

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

DETERMINATION

PAUL G. BUCHANAN,

a Judge of the Family Court, Erie
County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Harris Beach PLLC (by Richard T. Sullivan) for the Respondent

The respondent, Paul G. Buchanan, a Judge of the Family Court, Erie
County, was served with a Formal Written Complaint dated March 6, 2012, containing
three charges. The Formal Written Complaint alleged that respondent made an *ex parte*

hospital visit to a party in a juvenile delinquency proceeding (Charge I), was discourteous to a lawyer and a probation supervisor (Charge II), and issued a decision in a custody and visitation matter after foreclosing cross-examination of the parties and denying the attorneys an opportunity to be heard (Charge III). Respondent filed an Answer dated May 1, 2012.

On October 24, 2012, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On December 6, 2012, the Commission accepted the Agreed Statement and made the following determination.

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

As to Charge I of the Formal Written Complaint:

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

3. In November 2009, respondent released S [REDACTED] [REDACTED] to the

custody of her mother. About ten days later, Ms. [REDACTED] 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 [REDACTED] [REDACTED] was transported back to ECMC and placed in a psychiatric unit for treatment and observation.

4. In the first week of December 2009, within days after learning of S [REDACTED] [REDACTED] 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.

5. Respondent neither notified nor sought authorization from S [REDACTED] [REDACTED] mother, doctor, attorney or the attorney for the presentment agency, for his psychiatric unit visit with her.

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

7. 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.

8. 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.

9. 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."

As to Charge II of the Formal Written Complaint:

Matter of [REDACTED] [REDACTED]

10. 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.

11. 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.

12. 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.

13. 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.”

14. 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.

15. 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.

16. 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.

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

Matter of R [REDACTED] [REDACTED], Jr.

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

19. 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.

20. 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.

21. 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."

22. 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.

23. 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.

24. 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.

As to Charge III of the Formal Written Complaint:

25. 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*.

26. 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.

27. 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.

28. 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."

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

30. 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!”

31. 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.”

Additional Factors

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

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

34. 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.

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

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6)(a) and 100.3(E)(1) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law.

Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent engaged in a series of improper acts, both on and off the bench, that were inconsistent with ethical standards. His unauthorized hospital visit to a 14-year old girl, a party in a juvenile delinquency proceeding who was being held for treatment and observation after an overdose of prescription medication, violated the well-established prohibition against *ex parte* communications and overstepped the appropriate boundaries between a judge and a party in a pending matter (Rules, §100.3[B][6][a]). *See, Matter of Singer*, 2010 Annual Report 228 (Family Court judge admonished, *inter alia*, for an *ex parte* hospital visit to a youth whom the judge had ordered to be held for a mental evaluation in a custody case). Respondent should have recognized that such an unauthorized, private visit, however well-intentioned, would create an appearance of impropriety and compromise his impartiality (Rules, §100.2[A]), and thus was inconsistent with the proper role of a judge. A judge is not a therapist or social worker and has a responsibility, especially when dealing with vulnerable, troubled litigants, to ensure that appropriate boundaries are maintained. Respondent's misconduct is exacerbated by his failure to disclose the *ex parte* meeting and his failure to recuse himself promptly thereafter. Upon learning of the *ex parte* meeting, the presentment agency attorney promptly moved for his recusal because of it, and since respondent's conduct had placed him in a position in which his impartiality could reasonably be questioned, his recusal was required under the ethical rules (Rules, §100.3[E][1]).

In three matters, respondent violated his obligation to be patient, dignified and courteous to attorneys and others with whom he deals in an official capacity (Rules, §100.3[B][3]). In the [REDACTED] case, he appears to have overreacted because of a perceived deficiency in a probation report, berating and shouting at a probation supervisor. In [REDACTED], even if respondent was understandably concerned that a Legal Aid client had been injured at a treatment facility, venting his anger against the lawyer who disclosed the incident – and barring the lawyer from the courtroom with no explanation – was not an appropriate response.

In *Farrar v. Kinne*, a custody and visitation matter, respondent not only was discourteous to the law guardian who was attempting to assert his rights as the attorney for the child, but also foreclosed the attorney from exercising his rights. Respondent conducted an abbreviated hearing that deprived the parties of a full right to be heard and created an appearance that he engineered the result. By foreclosing cross-examination, he failed to afford an essential element of due process. Foreclosing the mother's attorney from cross-examining the father seems to indicate that respondent had already decided he would rule in the mother's favor. Moreover, the child's attorney – the law guardian – had the right to question both parties and to “zealously advocate the child's position” (22 NYCRR §7.2[d]). Such attorneys are important participants in Family Court proceedings. In this case, if the law guardian believed that the father's request for custody/visitation was in the best interests of the child or that his client supported the request, his cross-examination might have buttressed the father's petition. Respondent rudely and

inappropriately foreclosed the attorney from exercising his proper function, which resulted in a decision made on an abbreviated record that did not afford the parties a full opportunity to be heard.

We note that respondent, who had served as a Family Court Judge for more than five years at the time of these events, has acknowledged that his actions were inconsistent with the ethical standards and the procedures required by law, and has pledged to conduct himself in accordance with the Rules in the future.

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Mr. Emery, Mr. Harding, Ms. Moore, Mr. Stoloff and Judge Weinstein concur.

Mr. Belluck was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: December 11, 2012

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct