

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

PAUL G. BUCHANAN,

A Judge of the Family Court,
Erie County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between

Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and
Honorable Paul G. Buchanan ("respondent"), who is represented in this proceeding by
Richard T. Sullivan, Esq., Harris Beach PLLC, that further proceedings are waived and
that the Commission shall make its determination upon the following facts, which shall
constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in
1989. He has been a Judge of the Family Court, Erie County, since 2004. Respondent's
current term expires on December 31, 2013.

2. Respondent was served with a Formal Written Complaint dated
March 6, 2012 and filed an Answer dated May 1, 2012.

As to Charge I

3. From September 2009 through January 2010, respondent presided in Erie County Family Court over *Matter of* ██████████ ██████████, a juvenile delinquency proceeding. Ms. ██████████ was 14 years old during this time period.

4. In November 2009, respondent released S ██████████ ██████████ to the custody of her mother. About 10 days later, Ms. ██████████ was transported to the Erie County Medical Center (ECMC) and then to the Women and Children's Hospital of Buffalo for treatment and observation due to an overdose of prescription medication. In early December 2009, S ██████████ ██████████ was transported back to ECMC and placed in a psychiatric unit for treatment and observation.

5. In the first week of December 2009, within days after learning of S ██████████ ██████████' overdose and hospitalization, respondent visited with her alone for approximately 15 minutes in the psychiatric unit at ECMC. Respondent gave her an age-appropriate book and cookies which he had purchased as gifts. Respondent told her that her mother and grandmother loved her and that she had a lot to live for.

6. Respondent neither notified nor sought authorization from S ██████████ ██████████' mother, doctor, attorney or the attorney for the presentment agency, for his psychiatric unit visit with her.

7. In the first week of January 2010, Amy M. McCabe, Esq., the presentment agency attorney, filed a motion seeking respondent's recusal from the ██████████ ██████████ matter because of his *ex parte* psychiatric unit visit with S ██████████ ██████████. Ms. ██████████' attorney, Jeffrey M. Priore, Esq., did not oppose the motion.

8. On January 14, 2010, respondent presided over the [REDACTED] matter. He did not acknowledge his private meeting with Ms. [REDACTED] and reserved decision on Ms. McCabe's recusal application. Mr. Priore took no position on the motion. Respondent addressed the pending issues in the case, signed an order directing secure detention, and adjourned the case to March 2, 2010.

9. On January 15, 2010, respondent spoke with Frank J. Boccio, Chief Clerk of Court for Erie County Family Court, and had the [REDACTED] matter transferred to another Erie County Family Court Judge. Respondent did not enter a ruling on Ms. McCabe's recusal motion or indicate on the record the basis for the transfer.

10. Respondent signed an Order on Motion, entered on January 26, 2010, which stated that Ms. McCabe's recusal motion was "dismissed as moot" and that the [REDACTED] matter "had been previously administratively transferred...prior to decision."

11. 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 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; failed to perform the duties of judicial office

impartially and diligently in that he initiated and permitted an improper *ex parte* communication outside the presence of the parties or their lawyers concerning a pending proceeding, and failed to make provisions for prompt notification of the parties or their lawyers of the substance of the *ex parte* communication and allow an opportunity to respond, in violation of Section 100.3(B)(6)(a) of the Rules; and failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

As to Charge II

Matter of [REDACTED] [REDACTED]

12. On June 2, 2009, respondent presided in Erie County Family Court over *Matter of* [REDACTED] [REDACTED], a Person in Need of Supervision (PINS) proceeding. Respondent stated that he would release Ms. [REDACTED] to her legal guardian, Cheryl Anderson, provided that Ms. [REDACTED] cooperate with Southwest Key Programs and Family Functional Therapy.

13. Assistant Erie County Attorney Amy M. McCabe responded that Ms. Anderson had been unsuccessful in meeting and communicating with Ms. [REDACTED]'s probation officer or a department supervisor. Respondent directed court clerk Lisa Juda to call Erie County Probation Department supervisor Nancy Lauria to the courtroom and he adjourned the matter until later that day.

