

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

IN THE MATTER CONCERNING
JUDGE JAMES G. BERTOLI

DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT

This disciplinary matter concerns Judge James G. Bertoli, a judge of the Sonoma County Superior Court since 2001. His current term began in 2019. Pursuant to rule 114 of the Rules of the Commission on Judicial Performance, Judge Bertoli through his attorney, James A. Murphy, appeared before the commission on October 16, 2024, to contest the imposition of a tentative public admonishment issued on May 30, 2024. Judge Bertoli waived his right to formal proceedings under rule 118 and to review by the Supreme Court. Having considered the written and oral objections and argument submitted by Judge Bertoli and his counsel, and good cause appearing, the Commission on Judicial Performance issues this public admonishment pursuant to article VI, section 18(d) of the California Constitution, based upon the statement of facts and reasons set forth below.

STATEMENT OF FACTS AND REASONS

The commission found that Judge Bertoli engaged in improper political activity, improper social media conduct that demeaned the judicial office, and improper fundraising as set forth below.

1. Improper Political Activity Concerning the Renaming of Analy High School

On March 10, 2021, the West Sonoma County Union High School Board approved a consolidation of two high schools, Analy High School (in Sebastopol) and El Molino High School (Analy's long-time rival, in Forestville), requiring the El

Molino students to attend the Analy campus. Judge Bertoli graduated from Analy High School in 1978.

On May 12, 2021, the school board voted to use a temporary name for the consolidated school, “West County High School.” All five school board members voted to consolidate the schools, but only two voted to change the school’s name. The consolidation and name change were controversial and emotionally-charged issues that involved lawsuits, protests, and petitions to recall members of the school board.

In April 2021, the Community Alliance for Responsible Education, a group of El Molino community members, sued the West Sonoma County Union High School District for an alleged failure to include an environmental review in the consolidation plan. The Sonoma County Superior Court dismissed the lawsuit in September 2021.

Judge Bertoli was on the Board of Directors and an active member of the Analy Alumni Association, which opposed the renaming efforts. The Analy Alumni Association participated in rallies, raising money, and a recall campaign for the school board members. Judge Bertoli participated in writing a “position paper” that the Analy Alumni Association sent to the West Sonoma County Union High School District in April 2021. Judge Bertoli also disseminated the position paper via his public Facebook page.

On April 14, 2021, Judge Bertoli spoke at the West Sonoma County Union High School District board meeting.

Judge Bertoli co-wrote a letter to the editor of The Press Democrat that was published on June 1, 2021. The letter criticized the West Sonoma County Union High School District for “handpicking a naming committee with the directive to not consider retaining the Analy name.”

On June 16, 2021, Judge Bertoli led a protest rally in Sebastopol against the renaming efforts. Rally attendees lined up to sign recall petitions. In a June 17, 2021 The Press Democrat article, Judge Bertoli was identified as a Sonoma

County Superior Court judge who led the June 16, 2021 protest rally. Judge Bertoli was photographed standing with a microphone in front of a crowd. Judge Bertoli said that the school board did not have a “ ‘flipping idea what it’s going to cost,[’] ” and stated that the renaming could cost “ ‘seven figures’ ” to make the name change. As a rally organizer and speaker, Judge Bertoli’s participation in the group gave the appearance that he endorsed the group’s stated goals and activities, including the recall of all five school board members.

On July 17, 2021, Judge Bertoli led a protest rally at the Sebastopol Town Square. As reported by The Press Democrat, Judge Bertoli stated, “ ‘[I]et no one be mistaken . . . We who are affiliated with Analy support our friends in their quest to save their school and stand ready to help them develop a solution. . . . If only the board would do its duty and work with their constituents.’ ” The July 17, 2021 The Press Democrat article identified Judge Bertoli as a Sonoma County Superior Court judge.

On July 18, 2021, Judge Bertoli participated in a fundraising campaign for El Molino advocates by playing with his band, Court ‘n’ Disaster, for free at a fundraising event, the Annual Chili Cook Off Fundraiser – Save El Molino.

