli volunteered to call the jail to check on Ghazal’s status. (R.T. 66-67, 108, 140-141, 286-287)

Netzer had been a friend of Petrucelli for several years, a friendship developed through their mutual patronage of a cigar shop in Fresno, including mutual participation in events and two trips abroad, in 2012 and 2013, organized by the cigar shop. Ghazal, like Netzer and Petrucelli, was a member of the informal men’s group referred to as “HBC” that congregated at the cigar shop. Petrucelli first met Ghazal about 10 years ago at one of several restaurants Ghazal owned. He was regarded by Petrucelli as a prominent local businessman in good standing in the community. Both participated in various HBC social events. The evidence indicates that Petrucelli and Netzer, and Netzer and Ghazal, can fairly be characterized as good friends, and that Petrucelli and Ghazal can more accurately be characterized as social acquaintances. (R.T. 43-54, 57-58, 157, 264-265, 306, 308-309)

Petrucelli had heard that Ghazal and his wife were obtaining a divorce but he was not aware of any prior physical confrontations between the two. (R.T. 59-63, 68, 99) Based on his conversation with Netzer, Petrucelli was under the impression that Ghazal's wife had not been injured in the incident leading to his arrest. (R.T. 66-68, 154-158, 287-288, 312-314)

Immediately following his conversation with Netzer, Petrucelli called the Fresno jail. His original intention was to inquire about Ghazal's status and find out when he would be available for release on bail. (R.T. 99, 111, 134, 140-142, 288-289) Petrucelli first spoke with dispatch, then with an officer in booking, who does not recall but most likely advised Petrucelli that Ghazal had not yet been booked. (Exh. 39, Alicia Perez.)<sup>1</sup> Petrucelli was then transferred to Officer Marylou Merancio. Although Merancio states that after identifying himself as Judge Petrucelli, the judge stated "he wanted to have an inmate released" (Exh. 39, Marylou Merancio), a more complete and accurate statement is that the judge asked when Ghazal would be available for release, meaning release on bail. (R.T. 141-143, 146-148) Merancio advised Petrucelli that she could not answer but would pass his inquiry and contact information on to her supervisor, Officer Crystal Galindo, which she did when Galindo returned to the office soon after. (R.T. 147, 158; Exh. 39, Merancio)

At 9:51 a.m., Galindo, having ascertained that Ghazal had recently been booked on several charges including felony spousal abuse, called Petrucelli. Neither Galindo nor Petrucelli has a good recollection of their brief conversation, but it is clear that the first mention of an "honor release," i.e., an OR release, occurred during this conversation. Either Galindo first asked Petrucelli if he wanted Ghazal to be released on his own recognizance or Petrucelli first asked about an OR release, but in all events Petrucelli stated that he would like, or would be comfortable with, an OR release. (R.T. 150-153;

---

<sup>1</sup> References to exhibit 39 and exhibit N are to the stipulated testimony of the specified individual contained in the exhibit binders.

Exh. 39, Crystal Galindo) Galindo said she would have to check with her supervisor. (*Ibid.*)

Galindo first contacted retired Correctional Officer Michael Mendoza for advice. Mendoza told her that “[t]elephonic release orders were not a frequent occurrence, but were not uncommon.” He “told her to get the judge’s name and to contact her sergeant and lieutenant to make sure it is properly handled” and that “dispatch would do a verification that it was the judge” who called. (Exh. N, Michael Mendoza; Exh. 39, Crystal Galindo)

Galindo then advised Sergeant Daniel Her of the request for an OR release. Her telephoned Petrucelli, who confirmed that he “wanted to do an over the phone release of inmate Ghazal.” (Exh. 39, Daniel Her, Crystal Galindo; R.T. 160-162, 164-165) Petrucelli told Her that he would be willing to come to the jail to sign any paperwork that was required, but Her responded that would not be necessary. (R.T. 162, 164)

