

Judge Peter "The Saw" McBrien

Who will survive
and what
will be
left of
them?

THE FAMILY COURTROOM MASSACRE



Pete "The Saw" McBrien became infamous in 2001 when he engaged in a little judicial pruning of 50 to 100 year old trees on Sacramento County property to improve his *Dis-honor's* view of the Sacramento River. As a result of his felonious conduct, the California Commission on Judicial Performance (so-called judicial watchdog agency) punished *The Saw* by giving him a complimentary public reprimand when in fact he should have been tossed off the bench.

Of course anyone with an I.Q. higher than the legal speed limit for semi-trucks on State Route 50 in Sacramento would have concluded that it wouldn't be long before *The Saw* provided us with an encore of his innate ability to treat his oath of office with total contempt.

Below you'll see a verbatim copy of a September 25, 2008 Complaint filed by the Judicial Commission against *The Saw* for trampling on

the due process rights of Ulf Carlsson. You'll also see two charges leveled against *The Saw* for engaging in illegal ex parte communications (speaking with one side to a lawsuit without the other's side's knowledge.)

In addition to his skills with a chainsaw, *The Saw* has also proven to be a vindictive and punitive martinet who actually enjoys causing irreparable damages to those poor souls who were unfortunate enough to have had their family law court disputes assigned to him. We'll never know the actual amount of *The Saw's* true victims, but I'm sure that if you laid them end to end beginning in Sacramento, you'd likely make it all the way to Vacaville.

The Saw employed attorney James Murphy of Murphy, Pearson, Bradley & Feeney in San Francisco to defend him. If California operates like Ohio, then *The Saw's* defense is being funded by California taxpayers who pay the premiums for liability insurance for judges. This would mean that *The Saw's* victims are getting screwed twice if ya know what I mean. I'll have to do some research, and if this is the case, then a follow-up on the matter will be posted. In this writer's opinion, if you're looking for an attorney in the Bay area, LA or Sacramento that might not be ethically deprived, then I'd advise you to steer clear of Mr. Murphy and his firm. However, if you're looking for an attorney that is willing to twist the truth and/or fabricate a few novel defenses, then maybe Murph is your man.

Below you'll find (1) a letter to *The Saw* asking him to resign, (2) a letter to *The Saw's* lawyer James Murphy of San Francisco, (3) a verbatim copy of the complaint filed against *The Saw* by the California Judicial Commission (4) a story appearing in the *Metropolitan News*, and (5) a story appearing in the *Sacramento News & Review*.



Dave Palmer
The Watchdawg
Email: Noethics1@aol.com
URL: www.noethics.net
October 1, 2008

Judge Peter (**"The Saw"**) McBrien
3341 Power Inn Road
Sacramento, CA 95826

Re: Immediate Resignation

Dear Pete:



On behalf of the overtaxed voters and citizens of Sacramento County, I would respectfully ask that you consider immediately resigning from the bench. The recent (Sept. 25) "Notice of Formal Proceedings" filed by the Commission on Judicial Performance leaves no doubt that you are now and have been for many years unfit to sit in judgment of my fellow Californians.

Your prior felonious conduct in laying waste to government owned trees to improve your view of the American River in 2001 should have rightfully caused the Judicial Commission to have permanently benched you (aka, cut you off at the knees). Unfortunately, the Commission failed to so act, thereby assuring that you would continue to treat your oath of office with utter contempt and disdain.

Your conduct in the Ulf Carlsson matter is not only despicable but also unprecedented. It is painfully clear to me that you suffer from a Napoleonic syndrome wherein you believe you have a god-given right to destroy someone's life. Sadly, it appears that you actually enjoy inflicting irreparable damage on those you perceive as the enemy, which would be anyone that has the audacity to question your conduct.

