

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROLAND A. BEERS,

a Justice of the Walton Village Court,
Delaware County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to respondent, Roland A. Beers, a Justice of the Walton Village Court, Delaware County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon respondent the annexed Formal Written Complaint; and that, in accordance with said statute, respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Albany office, The Hampton Plaza, 38-40 State Street, Albany, New York 12207, with his verified Answer to the specific paragraphs of the Complaint.

Dated: October 31, 2007
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
(212) 809-0566

To: Honorable Roland A. Beers
Walton Village Justice
21 North Street
Walton, New York 13856

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ROLAND A. BEERS,

a Justice of the Walton Village Court,
Delaware County.

**FORMAL
WRITTEN COMPLAINT**

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Roland A. Beers ("respondent"), a Justice of the Walton Village Court, Delaware County.
3. The factual allegations set forth in Charges I through IV state acts of judicial misconduct by respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").
4. Respondent has been a Justice of the Walton Village Court since 1993. He is not an attorney.

CHARGE I

5. In or about August and September 2005, in presiding over *People v. Jeremy Stafford*, in which the defendant was charged with Assault in the Second Degree,

a felony in violation of Penal Law §120.05(1), respondent failed to effectuate the defendant's right to counsel and, in the absence of counsel, accepted the defendant's waiver of his right to a preliminary hearing, without conducting a searching inquiry into the defendant's knowledge of the significance thereof.

Specifications to Charge I

6. On or about August 29, 2005, respondent arraigned Jeremy Stafford on one count of Assault in the Second Degree, a felony in violation of Penal Law §120.05(1).

7. At the arraignment, respondent advised the defendant of his right to an attorney and asked the defendant if he wished be represented by a court-appointed attorney.

8. The defendant initially indicated that he was represented by attorney Andrew Van Buren but later, during the same arraignment proceeding, made clear that he wished to have an attorney appointed by the court to represent him in the instant matter.

9. Respondent acknowledged that the defendant requested a court-appointed attorney by annotating the defendant's criminal docket sheet and then questioning the defendant as to his financial ability to retain private counsel.

10. The defendant advised the respondent that he earned approximately \$300.00 per week and lived with his parents but had obligations to pay rent and support a child.

11. Based upon the oral assertions of the defendant, respondent determined that the defendant was not entitled to court-appointed representation and

directed the defendant to obtain counsel in anticipation of a preliminary hearing in the case. Respondent did not provide the defendant with a written application for court-appointed representation.

12. Respondent set September 2, 2005, as the date for a preliminary hearing in the case.

13. Respondent set bail in the case at \$2,500.00 cash or \$5,000.00 bond, and remanded the defendant to the Delaware County jail. The defendant did not post bail or bond and was taken to the Delaware County jail.

14. Between August 29, 2005, and September 2, 2005, respondent took no action to effectuate the defendant's right to counsel.

15. On September 1, 2005, respondent telephoned the Delaware County jail to ascertain whether or not the defendant had obtained counsel.

16. Respondent spoke by telephone with a correctional officer at the jail who, after speaking with the defendant, advised respondent that the defendant was represented by attorney Andrew Van Buren.

17. Respondent did not speak with the defendant and did not clarify in what matter attorney Andrew Van Buren might represent the defendant.

18. The defendant was not, in fact, represented by attorney Andrew Van Buren in the matter pending before respondent in the Walton Village Court.

19. On September 2, 2005, the defendant was brought from the jail to appear before respondent in the Walton Village Court. The District Attorney also appeared.

20. Respondent asked the defendant where his counsel was, and the defendant replied that he did not have counsel in the matter then pending in the Walton Village Court.

21. Respondent advised the defendant that he would adjourn the scheduled preliminary hearing to allow the defendant to obtain counsel, but that the defendant would be returned to the jail to await the adjourned date for the preliminary hearing.

22. Respondent advised the defendant that after any hearing, respondent would determine if there was sufficient evidence to warrant binding the case over for action of a grand jury.

23. Respondent also advised the defendant that he could waive the preliminary hearing in anticipation of action of a grand jury.

24. Both respondent and the district attorney spoke to the unrepresented defendant about waiving the preliminary hearing in the matter.

25. In the absence of a preliminary hearing, the defendant should have been released from custody on September 3, 2005, pursuant to CPL §180.80.

26. Respondent allowed the defendant to waive the preliminary hearing, in the absence of counsel, and respondent did not conduct a searching inquiry into the defendant's knowledge of the significance of his decision to waive the preliminary hearing.

27. At the conclusion of the proceeding on September 2, 2005, respondent remanded Jeremy Stafford to the Delaware County jail to await action of a grand jury.

28. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules.

CHARGE II

29. In or about July 2006, in presiding over *People v. Timothy Wilber*, in which the defendant was charged with Disorderly Conduct, a violation of Penal Law §240.20(7), respondent held the highly-intoxicated defendant in contempt of court and summarily sentenced him to the Delaware County jail for 30 days without setting forth in

a mandate of commitment the particular circumstances of the defendant's offense as required by Judiciary Law § 752. Respondent then signed, as the complainant, an Information charging the defendant with Criminal Contempt in the Second Degree, a misdemeanor in violation of Penal Law §215.50(1), and thereafter accepted the unrepresented defendant's guilty plea to the Disorderly Conduct charge.