Her then contacted Lieutenant Michael Porter to authorize the OR release. Porter was familiar with what had been referred to as an “honor release” or “telephonic release,” i.e., an OR release, for 25 years, although it had been some 10 to 15 years since he had handled one. Such releases were “rare,” perhaps two or three a year. He told Her that the process was to complete a written form that existed specifically for that purpose. Porter looked for but could not find the form in his office, so he directed Her to write out the information that was called for by the form, which Porter remembered. (R.T. 201-205, 223-224) Her did so and Porter’s authorization of the “honor release” was entered in the jail’s offender track system. (Exhs. 25, 10) Steps were then taken to verify Petrucelli’s identity, Galindo was advised to process Ghazal’s release, and Ghazal was released at 10:48 a.m. (Exh. 39, Daniel Her, Crystal Galindo; Exh. 40)

That evening, Petrucelli encountered Ghazal at a charitable fund raising event. Ghazal told Petrucelli that he had an upcoming court date and Petrucelli told Ghazal that he could not discuss the matter, but that Ghazal should stay away from his wife. (R.T. 117-119) Ghazal then asked Petrucelli if he could help him obtain an attorney and Petrucelli responded that he would see what he could do. (R.T. 124)

The following Monday morning Galindo sent an email to Gayle Sherwood, a supervisor at the superior court, advising that Petrucelli had “honor released” Ghazal, and that Galindo had given Ghazal a date to appear in court but, unlike the normal situation, had no paperwork to forward to the court reflecting this action. (R.T. 177-178; Exhs. 24, 28A, B) Sherwood, who was not familiar with an “honor release,” forwarded the email to supervising Judicial Assistant Crystal Nelson who in turn contacted Petrucelli’s courtroom clerk, Larissa Embrey, to verify that Petrucelli had in fact ordered the OR release. (R.T. 179-180; Exh. 28A, Exh. 39, Larissa Embrey) Embrey conferred with Petrucelli, who was then on the bench conducting trial in a complex case, and spoke with him a second time during a recess. Petrucelli confirmed that he had ordered the release and would sign any paperwork that might be required. (R.T. 130-131) Following her conversation with Petrucelli when the trial recessed, Embrey sent the following email to Nelson:

“After speaking further with Judge, this was not something out of the ordinary or special. He said that he has never been asked to sign anything before so he’s not sure about the paperwork or procedures on their/our end. He will be happy to sign something if you need him to for paperwork purposes in order to have the calendar setting done correctly but neither of us are sure what that might be at this moment. (He tried to phone earlier but was unable to reach you. If you need anything from him, defendant information, etc. then he will be happy to provide that to you if you come up.) Hope that helps.” (Exh. 28C; Exh. 39, Larissa Embrey)

At some point in the afternoon, Petrucelli called Sherwood, expressing his concern for the apparent confusion caused by the absence of normal paperwork. Sherwood characterized Petrucelli as irate and confused (Exh. 28B; R.T. 180-181), but Petrucelli testified credibly that he was simply frustrated and embarrassed by the confusion and extra work that had been caused by the OR release (R.T. 100-102, 190-191, 347-349). His testimony is confirmed by Embrey’s recollection that the judge was not angry, “just frustrated by the fact there wasn’t paperwork generated.” (Exh. 39, Larissa Embrey) During his conversation with Sherwood, Petrucelli confirmed that he had authorized Ghazal’s OR release, that Ghazal “was an acquaintance of his and a local business owner and a good guy,” that he would disqualify himself from sitting on Ghazal’s case, and that

he would sign any paperwork that was necessary to have the case properly calendared. (R.T. 103-104, 109, 184-185) According to Sherwood, during the conversation Petrucelli remarked something to the effect, “you know how these DV [domestic violence] cases are.” (R.T. 184; Exh. 28B; see R.T. 104-106)

That Monday morning, Petrucelli called Roger Nuttall, a well-respected criminal defense attorney in Fresno, and asked if he was willing to speak with an individual arrested following an incident with his wife, who Petrucelli had ordered released on his own recognizance. Nuttall indicated he was and that Petrucelli could give Nuttall’s contact information to that individual. (R.T. 126-128, 411-412) Petrucelli called Ghazal and gave him Nuttall’s contact information, and had no further communications with Ghazal on this subject. (R.T. 129)

Ghazal’s matter ultimately was placed on calendar and handled in another department in the normal course, without further incident. Nuttall represented Ghazal in the proceedings.

