

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE

DECISION AND ORDER IMPOSING
SEVERE PUBLIC CENSURE
PURSUANT TO STIPULATION

(Commission Rule 116.5)

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court. Judge Shore and his counsel, Heather L. Rosing and David Majchrzak of Klinedinst PC, have entered into a stipulation with Gregory Dresser, Director-Chief Counsel of the Commission on Judicial Performance, pursuant to commission rule 116.5, to resolve the pending preliminary investigation involving Judge Shore by imposition of a severe public censure. The Stipulation for Discipline by Consent (Stipulation) was approved by the commission on December 6, 2023, pursuant to the following terms and conditions and stipulated facts and legal conclusions. A copy of the Stipulation is attached.

TERMS AND CONDITIONS OF AGREEMENT

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

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

STIPULATED FACTS AND LEGAL CONCLUSIONS

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court since 1998, and a judge of the San Diego County Municipal Court from 1990 to 1998. His current term began in January 2021.

1. Dereliction of Duty

In November 2022, San Diego County Superior Court Presiding Judge Michael T. Smyth heard from court staff that Judge Shore had been difficult to engage, due to his frequent absences, and that Judge Shore did not complete Judicial Absence Requests (JARs) in advance of any planned days off. Court staff also informed Judge Smyth that Judge Shore's Court Activity Calendar report showed his status as "Off" nearly every Friday, though Judge Shore had not submitted any JARs for those days.

The San Diego County Superior Court requires each judge to obtain approval from their supervising judge, as well as the presiding judge, before any planned absences.

Because Judge Smyth had not authorized Judge Shore to take leave on Fridays or work from home, he undertook an investigation. Judge Smyth reviewed Judge Shore's proximity card use records, courthouse garage access records, and chambers telephone activity records from 2021 and 2022, and concluded that Judge Shore had been absent from the courthouse at least 155 days, including nearly every Friday, without approval. Judge Smyth further determined that, even if Judge Shore had requested authorization to use vacation time for those days, his absences exceeded the vacation available to him by 87 days.

On December 1, 2022, Judge Smyth and Assistant Presiding Judge Maureen Hallahan met with Judge Shore to discuss Judge Shore's frequent absences from the bench. Judge Shore initially stated that he did not believe that he had taken time off without a leave slip (e.g., a formal request); that he barely took any vacation; and that he did not regularly take Fridays off. Later, Judge Shore agreed that he had not been working on most Fridays. He later explained that he had been traveling to Los Angeles on most of those Fridays to assist with family needs (including health issues), and he could not travel after sunset on Friday, through Saturday, in accordance with Orthodox Jewish religious mandates for the Sabbath. Judge Shore subsequently told Judges Smyth and Hallahan that he had rationalized taking Fridays off regularly because he took work home with him at night, completed his work within the other four workdays, and because he saw other judges leaving early. Judge Shore acknowledged that he was aware judges are not entitled to compensatory time for hours worked outside of normal court hours.

Judge Shore subsequently emailed Judge Smyth on December 1, 2022, copying Judge Hallahan, admitting and explaining his absence on 26 days in 2021 and 33 days in 2022. Judge Shore then sent a second email to Judge Smyth, stating, in part, "The Fridays I didn't come in were Fridays I went to L.A. But the Fridays I didn't go to L.A., I would come to work. Since I didn't need staff on Fridays, there would be no one to verify my attendance. I would work in chambers, and the courtroom would be dark. The problem is, I have no records of when I was in San Diego on a Friday. But it would be inaccurate to say I took every Friday off. If I wasn't going to L.A., there would be nothing else to occupy my time and no reason for me not to come to work." Judge Shore continued, writing that he just wanted to let Judge Smyth know, "I definitely did not take every Friday off."

