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May 31, 2017

Victoria B. Henley
Director-Chief Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94012

Re: The Failure of the California Commission on Judicial Performance ("CJP") to
Address the Judicial Misconduct of California Superior Court Judge Beverly
Wood ("Wood") in Marin County Superior Court Case FL 064080 ("Diop")

Dear Ms. Henley:

Please share this letter with all members of the Commission. Attached hereto for your
collective convenient review please find:

Group Exhibit A. The June 9, 2014 letter complaint and October 18, 2016 follow-up letter to the CJP about Wood's actions in the Diop case, without the voluminous supporting documentation (transcripts, orders, registers of actions, and much more) already in the CJP's possession or readily available in the Diop court file, **and various Code of Judicial Ethics excerpts**. The letters and underlined Code excerpts summarize some but not all of the serious ethical and procedural misconduct of Wood in this case involving a financially disadvantaged immigrant mother of color, and a wealthy former family law client (hereafter "the client") of Wood's politically connected law firm (Freitas McCarthy), which law firm is known for its substantial donations to and participation in judicial election campaigns. The misconduct includes but is not limited to repeated undisclosed ex parte communications between Wood and the client resulting in the issuance of secret orders not copied upon Ms. Diop or counsel; repeatedly allowing the client to bring non-emergency ex parte matters before the court in violation of multiple laws; arguing on behalf of the client regarding relief requested by Ms. Diop although the client did not file responsive pleadings or appear to oppose the requested relief; use of Wood's court clerk to perform research and effect notice and service on behalf of the client; the independent investigation and acquisition of information by Wood on unrelated matters not a part of the court record and subsequent use of the information to argue on behalf of the client; the backdating by Wood or someone under Wood's administrative control of an unsigned minute order and court register of actions to make it appear that a written order denying Ms. Diop's October 3, 2013 CCP 170.1 disqualification challenge of Wood was timely entered within 10 days of the challenge, although two court clerks and a presiding judge stated it was entered 25 days later; the ongoing (3.5 years and counting) refusal of Wood to correct the backdated order and register of actions by providing requested routine "information relevant to

disqualification” as specifically required by the Code of Judicial Ethics—namely a formal Notice of Entry of Order stating the date the minute order denying the October 3, 103 CCP 170.1 challenge was entered; *and Wood’s ongoing abuse and denigration of Ms. Diop and her counsel for complaining about all of the above.*

Group Exhibit B. The unintelligible **March 30, 2017 CJP letter response** to the June 9, 2014 complaint (“the commission found no basis for action against the judge, **OR** determined not to proceed further in this matter”); **my follow-up email inquiries of April 6 and April 11, 2017** asking which it was-- whether the CJP in fact found no basis for action, **OR** instead determined not to proceed, as those are two very different things—and further asking as a general matter for what reasons the CJP can “determine not to proceed” on a meritorious complaint; and the **April 13, 2017 CJP reply** stating that the CJP “cannot provide the information” sought.

According to the CJP, complaints that are unmeritorious on their face are summarily closed. The CJP did not summarily close the Diop complaint; it investigated for 33 months. Further, given the full documentation of Wood’s ongoing multiple violations of the Code of Judicial Ethics available to the CJP, the CJP cannot claim it was faced with “untrue or unprovable allegations” regarding the complaint. Many of Wood’s worst ethical violations are reflected in transcripts, orders and the official register of actions. Finally, given the public discipline the CJP has imposed upon other judges for similar (or far less serious) misconduct, there is no question that the CJP did find actionable misconduct by Wood, but somehow “determined not to proceed further”. The CJP then wrote an unintelligible response to the complaint and declined to further elaborate.

The CJP did not say *it could but will not* provide the information I seek about why the CJP is not proceeding further or, more importantly, **as a general matter under what circumstances the CJP can “determine not to proceed further” regarding a meritorious complaint**. It said the CJP “*cannot*” provide the information, which in plain English means the CJP is in some way *prohibited* from doing so. How can explaining something as a general matter be prohibited?

In any event, it appears that with respect to this fully documented, patently meritorious complaint, there are only a few ways the CJP could try to justify its failure to discipline Wood. For example, if the CJP cut a deal with Wood under CJP Rule 116.5, and the deal included a confidentiality clause; or if the CJP placed Wood in their new special “mentoring” program, and that program is designed to protect judges from discipline, disclosure of misconduct, and disclosure of the judge’s participation in the program. Questions: where is Rule 102 (q), on what date was it actually created, and where did the legal authority for a CJP “mentoring” program come from? The CJP states on its website that “*the commission’s authority is limited to investigating allegations of judicial misconduct and, if warranted, imposing discipline.*” Those are not rhetorical questions; I want answers.

As the CJP was told in January of 2017, after multiple complaints against Wood, she has been moved out of the Marin family court, into juvenile and dependency court. As is customary,

hundreds of her family law cases were re-assigned to the new family law judge, but according to the Marin Court, Wood herself hand-picked and “kept about 20” family law cases. The Diop case is one of those, although unlike other family law cases Wood “kept”, nothing is presently pending in the Diop case. It is neither customary nor routine for a judge to transfer hundreds of other family law cases when moving out of family court, but keep a highly controversial, inactive family law case involving the unresolved backdating of court documents related to a CCP 170.3 challenge of the judge, a CJP complainant and a former client of the judge’s law firm.

It is impossible to imagine any kind of legitimate deal the CJP could have cut regarding Wood’s extensive misconduct that would a) allow Wood to stay on the bench; b) result in zero CJP discipline; c) protect the public from further misconduct (particularly since the CJP has received multiple complaints about Wood from others); and d) **allow Wood to keep CJP complainant Diop trapped in her courtroom long after Wood has been transferred out of family court.**

The CJP website correctly states that *“The commission’s mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system. While the majority of California’s judges are committed to maintaining the high standards expected of the judiciary, an effective method of disciplining judges who engage in misconduct is essential to the functioning of our judicial system. Commission proceedings provide a fair and appropriate mechanism to preserve the integrity of the judicial process.”*

The lack of any visible consequences imposed upon Wood by the CJP, in conjunction with Wood’s ongoing death grip on this case under extraordinarily irregular circumstances, illustrate to all that far from “protecting the public, enforcing rigorous standards of judicial conduct and maintaining public confidence in the integrity and independence of the judicial system”, the current secretive CJP processes enables the CJP to violate its mandate by a) selectively *refusing* to discipline actionable, serious violations of the Code of Judicial Ethics; while b) effectively colluding with problematic judges to enable ongoing judicial abuse of CJP complainants and the public, ***without any explanation or oversight.*** .

Many who have reviewed what has happened in the Diop case characterize it as “shocking”, something that would happen in a third world country, not the United States of America. Former CA Attorney General (now Governor) Jerry Brown, Former CA Attorney General (now U.S. Senator) Kamala Harris, CA Chief Justice Tani Cantil Sakauye and the entire Judicial Council, are all aware of this case, yet they have done absolutely nothing to protect Ms. Diop, claiming they lack the authority to do so.

In March of 2016, Kathleen Russell of the Center for Judicial Excellence and I prepared and sent a memo summarizing the complete lack of judicial accountability in the State of California to the California Assembly Budget Subcommittee #5 on Public Safety. That summary is attached hereto as **Exhibit C**. Among other things, we pointed out that the Pulitzer Prize winning Center for Public Integrity gave California an “F” grade in Judicial Accountability, and also that according to the CJP’s own data, only 1.45% of the thousands of complaints made

against judges by litigants, their family or friends result in a judicial sanction. We and many others requested increased transparency from and an audit of the CJP, and in August 2016 the Joint Legislative Audit Committee voted to audit the CJP.

Thereafter, in my October 18, 2016 letter to the CJP about this case, I pointed out potential conflicts of interest existing between the Judicial Council, the CJP, and the Diop case, and stated as follows:

“The Diop case also illustrates the reality that secrecy in CJP proceedings can lead to reasonable speculation and mistrust about conflicts of interest, divided loyalties, motivation for delay or determination of a complaint, and more. Transparency regarding CJP proceedings and voting records at all stages would be very helpful in assessing objectivity or the lack thereof in CJP proceedings, particularly in cases such as this one, where divided loyalties and conflicts of interest could and most likely do exist.”

Immediately after my October 18, 2016 letter went out, the CJP filed a lawsuit against the state auditor seeking to prohibit review of files related to CJP complaints and investigations. Five months later the CJP closed the Diop complaint without any meaningful explanation. The fate and timing of a CJP audit that could explain why or how that happened is unknown.

I suspect that after this letter goes out, there will be another flurry of activity by the CJP, the Judicial Council, and others, trying to stop or further delay any investigation by **anybody** of what happened in this and thousands of other serious and meritorious cases the CJP has “closed” without explanation. Intense lobbying of the JLAC committee and other legislators, renewed efforts to oust the current auditor who in previous audits has been critical of Judicial Council practices, and pressure for a judge to issue a lower court ruling prohibiting the CJP audit that can be appealed for years are foreseeable on the Judicial Council/CJP audit obstruction menu.

Given what has happened *and is still happening* to Ms. Diop, an African Muslim mother who years ago legally immigrated to this country, the irony of California holding itself out as a “sanctuary” state for immigrants and model of justice for the world is not lost on me.

The CJP violated its mandate and abused its discretion in the Diop case, and likely many others. It is now apparently “mentoring” rather than disciplining judges who engage in serious misconduct, while allowing ongoing abuse of CJP complainants. If no one in California government has the stomach, impartiality, clout or authority to expeditiously force an investigation of this failed oversight agency charged with policing *the largest judiciary in the Western world*, it is time for the Federal government to step in. Unabated judicial corruption—and punishment of those who complain about it—can no longer be tolerated.

Sincerely,



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Re: Report of Evidence Tampering, Obstruction of Justice by:
Marin Superior Court Judge Beverly Wood
Marin Court Executive Officer Kim Turner

Dear Sir/Madam:

I am writing to report what appear to be very serious violations by Marin Superior Court Judge Beverly Wood and former CA Judicial Council Member/current Marin Court Executive Officer Kim Turner, of, among other things, Government Code section 6200, CA Penal Code sections 182 and 96.5, and Federal RICO statutes.

As will be detailed below, the Marin County Superior Court Registers of Actions are being deliberately altered, and false certified Registers of Actions and minute orders are intentionally being created and disseminated, in cases involving Marin Superior Court bench

officer Beverly Wood. This is being done with the knowledge and assistance of Marin Court Executive Officer (former Judicial Council Member) Kim Turner. Both have been notified of the falsification of records; both have been offered the opportunity to remedy the falsification of Court records; both have declined that opportunity. Turner went so far as to suggest in writing that the falsified information in the Marin court register of actions and minute orders was true and could be relied upon as true. The actions of Turner and Wood have irreparably harmed Petitioner/Mother herein, and undermined any confidence the public or others (including the Court of Appeal) could or should have with respect to the integrity of the Marin County Superior Court Register of Actions and Minute Orders, perhaps, but not necessarily, especially those involving Judge Beverly Wood and her husband's law firm, Freitas McCarthy.