Hopefully you'll now display a modicum of courage and immediately resign. The cost to the taxpayers in prosecuting the pending Judicial Commission complaint will likely exceed several hundred thousand dollars. I'm confident that the Commission will recommend that you be removed from the bench. Therefore, do the right thing Pete and resign now. I hear tell there are job opportunities as a greeter at Wal-Mart, so things are not as bleak as you might think. When you apply, take my advice and don't tell them you were a lawyer or judge. After all, Wal-Mart does have some ethical standards if ya know what I mean.

Respectfully yours,

Dave Palmer
The Watchdawg

PS: I'll be posting this letter; letter to Mr. Murphy; the Commission's complaint and news stories on my web site under "Watchdawg's Boneyard" (Judicial Misfits) at www.noethics.net.



Dave Palmer
The Watchdawg
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October 1, 2008

James Murphy
Murphy, Pearson, Bradley & Feeney
88 Kearny Street, 10th Floor
San Francisco, CA 94108
jmurphy@mpbf.com

Re: Representation of Peter (**The Saw**) McBrien

Dear Jim:

According to the *Metropolitan News* and the *Sacramento News & Review*, you're representing **The Saw** in regards to Formal Proceedings instituted by the California Judicial Commission on Sept. 25, 2008.

Obviously, every defendant regardless of the heinous nature of their crimes is entitled to a defense; however, I know many fine attorneys throughout the country who would refuse to defend someone of **The Saw's** ilk. I guess you gotta make a buck whenever you can regardless of the nature of the miscreant's egregious misconduct, right Jim?

Your comments to the *Metropolitan News* in defense of **The Saw** take hyperbole to new and as yet seen levels Jim. More importantly, it tends to exhibit a lack of ethics and the inability to speak the truth. Calling the charges against **The Saw** "a ticky tacky foul they wouldn't call in the NBA" is evidence that you're an enabler and apologist along with being an ethical dwarf. Stating that **The Saw's** conduct "goes to the heart of how the Sacramento Superior Court handles its family law department" is an alarming admission that **The Saw's** conduct is standard fare and totally acceptable. (*Metropolitan News*) I'm sure **The Saw's** myriad of victims, along with those victimized by his peers on the Family Court bench would totally agree Jimmy.

Even more laughable is your comment to the *News* that the anticipated testimony being presented by Carlsson's attorney "was going to be redundant." Are you claiming you're a certified savant Jimmy? It's obvious to me Jim that you're willing to say anything no matter how ridiculous in order to defend conduct that is clearly indefensible. Apparently you believe that Mr. Carlsson and/or those similarly situated are not really entitled to the due process protections of the U.S. and California Constitutions. It's obvious Jim that you'll do or say anything as long as **The Saw's** insurer (aka, the taxpayers) is willing to pay you \$300 or more an hour.

Dave Palmer
The Watchdawg

PS: I'll be posting this letter; letter to **The Saw**; the Commission's complaint and news stories on my web site under "Watchdawg's Boneyard" (Judicial Misfits) at www.noethics.net.

SEP 25 2008

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE**INQUIRY CONCERNING
JUDGE PETER J. McBRIEN****NOTICE OF FORMAL
PROCEEDINGS****No. 185**

To Peter J. McBrien, a judge of the Sacramento County Municipal Court from April 10, 1987 to July 17, 1989, and of the Sacramento County Superior Court from July 18, 1989 to present:

Preliminary investigation pursuant to Rules of the Commission on Judicial Performance, rules 109 and 111, having been made, the Commission on Judicial Performance has concluded that formal proceedings should be instituted to inquire into the charges specified against you herein.

By the following allegations, you are charged with willful misconduct in office, persistent failure or inability to perform your duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action within the meaning of article VI, section 18 of the California Constitution providing for removal, censure, or public or private admonishment of a judge or former judge, to wit:

COUNT ONE***A. Mona Lea Carlsson v. Ulf Johan Carlsson (No. 04FL02480)***

Carlsson was a contested marital dissolution and child custody case that primarily involved the distribution of the family residence and a rental property. A court trial took place before you for a full day on March 2 and two half-days on March 3 and 9, 2006. Attorney Sharon Huddle represented Mr. Ulf Carlsson. You entered judgment in favor of Ms. Mona Carlsson on almost every issue. In a published opinion, the Court of Appeal reversed the Carlsson judgment and remanded with an order that the case be assigned to a different judge. (*In re marriage of Carlsson* (2008) 16 Cal.App.4th 281.)