Over a two-year period in 2021 and 2022, Judge Shore was absent, without approval or authorization, on at least 155 court days. He was not present

in the courthouse on a single Friday between May 28, 2021, and November 18, 2022. Further, Judge Shore's absences exceeded his available vacation time by 87 days. Judge Shore's numerous unauthorized and undocumented absences from the courthouse constituted a dereliction of duty, a persistent failure to perform his judicial duties, and a failure to follow the directives of the presiding judge in matters of court management and administration. Judge Shore also failed to comply with Rules of Court requiring that he request the approval of the presiding judge for any intended absence of one-half day or more within a reasonable time before the intended absence, and limiting vacation time for a judge of his tenure to 30 days annually, absent documentation of extraordinary circumstances and written authorization of the presiding judge. (Cal. Rules of Court, rule 10.608(3), 10.603(c)(2).)

Judge Shore's conduct violated the Code of Judicial Ethics, canons 3 (a judge shall perform the duties of judicial office impartially, competently, and diligently), 3A (a judge shall accord precedence to all of the judicial duties prescribed by law over all other activities), 3B(8) (a judge shall dispose of all judicial matters fairly, promptly, and efficiently, and manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with law), 3C(1) (a judge shall diligently discharge his administrative responsibilities in a manner that promotes public confidence in the integrity of the judiciary), 4A (a judge shall conduct all of his extrajudicial activities so that they do not demean the judicial office or interfere with the proper performance of judicial duties), 2A (a judge shall respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), and 1 (a judge shall uphold the integrity of the judiciary).

Judge Shore's conduct constituted, at a minimum, persistent failure to perform judicial duties and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. (Cal. Const., art. VI, section 18, subd. (d).)

2. Additional Factors Relevant to Discipline.

Judge Shore has no prior history of commission discipline, and several of Judge Shore's colleagues submitted letters attesting to his work ethic, diligence, and legal acumen.

In addition to consenting to discipline on the terms set forth, Judge Shore expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

DISCIPLINE

Prejudicial misconduct is "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., art. VI, § 18, subd. (d).) Judge Shore concedes that his routine absences from the courthouse, without authorization or approval, constitutes prejudicial misconduct.

The commission has previously stated, "Public confidence in the integrity of the judiciary is seriously undermined when a judge routinely leaves the courthouse early without approval. Taxpayers of the State of California have a right to expect that judges are available to provide the services for which they are paid." (*Censure of Judge Christopher J. Sheldon* (2009) p. 5.) While Judge Shore rationalized his decision to not request or obtain approval for his Friday absences because he took work home with him at night and completed his work within the other four workdays, judges are not entitled to compensatory time. As stated by Judge Rothman, "The public does not owe judges extra time off, or anything other than what the law allows, in gratitude for the hard work judges must expend." (Rothman et al., *Cal. Judicial Conduct Handbook* (4th ed. 2017) § 6:11, p. 350.) By regularly absenting himself from the courthouse on Fridays over a two-year period, Judge Shore's conduct "demonstrated a flagrant disregard for his obligations to his fellow judges, the public, and the reputation of the judiciary."

(*Censure of Judge Christopher J. Sheldon, supra*, at p. 4.) Judge Shore’s conduct seriously undermines public confidence in the integrity of the judiciary and casts disrepute on the judicial office.

In mitigation, Judge Shore has served 33 years as a judicial officer without discipline, expressed contrition, and modified his conduct. Further, Judge Shore cooperated fully and honestly with the commission and has stipulated to the imposition of this severe public censure as the appropriate sanction that is commensurate with his admitted serious wrongdoing.

Based on the foregoing analysis and appraisal of Judge Shore’s misconduct, the commission concludes that the purpose of judicial discipline, as enunciated in *Broadman*—protection of the public, enforcement of rigorous standards of judicial conduct, and maintenance of public confidence in the integrity and independence of the judicial system—can be accomplished through a severe public censure. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112 (*Broadman*), citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.)

Accordingly, the commission hereby imposes this severe public censure of Judge Shore.

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Ms. Kay Cooperman Jue; Mani Sheik, Esq.; Mr. Richard Simpson; and Ms. Beatriz E. Tapia voted to accept the Stipulation and to issue this severe public censure. Commission members Mr. Eduardo De La Riva; Rickey Ivie, Esq.; and Ms. Sarah Kruer Jager did not participate.