On July 28, 2021, Judge Bertoli and other members of the Analy Alumni Association met with attorney James F. DeMartini to “map out a strategy, including possible legal action, to stop this renaming process.”

Judge Bertoli submitted an email to the West Sonoma County Union High School District that was read during the board meeting on August 25, 2021.

On December 1, 2021, the school board voted to end the renaming and keep the “Analy” name.

The Code of Judicial Ethics prohibits judges from engaging in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary. (Canon 5.) “Judges . . . are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity

that may create the appearance of political bias or impropriety. Judicial independence, impartiality, and integrity shall dictate the conduct of judges” (*Ibid.*) Judges “may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with [the Code of Judicial Ethics].” (Canon 5D.)

“Public involvement on either side in ongoing debates about controversial social and political issues is improper.” (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 10:33, p. 699.) “Public involvement politicizes the judicial institution, demeans the judiciary, and impairs judicial independence and impartiality.” (*Id.* at p. 700.)

In his role on the Board of Directors of the Analy Alumni Association, Judge Bertoli led protest rallies, made speeches, participated in fundraising, consulted with an attorney on behalf of the association, and urged people to oppose the renaming of Analy High School through two public Facebook pages, Change.org and SurveyMonkey.com. Judge Bertoli also led the alumni organization that sought to recall the school board members who voted to rename the school.¹

Given the controversial nature of the renaming of the school, it was reasonable to expect that Judge Bertoli’s leadership role would gain media attention, and that his identity as a judge would likely be publicized (as it was). Judge Bertoli acknowledged that he is recognized in the community as a judge.

According to a December 1, 2021 The Press Democrat article, the consolidation and renaming of Analy High School were highly contentious political issues, sparking a “tumultuous year of protests, lawsuits, and recall

¹ Judge Bertoli did not personally advocate for recalling the school board members, but he led the protest rallies at which other alumni association members collected signatures for the recall petitions. The community could reasonably infer that the judge was also involved in the recall effort. The judge’s leadership position with the alumni group caused at least one Facebook commenter to assume that he participated in the recall petitions.

efforts.”² Although the judge’s conduct was not directed to a major political party, it was directed to matters of government, as distinguished from matters of law. The judge’s conduct also involved public involvement on one side of an ongoing debate on a controversial social and political issue that Rothman warned against.

Judge Bertoli not only attended the events, but also organized them and made speeches during the course of the events. “It is improper for a judge to serve as the master of ceremonies or to engage in any other public participation at a political event, although the judge may attend.” (Rothman et al., *supra*, § 11:7, p. 743, *citing* Cal. Judges Assn., Judicial Ethics Update (Dec. 1995) p. 8.)

The protest rallies involved a highly divisive issue, in which Judge Bertoli’s participation could reasonably undermine the public’s confidence in the judiciary. The events related to a lawsuit already filed, and Judge Bertoli himself consulted with an attorney to discuss potential litigation. Thus, it was reasonably likely to give rise to litigation in the Sonoma County Superior Court.

Canon 2B(2) also prohibits judges from lending the prestige of judicial office in any manner to advance the pecuniary or personal interests of the judge or others. Participation in the rallies, particularly his leadership role, created the appearance that Judge Bertoli was speaking on behalf of, or lending the prestige of office to, the alumni association that also promoted the recall of elected officials.

In his response and objections Judge Bertoli argued that his conduct did not constitute political activity because his actions were directed to a matter of public interest and not towards any political point of view or politician. The

² In April 2021, opponents of the consolidation of the two schools filed a lawsuit which was heard by one of Judge Bertoli’s colleagues in the superior court. Although Judge Arthur Wick dismissed the suit on September 22, 2021, the plaintiffs, who organized under the nonprofit Community Alliance for Responsible Education (CARE), referred to the loss as “ ‘just one battle in the war.’ ” (Tornay, *Judge tosses consolidation lawsuit against west Sonoma County school district*, The Press Democrat (Sept. 22, 2021).)

