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## Judge Scott subject of probe

### Former clerk's allegations spur investigation

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While the Commission on Judicial Performance pursues formal misconduct charges against Judge Jose Velasquez, it is investigating alleged misconduct by at least one other Monterey County judge.

Lawyers who spoke on the condition of anonymity confirmed in recent weeks that the commission, the state's disciplinary panel for judges, is investigating allegations against Judge Russell Scott.

The allegations were originally contained in sworn statements filed by Crystal Powser, Scott's former court clerk, whose earlier allegations led to the resignation of Traffic Commissioner Richard Rutledge in September.

Attorneys interviewed by the commission's investigators said they were asked about Powser's allegations that Scott had her make telephone calls to coach prosecutors who were in trial in his courtroom.

Through his court clerk Friday, Scott declined comment, saying that a judge is prohibited from making comment on an investigation.

The attorneys said they were asked about an alleged arrangement in the Monterey County Superior Court, whereby attorneys who "papered" Scott had their cases assigned to Judge Robert Moody, and those who challenged Moody without cause were assigned to Scott.

Under section 170.6 of the state Code of Civil Procedure, attorneys are given one chance on each case to challenge a judge without cause. The process is commonly called papering a judge.

Defense lawyers have long complained that Scott and Moody, both former prosecutors, are pro-prosecution. Lawyers have frequently papered the judges, particularly Scott, to have their cases removed to another courtroom.

At some point, according to Powser's declaration, then-Presiding Judge Terrance Duncan approved a system whereby all of Scott's papered cases went to Moody and vice versa.

Duncan did not return a phone call Friday.

Many defense attorneys said the purported system, which they view as retaliatory, has continued under Presiding Judge Stephen Sillman.

Sillman denied the allegation last week.

"One, nothing can be said about an investigation, and, two, it's not a policy," he said.

### Reasons for assignments

Sillman said he reviews each case that comes to him for reassignment on an individual basis. In many cases, he said, it made sense to assign Scott's and Moody's cases to each other because they have the same pretrial schedules.

Investigations by the Commission on Judicial Performance are confidential and can lead to several levels of discipline, some of which are confidential.

Victoria Henley, the commission's chief counsel, said she couldn't confirm or deny an investigation of Scott or any other

judge on Monterey County's bench. Speaking generally, she said there are no state regulations dictating how a case must be reassigned after a judge has been papered.

However, three sources who spoke to The Herald on the condition of anonymity said they were interviewed by commission investigators who questioned whether the practice, coupled with the allegation of coaching the prosecution, indicated a broader pro-prosecution bias on Scott's part.

The state Code of Judicial Ethics requires that a judge be impartial in carrying out his judicial duties.

"The integrity and independence of judges depend... upon their acting without fear or favor," the code reads. "Violations of this code diminish public confidence in the judiciary and thereby do injury to the system of government under law."

The code goes on to say: "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 bias or prejudice."

Powser's allegation that Scott had her call prosecutors with tips during trials is the far more serious allegation.

The code states a judge "shall not initiate, permit or consider ex parte communications" -- discussions outside the courtroom without the presence of both attorneys in the case.

In Powser's declaration, which contained allegations against Judge Michael Fields and Velasquez, the former clerk relates a conversation she had with Fields in which she said Scott had her "contact the DAs and tell them what to ask in jury trials, because Judge Scott told me that it would be wrong for him to do it, but not for me to do it for him, and (he) told me not to tell the (prosecutor) who told me to do it."

Powser said Fields "sat back with a disgusted look on his face, crossed his arms and said he totally thought that was wrong and he would never have, and never has had, his clerk do such a thing."

Assistant District Attorney Berkley Brannon said he did not know if his office had been contacted by the commission, because the inquiries would be confidential. He said the Monterey County Public Defenders Office questioned several deputies in his office.

"I have discussed it with a number of attorneys and in my opinion it's false," he said of Powser's allegation.

Former public defender Michael Lawrence said the allegations are "of grave concern to every defense attorney."

"The allegations that on occasion he would communicate indirectly with prosecutors and provide assistance to them is, of course, extremely disturbing and raises implications about the integrity of the criminal justice," he said, "and these questions should be resolved."