As a result of the confusion in calendaring the case, the matter was brought to the attention of then-Presiding Judge Gary Hoff, who promptly spoke to Petrucelli. Hoff told Petrucelli that it was improper for him to have handled a matter that had not been assigned to him. According to Hoff, Petrucelli was “shocked” and “dumbfounded” to learn that what he had done was improper. (R.T. 237, 242-243; see R.T. 74) Petrucelli indicated that he was aware that other judges had ordered such telephonic releases in the past, but immediately apologized, acknowledged that he had made a mistake, and assured Hoff that he would not do so again. (R.T. 237, 242-243, 244-245) According to Hoff, Petrucelli was “extremely cooperative” and accepted responsibility for his mistake “right away.” (R.T. 244) (Hoff also confirmed in his testimony that “honor releases” had been a practice in the past. (R.T. 229, 232)) Hoff told Petrucelli that the matter would need to be reported to the commission and that he would give Petrucelli the opportunity to self-report the matter, which Petrucelli promptly did. (R.T. 237, 244, 248)

### **Levels of misconduct**

Article VI, section 18, subdivision (d) of the California Constitution defines the levels of judicial misconduct that may subject a judge to discipline by the commission. These include willful misconduct, prejudicial misconduct and improper action.

#### *Willful Misconduct*

Willful misconduct is unjudicial conduct that is committed in bad faith by a judge acting in his judicial capacity. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1091; *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 795.) Whether a judge's conduct is " 'unjudicial' "is measured with reference to the California Code of Judicial Ethics. (*Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163, 172.) Bad faith is shown when the evidence establishes that the judge performed a judicial act either for a corrupt purpose (any purpose other than the faithful discharge of judicial duties) or with knowledge that the act is beyond the judge's lawful judicial power, or that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority. A judge's reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge's prescribed power is a state of mind properly characterized as bad faith. (*Broadman, supra*, at p. 1092.) A judge is acting in his judicial capacity when he is performing one of the various functions generally associated with his position as a judge. (*Dodds, supra*, at p. 172.)

#### *Prejudicial Misconduct*

Prejudicial misconduct is conduct prejudicial to the administration of justice that brings the judicial office into disrepute. It includes acts that a judge undertakes in good faith but would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office. (*Geller v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 284.) The appropriate standard is how an objective observer would view the judge's conduct. (*Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 324-325; *Broadman v. Commission on Judicial*



*Performance, supra*, 18 Cal.4th at p. 1104.) The subjective intent or motivation of the judge is not a significant factor in assessing whether prejudicial misconduct has occurred. (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 878.) The failure of a judge to comply with the canon suggests performance below the minimum level necessary to maintain public confidence in the administration of justice. (*Ibid.*, citing *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 662.)

### *Improper Action*

Improper action consists of conduct that violates the Code of Judicial Ethics but does not rise to the level of prejudicial misconduct.

### *Burden of proof*

The burden of proof is on the commission to prove the charges by clear and convincing evidence. (*Geller v. Commission on Judicial Qualifications, supra*, 10 Cal.3d at p. 275.) Clear and convincing evidence is so clear as to leave no substantial doubt. It is sufficiently strong to command the unhesitating assent of every reasonable mind. Evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish the fact beyond a reasonable doubt. (*Broadman v. Commission on Judicial Performance, supra*, 18 Cal.4th at p. 1090.)

### **Findings of Fact**

Based on the facts set forth in the Factual Background section above, we find, as all parties acknowledge, that Petrucelli ordered the release of Ghazal on his own recognizance when the matter had not been assigned to him and, as we shall state in our Conclusions of Law below, in violation of several canons in the Code of Judicial Ethics and in violation of Penal Code section 1270.1.<sup>2</sup> We also find and conclude, as Petrucelli

---

<sup>2</sup> Penal Code section 1270.1, subdivision (a) provides in part that “before any person who is arrested for any of [designated crimes, including the offense with which Ghazal was charged] . . . may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge.” Subdivision (b) provides, “The prosecuting attorney and defense attorney shall be given a two-court-day written notice and an opportunity to be heard on the matter.”

also acknowledges, that this action was unjudicial conduct committed by him while acting in his judicial capacity. The significant factual issue in dispute is whether Petrucelli did so in bad faith. We find that this misconduct was not committed in bad faith or in conscious disregard of whether his action was proper.