commission rejected Judge Bertoli's defense that his conduct did not constitute political activity. Rothman refers to the Webster's Dictionary to define political: " 'Political' is defined as 'of or relating to government, a government, or the conduct of government affairs,' 'of or relating to matters of government as distinguished from matters of law,' 'of, relating to, or concerned with politics,' and 'of, relating to, or involved in party politics.' " (Rothman et al., *supra*, § 10:30, p. 697 at fn. 103.) Judge Bertoli's conduct targeted discretionary decisions made by the school board, whose members are elected public officials, entrusted with governing a community's public schools. Therefore, the judge's conduct related to matters of government as distinguished from matters of law.³ Moreover, after defeating the name change, Judge Bertoli described his actions as a democratic function of government.⁴

The commission also rejected Judge Bertoli's claim that his conduct was protected speech. The state may restrict judicial speech only where the restriction is outweighed "by the benefits it achieves in furthering the state's interest in the soundness of the judicial system." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1103.) Upon taking the bench, judicial officers assume the obligation to "comply with [the Code of Judicial Ethics]," which is intended to "govern[] the conduct of judges . . . and is binding upon them." (Preamble to the Cal. Code Jud. Ethics.) Since judicial officers

³ The California Judges Association (CJA) has opined that a judge may join a group, the sole purpose of which is to request the board of supervisors to erect a memorial to Vietnam veterans, but should not personally appear to promote the issue. (Cal. Judges Assn., Jud. Ethics Update (2001) p. 5.) CJA also opined that a judge may be a member of a high school booster club if the organization primarily decides how money donated to the organization should be spent. (Cal. Judges Assn., Jud. Ethics Update (1997) p. 12.)

⁴ Judge Bertoli wrote a lengthy post in response to negative feedback after the board voted to retain the school's name. He stated, "Those in the minority of the result, as members of a democracy, need to learn to accept the results as the vote dictates. It is how we, the people, operate."

“must expect to be the subject of constant public scrutiny,” they “must therefore accept restrictions on [their] conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.”

(Advisory Com. com., canon 2A.)

Rothman states that canon 5 permits *private* comment on political matters. “Thus, a judge is free to express his or her views in private, nonpublic circumstances.” (Rothman et al., *supra*, § 11:1, p. 734.) “Limitation on political activity is critical to the maintenance of an independent judiciary. Because of the historic role and nature of politics, the public would justifiably lose confidence in the impartiality of the judiciary were judges to become embroiled in political activity.” (*Id.* at § 11:2, p. 736.) While Judge Bertoli was free to privately comment on an issue that he cares deeply about, his judicial position required his abstention from public political activity.

Judge Bertoli argued that his conduct was “absolutely protected” by the First Amendment, pursuant to *Republican Party v. White* (2002) 536 U.S. 765. He also argued that every sitting judge is a candidate for reelection, and thus always a candidate for office. The commission disagreed.

In 2002, the United States Supreme Court, by a vote of 5-4, held that a Minnesota judicial canon that prohibited a judicial candidate from “ ‘announc[ing] his or her views on disputed legal or political issues’ ” violated the First Amendment. (*Republican Party v. White, supra*, 536 U.S. 765, 768.) Justice Kennedy, who cast the deciding vote, specifically noted that the case did “not present the question whether a State may restrict the speech of judges because they are judges—for example, as part of a code of judicial conduct; the law at issue here regulates judges only when and because they are candidates.” (*Id.* at p. 796.) Whether a state could impose a “general speech restriction on sitting

judges—regardless of whether they are campaigning—in order to promote the efficient administration of justice, is not an issue raised here.” (*Ibid.*)

The California Code of Judicial Ethics did not have an “announce clause,” such as the one at issue in Minnesota, but the California Supreme Court revised canon 5B, so that it is not over-inclusive, as follows:

A candidate for judicial office . . . shall not: (a) make statements to the electorate or the appointing authority that ~~commit or appear to commit~~ the candidate . . . with respect to cases, controversies, or issues that are likely to come before the courts

Canon 5B pertains to conduct during judicial campaigns and the appointment process and is not at issue in the type of political activity in which Judge Bertoli engaged. Judge Bertoli is a sitting judge, not a candidate for office, and is subject to greater restrictions than a candidate. The judge’s conduct is thus subject to regulation and discipline under the canons.