Summary of charges herein: On October 3, 2013, Petitioner/Mother (hereafter "Mother") in Marin court case number FL 064080 filed a California Code of Civil Procedure section 170.1 request for disqualification of Judge Beverly Wood, citing, among other things, four documented instances of substantive, illegal, and prejudicial ex parte communications and proceedings between Wood and Respondent/Father (hereafter "Father"), a former client of Wood's law firm, Freitas McCarthy in the time period June 10, 2013 through August 30, 2013. Wood orally struck the disqualification request that same day, October 3, 2013. Mother has proof that the unsigned, written minute order striking the disqualification was entered 25 days later, on October 28, 2013. The certified register of actions and certified minute order state that the minute order striking the disqualification was entered on October 3, 2013. The date the order was entered is crucial to Mother's legal position that according to statutory and case law, Wood was disqualified by operation of law because the written order was not officially entered and effective within 10 days of service of the request for disqualification. Mother and her counsel have asked Court Executive Officer Kim Turner and Judge Beverly Wood for an official Notice of Entry of Order striking the disqualification motion. Both have refused, although pursuant to CCP Section 170.3(d), *service of written Notice of Entry of the order striking the disqualification* triggers a 10-day time limit within which to file a writ challenging a disqualification order.

Prior allegations: In 2010, Marin family law attorney Paul Camera reported to Marin Presiding Judge Terence Boren and the Commission on Judicial Performance the secret retroactive alteration of family court records (the register of actions and a minute order) in a case involving Beverly Wood. Mr. Camera pointed out that pursuant to Government Code section 6200, it is a crime punishable by 2-4 years in state prison, for "every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public place", to "alter or falsify" such record. See Mr. Camera's 3/23/2010 complaint to the Commission on Judicial Performance with referenced 3/22/2010 letter to then Presiding Judge Terence Boren, submitted herewith as Exhibit "A" and incorporated herein by this reference. Mr. Camera reports the behavior of then-Commissioner Beverly Wood and includes the documentary proof of the alteration of official court records seven months after the fact. He reports Wood's unprofessional inclusion of inaccurate, inappropriate and irrelevant personal attacks in her order defending the alteration of records, in an apparent attempt to discredit Mr. Camera and his client, and in Mr. Camera's words, "deflect attention *away from what happened*". (It is believed but has not been confirmed by checking the file that Wood's court clerk subsequently claimed she served a Notice of Entry of Judgment on the attorneys in this

case, but none of the attorneys on either side of the case received it, thereby compromising appellate remedies. It is believed that Judge Faye D'Opal was the judge on the case at the time the Notice of Entry of Judgment issue was addressed.)

In 2009, while a Joint Legislative Audit Committee investigation of the Marin Family Court was pending, CA Judicial Council Member/Marin Court Executive Officer Kim Turner, with approval by the CA Administrative Office of the Courts, and knowledge of the Marin Superior Court bench, ordered the mass destruction of child custody evidence contained in Marin Family Court Services files, while blocking the state auditor's access to Marin family court documents and employees. The longtime Marin Family Court Services supervisor resigned while Turner was denying auditor access to court employees, and was thereafter unavailable to be interviewed by the state auditor.

Background of this case: Mother has unsuccessfully sought the disqualification of Commissioner-turned-Judge Beverly Wood since Wood first entered this case in 2008 and commenced a pattern of prejudicial conduct favorable to multimillionaire Father, *a former client of the Freitas McCarthy law firm*. Wood's husband, Peter Kleinbrodt, is a managing partner at the Freitas McCarthy law firm with Neil Moran, husband of Wood's good friend Marin Judge Lynn Duryee (who just retired this year). Wood was an associate at the Freitas McCarthy law firm before being selected to serve as a Marin County Commissioner. Each year Wood reports a hefty interest in the Freitas McCarthy law firm.

Delivered herewith as **Exhibit "B"** are communications with the Marin Superior Court questioning the very close financial and political ties between Freitas McCarthy and key members of the Marin bench, including the fact that Freitas McCarthy was the top campaign donor to many of the Marin judges' election efforts, and Freitas McCarthy partner Neil Moran (Judge Duryee's husband) was the campaign treasurer for said election campaign efforts. Also questioned in those communications was the selection of Beverly Wood by the Marin Superior Court *from a field of 50 or more applicants* to serve as Marin Court Commissioner. Father's former attorney, Freitas McCarthy attorney Ali Quam, was subsequently selected by the Marin Superior Court to serve as their Family Law Facilitator, and Father is able to consult with her for free now.

Between June 10, 2013, and August 30, 2013 alone, while Mother was represented by child custody counsel, had a pro per Federal lawsuit pending against Wood, and was asking that Wood recuse herself in every pleading and at every hearing, Wood engaged in at least *four documented incidents of inappropriate and highly prejudicial ex parte communications with the Father*. Unbeknownst to Mother until months later, this began on June 10, 2013, when Father gave Wood a detailed secret letter denigrating Mother and telling Wood specifically what vacation and custody orders he wanted. He and Wood followed that letter up on June 21, 2013, at which time they engaged in unreported secret ex parte proceedings at which Wood secretly gave Father the vacation order he requested. Father left the country with the child, without Father or the Court serving Mother with the secret letter, the secret ex parte application, or the resulting secret order. On July 17, Father and Wood again engaged in unreported ex parte communications, at which time Father presented an ex parte application without notice to Mother's counsel. Mother had been informed by a third party that this was Father's intention,

and Mother's counsel warned Wood's clerk in advance that Father was intending to bring another secret ex parte. Father told Wood when he appeared on July 17, 2013 that he would not serve Mother's counsel with the ex parte application. *Rather than summarily informing Father that he had to comply with proper ex parte procedures involving notice and service of the ex parte application as required by the CA Family Code, and State and Local Rules of Court, Wood moved the ex parte hearing to the next day and had her court clerk give Mother's counsel notice and service of Father's ex parte papers.* Mother noticed and served her own ex parte application for hearing the same day.

On July 18, 2013, when Mother's counsel tried to make an objection on the court-reported record to the secret ex parte proceedings and secret orders being issued, Wood and Father repeatedly interrupted Mother's counsel. Wood told Mother's counsel that "we're not going to go there"; and "I don't want to go into this whole conspiracy and secret things" and "for God's sake would you please try to stay on topic". Wood denied Mother's ex parte application (which included a request that the child be able to travel to New York for his vacation time with her as she was ill and could not travel) and granted Father's request (which included a request that the child not be allowed to go to New York) without bothering to read Mother's ex parte application. **Wood ordered that the parties' child had to stay in the State of California.**

The early morning of July 19, 2013, Mother's counsel called and asked that the Marin records department immediately make a copy of the July 18, 2013 minute order (prohibiting out of state travel) available by fax, email, or for pick up, because Mother feared that Father was going to remove the child from California in violation of that order. Mother wanted the order to provide to Father with a demand that he not remove the child from California. The Marin records department initially refused to fax or email the order to Mother's counsel, or release the order to a messenger or anyone but Mother's counsel (who was already out of town), or Mother (who was ill in New York). Mother's counsel wrote a scathing email to court administration, pointing out that Father, a former client of Wood's Freitas McCarthy law firm, was getting special treatment. Specifically, that Wood was having secret ex parte hearings with Father, issuing secret orders to Father without service to Mother, had used public resources (her clerk) to effect notice and service of Father's July 18, 2013 ex parte, yet Mother could not even get a copy of the resulting July 18, 2013 order. Mother's counsel asked that her July 19, 2013 e-mail to court administration be forwarded to Marin Presiding Judge James Ritchie, and Marin Family Law Presiding Judge Verna Adams, and considered a complaint and request for investigation about the improper use of Wood's courtroom to provide special treatment and advocacy for Father. *Mother's counsel reminded the Court that in 2010 minor's counsel had been appointed in the case, payable by public resources, although Father is a multi-millionaire.* The Court ultimately emailed the July 18, 2013 order to Mother's counsel, but it was too late. Father reportedly informed Mother that he had indeed taken the child out of the state in violation of Wood's order.

On August 5, 2013, Father reportedly attempted to bring another secret ex parte before Wood, but Wood was not available so he brought it before Judge Verna Adams. Mother learned of this when the parties' young child reported that he had gone to Court with Father (prohibited by local rules) and he had talked to the judge with white hair. The register of actions reveals the child's "appearance", that it was an unreported proceeding, that Adams read, considered, and returned to Father his ex parte application, with direction that he should bring the matter before

Wood when she was back in session. Father's ex parte papers and the resulting orders were never served on Mother, and the ex parte application is not in the Court file. Mother has no idea what Judge Adams read or what Father told Judge Adams. That same day, August 5, Father unilaterally continued a hearing he had scheduled for August 22, 2013. The register of actions reveals this was done "by agreement", but Father had never mentioned this to Mother's counsel, there was no agreement, and the continuance was granted without Father providing a letter confirming such an agreement as is normally required.

On August 30, 2013, Father again brought a secret ex parte application before Wood, again without notice and with no reporter present. Mother found out about it after the fact only because she had heard from Father that he had received some type of ex parte order from the Court ensuring he would have the upcoming Labor Day weekend with the parties' child. The minute order from the hearing reveals that Wood told Father to serve Mother's counsel, he refused, so Wood set the matter for a hearing, made a referral to Family Court Services recommending mediation, and told Father to file his papers. *The register of actions reveals that Father then stated concerns about a custody issue that day, Judge Wood passed the matter, ordered the Court file, re-called the matter, and gave Father a copy of an order in the file.* In other words, Wood again heard substantive ex parte argument from Father, and used court resources (her court clerk) to perform research and provide documents on his behalf.

On September 19, 2013, Mother's counsel emailed court administration, asking whether her July 19, 2013 emailed complaint had been forwarded to Judge Adams and Judge Ritchie, and inquiring as to the status of the complaint. She informed administration of what had transpired since her July 19, 2013 emailed complaint, and asked that her September 19, 2013 follow-up email be forwarded to Judge Ritchie and Judge Adams.

On October 3, 2013, Mother served a California Code of Civil Procedure section 170.1 judicial disqualification request on Wood, citing the above instances of prejudicial ex parte proceedings and more. The disqualification request was accompanied by a meticulous record supporting Mother's claims. The 170.1 application, without attachments, is attached hereto as **Exhibit "C"**. The supporting documents are in the Court file.

Notwithstanding the fact that CCP Section 170.3(c)(5) provides that a judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification, Wood orally struck Mother's disqualification herself on October 3, 2013, and then forced a custody hearing to go forward. She indicated she would prepare a written order. For weeks after Wood's oral pronouncement Mother and her attorney checked the register of actions to see if a written order striking the disqualification had been entered, because pursuant to CCP Section 170.3(d) service of Notice of Entry of the order striking the disqualification triggers a 10-day time limit within which to file a writ challenging the order. Mother and/or her counsel twice (October 11 and 16) obtained copies of the register of actions entries to prove no order regarding the disqualification had yet been entered. Commencing October 10, 2013, Mother and her counsel requested the court file so they could get a certified copy of a DCSS fee order Father had violated in order to place an abstract of judgment on Father's home before he sold it. Wood kept the file sequestered in her chambers.

On October 28, 2013 Mother's counsel commenced an email dialogue with Marin Administration, complaining that the file had been unavailable for 18 days, while Mother was trying to get an order from those files so she could file an abstract of judgment on Father's house before he sold it. That same day, she was informed that the file was available.

On October 29, 2013, Wood issued a written custody order prejudicial to Mother stemming from the October 3, 2013 custody hearing, but the order did not include a written determination of Mother's October 3, 2013 disqualification request.

