

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
FORMER JUDGE PAUL D. SEEMAN

DECISION AND ORDER IMPOSING
PUBLIC CENSURE AND BAR
PURSUANT TO STIPULATION
(Commission Rule 116.5)

This disciplinary matter concerns Paul D. Seeman, a former judge of the Alameda County Superior Court. Mr. Seeman served as a court commissioner from August 2, 2004, until he was appointed to the bench on March 27, 2009. The commission authorized a preliminary investigation in this matter on June 29, 2011, pursuant to which the commission sent its preliminary investigation letter to Mr. Seeman on February 1, 2013.

Mr. Seeman resigned from the bench on March 19, 2013. On August 1, 2013, Mr. Seeman pled no contest to one felony charge of elder abuse (Pen. Code, § 368(d)) and one felony charge of perjury (Pen. Code, § 118(a)). Mr. Seeman was sentenced on October 22, 2013.

After settlement negotiations with commission staff counsel, Mr. Seeman and his counsel agreed to propose that the pending preliminary investigation be resolved by the imposition of a censure and bar. Mr. Seeman and his counsel have stipulated, pursuant to commission rule 116.5, to the imposition of a public censure and bar prohibiting Mr. Seeman from seeking or holding judicial office, or accepting a position or an assignment as a judicial officer, subordinate judicial officer or judge pro tem with any court in the State of California, or accepting a reference of work from any California state court, at any time in the future.

The Stipulation for Imposition of Censure and Bar (“Stipulation”) was approved by the commission on December 5, 2013, pursuant to the following terms and conditions as set forth in the Stipulation.

TERMS AND CONDITIONS OF STIPULATION

1. This agreement resolves the preliminary investigation out of which the preliminary investigation letter of February 1, 2013, arose.

2. The commission has jurisdiction over the matter pursuant to article VI, section 18, of the California Constitution. The allegations before the commission are sufficiently serious to warrant the institution of formal proceedings pursuant to that section of the Constitution.

3. The settlement provided by this agreement is in the best interests of both the commission and Mr. Seeman because, among other reasons, it adequately protects the public and will avoid the delay and costs of formal proceedings.

4. The commission shall issue a censure and bar based on the agreed Stipulated Facts and Legal Conclusions set forth herein. Mr. Seeman has agreed to accept a censure and bar, which is the maximum discipline the commission can impose on a former judge.

5. Mr. Seeman resigned from his position as a judge with the Alameda County Superior Court on March 19, 2013.

6. Mr. Seeman has agreed not to seek or hold judicial office, or accept a position or assignment as a judicial officer, subordinate judicial officer or judge pro tem with any court in the State of California, or accept a reference of work from any California state court, at any time in the future.

7. Mr. Seeman has agreed to be disbarred by the State Bar of California.

8. If Mr. Seeman fails to comply with any of the terms and conditions of this agreement, the commission may withdraw the censure and bar and resume its investigation. Failure to comply with the terms and conditions of this agreement will constitute additional and independent grounds for discipline.

9. Mr. Seeman waives any further proceedings and review in this matter, including any further response to the preliminary investigation letter (commission rule 111(a)), formal proceedings (commission rule 118, et seq.), and review by the California Supreme Court (Cal. Rules of Court, rule 9.60).

STIPULATED FACTS AND LEGAL CONCLUSIONS

I. Misconduct Relating to Mr. Seeman's Handling of Anne Nutting's Financial Affairs

In 1998, Paul Seeman was an attorney living across the street from Lee and Anne Nutting. Lee Nutting was 89 years old. Anne Nutting was 85 years old. They had no children and no family or friends living nearby. Mr. Seeman did not know the Nuttings well.

In December 1998, the Nuttings' home was deemed unsuitable for habitation due to an accumulation of possessions and lack of upkeep, so they moved to a hotel. Mr. Seeman offered to help them obtain permission to return to their home. They agreed.

In January 1999, Mr. Seeman entered into a written retainer agreement for legal services with the Nuttings regarding their home, estate planning, and other miscellaneous matters. At that time, Mr. Seeman had almost no experience with estate planning. Mr. Seeman began billing the Nuttings for professional services and continued to do so monthly until at least the end of July 2004.

Also in January 1999, Mr. Seeman had the Nuttings each execute a Durable Power of Attorney ("DPOA"), which Mr. Seeman had prepared. Mr. Seeman was named as the agent for the principal in each DPOA. Mr. Seeman did not advise the Nuttings in writing that they should seek independent counsel before signing the documents.

Mr. Seeman discovered that the Nuttings' financial affairs were in a state of disarray. The Nuttings gave Mr. Seeman access to their home, where he found numerous stock certificates, which he collected and took to a broker who set up a brokerage account for the Nuttings that had a beginning value in excess of \$1,000,000.

Mr. Seeman also helped the Nuttings with their taxes. He retained a tax accountant for them and began paying their taxes. At times, he had Mrs. Nutting make out checks for "taxes" that were payable to him personally, rather than to the Internal Revenue Service or the Franchise Tax Board.

In December 1999, Mr. Nutting passed away.

In January 2000, Mr. Seeman opened a client trust account with funds belonging to Mrs. Nutting (the "Trust Account"). Mrs. Nutting periodically gave Mr. Seeman checks to deposit into the Trust Account. From 2000 until 2010, Mr. Seeman maintained a Quicken ledger to record the debits and credits for the Trust Account.

In early 2004, Mr. Seeman applied for the position of commissioner with the Alameda County Superior Court.

In June 2004, when Mrs. Nutting was 91 years old, Mrs. Nutting's stock brokerage account was changed from an account for which Mr. Seeman had a power of attorney to an account naming him as the pay-upon-death beneficiary. As long as Mr. Seeman was the pay-upon-death beneficiary of the account, if Mrs. Nutting predeceased him, he would have obtained sole ownership of the account, which was worth approximately \$2,000,000.

Around the same time, Mr. Seeman's name was added to two of Mrs. Nutting's bank accounts. One account contained approximately \$200,000 and the other account contained approximately \$250,000. If Mrs. Nutting had predeceased Mr. Seeman, he would have obtained sole ownership of each account.

In July 2004, Mr. Seeman prepared a will for Mrs. Nutting that named 13 different charitable organizations as the beneficiaries of her estate and named his wife as the executor of her estate. He also prepared a declaration of trust in which he was designated as the successor trustee and sole beneficiary, and a second declaration of trust in which his wife was the successor trustee and he was the sole beneficiary. The sole asset of each trust was Mrs. Nutting's residence. Mrs. Nutting decided not to sign these draft trust documents.

On August 2, 2004, Mr. Seeman became a court commissioner.

After Mr. Seeman became a commissioner, he continued to handle some of Mrs. Nutting's financial affairs, including her taxes and payment of utilities and other expenses via the Trust Account, in the same manner as he had before he became a commissioner, and he continued to act as her fiduciary.

In August 2004, Mr. Seeman changed the Trust Account from a client trust account to a joint account between himself and Mrs. Nutting. If Mrs. Nutting predeceased him, Mr. Seeman would have obtained sole ownership of the funds in the Trust Account.

Between 2004 and 2010, Mr. Seeman on a number of occasions commingled his personal funds with Mrs. Nutting's funds in the Trust Account and failed to keep a proper accounting of the Trust Account.

Between 2004 and 2006, Mr. Seeman used money in the Trust Account to pay some of his personal American Express bills. These transactions totaled over \$5,000.

On September 10, 2004, Mr. Seeman borrowed approximately \$250,000 from Mrs. Nutting. He signed an unsecured "Simple Promissory Note" for \$250,000 at 3 percent interest, with monthly interest payments to be made on the first of every month, starting in November 2004. Mr. Seeman made interest-only payments for eight months and then stopped making any payments after July 2005.

In May 2007, Mrs. Nutting contacted an attorney who directed Mr. Seeman to remove his name from all of her accounts and to take no further action with respect to her affairs. Mr. Seeman did not comply with this directive, and he continued to use and control the Trust Account, and could have accessed the other accounts from which he did not remove his name.

On March 27, 2009, Mr. Seeman became a judge. He continued to handle Mrs. Nutting's financial affairs, including her taxes and payment of utilities and other expenses via the Trust Account, and he continued to act as her fiduciary.

From 2000 until 2010, Mr. Seeman had exclusive access to and use of the Trust Account. The bank statements for the Trust Account were sent to Mr. Seeman and not to Mrs. Nutting.

In February 2010, Mr. Seeman was asked by an individual acting on Mrs. Nutting's behalf to repay the \$250,000 loan he took from Mrs. Nutting. He told Mrs. Nutting that he was still paying the monthly interest payments into the Trust Account. Mr. Seeman's representation was false, and he knew it was false.

Mrs. Nutting died on April 17, 2010.

Mr. Seeman repaid the loan plus interest in November 2010.

On August 1, 2013, Mr. Seeman pled no contest to one charge of felony elder abuse (Pen. Code, § 368(d)) in connection with his handling of Mrs. Nutting's financial affairs.

Mr. Seeman's conduct while he was an attorney constituted a breach of fiduciary duty and violated Probate Code sections 4232 (duty of holder of power of attorney to act solely in the interest of the principal and to avoid conflicts of interest), 4233 (duty of holder of power of attorney to keep property separate and distinct from other property in a manner adequate to identify the property clearly as belonging to the principal), 4236 (duty of holder of power of attorney to keep records of all transactions entered into on behalf of the principal), 21350 (no provision of any instrument shall be valid to make a donative transfer to the person who drafted the instrument), and 21351(b) (draft instrument making donative transfer to person who drafted it must be reviewed by independent attorney); Rules of Professional Conduct, rule 3-300 (attorney

shall not enter into a business transaction with a client, or acquire a pecuniary interest adverse to a client, unless the transaction is fair and reasonable to the client and is fully disclosed in writing to the client, the client is advised in writing that the client may seek the advice of independent counsel and is given the opportunity to do so, and the client consents in writing to the terms of the transaction), rule 4-100 (attorney may not commingle client funds with personal funds), and rule 4-400 (attorney cannot induce a client to make a substantial gift to the attorney); and Penal Code section 368(d) (theft from an elder).

