Statement

I am here today because a complaint was made accusing me of judicial misconduct in my handling of a bankruptcy case more than six years ago.

I am here to tell you that I categorically deny that I committed any misconduct in any aspect of that case.

In my nearly 40 years on the bench, I have presided over more than 31,000 cases, including thousands of civil and criminal trials.

Like most judges, I have had a few complaints of misconduct made about me.

However, not one of those complaints was found to be true and I have never been sanctioned for any type of judicial misconduct.

The Complaint and its Investigation

The complaint that brings me here was the accusation that I received a secret letter from a criminal defendant that caused me to decide an issue in her favor in a bankruptcy case.

That accusation is untrue.

The complaint was filed by a lawyer who had no connection, involvement, or personal knowledge of the bankruptcy case.

He has had a personal vendetta against me for over twenty years.

In 1984, I sanctioned that lawyer for his misconduct in a trial I was handling.

Since then, he has made personal attacks against me and has publicly called me "mentally unsound."

He also filed the present complaint against me.

His first accusation was that I had made decisions in the bankruptcy case because I had an improper personal relationship with the debtor, Deborah Canter.

That complaint was investigated by the Chief Judge of the Ninth Circuit and dismissed.

The lawyer appealed.

The Ninth Circuit Judicial Council then conducted its own investigation, interviewing at least 15 witnesses.

One of its investigators interviewed Ms. Canter's bankruptcy lawyer.

He said his wife had told him she helped Ms. Canter prepare a secret letter to me asking for my help in preventing her eviction.

Because of this, the Judicial Council sent the complaint back to the Chief Judge for further investigation.

The Chief Judge conducted her own investigation.

After that investigation, she concluded there was no credible evidence of a secret letter from Ms. Canter to me.

The Chief Judge dismissed the complaint a second time.

The lawyer appealed again.

This time, the Judicial Council affirmed the dismissal by a 7 to 3 vote.

One of the dissenting judges, Judge Alex Kozinski, wrote a 39-page opinion in which he concluded that I had received such a secret letter from Ms. Canter.

Judge Kozinski's conclusion was based upon erroneous facts and his speculation.

However, because of its vitriolic spirit and tone, Judge Kozinski's opinion received widespread news coverage.

At the time, I refused to comment on the accusations made against me and have made no public comments until today.

I have submitted my Written Testimony explaining the background of the bankruptcy case and the complaint of misconduct.

I have also submitted an Appendix of Exhibits with the evidence the Chief Judge and the Judicial Council had when they dismissed the complaint.

Today I would like to make a few additional comments.

120-Day Program

The original accusation was that Ms. Canter was receiving special treatment because she reported to me personally as part of her probation.

That is untrue.

In 1998, Ms. Canter pled guilty to making false statements and loan fraud.

I sentenced her to 5 years probation and 2,000 hours of community service.

That is a tough sentence.

2,000 hours of community service is a lot of hours.

As part of her probation, she was ordered to report to me every 120-days with her probation officer.

That was in no way unusual.

Since 1976, I have had a policy of requiring defendants that I place on probation to report to me in person every 120-days with their Probation Officer.

The 120-day meetings last no longer than 15 minutes and the probationer is always accompanied by a Probation Officer.

Ms. Canter was treated just the same as the more than one thousand defendants who I have placed on the 120-day program over the last 35 years.

I have not had any contact with Ms. Canter other than in open court or at one of her 120-day meetings with her Probation Officer.

Reasons for Withdrawing Reference

The original accusation was that I became involved in Ms. Canter's bankruptcy because I wanted to benefit her personally.

That is also untrue.

I had two 120-day meetings with Ms. Canter.

One was in August 1999 and the other was in January 2000.

At the second 120-day meeting, Ms. Canter told me that lawyers for one of her creditors had filed her confidential Pre-Sentence Report in her bankruptcy action.

Pre-Sentence Reports are confidential records of the court prepared by the Probation Department for my use in sentencing criminal defendants.

They contain a lot of private information about the defendant.

The reports are filed under seal and are not available to the public.

As the judge presiding over Ms. Canter's criminal case, I was the only person who could release her Pre-Sentence Report.

In my nearly 40 years on the bench, I had never had another case where someone misused a Pre-Sentence Report.

After this 120-day meeting, I withdrew the reference of Ms. Canter's bankruptcy.

This meant that the bankruptcy case was transferred to me for future handling.

As a district court judge, I am authorized by statute to do this.

I took over the bankruptcy case because I wanted to find out if Ms. Canter's Pre-Sentence Report had been misused.

When I got the bankruptcy file, I personally reviewed it.

I found out that the Pre-Sentence Report had been filed as part of a motion to lift the automatic stay in her bankruptcy case.

Under the bankruptcy law, all lawsuits against Ms. Canter were automatically stayed when she filed her bankruptcy.

This included an unlawful detainer action filed by her father-in-law to evict her from her home.

The motion requested the court to lift the stay so the eviction action could go forward and the bankruptcy judge had done so.

I asked my secretary to find out the status of the unlawful detainer action.

She contacted the state court clerk and learned that a judgment had been entered.

I concluded that the Pre-Sentence Report had been improperly used to lift the automatic stay so that the father-in-law could proceed with the unlawful detainer action.

Therefore, I signed an order in February 2000 staying the unlawful detainer action.

My reason for doing so was my concern over the misuse of the confidential Pre-Sentence Report.

I did not do so to benefit Ms. Canter because she was one of my probationers or because I had some sort of personal relationship with her.

The Ex Parte Letter

The other accusation made against me was that I made my rulings in Ms. Canter's bankruptcy because I had received a secret letter from her asking for my help in preventing her eviction.

This accusation arose because her former bankruptcy lawyer, Andrew Smyth, told a Judicial Council investigator that his wife said she helped prepare such a letter.

As part of the Chief Judge's investigation, my secretary submitted a declaration confirming that I had not received any such letter or other communication from Ms. Canter.

Ms. Canter also signed a declaration saying she had never written or delivered such a letter or other document to me.

I do know that I never received such a letter or any other such document from Ms. Canter.

The only documents I ever received from Ms. Canter were pleadings filed in her bankruptcy action.

In Judge Kozinski's dissent, he goes to great length to try to prove that I did receive an improper communication from Ms. Canter.

In my Written Testimony, I discuss some of the reasons why he was wrong and will not repeat that testimony in this opening statement.

Conclusion

In conclusion, I want to say again that the accusations of misconduct made against me are untrue.

I did not receive any secret communication from Ms. Canter.

I did not make any rulings in her bankruptcy based upon such a communication or for the purpose of benefiting her personally.

Thank you for the opportunity to make this statement.

I would be glad to answer any questions the Committee might have.

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