Mother's counsel subsequently learned via a telephone call with Marin court clerk Vita Johanson that a minute order *dated October 3, 2013* striking the disqualification was in the file. Mother's counsel asked Vita to look up the date the minute order was entered, and Ms. Johanson stated that it had been entered on *October 28, 2013*.

Without revealing what Ms. Johanson had told her, on November 5, 2013, Mother's counsel emailed court administration, informing them that Mother had not yet received a minute order, a regular order, or a Notice of Entry of Order regarding Wood's ostensible striking of the October 3, 2013 disqualification request, although it was well outside the 10 days within which Wood had to act on Mother's request. Mother's counsel asked a) when the Notice of Entry would be forthcoming; b) for confirmation of the date the minute order was entered striking the disqualification; and c) direction to a rule or handbook stating the time frame within which a minute order had to be entered by a court clerk. She also noted that she had called Judge Ritchie's clerk to find out the status of the July 19, 2013 and September 19, 2013 complaints, and to ask if the case had been reassigned due to Wood's non-action. She inquired as to whether the complaints had actually been forwarded to Judge Ritchie. She noted that Judge Ritchie had oversight responsibility of then-Commissioner Wood as of June 2013, when Wood engaged in her June 10 and June 21 secret ex parte communications with Father; that he thereafter had oversight responsibility to report her behavior as a judge if it did not comport with the Code of Judicial Ethics, and that he needed to know what was going on in his courthouse. Mother's counsel reminded administration that she "was involved in apprising the legislature of what was transpiring in the Marin Family Court requiring a JLAC audit and have no problem going back and telling everyone again that the problems continue unabated, with Marin Superior Court judges now completely and with impunity eliminating the due process rights of litigants, perhaps especially targeting those like [Mother] who initially provided evidence to the State Auditor."

On November 7, 2013, Mother followed up with another email to court administration, asking with respect to the October 3, 2013 proceedings what orders were entered into the permanent minutes, when (date and time) and by whom; what minute orders had been entered, when (date and time) and by whom; what changes to the minutes had been made, when (date and time), and by whom; what orders had been served, when, and by whom.

On November 8, 2013, Mother and her counsel went to the Marin Records Department to look at the register of actions and court file. They observed that the Court register of actions *had been altered* to indicate a minute order striking the disqualification was entered on October 3, 2013, and that an unsigned minute order striking the disqualification without stating a basis had been issued indicating that it was entered on October 3, 2013. They obtained a certified

copy of the register of actions as of 11/8/2013 at 12:30 p.m., and a certified copy of the minute order falsely dated October 3, 2013 from the records department, and then, upon request to the Marin records department supervisor, had the records department file clerk Lindsay Lara look up the actual date the minute order was entered. Ms. Lara reported (as Ms. Johanson had before her) that the actual date the minute order was entered was October 28, 2013, not October 3, 2013, and Ms. Lara confirmed this information in an informal signed writing on a copy of the minute order.

Meanwhile, on November 8, 2013, former Judicial Council Member/current Court Executive Officer Kim Turner sent a reply e-mail to Mother's counsel (obviously without knowledge of Lindsay Lara's signed statement), telling her as follows:

"The Presiding Judge will not respond to your complaints about Judge Wood and is not required to investigate your many perceptions about what transpired between clerks in the courtroom and the Clerk's office. As you well know, you have written volumes over the years about your theories of misconduct. The court has diligently researched and investigated those complaints and found them to be without merit, time and again".

"The court is under no obligation to respond to the litany of questions about who entered minutes, on what date, at what time, whether the minutes were amended, what orders have been served, by whom, and other like inquiries. All judicial orders are also in the register of actions. All documents filed and proofs of service, when filed, are in the court file. The register of actions and the documents contained in the court file provide you with answers to those questions to which you are entitled to answers".

The above-referenced communications between Mother's counsel and Court Administration from July 19, 2013 and November 8, 2013 are delivered herewith as Exhibit "D".

The excerpt from the October 11, 2013 register of actions showing that no minute order had been entered for October 3, 2013, the excerpt with the false October 3, 2013 entry from the certified November 8 register of actions, the falsified certified "October 3, 2013" minute order striking the disqualification, and the uncertified copy of the minute order with the signed statement of Lindsay Lara are delivered herewith as group Exhibit "E".

Based on the fact that Wood had not issued, filed or served a signed order (which arguably is required pursuant to CCP section 581d) of any kind striking Mother's disqualification, and that the unsigned minute order striking the disqualification had not been entered until 25 days after service of the disqualification on Judge Wood (although a judge's authority to strike a statement of disqualification must be exercised within 10 days of service of the disqualification), on November 15, 2013, Mother brought an ex parte application before Marin's then-presiding Judge James Ritchie, arguing that Wood had been disqualified as a matter of law, and asking that the case be re-assigned. At the hearing Ritchie declined to reassign the case, stating his belief that Wood's oral order was sufficient to strike the disqualification request. However, the Minute order stemming from the hearing specifically states: "NO FINDINGS-NO ACTION TAKEN". Judge Ritchie retired soon thereafter.

On January 3, 2014, Father noticed another non-emergency ex parte application on January 7, 2014 before Judge Wood. He did not specify the relief requested. On January 5, 2014, Mother's counsel asked him to serve his papers in advance. He did not. Mother's counsel appeared by Courtcall, and objected to the ex parte given that it was not an emergency, and he had not served his ex parte papers as required by state and local laws and rules of court. Wood granted Father's request for vacation time, although Wood conceded this request was not an emergency, and set Father's other requests for further hearing. Neither Father nor Wood ever served the resulting signed order granting vacation time (which Wood gave to Father on January 7, 2014) on Mother's counsel, notwithstanding her repeated request for same.

On January 8, 2014, Mother filed "Petitioner's Objection to Judicial Authority of Beverly Wood", voicing her "continuing objection to Judge Beverly Wood's authority to hear or act in this case for any purpose". She attached her November 15, 2013 ex parte application to Judge Ritchie (without exhibits), noted that he had stated his "belief" that an oral order striking the disqualification was sufficient, and then provided the law making clear that an "order" is by definition a direction of a court or judge, *made or entered in writing* (CCP section 1003); and that pursuant to Marriage of Drake (1997) 53 Cal.App.4th, 1139, 1170 in family law cases, as in other cases, *an order of the court must be written to be effective, because a court may change its ruling until such time as the ruling is reduced to writing and becomes its order*.

Mother stated as follows in her above-mentioned objection to Wood's authority:

"Petitioner invites Judge Wood and the Presiding Judge of the Superior Court to consult with counsel about the legal issues raised herein before any further matters in this case are calendared before and heard by Judge Wood. Petitioner believes that in the first instance Judge Wood disingenuously and improperly attempted to claim there was no basis for disqualification when she made her oral ruling striking the disqualification. Petitioner believes Wood has used and continues to use her position on the bench to a) advocate for Respondent, a former client of the law firm at which Wood's husband is the managing partner, and b) deprive Petitioner of her due process rights and advocate against Petitioner, who has named Wood in a federal lawsuit for her egregious behavior in this case. At this point Petitioner's beliefs are secondary to the fact that it appears very clear that pursuant to the authority cited above, Wood was disqualified by operation of law; that she has no power to act in this case; and that the orders she continues to make notwithstanding Petitioner's continuing objections to her authority and to her ongoing violations of Petitioner's due process rights are made in violation of the law".

A courtesy copy of Mother's January 8, 2014 Objection was served on Marin Presiding Judge Faye D'Opal. A copy of the Objection is delivered herewith as **Exhibit "F"**.

On January 16, 2014, Mother filed an ex parte request for recusal of Judge Wood, correction of the official record, a formal Notice of Entry of Order with respect to Wood's October 3, 2013 disqualification order, and attorney's fees so she could file a writ of Wood's disqualification order and an appeal of her custody orders. She said:

"Because Wood continues to entertain procedurally defective ex parte proceedings, and issue prejudicial secret orders that are not served, if she does not recuse herself as ethically required I will have to take her to the Court of Appeal and other oversight entities".

*"I must have a correct official record of when the minute order was entered. I want a formal Notice of Entry of Order from Gina Compton stating when it was entered and I want the minute order and register of actions corrected to reflect that date. **It would be a highly prejudicial obstruction of justice to deny me this**". (bold emphasis added).*

"I am also requesting \$7,500 in fees for a writ, and \$15,000 in fees for an appeal".

Mother's Income and Expense Declaration reflected \$671 per month in Worker's compensation income, and estimated that Father's income was \$30,000 per month.

Father neither responded to object to the ex parte application, nor appeared at the hearing. Judge Wood nonetheless stated it was not an emergency, denied the application in its entirety, told Mother's counsel to "writ, appeal, whatever", and when Mother's counsel again tried to ask for a Notice of Entry of Order, was told by Wood "not to disrupt her courtroom" and to "leave". A copy of the transcript from the January 16, 2014 hearing is delivered herewith as **Exhibit "G"**.

Mother filed the ex parte application for hearing on the Court's regular calendar, February 27, 2014.

On January 24, 2014, Mother filed another continuing objection "to Judge Beverly Wood's authority and jurisdiction to act in this case for any purpose", and to an improperly noticed custody motion filed by Father set for hearing on February 6, 2014.

On February 5, 2014, Wood issued a tentative ruling on Father's custody motion, continuing the hearing to February 27, 2014, the same date as Mother's motion. Mother's counsel nonetheless traveled to Marin for the February 6, 2014 hearing, in case Father objected to the tentative ruling and she had to appear. Father did not call Mother's counsel to state his intention to contest the ruling and appear on February 6, 2014 as required by local rules, and as a consequence Mother's counsel did not appear in court on Mother's case on February 6, 2014.

However, on February 6, 2014, Father -- who at this point had many times prepared ex parte papers, and repeatedly had been admonished to give notice of ex parte applications and serve ex parte papers--nonetheless DID appear ex parte in Judge Wood's Courtroom. This was one of the few ex parte applications that were reported, and the transcript gives insight to the type of interactions he had likely been having with Wood for months. He orally explained to Judge Wood that he wanted to take the parties' child out of school, and to the Bahamas, the following week. Wood noted that Mother's counsel "adores finding technical issues" and he and Wood then engaged in a remarkable exchange during which Wood advised Father to bring an ex parte application the following Monday, February 10, and to give notice to Mother's counsel. Instead of referring Father to the Family Law Facilitator's office to prepare proper papers in compliance with state and local rules of court, Wood said: "So what we have to do. . .is we have to properly notice. . .an ex parte application... So what you need to do is you need to

put together a sheet of paper and say "I am going to the Court--...to ask for this. . .OK? . .And then you can e-mail, scan, whatever--... to [Mother's counsel]. . .and I would do it a couple of days in advance. . .But you have to do that, and you have to be very careful about it, okay. . .so that we can avoid all these writs and appeals." Father said "But most importantly, I want to take him [the child] with me on the 13th". Wood responded: "I understand. . .That's why you need to notice her, and you could—you could come in on Monday if you notice her by the end of business day today. But write out on a sheet of paper what it is you want, and if you can e-mail or scan it, or something like that, so that we have a record of having done it---...that would be good too." Mother's counsel obtained this transcript on June 4, 2014. It is delivered herewith as **Exhibit "H"**. Delivered herewith as **Exhibit "I"** is the law regarding ex parte applications (Family Code section 3064; CRC 5.151 and 5.167; California Judge's Benchguide 200—Child Custody and Visitation 2012, section 200.7, 200.35; Marin Superior Court Local Rules 6.6) If a practicing lawyer advised a client to do what Judge Wood instructed Father to do to get a non-emergency vacation order ex parte ("write on a sheet of paper what it is you want") the lawyer could face malpractice charges, and the client could face sanctions.