1. On March 9, prior to the conclusion of Mr. Carlsson's case, Ms. Carlsson's expert witness was recalled for rebuttal on the issue of fair market of the real properties. Ms. Huddle then recalled Mr. Carlsson's expert witness, Paktun Shah, to testify regarding fair market value. Mr. Shah had only briefly been on the witness stand when the trial ended with this exchange:

MS. HUDDLE: If you redid you capitalization and your sales market approach –

THE COURT: Pardon me. I have an EPO, Court is in recess.

MS. HUDDLE: I think he's just taking an Emergency Protective Order request. Is that it, like a domestic violence, it's his week; right?

THE CLERK: he's always assigned to EPOs.

THE COURT: We're going to have to adjourn this. The County operator is on the phone. This trial has ended.

MS HUDDLE: Your Honor, I don't even have my client's attorney fee costs [sic] put on.

THE COURT: Then I'll reserve over that issue or you can get a mistrial, on or the other.

MS. KEELEY: We don't want a mistrial. We'll reserve over that issue.

MS. HUDDLE: But your Honor, the house that we're evaluating –

(Judge Exits Room)

MS. KEELEY: We'll arrange another date. Don't panic.

MS. HUDDLE: Is that what he said?

MS. KEELEY: I'm going to ask for the [sic] him to reserve.

WITNESS: May I go.

MS HUDDLE: Is he coming back? I'm in the middle of my examination.

MS. KEELEY: Ms. Huddle, I'm not prepared for a mistrial.

The parties and counsel sat in the courtroom for several minutes, uncertain how to proceed, until the court clerk announced that the trial was over, with no explanation. Your departure from the bench precluded Ms. Huddle from completing her expert's testimony, from calling certain other witnesses and from presenting closing argument in person.

By abandoning the trial in the middle of Mr. Carlsson's case-in-chief without giving him an opportunity to complete the presentation of evidence of offer rebuttal evidence, **you denied Mr. Carlsson his constitutional right to due process and a fair trial.**

Your actions in terminating the trial as you did violated the Code of Judicial Ethics, canons 2A and 3B(7).

2. During the March 3 session of the Carlsson trial, you made a sua sponte [on his own volition] request for Mr. Carlsson to produce Statements of Economic Interest that were located at his place of employment, the State of California Department of General Services (DGS). You advised Mr. Carlsson to consult an attorney regarding his exposure to "potential penalties far beyond what we're talking about today."

The next court session was on March 9, where the following exchange took place:

THE COURT: Did he bring the documents with him?

MS. HUDDLE: He never went to work. He is on disability; he doesn't have them.

THE COURT: So, he has violated my request to bring those documents?

MS. HUDDLE: The way I heard you say it, it was a suggestion that he bring them.

You then said that Mr. Carlsson should send somebody to get the documents before the end of the trial. Ms. Huddle objected that the documents were irrelevant. You overruled the objection despite agreeing that the documents you asked Mr. Carlsson to produce were irrelevant to the trial over which you were presiding. You added, "However, they may be relevant to other proceedings."

After Ms. Huddle said that she was advising Mr. Carlsson to assert his Fifth Amendment rights regarding the documents, you engaged in an exchange with her regarding whether he client could properly invoke the Fifth Amendment at that point. You then threatened Ms. Huddle with contempt if Mr. Carlsson failed to produce the Statements of Economic Interest, as follows:

MS. HUDDLE: I suppose – this is all on the record. I don't know what to do in a situation like this when you're actually asking him to produce evidence which might incriminate him and it's not even the opposing side presenting it.

THE COURT: Ms. Huddle, am I to take that as a 'no' placing you in the possibility of contempt?