Mr. Seeman's conduct when he was a bench officer violated Penal Code section 368(d) (theft from an elder) and Government Code section 89503 (annual gift limit), and violated the following canons of the Code of Judicial Ethics: canon 1 (a judge shall personally maintain high standards of conduct so the integrity of the judiciary can be preserved), canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), canon 2A (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity of the judiciary), canon 4D(6) (a judge shall not accept a loan from anyone, with certain exceptions that do not apply here), and canon 4E(1) (a judge shall not serve as executor, . . . attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties).

II. Failure to Disclose in Statements of Economic Interests (Form 700's)

Mr. Seeman signed Statements of Economic Interests (Form 700's) under penalty of perjury on the following dates: February 22, 2005; January 12, 2006; February 14, 2007; January 16, 2008; January 12, 2009; March 27, 2009; April 2, 2009; January 12, 2010; and January 5, 2011. The Form 700's were filed with the Alameda County Superior Court and the Fair Political Practices Commission.

On each of the dates set forth above, Mr. Seeman failed to disclose the \$250,000 personal loan he received from Mrs. Nutting. He also failed to disclose investments he made in different properties through Trust Deed Investments, Inc. and the income he received from those investments. Mr. Seeman did disclose income from Trust Deed Investments, Inc. on the January 2011 Form 700. Mr. Seeman also filed an Amended Form 700 in October of 2011, declaring the loan retroactively for 2004.

On August 1, 2013, Mr. Seeman pled no contest to one charge of felony perjury (Pen. Code, § 118(a)) in connection with his failure to disclose on his Form 700's.

Mr. Seeman's conduct violated Penal Code section 118(a) and Government Code section 87200 et seq. His conduct also violated canons 1, 2, and 2A.

III. False Statement in DMV Application for Title or Registration

On August 26, 2004, Mr. Seeman filled out a California Department of Motor Vehicles Application for Title or Registration for a car, handwrote that the purchase price of the car was \$10,000, and signed the application under penalty of perjury under the laws of the State of California. In fact, the purchase price of the car was \$28,045. Mr. Seeman's statement on the application regarding the purchase price of the car was false.

Mr. Seeman's conduct violated Penal Code sections 115 and 118(a), and Vehicle Code section 20. His conduct also violated canons 1, 2, and 2A.

IV. Improperly Accessing DMV records

On four occasions, while he was a judge, Mr. Seeman caused court personnel to access Department of Motor Vehicles registration records to obtain information regarding the license plates of vehicles belonging to certain individuals for a purpose unrelated to the faithful discharge of his judicial duties.

Mr. Seeman's conduct violated Vehicle Code section 1808.45. His conduct also violated canons 1, 2, 2A, and 3B(11) (a judge shall not use for any purpose unrelated to judicial duties nonpublic information acquired in a judicial capacity).

DISCIPLINE

Article VI, section 18, subdivision (d) of the California Constitution provides that the commission may "censure a judge or former judge . . . for action . . . that constitutes . . . conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Mr. Seeman has stipulated that his conduct constituted prejudicial misconduct and willful misconduct and seriously undermined the integrity of the judiciary.

The purpose of a commission disciplinary proceeding is not punishment, "but rather the protection of the public, the enforcement of rigorous standards of judicial conduct, and the

maintenance of public confidence in the integrity . . . of the judicial system.” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912.) The commission believes that this purpose is best served by the discipline proposed in the Stipulation, which constitutes the maximum discipline that may be imposed by the commission on a former judge.

Accordingly, the commission concludes that the severe sanction of a public censure and bar is necessary for the protection of the public and the reputation of the judiciary. Good cause appearing, the commission hereby censures former judge Paul D. Seeman and bars him from receiving an assignment, appointment, or reference of work from any California state court.

Commission members Hon. Erica R. Yew; Anthony P. Capozzi, Esq.; Hon. Thomas M. Maddock; Nanci E. Nishimura, Esq.; Hon. Ignazio J. Ruvolo; Mr. Lawrence J. Simi; Mr. Richard Simpson; Ms. Maya Dillard Smith; Ms. Sandra Talcott; and Mr. Adam N. Torres voted to issue this decision and order imposing a public censure and bar pursuant to the stipulated disposition. Commission member Ms. Mary Lou Aranguren did not participate.

Dated: December 16, 2013



Honorable Ignazio J. Ruvolo
Commission Member