The commission determined that the judge’s political activities violated canon 5 (duty not to engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary), canon 4A (duty to conduct a judge’s extrajudicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially and do not demean the judicial office), and canon 2B(2) (duty not to lend the prestige of judicial office in any manner to advance the pecuniary or personal interests of the judge or others). Judge Bertoli’s conduct was also inconsistent with his obligations to maintain high standards of conduct and to personally observe those standards, so the integrity of the judiciary is preserved (canon 1), to avoid impropriety and the appearance of impropriety in all of a judge’s activities (canon 2), and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2A).

2. Improper Social Media Activity

From April through December 2021, Judge Bertoli engaged in Facebook conversations with members of the community through his personal Facebook page, the Analy Class of 1978 Facebook page, and the Analy Alumni Association Facebook page. Judge Bertoli's personal Facebook page and the Analy Class of 1978 Facebook page were public and available for anyone to view. Judge Bertoli was the moderator of the Analy Class of 1978 Facebook page. Some of the commenters in Judge Bertoli's Facebook discussions knew Judge Bertoli was a judge and addressed him as such.

Judge Bertoli made derogatory remarks about public officials, engaged in rhetoric that inflamed the passions of the community, and made profane remarks, as illustrated below.⁵ Judge Bertoli's participation in the Facebook groups also gave the appearance that he endorsed the Analy Alumni Association's stated goals and activities, including the recall of all five school board members.

On April 7, 2021, Judge Bertoli posted an Analy Alumni Association "position paper" on the Analy Class of 1978 Facebook page. He called the proposal to rename the high school "ridiculous." He also posted a link to a Change.org petition and asked people to "support keeping the name 'Analy High School.' "

On April 8, 2021, Judge Bertoli posted a link to a survey, through SurveyMonkey.com, and urged people to respond. He also re-posted the link to the petition on Change.org.

On July 26, 2021, Judge Bertoli implied that the school board was intentionally concealing its schedule by stating, "I wonder why they are keeping it so close to the vest about the next meeting. I just can't figure out why they

⁵ Many posts were duplicated on both Judge Bertoli's personal Facebook page and the Analy Class of 1978 Facebook page. If a comment was posted to both pages, only the comment posted on the judge's personal page is identified.

wouldn't want people [to] know the details of the meeting so that they could exercise their First Amendment rights with the Board.”

On July 29, 2021, Judge Bertoli urged people to attend the August 18, 2021 school board meeting. He described his meeting with attorney James F. DeMartini and stated, “[i]f the Board and Superintendent haven't figured it out by now, we are not going quietly into the night.”

On August 2, 2021, Judge Bertoli implied that the school board had changed the location of a meeting to prevent people from attending. He posted, “[w]ell, they are trying to throw us off the scent. New location for the board meeting. PLEASE attend!!!” One of the commenters stated, “I'll be in NY, Judge, unfortunately I'll miss the fireworks!!!”

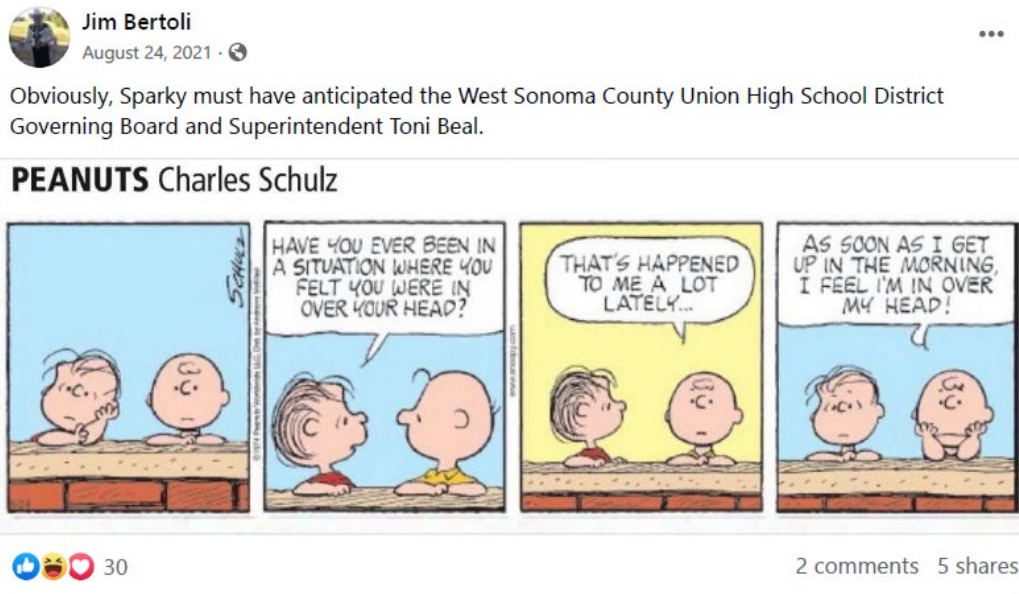
On August 12, 2021, Judge Bertoli characterized a school board member's statement as “myopic, unanalytical, and self-aggrandizing.” He stated that the proposed name change would cost “over seven figures.” Judge Bertoli named the board members who supported the name change and accused them of corruption when he stated that Varsity.com “greas[ed] the palms of school administrators, board members, athletic directors, etc. . . .” The judge's post garnered 32 comments, 11 shares, and 98 reactions.

On August 16, 2021, Judge Bertoli characterized Superintendent Toni Beal as “so confident in their stance that they are oblivious to public outcry, the lack of any significant support for their current fiasco, or the detriment to students” He stated that the consolidation had led to overcrowding and a dangerous school environment. Judge Bertoli lent the prestige of his judicial office to the post by stating, “[i]n my profession, a rush to a result without deliberation tends to get you overturned by the Court of Appeal.” The judge's post garnered 36 comments (many of which discussed recalling the board members), eight shares, and 65 reactions.

On August 17, 2021, Judge Bertoli complained about overcrowding at the high school and stated that “they stack the kids in there like cordwood.” He also

complained about lunches, restrooms, “escalating tensions,” traffic, and parking. Judge Bertoli stated, “This may be politically incorrect given the origin of the word, but what a bunch of frickin’ (I cleaned that up) morons!” The judge commented that the board’s priorities were “like putting lipstick on a pig.” When one commenter asked, “[w]hat were they thinking,” Judge Bertoli responded, “[a]h...the mistake of assuming they were thinking!” The judge’s post garnered 40 comments (including seven of his own comments), nine shares, and 71 reactions.

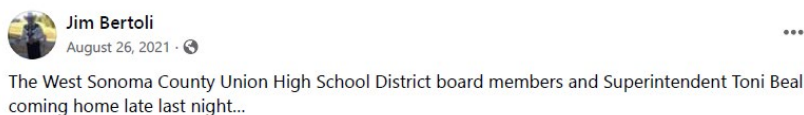
On August 24, 2021, Judge Bertoli implied that Superintendent Toni Beal was in over her head by posting a Peanuts comics strip. The judge’s post garnered two comments, five shares, and 30 reactions.



On August 25, 2021, Judge Bertoli stated that he could not attend the school board meeting that evening. He stated that Superintendent Beal had hired security to be present during the meeting, and stated, “[w]hich begs the question: Whatcha y’all afraid of? Free speech? The right to petition our government?” In responding to one commenter, Judge Bertoli stated, “I had thought about using the word ‘fascist’, but I hesitated. I’m a wimp!” The judge

also commented, “[c]reate a confrontational atmosphere and you enhance the probability of confrontation. Lots of way [sic] to provide security without calling in the National Guard, if you will excuse the hyperbole.” The judge’s post garnered seven comments (two of which were his own), five shares, and 15 reactions.

On August 26, 2021, the day after a school board meeting, Judge Bertoli mocked Superintendent Beal by likening her returning from the meeting to a Hagar the Horrible comic strip. The judge’s post garnered three comments, eight shares, and 20 reactions.