Your threat of contempt under these circumstances was improper and violated the Code of Judicial Ethics, canons 2 and 3B(4).

3. Shortly after the end of the Carlsson trial, you instructed your courtroom clerk to ask the court reporter to prepare a partial transcript of Mr. Carlsson's testimony concerning his real estate ownership and his disclosures on his Statements of Economic Interest about his real estate holdings. Your clerk told the court reporter that you were instructing her not to tell anyone, including the attorneys in the case, about your request for the partial transcript. You then sent the partial transcript to Mr. Carlsson's employer, DGS, and informed DGS that you believed Mr. Carlsson had failed to disclose certain information on his Statements of Economic Interest about his real estate holdings. **As a result of your actions, Mr. Carlsson's employment was terminated.** You continued to preside over the Carlsson case without disclosing to the parties your actions with respect to the partial transcript.

Your conduct constituted embroilment and violated the Code of Judicial Ethics, canons 2 and 3E(2).

4. During the Carlsson trial, you displayed impatience with Ms. Huddle and repeatedly threatened a mistrial if the proceedings were not concluded quickly enough, curtailing the parties' right to present evidence on all material disputed issues. You were also discourteous to Ms. Huddle. For example, you said, "This is not a law school class," in a derogatory manner which she was examining a witness.

Your conduct violated the Code of Judicial Ethics, canons 2 and 3B(4).

B. County of El Dorado v. John Chardoul (No.01FS05265

In the above-captioned matter, the minor child's mother, Cynthia Galiano, a party in the case, wrote a letter to the court dated July 10, 2006, requesting permission to appear by telephone at a mandatory settlement conference on August 15, 2006. Ms. Galiano did not send Mr. Chardoul or his attorney a copy of her letter. Ms. Galiano had previously made this request to Judge Allen Sumner while he was presiding over a hearing the matter on July 17, 2006, and he had denied it.

Although this case not assigned to you, you granted Ms. Galiano's ex parte request by stamping her letter "So ordered" and signing it on August 7, 2006, even though Local Rule 14.02 requires personal attendance at family law mandatory settlement conferences. You granted Ms. Galiano's ex part request without prior notice to Mr. Chardoul or his counsel, and without affording Mr. Chardoul or his counsel the opportunity to be heard on the matter. After you granted Ms. Galiano's request, you did not advise Mr. Chardoul or his attorney that you had done so, or that you had received the ex parte communication from Ms. Galiano. Mr. Chardoul first learned of Ms. Galiano's ex parte communication with you on August 15, 2006, when he appeared in person at the settlement conference, and she did not.

Your actions regarding the ex parte communication violated the Code of Judicial Ethics, canons 2 and 3B(7).

C. Dymora v. Dymora (No.99FL07480)

On April 4, 2000, while you were presiding over the above-captioned marital dissolution case, petitioner's counsel Donna T. DeCuir sent you a letter submitting her proposed Findings and Order After Hearing regarding a hearing over which you had presided on March 14, 2000. She did not send a copy of her letter to respondent's counsel Deborah Eldridge. Ms. DeCuir's April 4, 2000 letter to you stated that, in addition to submitting the Finds and Order After Hearing that she had prepared, she was also submitting the Findings and Order After Hearing "prepared by this office e by altered by [opposing counsel] Ms. Eldridge and her most recent threatening letter.

Ms. DeCuir's correspondence to you indicated that there was a dispute between the attorneys in the case regarding the language of the proposed Findings and Order After Hearing. You acted upon Ms. DeCuir's ex parte communication to you by signing the Findings and Order After Hearing she had prepared and submitted with her letter. After Ms. Aldridge found out about Ms. DeCuir's ex parte communication to you, she wrote you on April 20, 2000, to request that you vacate the order on the grounds that Ms. DeCuir's letter constituted an improper ex parte communication and that the Findings and Order After Hearing you signed did not accurately reflect the court's minute order for the March 14, 2000 hearing. You then vacated the Findings and Order After Hearing submitted by Ms. DeCuir and signed the Findings and Order After hearing submitted by Ms. Eldridge.