On Friday, February 7, Father gave e-mail notice to Mother's attorney that he was going to make an ex parte application on February 10, 2014 for extended visitation time with the parties' child. With respect to relief requested he stated as follows: "*I am seeking to move the presently scheduled 2/20 hearing as per the most recent order to 2/27 when another hearing is already scheduled as well as to extend [child's] next visitation with me which starts this afternoon until 2/26 when my second visitation with him this month ends.*"

Mother's counsel asked Father to provide the ex parte papers in advance of the hearing, and arranged to appear by Courtcall. Father did not provide any ex parte papers to Mother's counsel, and arrived in Court on February 10, 2014, without papers. Instead of being sent away, Mother's counsel heard Wood's clerk tell him he had to "go down the hall" to prepare ex parte papers. This took a full hour, and when Father returned, Mother's counsel first objected "for the record" to Wood hearing the case, and noted she had not received a Notice of Entry of Judgment regarding the disqualification. Wood told her "there is no record, because there is no reporter". Mother's counsel then objected that obviously she had not seen Father's papers, because he had just done them. Wood told her that all the application said was one sentence to the effect of "Father is seeking makeup vacation time". **Neither Wood nor Father told Mother's counsel that Father had appeared the prior Thursday and asked that the child miss school and travel to the Bahamas with Father.** Mother's counsel stated that this was not an emergency, reiterated ALL of the law regarding ex parte applications set forth in **Exhibit I**, and reiterated that Father and the Court were not following those laws. Wood asked Mother's counsel if she had "any objections other than the law", and then granted Father's request without specifying what she was ordering. She apparently issued a written order on the spot. Neither Father nor Wood provided a copy of the order to Mother or her counsel. Father delivered a copy to the police and the child's school to ensure enforcement of the order, and announced that he intended to take the child to the Bahamas returning February 25, 2014. Mother's counsel tried to get the order from the police, the child's school, and Father; none would provide them to her. Mother tried to get a copy of the register of actions or a minute order or the actual order. Nothing was reflected in the register of actions, no minute order was entered, and Wood sequestered the file in her chambers. Mother was unable to get a copy of the order until the next hearing took place on

February 27, 2014. The police let Mother see the order, however, and it *a) required the child to be back in school by February 24, 2014; b) required return to Mother on February 25, 2014, and c) made no mention of out-of-country travel.* Father returned the child to school and Mother on February 26, 2014. In other words, Father got the order, delivered the order to the police and school, announced that he was going to violate the order, and did violate the order. Mother's counsel did not see or receive the February 10, 2014 order until February 27, 2014, when Wood's clerk gave it to her at a court hearing. The register of actions does not reflect that a hearing took place on February 10, 2014. There is no entry at all for 2/10/14. There is an entry for 2/19/14 reflecting that a 2/10/14 order prepared by Wood was entered on February 19, 2014. There is no entry reflecting service of the order.

On February 26, 2014, Mother's counsel noticed an ex parte application set for hearing on February 27, 2014, based on Father's premeditated contempt of the Court's apparent 2/10/14 orders that resulted in the child being taken out of the country and missing four or five days of school. Mother requested sole custody, alternate weekend visitation for Father, return of the child's passport, and an order forbidding travel with the child outside of Marin without court order.

At the February 27, 2014 hearing on Mother's motion for recusal, correction of the record, Notice of Entry of Order, and attorney's fees, Wood orally denied Mother's request for attorney's fees, and took Mother's request for a Notice of Entry of Order under submission. Wood continued Father's custody motion to April 7, 2014 and referred the parties to Family Court Service mediation. She gave Mother's counsel permission to appear at all non-evidentiary hearings, including the April 7 hearing, by Courtcall. She stated that she would prepare a written order on all issues. Wood denied Mother's ex parte request for temporary custody orders, stating it was not an emergency—although the concerns stated in Mother's application—that Father would again take the child out of the country in violation of court orders—falls specifically within the Family Code section 3064 category “immediate risk that the child will be removed from the State of California”. Mother set her custody ex parte for hearing on April 10, 2014.

The written order stemming from the February 27, 2014 hearing, issued April 2, 2014, stated that Mother's request for disqualification “is merely another in a long line of Mother's theories of conspiracies against her by this Court. . .” and accused Mother's counsel of focusing on “procedural minutia”. Wood made no order on Mother's request for correction of the record, or for a Notice of Entry of Judgment.

On April 7, 2014, Mother's counsel appeared by Courtcall for the further hearing on Father's custody motion. Father had brought his oldest son from another relationship to testify although it was supposed to be a non-evidentiary hearing. Mother's counsel objected and reminded the Court that Mother had asked for a long-cause evidentiary hearing “from the get-go” [she provided a witness list including the boy, the police, the Family Court Services mediator, and more with her responsive papers] and was asking and entitled to a long-cause evidentiary hearing so she could call the boy and other witnesses. Wood admonished Mother's counsel not to interrupt or she would hang up. Mother's counsel said, one more time, that she had asked for an evidentiary hearing. Wood hung up and proceeded to take testimony from the boy and conclude the hearing without participation by Mother's counsel.

On April 10, 2014, Mother appeared on her custody request initially made by ex parte application on February 27, 2014. Mother's counsel reiterated her request for a Notice of Entry of Judgment stemming from the October 3, 2013 disqualification. Mother then addressed her motion, noting that Father had filed no responsive pleadings, and it was essentially unopposed. She reiterated her request for an evidentiary custody hearing. Wood focused the hearing on three items raised by Father that were not a part of the calendared hearing or Wood's tentative ruling (including Father's new, unnoticed request to take the child to Sugar Bowl) and took the matter under submission.

On May 8, 2014, Wood issued a scathing custody order giving Father sole legal custody of the parties' child. She went to great lengths to denigrate Mother, characterize Mother's concerns as "paranoid" and accuse Mother and Mother's counsel of having an agenda to establish a "secret conspiracy". However, *Wood again did not rule on Mother's request for correction of the record or for issuance of a formal Notice of Entry of Judgment.*

It is long past 90 days since the submission on February 27, 2014 of Mother's request for correction of the record and Issuance of a Notice of Entry of Judgment determining Mother's disqualification request. Pursuant to Article 6, Section 19 of the California Constitution, as of May 28, 2014, it appears Wood is not entitled to receive her salary until she rules on Mother's request for correction of the record and Notice of Entry of Judgment. Mother does not know if Wood executed a Government Code section 68210 affidavit falsely stating that no matters remain pending before her submitted for more than 90 days, and whether she has collected her paycheck.

It appears that Judge Wood and Court Executive Officer Kim Turner are now in great professional and legal peril. If a Notice of Entry of Order is issued reflecting that the disqualification order was entered on October 28, 2013, rather than October 3, 2013, a) it supports Mother's argument that Wood's order is void on its face, and she has had no authority to act; and b) it proves that the current certified register of actions and certified minute order with respect to October 3, 2013 contains entries both Wood and Turner know are false. As it now stands, they are both knowingly and intentionally perpetuating a false official record.

California Rule of Court 10.603 (Authority and Duties of Presiding Judge) required Judge D'Opal to ensure that no cause under submission remains undecided and pending for longer than 90 days. It requires her to notify the Commission on Judicial Performance of a judge's substantial failure to perform judicial duties. It requires her to provide general direction to and supervision of Court Executive Officer Kim Turner.

Marin County has a long and unabated record of administrative and bench misconduct repeatedly reported to the Commission on Judicial Performance, the Chief Justice, two Attorney Generals, two Governors, the Administrative Office of the Courts, the Legislature, the Judicial Council, the JNE commission, the Marin Grand Jury, and others. Most recently there was significant public outcry when Judicial Council Member Kim Turner ordered the mass destruction of child custody evidence contained in the Marin Family Court Services mediation working files, while a Joint Legislative Audit Committee investigation of the Marin Superior

Court was pending, and while Turner was blocking auditor access to court files and personnel (meanwhile the longtime mediation supervisor resigned and was ultimately unavailable for auditor interview). Turner claimed she was destroying the files for storage purposes, and she apparently escaped prosecution for evidence tampering with the claim that the files destroyed were not "court files" covered by Government Code section 6200. Included in the mediation files destroyed were those of Mother and Father in this case, containing important child custody information relevant to prior rulings in this case.

The legislature did its job by providing CCP 170 et seq as a means to allow litigants to disqualify corrupt or biased judges. Per CCP 170.3 a judge generally is not allowed to rule on disqualification requests filed against him or her except in very narrow circumstances, and in fact cannot take further substantive action in the case until an outside judge rules on the disqualification request. Litigants are required to seek writ relief on the court's order determining the question of disqualification within 10 days of service of written Notice of Entry of the court's disqualification order. Wood thwarted this statutory protection by denying her own disqualification request, and refusing to issue a correct Notice of Entry of her disqualification order, while continuing to aggressively advocate for her law firm's former client, and issue orders favorable to her law firm's former client vociferously attacking mom and her lawyer.

The legislature did its job by providing Family Code sections 2030 et seq and Family Code section 7605, to ensure that financially disadvantaged parents can be represented by counsel in Family Law proceedings. After repeatedly taunting Mother to "go writ! go appeal!" if she didn't like what Wood was doing, Wood effectively thwarted statutory fee protections and *eliminated* Mother's ability to file a writ or appeal by denying Mother's request that multimillionaire Father provide appellate attorney's fees and costs so that she could seek appellate relief.

The legislature did its job by ordering a JLAC audit of the Marin Family Court. It was thwarted by Kim Turner, the Administrative Office of the Courts, and the Marin Bench when they participated in the mass destruction of child custody evidence and eliminated key employees before they could be interviewed, with the result that this information was not available to the State Auditor.

The public has done its job by documenting and reporting corruption in the Marin County Superior Court for almost two decades.

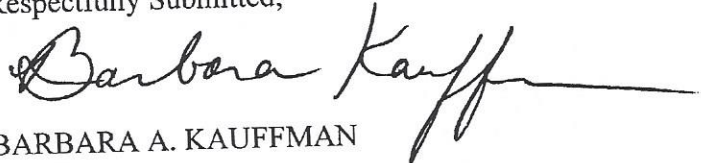
The JNE Commission, the Governor, and the Commission on Judicial Performance were repeatedly warned about Judge Wood, including her prior actions in this case, before her appointment to the Bench last fall. Nonetheless she was appointed, even as she was repeatedly violating Mother's most basic due process rights to notice and an opportunity to be heard by engaging in ongoing prohibited ex parte communications with Father.

This year alone, at least three judges (Ohio Judge Tracie Hunter, Texas Judge Denise Pratt, and Ohio Judge Harry Jacob III) have been indicted on evidence tampering charges, two directly related to backdated orders. News articles about these indictments are delivered herewith as Exhibit "J".

Mother and Mother's counsel have spent a long, brutal, year quietly making an airtight record of gross misconduct by Wood and Turner while being insulted every step of the way, including Wood's gratuitous comments inserted into her orders that Mother and her lawyer were engaging in "conspiracy theories" and focusing on "procedural minutia" with respect to Wood's ongoing violation of Mother's *most basic* due process rights to notice and opportunity to be heard by an impartial decision maker, and a true and correct official court record.

Mother and her counsel are not going to mince words. They are making a demand (not a request) for a full investigation --including a criminal investigation--of evidence tampering and other illegal/unethical activity (including but not limited to conflicts of interest, and ongoing ex parte communications between bench officers and certain favored litigants) in this and other cases; indictments Wood and Turner and others involved for all possible applicable crimes (including but not limited to Government Code section 6200, CA Penal Code sections 182 and 96.5, RICO, 18 U.S. Code 1512), and *immediate removal of Marin Court Executive Officer Kim Turner and Judge Beverly Wood from the Court system.*

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Barbara Kauffman", with a long horizontal flourish extending to the right.

BARBARA A. KAUFFMAN

LAW OFFICES OF
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October 18, 2016

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94012

Judicial Council of California
455 Golden Gate Avenue,
San Francisco, CA 94102

CC: Federal Bureau of Investigation, U.S. Attorney, Governor Brown, Attorney General
Kamala Harris, Marin County District Attorney's Office, Marin County Sheriff's Office

**Re: June 9, 2014 Report of Evidence Tampering, Obstruction of Justice by:
Marin Superior Court Judge Beverly Wood
Former Marin Court Executive Officer Kim Turner**

Dear Commission and Judicial Council Members:

Please make certain this letter is provided to each and every commission and council member.

It has been over 28 months since my complaint about Judge Beverly Wood's actions in the Diop case was made to the Commission on Judicial Performance (hereafter "CJP") and the Judicial Council, and 40 months since the initial *patently problematic judicial and administrative conduct* addressed in the June 9, 2014 complaint occurred. A copy of the complaint without exhibits is attached hereto as Exhibit "A". According to the CJP's own statements, 28 months is far longer than usual for resolution of a CJP complaint. I have been told repeatedly by the CJP that the case is "under investigation" and "pending", but nothing has been done by the CJP to protect Ms. Diop and the Marin community from Judge Wood's *ongoing* misconduct, and nothing has been done by either the CJP or Judicial Council to ensure that the Marin Presiding Judge and Marin Court Administration correct the order and register of actions backdated by former Judicial Council Member Kim Turner in the Diop case.

Although I was told by the CJP that I would get an "update" after the June 2016 CJP meeting, the only update was that the case remains "pending". I asked if the case was being deferred, and was told I could not have an answer because this was "confidential". I have heard nothing more from the CJP, although it has had two more meetings (August and October) and has taken action on other matters. There has been no explanation for the delay.

Meanwhile, over Ms. Diop's ongoing objections, for the last three years the Marin Court has continued to assign hearings in Ms. Diop's case to Judge Wood, and Judge Wood refuses to remove herself from the Diop case while continuing to engage in further misconduct in this and other cases, which I have reported to the CJP. This includes a complaint against Judge Wood that I made over two years ago in another case, after Wood engaged in prohibited ex parte communications while independently researching and obtaining information *over my objection*, and then made an order based on her out-of-court research without notice to or an opportunity to be heard by counsel for either party. That complaint is apparently still pending as well. Obviously nothing has been done to stop Wood, because this year after Wood argued with me about information that was not in the Diop case file, *Wood admitted on the record that she had undertaken her own research, and that this was a regular practice of hers*. The CJP has that transcript of Wood's in-court admission. Query in how many cases unsuspecting lawyers and litigants have appeared before Wood, without notice that she has engaged in ex parte communications and/or out-of-court information gathering, both of which are strictly forbidden by Canon 3B.(7) of the Code of Judicial Ethics.

It is very disturbing that a judge has admitted on the record, memorialized in an official court transcript, that she violates the Code of Judicial Ethics on a regular basis, and yet, nothing has been done to stop her.

Also meanwhile, two Marin Court presiding judges and two Marin Court executive officers, *without explanation*, have doggedly refused repeated requests for a Notice of Entry of Order correcting the present false order and register of actions in Ms. Diop's case. The Notice of Entry would allow us to move forward with our argument that Judge Wood's minute order denying her own CCP 170.3 challenge is void on its face because it was untimely entered. That would mean that she lost jurisdiction to act in this case over three years ago, and we could argue that every order she has made since then is subject to impeachment pursuant to CCP section 1916. As you will recall, the CCP 170.3 challenge was filed 10/3/13, and although the minute order and register of actions indicate the minute order denying the challenge was entered the same day (10/3/13), it was not. Two court clerks told me the minute order was entered on 10/28/13, and in September of 2014, then-Presiding Judge Faye D'Opal wrote me a letter admitting that the order was entered on 10/28/13. I immediately wrote her a letter pointing out that her correspondence was not an official court record, and demanding an official Notice of Entry of Order and correction of the register of actions. My September 22, 2014 demand letter to Judge D'Opal without exhibits is attached hereto as **Exhibit "B"** for your convenient reference. No Notice of Entry or correction of the register of actions was forthcoming.

In the past few months alone I have repeatedly requested a Notice of Entry of Order from both Marin Family Law Presiding Judge Verna Adams and Judge Wood (via formal court proceedings); Marin's Court Executive Officer James Kim (I have also repeatedly requested a meeting with him, but have gotten no response); Marin's Presiding Judge Kelly Simmons, and last but certainly not least, **the Judicial Council, which is well aware of the Marin Court's recordkeeping problems** (see the excerpt of a 2002 Judicial Council report on Marin attached hereto as **Exhibit "C"**). The Judicial Council referred the Diop complaint to the CJP in 2014.

Ms. Diop and I both went to a Judicial Council meeting this past July, told them the CJP had done nothing, and asked them to take corrective *administrative* action so we could get a Notice of Entry of Order. They did nothing, although as set forth in group **Exhibit "D"** hereto, Government Code 68150 requires the Judicial Council to create standards or guidelines that *"ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records"*. Failing to correct the record and refusing to provide a Notice of Entry of Order are inconsistent with Rules of Court 10.854 (d) and 2.507 and the minimum standards set forth in the Judicial Council's own Trial Court Records Manual (which states that *"the provision of a complete, accurate and accessible record, created and available in a timely manner, fulfills one of the judiciary's basic roles"*); as well as the Code of Ethics for Court Employees in California (which states that *"a major responsibility of all court employees is to provide accurate and timely information"*).

The Judicial Council has failed to protect Ms. Diop and other families and children on multiple prior occasions, *so it would not surprise me at all if the Judicial Council has actually advised the Marin Court not to issue a Notice of Entry in the Diop case*. Over the years the Judicial Council has actively protected, whitewashed and even encouraged patently problematic behavior that is harmful to Marin's families and children. As one glaring example, in 2009 *the Judicial Council itself* approved Marin Court Executive Officer/Judicial Councilmember Kim Turner's and Marin Family Court Presiding Judge Verna Adams' mass destruction of valuable Marin Family Court working files *containing important child custody evidence* (including Diop files) while a state audit of the Marin Family Court was pending, and then had a Judicial Council non-lawyer employee write a report amounting to a pseudo-legal opinion purporting to excuse the document destruction. A copy of my letter to the current Chief Justice pointing out the problems with the report, and requesting that the Judicial Council refuse to adopt it and issue formal legal opinions on the issues, is attached hereto as **Exhibit "E"**. The Judicial Council nonetheless adopted the report, giving the green light for courts in other counties to destroy important child custody evidence contained in their Family Court working files.

It is very important to note that Ms. Diop's case illustrates the need to immediately shoot down the "test balloon" defense floated by some (namely, former Judicial Council member Edith Matthai) suggesting a judge should not be disciplined if the AOC [Judicial Council] and other judges have been complicit in or supported the behavior of a judge against whom a CJP complaint is pending. Matthai was a member of the Judicial Council from 2010-2013, and served on the powerful Executive and Planning and Technology Committees. The Judicial Council and local judges should not be able to insulate a wayward judge from discipline for his or her violation of the law and Code of Judicial Ethics via complicity with or support for a wayward judge. The only official oversight entity charged with determining discipline of judges is the CJP. The CJP's duties and mandate cannot be discharged by others, particularly those with unclean hands who themselves have been audited and criticized for not following laws and/or acceptable business practices.

The fact that the Commission chair (criminal defense attorney Anthony Capozzi) is apparently undergoing a criminal investigation raises the obvious question of whether the foxes are guarding the henhouse, and actually whether multiple CJP members have unclean hands or

conflicts of interest. I have no personal knowledge about Mr. Capozzi's problem with the Fresno County Sheriff. However, I do know that I (and others) have been reporting to the Judicial Council and CJP about Marin court misconduct for over 15 years, and *some might legitimately say that the CJP has become an arm of the Judicial Council* via appointment of Judicial Council alumni to the CJP. As set forth in group **Exhibit "F"** hereto, Mr. Capozzi was a member of the Judicial Council from 2005-2010, presently sits on the Judicial Council Court Facilities Advisory Committee, and has been on the CJP since 2010. Justice Ruvolo hears appellate cases from Marin, has been on multiple Judicial Council task forces and advisory committees, and has been on the CJP since 2013. Judge Thomas Maddock was on the Judicial Council from 2006 to 2009, has previously served and is presently serving on a Judicial Council advisory committee, and has been on the CJP since 2013. Judge Erica Yew was a member of the Judicial Council from 2009 to 2012, is serving on a Judicial Council Advisory Committee, and has been a member of the CJP since 2010. The two Marin Court Executive Officers who have refused to correct the record and issue a Notice of Entry in the Diop case include former Marin Court Executive Officer Kim Turner, who was a member of the Judicial Council from 2009-2012, served on numerous Judicial Council committees and task forces thereafter, and won the Judicial Council's Judicial Administration Award in 2013 (the same year the Diop register of actions and minute order were backdated by her and/or her staff); and James Kim, who is presently on the Judicial Council's "Court Executives Advisory Committee". All of these individuals have intimate knowledge of the Judicial Council Rules of Court and the Judicial Council Trial Court Records Manual requiring and emphasizing the importance of keeping accurate court records. They know exactly how *terribly wrong* the Marin Court has acted and is acting with respect to the Diop case, and they know that Marin Court misconduct is not confined to the Diop case.

And yet, both the Judicial Council and the CJP are failing to protect the public and the integrity of the judicial system by delaying taking remedial action regarding the Diop complaint. This is especially surprising given that the Governor, Attorney General and others specifically referred the Diop case to the Judicial Council and/or Commission on Judicial Performance, and Ms. Diop's case was presented this year to convince the legislature that the CJP desperately needs oversight and an overhaul. **There appears to be no logical reason for the Marin Superior Court to refuse to issue a Notice of Entry of Order in the Diop case except one: they know crimes were committed and fear incriminating themselves and perhaps others.** It could very well be that multiple individuals and entities *at all levels* have been involved in this *very messy* Diop matter, and have been desperately waiting until the Statute of Limitations runs on all kinds of laws related to record tampering and obstruction of justice such as (to name a few) Penal Code section 182, Government Code sections 6200 and 6203, Penal Code sections 92 et seq., 115, 132 et seq., copies of which are attached hereto as **Exhibit "G"**.

The Diop case also illustrates the reality that secrecy in CJP proceedings can lead to reasonable speculation and mistrust about conflicts of interest, divided loyalties, motivation for delay or determination of a complaint, and more. Transparency regarding CJP proceedings and voting records at all stages would be very helpful in assessing objectivity or the lack thereof in CJP proceedings, particularly in cases such as this one, where divided loyalties and conflicts of interest could and most likely do exist.