We base this finding on multiple factors. After listening critically to Petrucelli's testimony and observing the judge's demeanor, we accept the truth of his testimony that he believed he was acting properly when he authorized the OR release and at that time had no doubts or questions in his mind about the propriety of that action. (R.T. 76-84, 87-88, 98, 104, 170-171, 343-344) His belief was based on his awareness as a deputy sheriff and later as a new judge that what had been referred to as "honor releases" or "telephonic releases" had been ordered by other judges in the past without any suggestion that the judges were acting improperly in doing so. (R.T. 63, 74, 81-82, 84, 86-87) While a deputy sheriff working in the jail and as a bailiff, he had seen a standard form that was used in connection with such releases. (R.T. 79-80, 92, 93, 348, 366) And shortly after he took office, Petrucelli had a conversation with the then-Presiding Judge Quashnick who confirmed that telephonic releases were ordered from time to time. (R.T. 64, 84, 345-346, 365-366, 478-479) Although the practice was utilized only occasionally in the past, and less frequently in recent years, the existence of this past practice was corroborated by the testimony of innumerable witnesses, including Judge Gary Hoff (R.T. 229, 232), former Judge Lenore Schreiber (R.T. 369-371, 374-377), retired Justice James Ardaiz (R.T. 391-392), retired Judge Ralph Nunez (R.T. 430-432), Justice Gene Gomes (R.T. 440-442), retired Judge Robert Oliver (R.T. 448), Sheriff's Department Lieutenant Michael Porter (R.T. 199-200, 213-214), Attorney Jonathon Netzer (R.T. 293-294, 295), Attorney Roger Nuttall (R.T. 416-418), Attorney Daniel Bacon (R.T. 454-458), former Deputy Sheriff Leland Nilmeier (R.T. 478), attorney and former Assistant District Attorney Michelle Eskew (Exh. 39), Correctional Officer Tim Hoffman (Exh. 39), Correctional Officer Terry Bardwell (Exh. 39), Assistant District Attorney Stacey Phillips (Exh. 39), Assistant Sheriff Thomas Gattie (Exh. N), Captain Robert Kandarian (Exh. N), Lieutenant Jeff Lockie (Exh. N), and Officer Michael Mendoza (Exh. N). The examiner presented the

testimony of several individuals who were not aware of the past practice of “honor releases,” but none who denied that the practice had existed.

The credibility of Petrucelli’s testimony that he was not aware that the practice was no longer in use was supported by the testimony of several of the witnesses. Lieutenant Porter testified that when approached by Sergeant Her for approval of Ghazal’s OR release, he was not aware that the practice was no longer ongoing. (R.T. 216-217) He explained to Her that there was a printed form to be completed for such a release and attempted to find the form for Her. When he could not find the form, he told Her what information the form contained and told him to handwrite that information on a sheet of paper. (R.T. 201-205, 223-224; Exh. 39, Daniel Her; see also Exh. N, Lt. Jeff Lockie) Thereafter, the honor release was entered into the jail’s offender track system with the explicit notation that it was an “honor release.” (R.T. 205-207, 218-219; Exhs. 25, 10) At no time during the discussions within the sheriff’s department did anyone suggest that there was any impropriety in the OR release authorized by a judge, nor did anyone convey any doubts about the practice to Petrucelli. (R.T. 165, 211, 223, 344-345)

Other witnesses also confirmed their understanding that the practice of “honor releases” was still in occasional use, tending to confirm that its discontinuance was not universally known within the court and law enforcement community, and further corroborating Petrucelli’s testimony. Justice Gomes did not know if the practice had ended, but thought it was used with decreasing frequency. (R.T. 443) Sheriff’s Captain Kandarian did not “know why this practice stopped, or if it did.” (Exh. N) Nuttall did not know that the practice was no longer being used; he believed that it was still on-going, but used less frequently than in the past. (R.T. 419-420; see also R.T. 385, 452, 456-457)

Petrucelli’s testimony is also corroborated by the manner in which he responded to the questions that arose on Monday morning following Ghazal’s release. In response to the questions concerning the missing paperwork, Petrucelli readily told court employees that he had authorized the OR release and would be pleased to sign any paperwork that might be required. He made no effort to deny or obfuscate what he had done. (Exh. 28A, Exh. 39, Larissa Embrey; R.T. 101-104, 129-131, 181, 182-184, 190-191; Exh. 28B) The

email message sent by his courtroom clerk to Sherwood after speaking with Petrucelli was that the OR release “was not something out of the ordinary or special.” (Exh. 28C) Similarly, when questioned by his presiding judge, Petrucelli readily acknowledged what he had done, without any attempt to conceal or twist the facts. Hoff perceived that Petrucelli was truly “amazed” to learn that he had done something improper and that the past practice with which he was familiar was no longer considered appropriate. (R.T. 236-238)