14. Ms. Lauria was present in the courtroom when respondent recalled the [REDACTED] matter, but respondent did not address Ms. Lauria or note her appearance on

the record. Respondent released Ms. [REDACTED] under the same conditions that he had imposed earlier and adjourned the [REDACTED] matter.

15. As Ms. Lauria was exiting the courtroom, respondent sternly called out that he wanted to speak to her. When Ms. Lauria approached the counsel table, which was approximately six feet from the bench, respondent pointed at her and, in a raised and angry tone of voice, stated in words or substance, "Stay there" and "don't come any closer."

16. Respondent shook his finger at Ms. Lauria and yelled at her in a volume so loud that he was heard by courtroom personnel as well as others who were in an outside hallway behind the closed courtroom doors. Respondent chastised Ms. Lauria for signing and authorizing the submission to the court of a multi-agency Family Services Team (FST) report in the [REDACTED] matter that did not have the signature of the lead agency's supervisor. The report had been authored by Luanne Kozlowski, Ms. [REDACTED]'s probation officer.

17. Respondent did not allow Ms. Lauria to explain, shouting over her as she said that she had acted with the authorization of Brian McLaughlin, the Director of Probation for the Erie County Department of Probation.

18. Respondent shouted that Ms. Lauria would "need to appear with an attorney" if she again signed an FST report to be submitted to the court without the signature of the lead agency's supervisor.

19. Respondent's behavior embarrassed and emotionally upset Ms. Lauria.

Matter of Rodney [REDACTED], Jr.

20. On March 3, 2010, respondent presided in the Erie County Family Court over *Matter of [REDACTED] [REDACTED], Jr. ([REDACTED])*, a PINS proceeding, in which Mr. [REDACTED] was represented by David M. Glenn, Esq., an attorney with the Legal Aid Bureau of Buffalo, Inc. (Legal Aid).

21. Mr. Glenn, an attorney admitted to the New York State Bar in 1962, had appeared numerous times in respondent's court over the years. Respondent had never complained about Mr. Glenn or his professional performance.

22. Mr. Glenn advised the court that his client would waive a dispositional hearing if he could be placed in his choice of one of two youth treatment programs that had accepted him. Respondent asked why his client did not like the other program. Mr. Glenn responded that a different Legal Aid client had suffered a fractured wrist at the other program, and that the injury was allegedly caused by facility staff during a disciplinary incident. Upon further questioning by respondent, Mr. Glenn said that he believed the matter was being investigated but did not know what, if any, action Legal Aid had taken concerning the matter.

23. Respondent stated, "But what you also are telling me is that Legal Aid Bureau has taken the position that one of their clients was injured... and has taken no action on behalf of their client." When Mr. Glenn protested that he never said that, respondent replied, "That's what you're leading me to believe."

24. Respondent shouted at Mr. Glenn in a loud and angry voice and interrupted Mr. Glenn's attempts to explain his position. Respondent berated Mr. Glenn

and, in a condescending tone, lectured him concerning Legal Aid's "ethical and legal obligations" and the agency's "requirement and duty" to its injured client.

25. After the proceeding, respondent telephoned Pamela L. Neubeck, Esq., Mr. Glenn's supervisor, and demanded, without explanation, that Mr. Glenn never again be sent to his courtroom. When Ms. Neubeck told respondent that her office did not automatically reassign attorneys upon a complaint, respondent warned that he would recuse himself in any case where Mr. Glenn appeared as counsel.

26. Respondent subsequently spoke to David Schopp, Esq., Executive Attorney for Legal Aid, and repeated his statement that he would recuse himself if Mr. Glenn appeared in his courtroom. Respondent and Mr. Schopp eventually agreed that Mr. Glenn could continue to appear in respondent's court to finish cases in which he had already been assigned, with the understanding that Legal Aid would not assign Mr. Glenn to any future cases in respondent's court.