Specifications to Charge II

30. On or about July 6, 2006, the defendant, Timothy Wilber, was charged with Disorderly Conduct, a violation of Penal Law §240.20(7). He was thereafter brought before respondent for arraignment in the early morning hours of July 7, 2006.

31. The defendant was highly intoxicated; a condition readily apparent to respondent and police officers in attendance.

32. Respondent did not accept a plea from the defendant due to the defendant's readily apparent highly intoxicated condition.

33. Respondent set bail in the case at \$250.00 cash or \$500.00 bond, and remanded the defendant to the Delaware County jail.

34. The defendant then became highly agitated and boisterous, and repeatedly used profanity toward respondent.

35. After several warnings that the defendant would be held in contempt if he continued his boisterous and profane conduct, respondent declared the defendant in contempt of court and sentenced him to 15 days in the Delaware County jail.

36. After the defendant defied respondent to impose more time, respondent increased the period of commitment to 30 days in the Delaware County jail. The defendant was then transported to the Delaware County jail.

37. After the arraignment, respondent directed attending police officers to prepare for his signature an Information charging the defendant with Criminal Contempt in the Second Degree, a misdemeanor in violation of Penal Law §215.50(1), which respondent signed on July 7, 2006.

38. Respondent did not have the defendant returned to the court immediately or soon after the defendant regained his sobriety to re-arraign him on the Disorderly Conduct charge, or to provide him with an opportunity to explain or apologize for his contemptuous conduct before the court.

39. Respondent allowed the defendant to remain committed to the Delaware County jail until July 20, 2006, when he accepted the unrepresented defendant's guilty plea to Disorderly Conduct and sentenced him to 15 days in the Delaware County jail to run concurrent to the 30-day commitment for contempt.

40. Despite summarily committing the defendant to the Delaware County jail for 30 days, respondent did not set forth in a mandate of commitment the particular circumstances of the defendant's offense, as required by Judiciary Law § 752.

41. Because respondent did not set forth in a mandate of commitment the particular circumstances of the defendant's offense, the defendant was denied the ability to have respondent's actions in this regard reviewed by a proceeding under Article 78 of the Civil Practice Law and Rules, as provided for in Judiciary Law § 752.

42. Respondent did not know the difference between criminal contempt under Judiciary Law § 752 and Criminal Contempt in the Second Degree in violation of Penal Law §215.50.

43. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules, and failed to disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

CHARGE III

44. In or about February 2006, in presiding over *People v. Adam McClenon*, in which the defendant was charged with Menacing in the Third Degree, a violation of Penal Law §120.15, at arraignment respondent set bail and remanded the

intoxicated defendant to the Delaware County jail but had the defendant brought back to court after approximately eight hours for re-arraignment after the defendant regained his sobriety. In the intervening eight-hour period, respondent contacted the district attorney, *ex parte*, and sought and obtained a reduction of the charge to a violation, Harassment in the Second Degree, a violation of Penal Law §240.26. Respondent then accepted the unrepresented defendant's plea to the reduced charge.

Specifications to Charge III

45. On or about February 25, 2006, the defendant, Adam McClenon, was charged with Menacing in the Third Degree, a violation of Penal Law §120.15. He was thereafter brought before respondent for arraignment in the early morning hours of February 25, 2006.

46. The defendant was intoxicated when brought before respondent at that arraignment, a condition apparent to respondent.

47. No representative from the district attorney's office was present and the defendant was unrepresented.

48. Respondent set bail in the case at \$500.00 cash or \$1,000.00 bond, and remanded the defendant to the Delaware County jail.

49. The defendant was brought back before respondent approximately eight hours later for re-arraignment, having regained his sobriety.

50. While the defendant was being held pending this re-arraignment, respondent contacted the district attorney by telephone in regard to the defendant's case.

51. Respondent urged the district attorney to agree to a plea to a reduced charge of Harassment in the Second Degree, a violation.

52. The district attorney agreed to such a reduction of the charge.

53. The defendant was not present when respondent telephoned the district attorney and did not authorize or otherwise know about respondent's telephone call to the district attorney.

54. When the defendant was brought back to court for re-arraignment, respondent advised him of the reduction in the charge and accepted the defendant's plea to the reduced charge.

55. The defendant did not have counsel when he pleaded to the reduced charge, and respondent took no steps to effectuate his right to counsel, as required by Section 170.10(4)(a) of the Criminal Procedure Law.

56. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety in that he failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to be faithful to the law and maintain

professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law by initiating an improper *ex parte* communication outside the presence of a party or that party's lawyer concerning a pending or impending proceeding, in violation of Section 100.3(B)(6) of the Rules.