Hagar the Horrible

by *Chris Browne*



👍👎❤️ 20

3 comments 8 shares

On August 27, 2021, Judge Bertoli posted a 2016 photo of himself announcing a football game at Analy High School and captioned it, “[a]nnouncing some Tiger football back before crazy people got it in their heads to try and destroy Analy High School.” He also commented, “I told them where they could put their microphone until they restore the Analy name. I have nothing to do with some school called ‘West County.’” In response to a comment, Judge Bertoli stated, “[t]hey’d pull the plug on me like a young trophy wife with a dying husband!” The judge also commented, “[t]his would have been the 43rd year behind the mike if it wasn’t for this colossal display of stupidity.” The judge’s post garnered 21 comments (three of which were his own) and 78 reactions.



On August 30, 2021, Judge Bertoli stated that renaming Analy High School “would for all intents and purposes, be stripping the Analy name from our community.” Regarding the school board, the judge commented, “[r]ight now, people can’t even try to secretly fart there without me hearing about it.” The judge’s post garnered 75 comments (including eight of his own), five shares, and 50 reactions.

On September 3, 2021, Judge Bertoli posted a photo of tigers attacking a van and captioned it, “[w]elcoming the West Sonoma County Union High School District board members and Superintendent Toni Beal to the last board meeting.” The judge’s post garnered 17 comments (including one of his own), six shares, and 46 reactions.



On September 4, 2021, Judge Bertoli posted an email he sent to the editor-in-chief of The Press Democrat, in response to an editorial that supported the name change. Judge Bertoli attacked the editorial’s “sloppiness.” The judge lent the prestige of the judicial office to his position by stating the editorial was “without evidentiary support (pardon the use of the term; it is a professional habit).” Judge Bertoli identified five “failures” on the part of the editorial and called the editor “negligent.” One of the commenters stated, “[w]e’ll [sic] said your honor.” Another commenter stated, “I agree with you Judge.” Judge Bertoli’s response to one commenter was, “[c]hicken butt?” The judge’s post garnered 54 comments, 10 shares, and 112 reactions.

On October 23, 2021, Judge Bertoli posted the question, “[h]ow can you have a ‘homecoming’ football game when you have no graduates from your school?” The judge’s post garnered 18 comments (including five of his own) and 14 reactions.

On November 6, 2021, Judge Bertoli posted, “PLEASE let these folks know how you feel (politely) about a proposed name change for Analy. Even if you don’t currently live in the District, your input is essential!” The judge’s post was “Seen” by 83, with 2 reactions.

On December 1, 2021, following the school board’s vote to keep the “Analy” name, Judge Bertoli posted a sign that reads, “Saved Analy.”



Many commenters thanked the judge for his leadership in opposing the name change. Judge Bertoli named the one board member who voted for the name change. In response to being called an elitist, Judge Bertoli responded:

Given all the cow, sheep and pig shit I’ve stepped in over the years, I’m interested in what you define as “elite”. [¶] . . . [¶] Seriously, hoss, what do you mean by “elite”? Does growing up in a family that lost their home make you “elite”? Does working on a farm from sunrise to sunset make you “elite”? Does working your way through school make you “elite”?

In response to a comment regarding real estate prices, Judge Bertoli responded, “[a]nd where the hell do you get the figure that a median house price is \$3 mil plus?” One commenter criticized the judge for perpetuating the rivalry between the two schools and accused him of “bully[ing] and threaten[ing] others

to get your way.” Judge Bertoli responded, “[h]aters gotta hate, bro.” One commenter called the judge a “strait [*sic*] hometown hero” because he “bullied the district with withdrawing funds.” Judge Bertoli corrected the commenter’s spelling. Judge Bertoli stated that his band played for free at an El Molino fundraiser. He also stated, “[s]o this narrative that we don’t understand, don’t care, don’t have any empathy for what has happened to El Molino is a giant crock of crap.” One commenter accused the judge of “calculated bullying tactics” by injecting himself into the fundraising and recall campaigns. Judge Bertoli responded by correcting the commenter’s spelling. In response to an accusation that he perpetuated the schools’ rivalry, Judge Bertoli responded, “[f]or one who has said that he ‘has no dog in the fight’, you sure are barking a lot.” The judge’s post garnered 121 comments (including 18 of his own), one share, and 158 reactions.

