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FILED

JUN 08 2006

LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
C. WILLIAMS DEPUTY

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5 In Propria Persona

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF MONTEREY**

10 EUGENE FORTE,
11 Plaintiff,

12 vs.

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14 ROBERT O'FARRELL, et al.

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16
17 Defendants.

Case No. M72599

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDERS
REQUESTED ON JUNE 7, 2006**

**Date: July 5, 2006
Dept: Judge Lee Cooper, Dept. 17
Time: 11:00am**

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20 **MEMORANDUM OF POINTS AND AUTHORITIES**

- 21
22 **1. Request for Judge to report need for investigation to federal authorities before**
23 **statute of limitations is passed.**

24 Code of Jud.Ethics, Canon 3, D. Disciplinary Responsibilities states:

25 “(1) Whenever a judge has reliable information that another judge has violated any
26 provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective
27 action, which may include reporting the violation to the appropriate authority.”

28 **ADVISORY COMMITTEE COMMENTARY, 2002 Electronic Update:**
Code of Jud.Ethics, Canon 3B(2): A judge shall be faithful to the law*

1 regardless of partisan interests, public clamor, or fear of criticism, and shall
2 maintain professional competence in the law.*”

3 Code of Judicial Ethics, Canon 3, Notes of Decision

4 a. Duty to report

5 “If judge is direct witness to manifestly unprofessional conduct that is
6 either serious or repeated, judge should, unless circumstances dictate otherwise,
7 report that conduct to appropriate authorities who can investigate further and take
8 any necessary disciplinary action Dodds v. Commission on Judicial Performance
(1995) 48 Cal.Rptr.2d 106, 12 Cal.4th 163, 906 P.2d 1260”

9 It is ridiculous to think that a judge has a duty to report “unprofessional conduct,” but not
10 conduct that is possibly “criminal” by other judges and public officials.

11
12 2. Request for order for written disclosure of Judge John Golden withdrawing from
13 cases M72599 and M58208.

14
15 2006 California Rules of Court, Rule 6.608. Duties of all judges:

16 *Each judge must:*

17 *(1) Hear all assigned matters unless: (a) he or she is disqualified; or (b) he or*
18 *she has stated in writing the reasons for refusing to hear a cause assigned for*
19 *trial, and the presiding judge, supervising judge, or master calendar judge has*
20 *concurred;*

21 Judge Cooper incredibly indicated in the last hearing that he thought that this rule did not apply
22 to retired judges, i.e., Judge John Golden, however, the Code of Judicial Ethics states:

23 Code of Judicial Ethics, Preamble:

24 “.... *All members of the judiciary must comply with the Code.* Compliance is required
25 to preserve the integrity of the bench and to ensure the confidence of the public.”

26 CANON 6. COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

1 "A. Judges

2 *Anyone who is an officer of the state judicial system and who performs judicial*
3 *functions*, including, but not limited to, a subordinate judicial officer, magistrate,
4 court-appointed arbitrator, judge of the State Bar Court, temporary judge, and
5 special master, is a judge within the meaning of this Code. All judges *shall*
6 *comply with this Code* except as provided below.

7 ADVISORY COMMITTEE COMMENTARY, 2005 Main Volume

8 For the purposes of this Canon, *if a retired judge is serving in the assigned*
9 *judges program, the judge is considered to "perform judicial functions."*
10 *Because retired judges who are privately retained may perform judicial*
11 *functions, their conduct while performing those functions should be guided by*
12 *this Code.*

13 B. Retired Judge Serving in the Assigned Judges Program

14 *A retired judge* who has filed an application to serve on assignment, meets the
15 eligibility requirements set by the Chief Justice for service, and has received an
16 acknowledgment of participation in the assigned judges program *shall comply*
17 *with all provisions of this Code*, except for the following:

18 4C(2) Appointment to governmental positions

19 4(E) Fiduciary activities”

20 And also in the Advisory Committee Commentary, it states:

21 *“Any exceptions to the Canons do not excuse a judicial officer's separate*
22 *statutory duty to disclose information that may result in the judicial officer's*
23 *recusal or disqualification.”*

24 The reason for a judicial officer’s recusal or disqualification must be disclosed. It is a ludicrous
25 assertion that California Rule of Court 6.608, that requires a judge to disclose in writing why he
26 has withdrawn from the case if not disqualified, was meant to be construed as not allowing
27 *litigants* to know why, but only judges.

28 In addition Cannon 3E. Disqualification, states:

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

1 (2) In all trial court proceedings, **a judge shall disclose on the record**
2 **information that the judge believes the parties or their lawyers might consider**
3 **relevant to the question of disqualification**, even if the judge believes there is no
4 actual basis for disqualification.”