Date: December 13, 2023

On behalf of the
Commission on Judicial Performance,



Dr. Michael A. Moodian
Chairperson

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

**IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE**

**STIPULATION FOR DISCIPLINE
BY CONSENT (Rule 116.5)**

Pursuant to Rules of the Commission on Judicial Performance, rule 116.5, Judge Howard H. Shore of the San Diego County Superior Court, represented by his counsel, Heather L. Rosing and David Majchrzak of Klinedinst PC, and commission counsel (the “parties”) submit this proposed disposition of the matters set forth in the commission’s preliminary investigation letter, dated April 14, 2023. The parties request that the commission resolve this matter by imposition of a severe public censure. The parties believe that the settlement provided by this agreement is in the best interests of the commission and Judge Shore because, among other reasons, in light of the stipulated facts and legal conclusions, a severe public censure adequately protects the public and will avoid the delay and expense of further proceedings.

TERMS AND CONDITIONS OF AGREEMENT

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2. The commission shall issue a severe public censure, based on the agreed Stipulated Facts and Legal Conclusions set forth therein.
3. If the commission accepts this proposed disposition, the commission’s decision and order imposing a severe public censure may articulate the reasons for its decision and include explanatory language that the commission deems appropriate.

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

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

6. Judge Shore agrees that the facts recited herein are true and correct, and that the discipline to which the parties stipulate herein is appropriate in light of those facts.

7. The commission may reject this proposed disposition and resume its preliminary investigation. If the commission does so, nothing in this proposed disposition will be deemed to be admitted or conceded by either party.

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

STIPULATED FACTS AND LEGAL CONCLUSIONS

This disciplinary matter concerns Judge Howard H. Shore, a judge of the San Diego County Superior Court since 1990. His current term began in January 2021.

1. Dereliction of Duty

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activity records from 2021 and 2022, and concluded that Judge Shore had been absent from the courthouse at least 155 days, including nearly every Friday, without approval. Judge Smyth further determined that, even if Judge Shore had requested authorization to use vacation time for those days, his absences exceeded the vacation available to him by 87 days.

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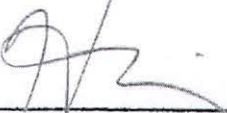
By signing this stipulation, in addition to consenting to discipline on the terms set forth, Judge Shore expressly admits that the foregoing facts are true and that he agrees with the stated legal conclusions.

Dated: November 9, 2023.



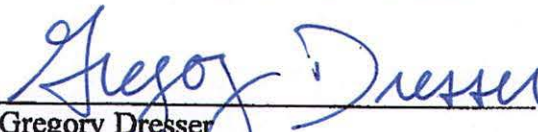
Judge Howard H. Shore

Dated: November 9, 2023.



Heather L. Rosing, Esq.
Attorney for Judge Howard H. Shore

Dated: Nov. 13, 2023.



Gregory Dresser
Director-Chief Counsel

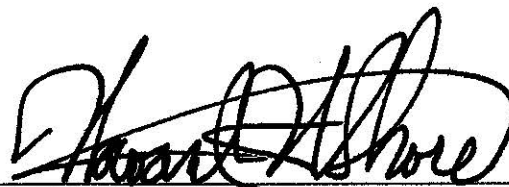
STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE HOWARD H. SHORE

ADDENDUM TO STIPULATION FOR
DISCIPLINE
BY CONSENT (Rule 116.5)


This addendum clarifies that Judge Howard H. Shore was a judge of the San Diego County Municipal Court from 1990 to 1998, and has been a judge of the San Diego County Superior Court since 1998.

Dated: Nov. 14, 2023.



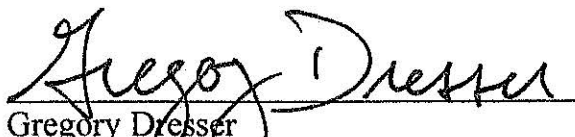
Judge Howard H. Shore

Dated: Nov. 14, 2023.



Heather L. Rosing, Esq.
Attorney for Judge Howard H. Shore

Dated: Nov. 14, 2023.



Gregory Dresser
Director-Chief Counsel