In any event, please consider this a request for a *substantive* written update regarding the Diop case within 7 days.

And, by copy of the original complaint with full exhibits, and this letter with full exhibits, to the FBI, the Governor, the Attorney General, the U.S. Attorney, and the Marin District Attorney and Sheriff's office, **I am notifying you that in 2014 we were referred by the Governor, Attorney General, and others to the Judicial Council and/or CJP to address the judicial and administrative misconduct raised in the June 9, 2014 Diop complaint, and the CJP and Judicial Council have done absolutely nothing to protect Ms. Diop or the public for over 28 months.** Therefore, I am putting this ball in all of your hands, for criminal prosecution and *any and all* other available remedial action available to you, individually and/or collectively, by law. That includes but is not limited to a request that this matter immediately be reviewed, and criminal *and all* other applicable remedial/disciplinary actions (state and federal) be commenced against *any and all* involved persons/entities (regardless of their position or stature), regarding *any and all* applicable crimes/misconduct (state and federal), **prior to the expiration of the Statute of Limitations regarding said crimes/misconduct.** I am requesting that you each individually take action, to the maximum extent possible, and do not rely on anyone else to do so. The Marin Court has indicated that the backdating occurred on or about October 28, 2013, but of course the Marin Court has been withholding an official Notice of Entry of Order, so we do not really know.

Again, if no crimes had been committed, a Notice of Entry of Order would have been issued as a matter of course. This is reflected in CCP 170.3. Instead, it appears that the Marin Court, which is expected to and is paid to serve the public, has been hunkering down and quietly and unofficially "taking the fifth" while collecting their hefty paychecks and compromising the integrity of the Marin Court on an ongoing basis. The refusal to provide a Notice of Entry involves AT LEAST FOUR MARIN JUDGES AND TWO MARIN COURT EXECUTIVE OFFICERS, with combined salaries of about \$1 million a year. I suspect this is just the tip of the iceberg, and a lot of other well-paid "public servants" will be implicated in this mess. Anyone involved in the commission of any crime should resign immediately, hire criminal lawyers on their own dime, and stop wasting the public's money.

Corruption in the Judicial Branch affects and/or contaminates each and every person/entity with which it has contact. The public has been complaining about corruption in the Marin Superior Court for over two decades, and no one has done anything to stop it. **The time has come for quick, decisive, remedial action.**

Sincerely,


BARBARA A. KAUFFMAN

Cc: Rama Diop

1 CANON 2

2
3 A JUDGE SHALL AVOID IMPROPRIETY* AND THE
4 APPEARANCE OF IMPROPRIETY* IN ALL OF THE JUDGE'S
5 ACTIVITIES
6

7 A. Promoting Public Confidence
8

9 A judge shall respect and comply with the law* and shall act at all times in a manner that
10 promotes public confidence in the integrity* and impartiality* of the judiciary. A judge
11 shall not make statements, whether public or nonpublic, that commit the judge with
12 respect to cases, controversies, or issues that are likely to come before the courts or that
13 are inconsistent with the impartial performance of the adjudicative duties of judicial
14 office.
15

16 *ADVISORY COMMITTEE COMMENTARY: Canons 2 and 2A*

17 *Public confidence in the judiciary is eroded by irresponsible or improper conduct*
18 *by judges.*

19 *A judge must avoid all impropriety* and appearance of impropriety.* A judge*
20 *must expect to be the subject of constant public scrutiny. A judge must therefore accept*
21 *restrictions on the judge's conduct that might be viewed as burdensome by other*
22 *members of the community and should do so freely and willingly.*

23 *The prohibition against behaving with impropriety* or the appearance of*
24 *impropriety* applies to both the professional and personal conduct of a judge.*

25 *The test for the appearance of impropriety* is whether a person aware of the facts*
26 *might reasonably entertain a doubt that the judge would be able to act with integrity,**
27 *impartiality,* and competence.*

28 *As to membership in organizations that practice invidious discrimination, see*
29 *Commentary under Canon 2C.*

30 *As to judges making statements that commit the judge with respect to cases,*
31 *controversies, or issues that are likely to come before the courts, see Canon 3B(9) and its*
32 *commentary concerning comments about a pending proceeding,* Canon 3E(3)(a)*
33 *concerning the disqualification of a judge who makes statements that commit the judge to*
34 *a particular result, and Canon 5B(1)(a) concerning statements made during an election*
35 *campaign that commit the candidate to a particular result. In addition, Code of Civil*
36 *Procedure section 170.2, subdivision (b), provides that, with certain exceptions, a judge*
37 *is not disqualified on the ground that the judge has, in any capacity, expressed a view on*
38 *a legal or factual issue presented in the proceeding before the judge.*
39

40 B. Use of the Prestige of Judicial Office
41

42 (1) A judge shall not allow family, social, political, or other relationships to influence
43 the judge's judicial conduct or judgment, nor shall a judge convey or permit others to

CANON 3

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY,* COMPETENTLY, AND DILIGENTLY**

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(1)

Canon 3B(1) is based upon the affirmative obligation contained in Code of Civil Procedure section 170.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3B(2)

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of this code.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all staff and court personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

1 (6) A judge shall require* lawyers in proceedings before the judge to refrain from
2 manifesting, by words or conduct, bias or prejudice based upon race, sex, gender,
3 religion, national origin, ethnicity, disability, age, sexual orientation, marital status,
4 socioeconomic status, or political affiliation against parties, witnesses, counsel, or
5 others. This canon does not preclude legitimate advocacy when race, sex, gender,
6 religion, national origin, ethnicity, disability, age, sexual orientation, marital status,
7 socioeconomic status, political affiliation, or other similar factors are issues in the
8 proceeding.
9

10 (7) A judge shall accord to every person who has a legal interest in a proceeding, or
11 that person's lawyer, the full right to be heard according to law.* Unless otherwise
12 authorized by law,* a judge shall not independently investigate facts in a proceeding
13 and shall consider only the evidence presented or facts that may be properly judicially
14 noticed. This prohibition extends to information available in all media, including
15 electronic. A judge shall not initiate, permit, or consider ex parte communications,
16 that is, any communications to or from the judge outside the presence of the parties
17 concerning a pending* or impending* proceeding, and shall make reasonable efforts
18 to avoid such communications, except as follows:
19

20 (a) Except as stated below, a judge may consult with other judges. A judge shall
21 not engage in discussions about a case with a judge who has previously been
22 disqualified from hearing that matter; likewise, a judge who knows* he or she is or
23 would be disqualified from hearing a case shall not discuss that matter with the
24 judge assigned to the case. A judge also shall not engage in discussions with a
25 judge who may participate in appellate review of the matter, nor shall a judge who
26 may participate in appellate review of a matter engage in discussions with the
27 judge presiding over the case.
28

29 A judge may consult with court personnel or others authorized by law,* as long as
30 the communication relates to that person's duty to aid the judge in carrying out the
31 judge's adjudicative responsibilities.
32

33 In any discussion with judges or court personnel, a judge shall make reasonable
34 efforts to avoid receiving factual information that is not part of the record or an
35 evaluation of that factual information. In such consultations, the judge shall not
36 abrogate the responsibility personally to decide the matter.

37 For purposes of Canon 3B(7)(a), "court personnel" includes bailiffs, court
38 reporters, court externs, research attorneys, courtroom clerks, and other employees
39 of the court, but does not include the lawyers in a proceeding before a judge,
40 persons who are appointed by the court to serve in some capacity in a proceeding,
41 or employees of other governmental entities, such as lawyers, social workers, or
42 representatives of the probation department.

1 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)(a)*

2 *Regarding communications between a judge presiding over a matter and a judge*
3 *of a court with appellate jurisdiction over that matter, see Government Code section*
4 *68070.5.*

5 *Though a judge may have ex parte discussions with appropriate court personnel, a*
6 *judge may do so only on matters that are within the proper performance of that person's*
7 *duties. For example, a bailiff may inform the judge of a threat to the judge or to the*
8 *safety and security of the courtroom, but may not tell the judge ex parte that a defendant*
9 *was overheard making an incriminating statement during a court recess. A clerk may*
10 *point out to the judge a technical defect in a proposed sentence, but may not suggest to*
11 *the judge that a defendant deserves a certain sentence.*

12 *A sentencing judge may not consult ex parte with a representative of the probation*
13 *department about a matter pending before the sentencing judge.*

14 *This canon prohibits a judge from discussing a case with another judge who has*
15 *already been disqualified. A judge also must be careful not to talk to a judge whom the*
16 *judge knows* would be disqualified from hearing the matter.*

17
18 (b) *A judge may initiate, permit, or consider ex parte communications, where*
19 *circumstances require, for scheduling, administrative purposes, or emergencies*
20 *that do not deal with substantive matters provided:*

21
22 (i) *the judge reasonably believes that no party will gain a procedural or tactical*
23 *advantage as a result of the ex parte communication, and*

24
25 (ii) *the judge makes provision promptly to notify all other parties of the*
26 *substance of the ex parte communication and allows an opportunity to respond.*

27
28 (c) *A judge may initiate, permit, or consider any ex parte communication when*
29 *expressly authorized by law* to do so or when authorized to do so by stipulation*
30 *of the parties.*

31
32 (d) *If a judge receives an unauthorized ex parte communication, the judge shall*
33 *make provision promptly to notify the parties of the substance of the*
34 *communication and provide the parties with an opportunity to respond.*

35
36 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)*

37 *An exception allowing a judge, under certain circumstances, to obtain the advice*
38 *of a disinterested expert on the law* has been eliminated from Canon 3B(7) because*
39 *consulting with legal experts outside the presence of the parties is inconsistent with the*
40 *core tenets of the adversarial system. Therefore, a judge shall not consult with legal*
41 *experts outside the presence of the parties. Evidence Code section 730 provides for the*
42 *appointment of an expert if a judge determines that expert testimony is necessary. A*
43 *court may also invite the filing of amicus curiae briefs.*

1 An exception allowing a judge to confer with the parties separately in an effort to
2 settle the matter before the judge has been moved from this canon to Canon 3B(12).

3 This canon does not prohibit court personnel from communicating scheduling
4 information or carrying out similar administrative functions.

5 A judge is statutorily authorized to investigate and consult witnesses informally in
6 small claims cases. Code of Civil Procedure section 116.520, subdivision (c).

7
8 (8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A
9 judge shall manage the courtroom in a manner that provides all litigants the
10 opportunity to have their matters fairly adjudicated in accordance with the law.*

11
12 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(8)*

13 The obligation of a judge to dispose of matters promptly and efficiently must not
14 take precedence over the judge's obligation to dispose of the matters fairly and with
15 patience. For example, when a litigant is self-represented, a judge has the discretion to
16 take reasonable steps, appropriate under the circumstances and consistent with the law*
17 and the canons, to enable the litigant to be heard. A judge should monitor and supervise
18 cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary
19 costs.

20 Prompt disposition of the court's business requires a judge to devote adequate
21 time to judicial duties, to be punctual in attending court and expeditious in determining
22 matters under submission, and to require* that court officials, litigants, and their lawyers
23 cooperate with the judge to those ends.