Your signing of the ordered based upon ex parte communication violated the Code of Judicial Ethics, canons 2 and 3B(7).

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceeding in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

Pursuant to the to Rules of the Commission on Judicial Performance, rules 104(c) and 119, you must file a written answer to the charges against you within twenty (2) days after service upon you. The answer shall be filed with the Commission on Judicial Performance, 455 Golden Gate Avenue, Suite 144000, San Francisco, California 94102-3660. The answer shall be verified [sworn to as true and accurate] and shall conform in style to the California Rules of

Court, rule 8.204(b). The Notice of Formal Proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer [motion to dismiss] shall be filed against any of the pleadings.

This Notice of Formal Proceedings may be amended pursuant to Rules of the Commission on Judicial Performance, rule 128(a).

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: September 22, 2008

Metropolitan News

CJP Launches Proceedings Against Sacramento Judge

By SHERRI M. OKAMOTO, Staff Writer – Sept. 30, 2008

The Commission on Judicial Performance instituted formal proceedings against Sacramento Superior Court Judge Peter J. McBrien the organization announced yesterday.

The notice of formal proceedings, authored by commission chair Orange Superior Court Frederick P. Horn, was filed Thursday, and charged McBrien with improperly threatening counsel with contempt, becoming embroiled in the proceedings before him, and ultimately abandoning a trial in the middle of a party's case in chief. The jurist's answer is due October 14, 2008.

While presiding over a routine marital dissolution between Mona Carlsson and Ulf Carlsson, the commission alleged that McBrien had "displayed impatience" with Ulf Carlsson's counsel, and "repeatedly threatened a mistrial if the proceedings were not concluded quickly enough."

McBrien also issued a sua sponte order that Carlsson produce certain financial documents that Carlsson was required to file as a public employee, even though the judge acknowledged that the documents were not relevant to the divorce proceedings. After Carlsson's attorney suggested that her client may want to assert his Fifth Amendment right against self incrimination if Carlsson had made any mistake in filling out the forms, McBrien asked her whether he should hold her in contempt for refusing to produce the forms.

The judge later abruptly ended the proceedings by excusing himself to take a phone call right after Carlsson's trial attorney, Sharon Huddle, called a witness to the stand and was in the midst of asking the witness a question. McBrien never returned to the bench, and eventually issued a ruling against Carlsson on virtually every issue.

Shortly after the end of the Carlsson trial, the notice alleged, McBrien instructed the courtroom clerk to ask the court reporter to prepare a partial transcript of Carlsson's testimony regarding the financial documents, and sent the transcript to Carlsson's employer, causing Carlsson to lose his job. McBrien never disclosed his actions to the parties.

In May, the Third District Court of Appeal held that McBrien's behavior "openly violated" the precepts of due process and so infected the integrity of the process that reversal was required without an assessment of actual prejudice.

McBrien was also charged with engaging in improper ex parte communications in two separate trials, and the notice alleged that McBrien's conduct as a whole constituted willful misconduct, persistent failure or inability to perform the duties of a judge, and conduct prejudicial to the administration of justice.

San Francisco attorney James A. Murphy, Esq., of Murphy, Pearson, Bradley and Feeney is representing McBrien before the council.

Murphy opined “when all of the facts comes out there will be a complete understanding of what [McBrien] did, why he did it, and that he should not be found guilty of any type of misconduct”

The attorney called the charges “a ticky tacky foul they wouldn’t call in the NBA,” and argued they should not form the basis of misconduct, and “go to the heart of how the Sacramento Superior Court handles its family law department.”

The court is “overburdened with work,” Murphy explained, and has a limit on the amount of time that can be used to try cases. He said that the Carlsson matter had already exceeded its allotted time, and it was 4:29 in the afternoon when McBrien left the bench to take an emergency protective order call.