### **Denies existence of system**

Lawrence, who has gone into private practice since retiring in December, said he has no cases before Scott. In the future, he said, he would have to weigh a specific case to determine if he wants to paper Scott, challenge him for cause, or do nothing.

Moody said he regularly is assigned papered cases from many judges on the bench and denied there was a system to reassign Scott's cases to him or vice versa.

"There absolutely never has been a discussion or agreement or plan to use 170.6s to any purpose whatsoever," he said

It is unclear whether the commission is investigating the conduct of Moody, Duncan or Sillman.

Sillman denied rumors that the commission issued private letters of censure to him and Scott.

Several defense attorneys said the alleged practice of reassigning Scott's and Moody's cases to each other was unfair, if not unethical.

"I think it's terrible," said Monterey attorney Larry Biegel. "It shouldn't be done like that, like a punishment. It should be

done on a revolving basis."

Salinas defense attorney Richard Rosen, who is president of the Monterey County Bar Association, objected to the idea.

"I don't want to comment about Judge Moody or Judge Scott," he said. "However, as a general proposition, (California Code of Civil Procedure) 170.6 was enacted to ensure fairness to all sides in both civil and criminal litigation. If the response to any lawyer filing a 170.6 against one particular case is to always assign the case to another judge to create a loop, then that's wrong.

"It has the appearance of impropriety because it looks like the judges are in collusion with one another to defeat the very purpose of 170.6," he said. "If it's going on, it's a bad practice and it ought to be stopped."

Other attorneys, such as acting Public Defender Glenn Nolte and Salinas lawyer Tom Worthington, said it was their impression the system to reassign cases was based on ease of scheduling.

"I frankly thought it was because of a matter of convenience," said Worthington, noting that Scott's and Moody's courtrooms were previously located next to each other and they used similar schedules. "I really didn't have a problem with it and I especially didn't have a problem when I heard it was Judge Sillman's decision."

Worthington said he has not seen pro-prosecution bias on Scott's part.

"I can only say that I have had dozens of cases in Judge Scott's department, and if I had thought anything like that was going on, I certainly would have made it known and I never saw anything like that happening."

Also unknown is the status of a commission investigation of Fields, an inquiry also sparked by the Powser's filed court declaration. Powser is the catalyst for a cavalcade of scandal that has rocked the Monterey County Superior Court bench and beyond in the past year.

In her sworn statement, Powser alleged that she was invited to Ventura to visit Fields, who was presiding over a commission disciplinary hearing against Santa Barbara Judge Diana Hall. In graphic detail, Powser recounted alleged sexual overtures Fields made to her in his hotel room and said Fields had discussed the case over which he was presiding.

### **Powser's allegations**

In his hotel room and during dinner, she said, Fields described the charges against Hall: that she secretly accepted a \$20,000 campaign donation from her live-in girlfriend, was convicted of drunken driving, and improperly questioned a prosecutor who papered her to remove her from a case.

According to Powser, Fields told her he and the panel's other two judges discussed the case during meals and had already decided she was guilty.

Upon receiving a copy of Powser's declaration, the commission removed Fields from the panel, then dismissed the panel altogether. A new panel was appointed and the case is set for final arguments June 14.

It is unknown if Fields was, or will be, further disciplined by the commission. Its disciplinary actions can range from private admonishments to public censure to removal from the bench.

Powser caused the resignation of Rutledge, her former fiance, who resigned in September after she sent e-mails to dozens of people in the Monterey County Superior Court system detailing her sexual encounters with Rutledge in his Marina chambers and elsewhere in Salinas' courthouse.

The e-mail, prompted by Powser's breakup with Rutledge and the Superior Court's refusal to let her withdraw a resignation she filed in anger, contained far more serious allegations that Rutledge fixed tickets for friends and co-workers.

Prosecutors did not find sufficient evidence to file criminal charges, partly because of the statute of limitations. But District Attorney Dean Filippo expressed serious concerns about Rutledge's judicial behavior, specifically that he did not recuse himself in conflict-of-interest cases. Filippo said Rutledge's actions "undermined the integrity" of the court.

Rutledge resigned hours later.

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