24
25 (9) A judge shall not make any public comment about a pending* or impending*
26 proceeding in any court, and shall not make any nonpublic comment that might
27 substantially interfere with a fair trial or hearing. The judge shall require* similar
28 abstention on the part of staff and court personnel subject to the judge's direction and
29 control. This canon does not prohibit judges from making statements in the course of
30 their official duties or from explaining the procedures of the court, and does not apply
31 to proceedings in which the judge is a litigant in a personal capacity. Other than cases
32 in which the judge has personally participated, this canon does not prohibit judges
33 from discussing, in legal education programs and materials, cases and issues pending
34 in appellate courts. This educational exemption does not apply to cases over which
35 the judge has presided or to comments or discussions that might interfere with a fair
36 hearing of the case.

37
38 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)*

39 The requirement that judges abstain from public comment regarding a pending*
40 or impending* proceeding continues during any appellate process and until final
41 disposition. A judge shall make reasonable efforts to ascertain whether a case is
42 pending* or impending* before commenting on it. This canon does not prohibit a judge
43 from commenting on proceedings in which the judge is a litigant in a personal capacity,

1 *ADVISORY COMMITTEE COMMENTARY: Canon 3B(12)*

2 *While the judge plays an important role in overseeing efforts to resolve disputes,*
3 *including conducting settlement discussions, a judge should be careful that efforts to*
4 *resolve disputes do not undermine any party's right to be heard according to law.**

5 *The judge should keep in mind the effect that the judge's participation in dispute*
6 *resolution efforts may have on the judge's impartiality* or the appearance of*
7 *impartiality* if the case remains with the judge for trial after resolution efforts are*
8 *unsuccessful. Accordingly, a judge may wish to consider whether: (1) the parties or their*
9 *counsel have requested or objected to the participation by the trial judge in such*
10 *discussions; (2) the parties and their counsel are relatively sophisticated in legal matters*
11 *or the particular legal issues involved in the case; (3) a party is unrepresented; (4) the*
12 *case will be tried by the judge or a jury; (5) the parties will participate with their counsel*
13 *in settlement discussions and, if so, the effect of personal contact between the judge and*
14 *parties; and (6) it is appropriate during the settlement conference for the judge to express*
15 *an opinion on the merits or worth of the case or express an opinion on the legal issues*
16 *that the judge may later have to rule upon.*

17 *If a judge assigned to preside over a trial believes participation in resolution*
18 *efforts could influence the judge's decisionmaking during trial, the judge may decline to*
19 *engage in such efforts.*

20 *Where dispute resolution efforts of any type are unsuccessful, the judge should*
21 *consider whether, due to events that occurred during the resolution efforts, the judge may*
22 *be disqualified under the law* from presiding over the trial. See, e.g., Code of Civil*
23 *Procedure section 170.1, subdivision (a)(6)(A).*

24
25 **C. Administrative Responsibilities**

26
27 (1) A judge shall diligently discharge the judge's administrative responsibilities
28 impartially,* on the basis of merit, without bias or prejudice, free of conflict of
29 interest, and in a manner that promotes public confidence in the integrity* of the
30 judiciary. A judge shall not, in the performance of administrative duties, engage in
31 speech, gestures, or other conduct that would reasonably be perceived as (a) bias or
32 prejudice, including but not limited to bias or prejudice based upon race, sex, gender,
33 religion, national origin, ethnicity, disability, age, sexual orientation, marital status,
34 socioeconomic status, or political affiliation, or (b) sexual harassment.

35
36 *ADVISORY COMMITTEE COMMENTARY: Canon 3C(1)*

37 *In considering what constitutes a conflict of interest under this canon, a judge*
38 *should be informed by Code of Civil Procedure section 170.1, subdivision (a)(6).*
39

40 (2) A judge shall maintain professional competence in judicial administration, and
41 shall cooperate with other judges and court officials in the administration of court
42 business.
43

1 (3) A judge shall require* staff and court personnel under the judge's direction and
2 control to observe appropriate standards of conduct and to refrain from manifesting
3 bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity,
4 disability, age, sexual orientation, marital status, socioeconomic status, or political
5 affiliation in the performance of their official duties.

6
7 (4) A judge with supervisory authority for the judicial performance of other judges
8 shall take reasonable measures to ensure the prompt disposition of matters before
9 them and the proper performance of their other judicial responsibilities.

10
11 (5) A judge shall not make unnecessary court appointments. A judge shall exercise
12 the power of appointment impartially,* on the basis of merit, without bias or
13 prejudice, free of conflict of interest, and in a manner that promotes public confidence
14 in the integrity* of the judiciary. A judge shall avoid nepotism and favoritism. A
15 judge shall not approve compensation of appointees above the reasonable value of
16 services rendered.

17
18 **ADVISORY COMMITTEE COMMENTARY: Canon 3C(5)**

19 *Appointees of a judge include assigned counsel and officials such as referees,*
20 *commissioners, special masters, receivers, and guardians. Consent by the parties to an*
21 *appointment or an award of compensation does not relieve the judge of the obligation*
22 *prescribed by Canon 3C(5).*

23
24 **D. Disciplinary Responsibilities**

25
26 (1) Whenever a judge has reliable information that another judge has violated any
27 provision of the Code of Judicial Ethics, that judge shall take appropriate corrective
28 action, which may include reporting the violation to the appropriate authority. (See
29 Commentary to Canon 3D(2).)

30
31 (2) Whenever a judge has personal knowledge,* or concludes in a judicial decision,
32 that a lawyer has committed misconduct or has violated any provision of the Rules of
33 Professional Conduct, the judge shall take appropriate corrective action, which may
34 include reporting the violation to the appropriate authority.

35
36 **ADVISORY COMMITTEE COMMENTARY: Canons 3D(1) and 3D(2)**

37 *Appropriate corrective action could include direct communication with the judge*
38 *or lawyer who has committed the violation, other direct action, such as a confidential*
39 *referral to a judicial or lawyer assistance program, or a report of the violation to the*
40 *presiding judge, appropriate authority, or other agency or body. Judges should note that*
41 *in addition to the action required by Canon 3D(2), California law imposes additional*
42 *mandatory reporting requirements to the State Bar on judges regarding lawyer*

misconduct. See Business and Professions Code sections 6086.7 and 6086.8, subdivision (a), and California Rules of Court, rules 10.609 and 10.1017.

“Appropriate authority” means the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer,* he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer* sits and the Commission on Judicial Performance.

(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(3) and 3D(4)

See Government Code section 68725, which requires judges to cooperate with and give reasonable assistance and information to the Commission on Judicial Performance, and rule 104 of the Rules of the Commission on Judicial Performance, which requires a respondent judge to cooperate with the commission in all proceedings in accordance with section 68725.

(5) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

E. Disqualification and Disclosure

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3E(1)

The term “proceeding” as used in this canon encompasses prefiling judicial determinations. Thus, if a judge has a disqualifying interest in a matter, the judge is

1 *disqualified from taking any action in the matter, even if it predates the actual filing of a*
2 *case, such as making a probable cause determination, signing a search or arrest*
3 *warrant, setting bail, or ordering an own recognizance release. Interpreting*
4 *“proceeding” to include prefiling judicial determinations effectuates the intent of the*
5 *canon because it assures the parties and the public of the integrity* and fairness of the*
6 *judicial process.*

7
8 (2) In all trial court proceedings, a judge shall disclose on the record as follows:

9
10 (a) Information relevant to disqualification

11
12 A judge shall disclose information that is reasonably relevant to the question of
13 disqualification under Code of Civil Procedure section 170.1, even if the judge
14 believes there is no actual basis for disqualification.

15
16 (b) Campaign contributions in trial court elections

17
18 (i) Information required to be disclosed

19
20 In any matter before a judge who is or was a candidate for judicial office* in a
21 trial court election, the judge shall disclose any contribution or loan of \$100 or
22 more from a party, individual lawyer, or law office or firm in that matter as
23 required by this canon, even if the amount of the contribution or loan would
24 not require disqualification. Such disclosure shall consist of the name of the
25 contributor or lender, the amount of each contribution or loan, the cumulative
26 amount of the contributor’s contributions or lender’s loans, and the date of
27 each contribution or loan. The judge shall make reasonable efforts to obtain
28 current information regarding contributions or loans received by his or her
29 campaign and shall disclose the required information on the record.

30
31 (ii) Manner of disclosure

32
33 The judge shall ensure that the required information is conveyed on the record
34 to the parties and lawyers appearing in the matter before the judge. The judge
35 has discretion to select the manner of disclosure, but the manner used shall
36 avoid the appearance that the judge is soliciting campaign contributions.

37
38 (iii) Timing of disclosure

39
40 Disclosure shall be made at the earliest reasonable opportunity after receiving
41 each contribution or loan. The duty commences no later than one week after



State of California
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660
(415) 557-1200
Fax (415) 557-1266
Website: <http://cjp.ca.gov>
March 30, 2017

Barbara A. Kauffman, Esq.
204 West Lake Street, Suite D
Mount Shasta, CA 96067

Dear Ms. Kauffman:

I am writing to inform you about the commission's action with respect to your complaint dated June 9, 2014, and your further correspondence.

At its March meeting, after considering all of the information before it about this matter, the commission found no basis for action against the judge or determined not to proceed further in this matter. (See Rules of the Commission on Judicial Performance, rule 102(e)(1).)

We do appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Sonya Smith
Staff Counsel

SS:ap/L033017Kauffman

Subject: letter

From: Barbara Kauffman (bkfamlaw@sbcglobal.net)

To: sonya.smith@cjp.ca.gov;

Bcc: bkfamlaw@sbcglobal.net;

Date: Thursday, April 6, 2017 7:16 AM

Dear Ms. Smith,

I received your letter informing me that with respect to my June 9, 2014 complaint against Marin Judge Beverly Wood, the CJP has "found no basis for action against the judge **OR** determined not to proceed further in this matter".

Those are two very different things, and I believe that pursuant to Rule 102(e), I am entitled to know whether a) the CJP actually made a finding that there is no basis for action against Judge Wood (something which I find is virtually impossible, but maybe I am just naive about judges really having to follow the law and Code of Judicial Ethics in the State of California); or b) whether, for other reasons, the CJP determined not to proceed.

Also, as a general matter, I would like to know for what reasons the CJP can simply choose "not to proceed further" regarding a meritorious complaint against a judge.

Please let me hear from you this week.

Thank you,

Barbara A. Kauffman
Law Offices of Barbara A. Kauffman
204 West Lake Street, Suite D
Mount Shasta, CA 96067
T: (530) 926-3700
F: (888) 283-1951
bkfamlaw@sbcglobal.net

Subject: Re: letter

From: Barbara Kauffman (bkfamlaw@sbcglobal.net)

To: sonya.smith@cjp.ca.gov;

Cc: bkfamlaw@sbcglobal.net;

Date: Tuesday, April 11, 2017 1:50 PM

Dear Ms. Smith,

I am waiting for an answer to my questions posed below, and in my followup telephone message yesterday.

The questions are not hard to answer, and are obviously readily available to you. Please answer them.

Or tell me why you won't, with legal authority for withholding the very simple information I have requested, and with an explanation regarding why and how withholding the information I have requested a) is logically consistent with CJP rule 102(e), and b) furthers the CJP's explicit mandate to "protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system."