CHARGE IV

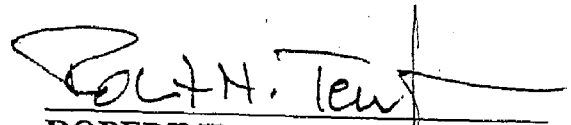
57. In *People v. Jeremy Stafford*, *People v. Timothy Wilber*, and *People v. Adam McClenon*, as indicated in Charges I through III, respondent took no steps to effectuate the defendants' rights to counsel, as required by Section 170.10(4)(a) of the Criminal Procedure Law, notwithstanding that respondent had received a Letter of Dismissal and Caution, dated November 10, 2004, in which the Commission cautioned respondent to comply with pertinent standards of the Rules Governing Judicial Conduct and to abide by Section 170.10(4)(a) of the Criminal Procedure Law regarding the right to the aid of counsel and the requirement that respondent take such affirmative action as is necessary to effectuate that right. A copy of the Letter of Dismissal and Caution is annexed as Exhibit A.

58. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety

in that he failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to afford every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: October 31, 2007
New York, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
(212) 809-0566



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT
61 BROADWAY
NEW YORK, NEW YORK 10006

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November 10, 2004

CONFIDENTIAL

Honorable Roland A. Beers
Walton Village Justice
21 North Street
Walton, New York 13856

LETTER OF DISMISSAL AND CAUTION

Dear Judge Beers:

The Commission on Judicial Conduct has completed its investigation into allegations that you failed to advise defendants of their rights as required. After considering your response to the allegations, the Commission has determined not to institute formal charges.

In accordance with Section 7000.3(c) of the Commission's Operating Procedures and Rules, the Commission has dismissed the complaint with this letter of dismissal and caution.

You are cautioned to adhere to Section 100.1 of the Rules Governing Judicial Conduct ("Rules"), which requires a judge to observe high standards of conduct so as to preserve the integrity of the judiciary; Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; Section 100.3(B)(1) of the Rules, which requires a judge to be faithful to the law and to maintain professional competence in it; and Section 100.3(B)(6) of the Rules, which requires a judge to afford every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

You did not comply with those standards when you failed to advise certain defendants charged with violations under the Penal Law of their right to assigned counsel. You are cautioned to abide by Section 170.10(4)(a) of the Criminal Procedure Law regarding the right to assigned counsel and to take such affirmative action as is necessary to effectuate that right. The Commission notes that your conduct in this regard appeared to be motivated by your mistaken belief that it was not necessary to advise defendants of the right to assigned counsel if you did not intend to impose a jail sentence.

You are also cautioned to make a record of arraignment proceedings, including the constitutional and statutory rights of which the defendant was advised, as required by Section 200.23(b) of the Recordkeeping Requirements For Town and Village Courts (22 NYCRR §200.23[b]).

In addition, you have acknowledged that you set bail with the direction that it be posted in the form of cash only. You are cautioned to adhere to Section 520.10(2)(b) of the Criminal Procedure Law, which does not allow you to restrict the payment of bail to cash only.

In accordance with the Commission's policy, you may either accept this letter of dismissal and caution or request a formal disciplinary hearing. If you choose to accept this letter of dismissal and caution, no further action will be taken. If you request a hearing, the Commission may authorize a Formal Written Complaint against you pursuant to Judiciary Law Section 44(4) and designate a referee to hear and report findings of fact and conclusions of law. If a hearing is held, the Commission may then decide to dismiss the complaint, issue a letter of caution to you, or file a determination pursuant to Judiciary Law Section 44(7) that you be publicly admonished, publicly censured, or removed from office.

The letter of dismissal and caution is a confidential disposition of the current complaint but may be used in a future disciplinary proceeding based on a failure to adhere to the terms of the letter. The Commission may also consider the letter of dismissal and caution in determining sanction in any future disciplinary proceeding, in the event formal charges are sustained and misconduct is established.

Please advise the Commission in writing no later than 10 days after receipt of this letter if you choose not to accept this letter of dismissal and caution and wish to have a hearing on formal charges. If we do not hear from you requesting a formal hearing within 10 days, the letter shall be final.

Honorable Roland A. Beers

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A copy of the Commission's rules is enclosed for your information.

Very truly yours,

COMMISSION ON JUDICIAL CONDUCT

By:



Lawrence S. Goldman, Esq.
Chair

Enclosure

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VERIFICATION

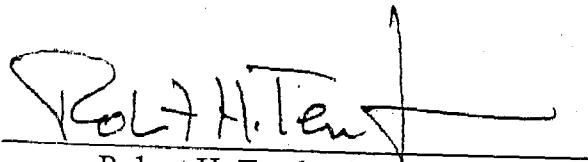
ROLAND A. BEERS,

a Justice of the Walton Village Court,
Delaware County.
-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
31st day of October 2007

KAREN KOZAC
NOTARY PUBLIC, State of New York
No. 02KO6171500
Qualified in Westchester County
Commission Expires July 23, 20 11

Notary Public