27. 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 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 patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

As to Charge III

28. On September 9, 2010, respondent presided in Chautauqua County Family Court over a custody and visitation hearing in *Jason J. Farrar v. Crystal M. Kinne*.

29. Following a brief recess after Mr. Farrar's direct testimony, respondent asked James J. Spann, Jr., Esq., Mr. Farrar's attorney, if he intended to call Crystal Kinne as his final witness at the conclusion of Mr. Farrar's testimony. After Mr. Spann confirmed that was his intention, respondent stated that he was going to interrupt Mr. Farrar's testimony so that Ms. Kinne could be called by Mr. Spann to testify out of turn. Respondent reserved the right of the other attorneys in the matter to have Mr. Farrar recalled for the purpose of cross-examination.

30. At the conclusion of Ms. Kinne's direct examination by Mr. Spann, respondent told Ms. Kinne that she could "step down." John P. Rice, III, Esq., Ms. Kinne's attorney, asked, in reference to cross-examination, "Your honor, am I going to get an opportunity to ask her questions?" Respondent did not respond to Mr. Rice's question and again directed Ms. Kinne to step down from the stand. Respondent did not provide Mr. Rice or Kenneth M. Lasker, Esq., the law guardian, the opportunity to cross-examine Ms. Kinne.

31. Respondent did not have Mr. Farrar recalled to the stand so that he could be cross-examined. Respondent issued a decision from the bench. He noted that cross-examination of the parties was not conducted and stated, "I don't see the need for that cross-examination, because the Petitioner did not meet his burden of proof."

32. Mr. Lasker asked to be heard on the issue, and respondent replied, "I'm done."

33. Respondent repeatedly interrupted Mr. Lasker's attempt to make a record that he had not been allowed to question the witnesses or have his client heard by the court, by loudly yelling at him, "Sir;" "Sir;" "Sir! Sir Stop! Stop right there!"

34. Mr. Lasker asked respondent, "I can't even ask a question? I can't cross-examine a witness to bring out the facts?" Respondent replied, "Sir! Sir, you had your opportunity to cross-examine the witnesses."

35. 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 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; 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 be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules; and failed to accord 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.

Additional Factors

36. Respondent has been cooperative with the Commission throughout its inquiry.

37. Respondent's contact with S [REDACTED] [REDACTED] was motivated by concern for her well-being.

38. Respondent sought and received professional counseling to assist him in dealing with the emotional demands of being a Family Court Judge.

39. Respondent has served as a Judge of the Family Court, Erie County, for eight years and has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules and pledges to conduct himself faithfully in accordance with the Rules for the remainder of his term as a judge.

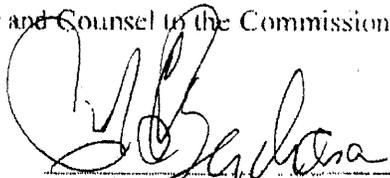
IT IS FURTHER STIPULATED AND AGREED that respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the

appropriate sanction is public Censure based upon the judicial misconduct set forth above.

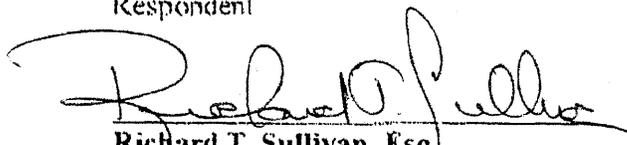
IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the respondent or the Administrator and Counsel to the Commission.

Dated: 10/23/12



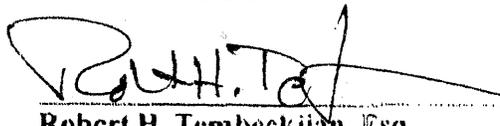
Honorable Paul G. Buchanan
Respondent

Dated: 9/18/12



Richard T. Sullivan, Esq.
Harris Beach PLLC

Dated: 10/24/12



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(David M. Duguay, Of Counsel)