4 It is clear that information regarding reasons for recusals, or disqualifications, are to be
5 disclosed on the record. In the subject case, Judge Golden withdrew, or in other words, self-
6 disqualified himself. The reasons why are absolutely germane as they pertain to the rulings he
7 has made in the cases and as they may affect any motions for reconsideration or to vacate orders
8 by plaintiff. Plaintiff Forte requests for the court to order disclosure of the written
9 reason provided by Judge John Golden for withdrawing from the cases of M72599 and M58208
10 according to California Rule of Court 6.608.
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13 **3. Request for order correcting minute order of November 23rd, 2005.**

14 California Code of Civil Procedure §473(c)(2)(d) states:

15
16 “(d) *The court may, upon motion of the injured party, or its own motion,*
17 *correct clerical mistakes in its judgment or orders as entered*, so as to conform
18 to the judgment or order directed, and may, on motion of either party after notice
19 to the other party, set aside any void judgment or order.”

19 It is clear that the minute order of November 23rd, 2005 falsely states that plaintiff was declared
20 a vexatious litigant. The Monterey Herald claimed in a tacit and insufficient correction to their
21 intentional libelous statements regarding plaintiff in their article “County Judiciary Under Fire”
22 of December 4, 2005, that their statements were purportedly due to “court error.”

23 Board of Medical Quality Assurance v. Superior Court (Dean), 250 Cal.Rptr. 182
24 Cal.App. 2 Dist.,1988 states:

25 “Judge of the superior court may not generally reconsider adverse prior ruling by another
26 judge, *except when original judge is unavailable.*”

27 Alvarez v. Superior Court, 12 Cal.Rptr.3d 252, Cal.App.2.Dist.,2004 also states:

1 “Rule precluding one trial judge from overruling order previously entered by another
2 trial judge does not apply when the first judge has become unavailable.”
3

4 **4. Request for identification of documents evidencing ex parte communications by**
5 **Plaintiff with the court.**

6 According to the Code of Judicial Ethics, Canon 3B(7), regarding ex parte
7 communications, states:

8 (7) A judge shall accord to every person who has a legal interest in a proceeding,
9 or that person's lawyer, full right to be heard according to law. * ***A judge shall***
10 ***not initiate, permit, or consider ex parte communications, or consider other***
11 ***communications made to the judge outside the presence of the parties***
12 ***concerning a pending or impending proceeding***, except as follows:

13 (a) A judge may obtain the advice of a disinterested expert on the law *
14 applicable to a proceeding before the judge if the judge gives notice to the parties
15 of the person consulted and the substance of the advice, and affords the parties
16 reasonable opportunity to respond.

17 (b) A judge may consult with court personnel * whose function is to aid the judge
18 in carrying out the judge's adjudicative responsibilities or with other judges.

19 (c) A judge may, with the consent of the parties, confer separately with the
20 parties and their lawyers in an effort to mediate or settle matters pending before
21 the judge.

22 (d) A judge may initiate ex parte communications, where circumstances require,
23 for scheduling, administrative purposes, or emergencies that do not deal with
24 substantive matters provided:

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

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

(e) A judge may initiate or consider any ex parte communication when expressly
authorized by law * to do so.

23 The basic thrust of the code is to prevent the prejudice to a party caused by another
24 party's communication with the judge without the "presence" of all parties, or in the case of a
25 letter, without a copy being sent to all parties when the communication concerns the pending
26 proceeding, lawsuit, etc.
27

1 The court has alleged and has given a “warning” to plaintiff that he has committed ex
2 parte communications, and that some action will be taken against him for such if he writes any
3 letters to the court. Due to such, Plaintiff is entitled to and requests that the court identify
4 specifically what documents evidence ex parte communications with the court as referred to in
5 the court letter of April 28th, 2006 (see Exhibit 2 to Decl. of Forte, BN 77-79)

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7 Dated: June 7, 2006

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Eugene Forte

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF MONTEREY)

I, the undersigned, declare that I am employed in the County of Merced, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1631 Fir Drive, Los Banos, California, 93635.

On June 8, 2006, I served the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDERS REQUESTED ON JUNE 7, 2006** on the parties in this action by:

_____ personal service on the below-named party(ies) at the address(es) given.

_____ facsimile machine pursuant to Rule 2008. Said document was sent to the below listed party(ies). The fax number I used was: _____ The facsimile machine I used complied with Rule 2004, and no error was reported by the machine. Pursuant to Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

 x depositing the sealed envelope(s) with the United States Postal Service with postage fully prepaid, addressed as follows:

By Mail:
Mr. Paul Hammerness
Attorney General's Office
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
(415) 703-5520 telephone
(415) 703-5480 facsimile

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 8, 2006 at Los Banos, California.



Eileen Forte