Further confirming Petrucelli’s belief that he had done nothing wrong is the testimony of Roger Nuttall. When Petrucelli called to ask Nuttall whether he would accept a call from Ghazal, Petrucelli told Nuttall that he had ordered that person’s OR release. He made no effort to conceal what he had done and gave no indication of any reservations about the propriety of his order. (R.T. 424)

There is no evidence that Petrucelli intended to advance the booking of Ghazal ahead of other arrestees; Petrucelli authorized the OR release after he had been advised that Ghazal had already been booked. We further find that there is no basis for the suggestion that Petrucelli ordered the OR release simply as a favor for a friend, knowing that the action was improper or consciously disregarding that possibility. As indicated by the evidence cited above, there is overwhelming evidence that Petrucelli did not know or consciously disregard that he should not have ordered the OR release. There is no evidence to the contrary. We find that Petrucelli was genuinely concerned that an individual was being held in jail for some 12 hours unable to obtain release either on bail or on his own recognizance. (R.T. 99-100, 140-142) His initial call to the jail was made solely for the purpose of ascertaining the status of the intake process. (R.T. 141-143, 146-148) When the possibility of an OR release arose—either at the suggestion of Officer Galindo or when the thought occurred to Petrucelli—Petrucelli considered what he knew of Ghazal to indicate that Ghazal was neither a flight risk nor a danger to his wife or others, making him suitable for an OR release. He was also aware that upon release Ghazal would be subject to an emergency protective order and he believed that Ghazal

was a person who would comply with such an order. Petrucelli did not order the release simply because of his acquaintance with Ghazal or his friendship with Netzer.

Although Petrucelli recognized that he would be disqualified from presiding in a criminal action against Ghazal, he did not believe that authorizing a release in accordance with what he understood to be the local telephonic release practice was subject to the canon requiring his disqualification. (R.T. 109-110.)

In short, we find that the examiner failed to prove by clear and convincing evidence that Petrucelli ordered the OR release for a corrupt purpose, that he did so with knowledge that the act was beyond his lawful judicial power, or that he did so with a conscious disregard for the limits of his authority.

### **Conclusions of Law**

We conclude that in ordering the OR release of Ghazal under the circumstances described above, Petrucelli violated canons 1, 2, 2A, 2B(1), 2B(2), 3B(2) and 3B(7) of the Canons of Judicial Conduct, and in so doing committed prejudicial misconduct within the meaning of article VI, section 18, subdivision (d) of the California Constitution. By ordering the OR release of a personal acquaintance when the charges against that person were not pending before him, and in violation of Penal Code section 1270.1, Petrucelli failed to uphold the integrity and independence of the judiciary (canon 1), failed to comply with the law and acted in a manner that tends to undermine rather than promote public confidence in the integrity and impartiality of the judiciary (canon 2, 2A), permitted his familiarity with Ghazal acquired through a social relationship to influence his judgment and lent the prestige of his judicial office to advance Ghazal's personal interests (canon 2B(1, 2)), was not faithful to the law (canon 3B(2)), and failed to accord the district attorney, who had a legal interest in the proceeding, the right to be heard according to law (canon 3B(7)). In the eyes of the public, Ghazal's OR release tends to reflect special treatment obtained as a result of personal connections between Ghazal, Netzer and Petrucelli, and thereby tends to diminish public confidence in the objectivity and impartiality of the judiciary. We conclude, however, that the misconduct was not

committed in bad faith and does not constitute willful misconduct in office within the meaning of the Constitution.

Petrucelli argues that canon 3E(1) does not apply because no “proceeding” had yet commenced. The examiner contends that the telephonic OR release order was a judicial act that is not exempt from canon 3E(1) simply because it occurred before the filing of an action. We need not resolve this issue because, whether or not Petrucelli’s conduct constituted a violation of this additional canon, his actions did not constitute willful misconduct.