On December 1, 2021, Judge Bertoli thanked five individuals and other “Tigers” who opposed the name change. One commenter thanked the judge for his “legal brain.” In response to another commenter, Judge Bertoli stated:

So, are you saying that I have to give my money to something I don’t believe in? Mandatory donation to the KKK? Oath Keepers? American Nazi Party? Kim Jong Un Retirement Fund? All actions have consequences. That is part of the freedoms we enjoy. We all vote with our pocketbook. I like store X better than store Y, so I’m going to spend my money there. I have no obligation to financially support every entity around. That is called capitalism, my friend, which includes who I choose to donate my money to. You telling me how I am supposed to spend my money is damn un-American.

When a commenter accused Judge Bertoli of “bull[ying]” and “gloating”, the judge stated, “I pay my taxes and I get to choose what I spend with the rest. You calling forcing me to spend my donated money ‘democracy’ is a joke. That is fascism at its finest.” The judge’s post garnered 54 comments, two shares, and 129 reactions.

On December 3, 2021, Judge Bertoli posted:

Long-winded post: While I'm not surprised at the blowback from some when the school board decided to retain the Analy High School name, there are a couple of things that stand out that cause me to not keep my flapping pie hole shut. First, there is this narrative that seems to be circulating that Analy alums didn't support El Molino and it's [sic] history and students. I call BS on that. The true state of the facts is that, among other things, Analy Alumni Association leaders regularly met with El Molino advocates (CARES) [sic] to assist them in their efforts to save EM, many Analy alums helped El Molino supporters gather recall signatures, at public gatherings, Analy alums, including me, spoke in favor of trying to find ways to keep EM open. Hell, my band played for free at a fundraiser for El Molino supporters. So anyone who says Analy wasn't backing EM is frankly, full of crap. Second, while I hate to get in a pissing match with some kids, this attitude evinced by a protest sign "Our school, our name" is lacking in merit. I can say that when I had the confidence of youth I took less than nuanced positions, but the student attitude that they determine the future of the school is youthfully naive. The school does not belong to them; it belongs to the community as a whole. They hold it in trust for past students, future students, and the public at-large. They don't get to decide the present or the future or eliminate the past on their own. It is a community decision that takes into account history, finances, and emotions. They spoke through their survey. Those in the minority of the result, as members of a democracy, need to learn to accept the results as the vote dictates. It is how we, the people, operate.

In response to one of the commenters, Judge Bertoli stated, "[r]ead the line again, this time with comprehension, context, and completeness, then feel free to pop off."

Canon 5D permits judges to engage in activities concerning the law, the legal system, or the administration of justice. Judge Bertoli's Facebook activity, however, did not concern the improvement of the law, the legal system, or the administration of justice.

Canon 2 requires judges to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2A requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. "The same canons that govern a judge's ability to socialize and communicate in person, on paper, or over the telephone apply to electronic communications, including use of the Internet and social networking sites." (Advisory Com. com., canons 2 and 2A.) "The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge." (*Ibid.*) During Judge Bertoli's campaign to stop the renaming of Analy High School, he inflamed the passions of the community through his posts. He used profanity and derogatory language, and he spoke derisively of those who did not agree with him.

In his objections, Judge Bertoli argued that his social media activity was not improper because he did not identify himself as a judge nor espouse any specific content as a judge. He argued that people, over whom he had no control, identified him as a judge, but any critical remarks he made were all made in his capacity as a private citizen.

Judge Bertoli's Facebook page was accessible to the public (or at least to anyone who created a Facebook account). He did not identify his title on Facebook, but commenters repeatedly referred to him as "judge" and one thanked him for his "legal brain." Moreover, on September 4, 2021, Judge Bertoli posted an email he sent to the editor-in-chief of The Press Democrat, in which he stated that an editorial was "without evidentiary support (pardon the use of the term; it is a professional habit)." By invoking his office in the Facebook comment, Judge Bertoli also lent the prestige of judicial office to advance the pecuniary or personal interests of the judge or others, in violation of canon 2B(2) (duty not to lend the prestige of the judicial office or use the judicial title in any manner to advance the pecuniary interests of the judge or others).