Regards, Barbara Kauffman

From: Barbara Kauffman <bkfamlaw@sbcglobal.net>
To: "Sonya@CJP Smith" <sonya.smith@cjp.ca.gov>
Sent: Thursday, April 6, 2017 7:16 AM
Subject: letter

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Subject: Re: letter

From: Barbara Kauffman (bkfamlaw@sbcglobal.net)

To: sonya.smith@cjp.ca.gov;

Cc: bkfamlaw@sbcglobal.net;

Date: Tuesday, April 11, 2017 2:22 PM

Dear Ms. Smith,

One more thing. May I respectfully suggest (in part for your own protection) that you immediately inform Ms. Henley and ALL members of the Commission about my follow-up inquiries regarding this egregious case? That way you and I and everyone else are all assured that no one on the Commission can say they did not know, or could not have known, about what is happening in this egregious case, on an ongoing basis, right now.

But whether you do or do not follow my suggestion, I am requesting an answer to my inquiries within 48 hours.

Regards, Barbara Kauffman

From: Barbara Kauffman <bkfamlaw@sbcglobal.net>
To: "Sonya@CJP Smith" <sonya.smith@cjp.ca.gov>
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Commission on Judicial Performance
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April 13, 2017

Barbara A. Kauffman, Esq.
204 West Lake Street, Suite D
Mount Shasta, CA 96067

Dear Ms. Kauffman:

This responds to your emails requesting further information and explanation about the closing of your complaint. By letter dated March 30, 2017, we have provided the extent of information required under commission rule 102(e).

We are sorry that we cannot provide the information you seek.

Very truly yours,

A handwritten signature in blue ink that reads "Victoria B. Henley".

Victoria B. Henley
Director-Chief Counsel

VBH:al/L04-13-17 Kauffman



CENTER *for* JUDICIAL EXCELLENCE

To: Asm. Campos & Assembly Budget Subcommittee #5 on Public Safety members
Fr: Kathleen Russell, Executive Director & Barbara Kauffman, Attorney at Law
Dt: March 15, 2016
Re: **Upcoming Hearing on Commission on Judicial Performance**
Budget Request Name 0280-001-BCP-BR-2016-GB for \$257,000 Gen. Fund

California's population of almost 40 million people has virtually no protection when faced with a bad judge who violates the law and/or the Code of Judicial Ethics. It is no accident that **The Center for Public Integrity**—a highly regarded nonpartisan, nonprofit organization and winner of the 2014 Pulitzer prize for Investigative Reporting—gave California an "F" grade in the category of Judicial Accountability in its 2015 State Integrity Investigation. See <http://www.publicintegrity.org/accountability/state-integrity-investigation/>.

Self-represented litigants are rapidly taking over California's court system. Judicial Council fact sheets regarding online self-help centers and the JusticeCorp program (from January 2010) reported that self-represented litigants comprise:

- 80% of parties in family law disputes
- 90% of those in landlord/tenant cases
- Most of the 6 million annual traffic filings
- All of the nearly 400,000 annual small claims filings
- 97% of proceedings processed through local child support agencies.

Commission on Judicial Performance (CJP)

The California CJP was established in 1960 by a legislative constitutional amendment approved by the voters, and it was supposed to protect the public from judicial incompetency and misconduct. But according to a CJP Summary of Discipline Statistics for 1990-2009, only a small fraction of complaints are investigated, and an even smaller fraction of complaints result in discipline. ***Most shocking is that a complaint by a litigant, or a friend or family member of litigant, is least likely to result in a judicial sanction*** (only 1.45 percent of such complaints result in sanctions, according to Table 11 of the report, attached hereto), yet these complaints constitute the vast majority of complaints filed. This remedy is no remedy at all for litigants, since **they have a 98.6% chance of their complaint being tossed out.**

Proposed Judicial Accountability Measures

Before the Legislature grants any request to fund two more staff positions (an Investigating Attorney and a Secretary) at the California Commission on Judicial Performance, the following accountability measures should be implemented:

1. **More CJP Transparency.** The CJP's processes should be made more transparent. In some states, complaints not acted upon are published, with

identifying information redacted, and Commission votes on the complaint are also published, so that the public can see what behavior has passed scrutiny. Look to Arizona for a great example of this transparency.

2. **Pilot Program- Judicial Performance Evaluations (JPEs).** In addition to reporting to the CJP, court users should be able to complete Judicial Performance Evaluations (which are ABA-approved and exist in 17 states & D.C.), so that a true measure of judicial performance is taken. A pilot program should be funded to establish a JPE system in Marin, Sacramento, and San Diego counties. Surveys would be distributed to people who have had contact with judges during an evaluation period, including attorneys, jurors, litigants, witnesses, self-represented litigants, court staff and other judges. The commission would hold public hearings on judges in election years and accept written comments from the public at any time. Judges could also complete a self-evaluation form. The commission would vote in a public meeting on whether each judge "Meets" or "Does Not Meet" judicial performance standards. This determination, along with the evaluation results, would then be included in the Secretary of State's Voter Information Pamphlet. See <http://www.azjudges.info/>.
3. **A CJP Performance Audit** should be authorized by the Joint Legislative Audit Committee to more carefully investigate the judicial complaints being made, the ways they are handled, and the reasons that court users are not being protected from inappropriate judicial behavior they report. Why are sanction rates in California so low compared to other states, especially given that California has more staff and a bigger budget to handle its caseload? Why are investigations taking so much longer than they used to?
4. **170.1 et. seq. Disqualification Requests.** Each and every 170.1 et. seq. disqualification request, and the results, should be recorded by the trial courts, and at the end of the year, that information should be gathered, summarized and forwarded to the legislature. The legislature would learn very quickly about problematic courts and judges and the miserable success rate of this statutory remedy. 2) Judges should be prohibited from denying challenges made against them, or alternatively, prohibited from doing so in all but the most extreme cases. In any case where a judge denies his or her own challenge, the complaint and the judge's response to it should be forwarded to the CJP, which should keep in its files the complaint, and the judicial response, for future reference.
5. **Unopposed Judges Should Appear on Ballots.** California has the lowest rate of contested judicial elections in the country, at 8%. All judges' names should appear on the ballot at the end of their terms, regardless of whether they have an opponent, giving the public a chance to vote "yes" or "no" regarding whether to retain unopposed incumbent judges.
6. **Judicial Council Compliance with the Law.** The Judicial Council should be denied funding unless it complies with the ALL legislative directives set forth in Govt. Code Section 77001.5. It already has the tools to do so.

Table 11. below, shows the number of complaints from sources with 50 or more records from 1990 to 2009 as well as the percentage of those complaints that resulted in discipline. In some cases, discipline may have arisen from complaints from multiple sources.

Table 11: Discipline Rate by Complaint Source, 1990-2009

Source of Complaint	Complaints	Sanctions	Sanction Rate
District Attorney	87	44	50.57
News report	124	54	43.55
Commission investigation of another judge	93	39	41.94
Public Defender	92	34	36.96
Anonymous letter	154	54	35.06
Judicial officer	319	100	31.35
Other types of source/witness	108	23	21.30
Juror	52	11	21.15
Court employee	71	15	21.13
Attorney - private	1131	182	16.09
Witness (in proceeding)	63	6	9.52
Victim/family/friend (criminal case)	108	9	8.33
Citizen	540	44	8.15
Unknown	191	7	3.66
Litigant/family/friend	19814	288	1.45

Source: A-9, Appendix

Notably, Table 11 also indicates that complaints filed by litigants or their family and friends comprise the overwhelming majority of total complaints, but result in discipline only 1.45 percent of the time.



A Primer on California's Judicial Accountability Crisis

Average court users (including millions of self-represented litigants) across our state are essentially unable to avail themselves of any of the current remedies that exist to report and/or remove a bad or corrupt judge. There is no effective judicial accountability here.

1. **Commission on Judicial Performance.** Myriad problems exist with the current California Commission on Judicial Performance, or CJP, including a severe lack of transparency, a refusal to act on complaints by court users, and inordinate delays for complaint resolution, all of which create ongoing hardships for the public the CJP is supposed to be protecting. See the comparisons to Texas, New York and Arizona. The CJP is no remedy at all.
2. **Impeachment.** Pursuant to Article IV, Section 18 of the California Constitution, a judge may be impeached by the Assembly and convicted by a two-thirds vote in the Senate after a hearing on the merits. It appears that only two judges have been impeached in California history, with the last impeachment in 1929. Impeachment is no remedy at all.
3. **Recall Elections.** Article II, Section 19 of the California Constitution provides for the recall of state and local officers. It is a long, complicated and expensive process described in Article 2, section 14. What litigant has the knowledge or financial/political ability to navigate and undertake this almost impossible process? Recall elections are no remedy at all.
4. **Recusal Statutes.** In theory, litigants can disqualify a bad trial judge for cause pursuant to Code of Civil Procedure Section 170.1 et. seq. However, CCP section 170.4 (b) allows a trial judge to deny and strike a disqualification challenge made against him or her if "it is untimely filed or if on its face it discloses no legal grounds for disqualification." If a trial judge denies his or her own disqualification, the **only** remedy available to the litigant is to file a writ with the court of appeal within 10 days (CCP 170.3 (d)). 90% or more of appellate writs are summarily denied without explanation or discussion. Judges can and do routinely deny their own challenges, knowing that litigants have no realistic chance at all of doing anything about it. How many litigants could possibly figure out how to file an appellate writ within 10 days, and how many would, even if they could, knowing the minute chance of success? Failure leaves them stuck in the court of an angry judge. Recusal statutes are no remedy at all.

5. **Retention Elections.** In theory, voters have a right to vote out a bad trial judge at least every six years. In practice, by statute (Election Code section 8203), an unopposed incumbent is "re-elected" without his or her name ever appearing on the ballot, and without voters ever having a chance to vote to remove a bad judge. In practice, **California has the lowest rate of contested judicial elections in the country, at 8%.*** The judicial branch frowns upon local lawyers who run against incumbent judges instead of waiting for a vacancy via retirement or other non-election removal of a judge, and voters are given little to no information about judges who do appear on the ballot. Retention elections are no remedy at all. *See *Stanford Law Review* article, Judicial Conduct Commissions, April 2012, Vol. 64, pages 1061-1062.
6. **Government Code Section 77001.5.** This sections states as follows:
77001.5. On or before November 1, 2007, the Judicial Council shall adopt, and shall report to the Legislature annually thereafter upon, judicial administration standards and measures that promote the fair and efficient administration of justice, including, but not limited to, the following subjects:
- (1) Providing equal access to courts and respectful treatment for all court participants.*
 - (2) Case processing, including the efficient use of judicial resources.*
 - (3) General court administration.*

The Judicial Council has simply ignored this legislative mandate except with respect to "efficiency," which it reports on with enthusiasm in support of its endless quest for more money and judges. Despite its formation of an Advisory Committee on Providing Access & Fairness, it does not appear that the Judicial Council has adopted meaningful administration standards or measures regarding fairness, equal access to courts, respectful treatment for all court participants; or important general court administration information such as reliability and integrity of court files, court employee satisfaction, and the like.

This is so although the Judicial Council's 2013 and 2014 "*Judicial Administration Standards and Measures That Promote the Fair and Efficient Administration of Justice Report to the Legislature Under Government Code Section 77001.5*" reveal that the National Center for State Court's CourTools program that is available to the Judicial Council provides, among other things, an "Access & Fairness Survey" to measure court performance, as well as information-gathering tools to measure "Reliability and Integrity of Case Files" and "Court Employee Satisfaction." None of these tools appear to be being used, so this too is no remedy at all for those seeking judicial accountability in our state.