Petrucelli’s brief remarks to Ghazal the night of July 13, consisting of little more than the statement that he could not discuss the matter with Ghazal, and the calls he made to put Ghazal in contact with an attorney, Nuttall, for potential representation, did not violate any canon of ethics or constitute any form of misconduct.

#### **Factors in Aggravation and Mitigation**

The sole factor in aggravation is the fact that in 2001 and 2002 Petrucelli received advisory letters from the commission and in 2007 received a public admonishment. However, as the examiner has acknowledged, the basis for the prior disciplinary action was Petrucelli’s courtroom demeanor, having no connection with or similarity to the present misconduct. To the contrary, substantial uncontradicted evidence was presented that since at least 2007 Petrucelli’s courtroom demeanor has been exemplary. Indeed, the manner in which Petrucelli has discharged his judicial responsibilities is a significant factor in mitigation, discussed more fully below.

There are numerous factors in mitigation. The misconduct was a single isolated incident, not reflecting a pattern or course of misconduct. The misconduct was committed in good faith, in the genuine but mistaken belief that it was proper. When the impropriety was brought to Petrucelli’s attention, he made no effort to deny or excuse what he had done; he was immediately apologetic and contrite and assured the presiding judge that he would not engage in such conduct again. He self-reported and from the outset has been cooperative with the commission and acknowledged that his conduct violated the canons of judicial ethics and constituted prejudicial misconduct.

There is overwhelming and uncontradicted evidence that Petrucelli is a dedicated, hard-working judge who takes his ethical responsibilities seriously and has contributed positively to the workings of the court and to his community. Presiding Judge Gary Hoff testified to Petrucelli's excellent work ethic, his willingness to accept all assignments, and he stated that since 2007 there have been no complaints about Petrucelli's courtroom demeanor. (R.T. 245-247; see also R.T. 342-343, 354-357) Similar unqualified positive evaluations of Petrucelli's judicial behavior and performance were provided by Judge John Conklin (R.T. 252-253), retired Judge Robert Oliver (R.T. 449-450), Judge John Skiles (R.T. 480-483), Family Law Examiner Jerry Haist (R.T. 461-468), Family Court Services Manager Lourdes Dotson (R.T. 504-507), Assistant Public Defender Scott Baly (R.T. 436-438), Psychologist Susan Napolitano (R.T. 488-489), Police Chief Jerry Dyer (Exh. N), Courtroom Clerk Larissa Embrey (Exh. 39), and Attorneys Jonathon Netzer (R.T. 308-309) and Roger Nuttall (R.T. 410-411).

Petrucelli's positive contributions to the handling of family law matters when he served as presiding judge in the Family Law Department, both in handling proceedings before him and in creating programs and volunteering his time outside the courtroom, were described by Susan Napolitano (R.T. 487-491, Lourdes Dotson (R.T. 504-507), former Court Division Manager Fran Collins (Exh. N), Family Law Examiner Dolores Stairs (Exh. N), and Jerry Haist (R.T. 462-463). Attorney Brian Tatarian, who appeared frequently before Petrucelli, considers Petrucelli "the best or one of the best family law judges he has appeared before in his 36 years as an attorney." (Exh. N)

Michael Goldering, the senior vice president of Valley Children's Health Care and a law school student with Petrucelli, described Petrucelli's commitment to public service and to charitable causes and programs, and his commitment to ethical behavior. (R.T. 509-512) Thomas Campagne confirmed Petrucelli's prior service on the fire district and school boards, and expressed his belief that Petrucelli is "of the highest character and ethics. He has a big heart and cares deeply about the community." (Exh. N; see also R.T. 469-472)

Petrucelli's generally honorable character and ethical behavior were also described by the President of the Fresno Police Officers Association, Jacky Parks (Exh. N), and by Kenneth Abrahamian (R.T. 413-415), Leland Nilmeier (R.T. 477-478), and Samuel (Steve) Mascarenas (R.T. 501-502).

No evidence was presented contradicting these positive evaluations of Petrucelli's character, ethical behavior, and judicial performance.

Respectfully submitted,

Dated: 4/7/15

/s/  
Hon. Stuart R. Pollak  
Presiding Special Master

Dated: 4/3/15

/s/  
Hon. Bradley L. Boeckman  
Special Master

Dated: 4/7/15

/s/  
Hon. Ronni B. MacLaren  
Special Master