The commission determined that the judge's comments, especially comments containing profanity and derogatory language, violated canon 1 (judge shall uphold the integrity and independence of the judiciary), canon 2 (judge shall avoid impropriety and the appearance of impropriety), and canon 2A (judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); demeaned the judicial office, in violation of canon 4A (duty to conduct a judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially and do not demean the judicial office); and constituted improper political activity, in violation of canon 5 (judge shall not engage in political activity that is inconsistent with the independence, integrity, or impartiality of the judiciary).

3. Improper Fundraising

On November 11, 2019, Judge Bertoli posted to his Facebook page that he had donated to Victoria Fleming's birthday fundraiser for UndocuFund, a local Sonoma County charity. The post indicated that 25 people donated and raised \$1,228.00 of \$2,500.00.

A judge may be involved in organizations that engage in fundraising, may plan fundraising, and may be present when solicitations are made. A judge may not, however, personally engage in a fundraising activity. Canon 4C(3)(d)(i) prohibits judges from personally participating in the solicitation of funds or other fundraising activities. Canon 4C(3)(d)(iv) prohibits the use of the prestige of judicial office for fundraising. "Were judges allowed to solicit for civic and charitable causes, potential donors could well feel coerced, especially those who might come before the judge." (Rothman et al., *supra*, § 10:43, pp. 719-720.)

Although Judge Bertoli did not identify his title, "friends" and commenters on social media were aware that Judge Bertoli was a judge. According to Rothman, a "judge cannot avoid the bar against fundraising by not using his or her title." (Rothman et al., *supra*, § 10:44, p. 722.)

Judge Bertoli posted a link to a fundraising site and noted that he had made a donation. Judge Bertoli argued that he did not solicit funds, but the commission concluded that the publication of his donation created the appearance of impropriety because it could reasonably be perceived as an invitation to others to donate. As Judge Bertoli was known to be a judge, potential attorneys and litigants may have sought to curry favor with the judge by making a similar donation.

The commission determined that the judge personally participated in fundraising activities, in violation of canons 4C(3)(d)(i) and 4C(3)(d)(iv). Judge Bertoli's fundraising activity also demeaned the judicial office, in violation of canons 1, 2, 2A, and 4A.

The judge's conduct, at a minimum, constituted improper action.

DISCIPLINE

In determining to impose this public admonishment, the commission considered Judge Bertoli's prior discipline to be an aggravating factor. (Policy Declarations of Com. on Jud. Performance, policy 7.1(2)(e).) In 2021, Judge Bertoli received an advisory letter for using his judicial title to promote his band, Court 'n' Disaster, from 2011 through 2021. The band's website identified Judge Bertoli as a sitting superior court judge. Photographs on the website identified the judge as "Judge Jimmy Bertoli." Marketing and promotional materials also identified the band as "your standard courthouse band." The commission determined that the judge abused the prestige of judicial office, in violation of canons 2 and 2B(2).

In light of the number of incidents of misconduct that publicly undermined respect for the judiciary – particularly with regard to the discourteous posts on social media, and Judge Bertoli's failure to fully appreciate his misconduct (Policy Declarations of Com. on Jud. Performance, policies 7.1(1)(a), 7.1(1)(h), 7.1(2)(a)), the commission has determined that a public admonishment is the appropriate discipline.

Commission members Dr. Michael A. Moodian; Hon. Lisa B. Lench; Hon. William S. Dato; Hon. Michael B. Harper; Rickey Ivie, Esq; Ms. Kay Cooperman Jue; Mr. Richard A. Long; Mani Sheik, Esq.; and Ms. Beatriz E. Tapia voted to impose the public admonishment. Two public member positions were vacant.

Date: October 30, 2024



Dr. Michael A. Moodian
Chairperson