The court was required to shut down at 4:30 because it did not have the funding to pay for overtime, Murphy said, and that the testimony being presented by Carlsson’s attorney “was going to be redundant,” Murphy said.

Murphy also denied that McBrien had ever threatened Carlsson’s attorney with contempt. He argued that the judge’s query about whether Huddle’s response should place her “in the possibility of contempt” was merely an accurate statement of fact.

“If you defy a judge’s order, I think that most people would think that you could be held in contempt of court,” he said.

Carlsson said yesterday that he had not yet been notified about the proceedings, but vowed “I’m going to nail [him].”

He led an unsuccessful effort to recall McBrien this year, but swore he was going to try again. “I’ll get my way because I won’t give up,” he said. “I won’t stop until I have him.”

The CJP, which is composed of three judges, two lawyers, and six public members, publicly admonished McBrien after he plead guilty to misdemeanor vandalism for chopping down oak trees on public land because they obscured the view of the American River from his home in April 2002.

McBrien, 63, was appointed to the Sacramento Municipal Court in 1987 by then-Gov. George Deukmejian, and elevated by Deukmejian to the superior court in 1989.

Sacramento News & Review

R.V. Scheide – Sept. 30, 2008

Judicial Performance Commission investigates local judge

The [California Commission on Judicial Performance](#) has charged controversial Sacramento Superior Court Judge Peter J. McBrien with willful misconduct and a persistent failure to perform his duties, according to documents filed by the commission on Monday, September 29. If the commission confirms the charges, McBrien, who is up for re-election this November, could be removed from the bench.

McBrien first gained local notoriety—and a rebuke from the commission—in 2001, after hiring an arborist to [chop down several oak trees](#) that obscured his home’s view of the American River. As SN&R reported at the time, the trees were on public land, and McBrien was charged with felony vandalism. He pleaded guilty to misdemeanor vandalism and paid a \$20,000 fine. The commission publicly reprimanded the judge, finding that his “conduct evidenced disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics.”

This time around, it’s McBrien’s conduct in courtroom that’s at issue. The present controversy began in 2006 after the judge walked out of the courtroom during a divorce trial before Gold River resident Ulf Carlsson had presented his entire defense. Carlsson appealed the case and

won, a decision that was recently upheld by the California Supreme Court. He also instigated a recall campaign, and quickly discovered he wasn't the only litigant unhappy with the treatment meted out in McBrien's family-law courtroom.

"I was shocked by how many victims there were out there," said Carlsson, who continues to gather signatures for the recall effort. "I keep thinking, this isn't about me, it's about an abusive judge."

Carlsson's case, which [SN&R first reported last August](#), is at the top of the commission's lengthy list of McBrien's alleged transgressions. "The formal proceedings concern allegations that the judge terminated a trial in a manner that deprived one of due process and a fair trial, improperly threatened that party's attorney with contempt, displayed embroilment against the party by sending information to the party's employer without disclosing that he had done so, displayed impatience with that party's counsel and repeatedly threatened a mistrial," the commission noted.

The commission also cites two cases in which McBrien allegedly engaged in ex parte communication with litigants without notifying the opposing parties, as required by the judicial code. If the commission determines that the charges are "proved by clear and convincing evidence, it is empowered to remove, censure, publicly admonish or privately discipline the judge."

To defend himself against the allegations, McBrien has retained James Murphy, of the respected San Francisco civil-litigation firm Murphy, Pearson, Bradley & Feeney. "When all the facts come out ... they will not find a factual basis to impose discipline," Murphy said.

McBrien has until October 14 to respond to the commission. If the commission confirms the charges against McBrien, Carlsson plans to retain a "super lawyer" and file a lawsuit in an attempt to recoup financial damages that include the loss of his state job and the depletion of his life's savings. He's grateful his parents had the financial wherewithal to help fund his battle against McBrien.

"If it weren't for Mom and Dad, I'd just be another victim no one ever heard about."