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

THOMAS R. BUCKLEY,

a Justice of the Dannemora Town Court and Acting Justice of the Dannemora Village Court, Clinton County.

Determination

THE COMMISSION:

Honorable Eugene W. Salisbury
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Honorable Thomas R. Buckley, pro se

The respondent, Thomas R. Buckley, a justice of the Dannemora Town Court and the Dannemora Village Court, Clinton County, was served with a Formal Written Complaint dated March 25, 1999, alleging nine charges of misconduct.

Respondent answered by letter dated March 30, 1999.

By Order dated April 26, 1999, the Commission designated Travis H.D. Lewin, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 20, 21 and 22 and August 2, 1999, and the referee filed his report with the Commission on November 16, 1999.

Each party submitted papers with respect to the referee's report. Oral argument was waived.

On February 4, 2000, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Dannemora Town Court since 1987 and acting justice of the Dannemora Village Court since 1989. He has successfully completed all training sessions required by the Office of Court Administration.

2. On August 13, 1996, Craig L. Bowman was charged with Harassment, Second Degree, on the complaint of his wife. He was arraigned before respondent, who issued an Order of Protection and released him on his own recognizance. Respondent assigned an attorney to represent Mr. Bowman and told him that he would have to perform community service for 50 hours to "pay" for the attorney's services.

3. On September 12, 1996, Mr. Bowman was charged with Criminal Contempt, Second Degree, for violating the Order of Protection. He was arraigned by respondent, who again released him in his own custody.

4. On October 19, 1996, Mr. Bowman's wife again alleged that he had violated the Order of Protection, and Mr. Bowman was again charged with Criminal Contempt, Second Degree, a misdemeanor.

5. On October 20, 1996, he was arraigned before respondent. At the arraignment, respondent angrily threatened to put Mr. Bowman "so far back" in jail that no one would find him. Respondent used the word "fuck" and told Mr. Bowman to stop "screwing around." Although respondent had known Mr. Bowman as a local resident for many years and had no reason to believe that he would not reappear in court, he ordered him committed to jail without bail. CPL 530.20(1) requires that bail be set on a misdemeanor. Mr. Bowman's assigned counsel, Frank Zappala, was not present. Respondent knew that he was required to set bail or order the release of defendants charged with misdemeanors.

6. On January 16, 1997, in satisfaction of the Criminal Contempt charges, respondent gave Mr. Bowman a conditional discharge and ordered him to serve 150 hours of community service.

7. On January 19, 1997, the probation department complained to respondent that Mr. Bowman had not reported for community service. On February 27, 1997, Mr.

Bowman pleaded guilty to Criminal Contempt, Second Degree, and respondent sentenced him to four weekends in jail. Before being admitted to jail, Mr. Bowman was required to have a test for tuberculosis. Respondent gave him a paper which erroneously stated that the tests were given on Tuesdays, when, in fact, they were given on Mondays. When Mr. Bowman inquired about taking the test on Tuesday, March 4, 1997, he was told that he had missed it. Thus, he could not begin his jail sentence as scheduled on Friday, March 7, 1997.

8. Mr. Zappala called respondent to explain that Mr. Bowman could not report to the jail. Respondent issued a bench warrant for his arrest and recorded in his docket that Mr. Bowman was charged with Criminal Contempt, Second Degree.

9. On March 10, 1997, Mr. Bowman appeared before respondent without counsel. The defendant explained why he had not reported for the TB test, but respondent angrily said that he was not taking "the fucking blame" and committed him to jail in lieu of bail.

10. Respondent then asked another attorney, Stephen A. Johnston, to represent Mr. Bowman.

11. On March 13, 1997, Mr. Bowman and Mr. Johnston appeared in court. Mr. Johnston objected to respondent arraigning Mr. Bowman inasmuch as respondent was the complaining witness on the Criminal Contempt charge. Respondent refused to recuse himself and said that he felt that Mr. Bowman should do additional jail time. However,

he granted an adjournment so that Mr. Johnston could make an application to county court. Respondent released Mr. Bowman the following morning.

12. On October 22, 1997, respondent dismissed the charge with the consent of the District Attorney's Office.

As to Charge II of the Formal Written Complaint:

13. On June 9, 1996, Eric S. Hulkow, who was then 18 years old, was charged with Driving While Intoxicated and Failure to Keep Right. He appeared before respondent. Without provocation, respondent called him a "con man" and a "finagler." Respondent and Mr. Hulkow did not know one another before his court appearance.

14. Mr. Hulkow pleaded guilty to Driving While Ability Impaired. On July 20, 1996, respondent gave him a Conditional Discharge, requiring 100 hours of community service.

15. In October 1996, Mr. Hulkow pleaded guilty in the Town of Ellenburg to a charge alleging that he possessed a can of beer at the community-service work site, a State Police barracks.

16. On October 8, 1996, respondent recorded in his docket that Mr. Hulkow was charged with Criminal Contempt based on a violation of his Conditional Discharge, even though no such charge had been lodged in his court. Mr. Hulkow was given no written notice of such a charge.

17. On October 15, 1996, respondent recorded in his docket that he called Mr. Hulkow by telephone and "gave defendant another chance."

18. On October 16, 1996, respondent called attorney Oliver Bickel and asked him to represent Mr. Hulkow on a charge that he had violated a Conditional Discharge.

19. On October 24, 1996, respondent completed a second Conditional Discharge, requiring an additional 25 hours of community service and a drug and alcohol evaluation. Mr. Hulkow was not given these conditions in writing and did not sign the Conditional Discharge.

20. On December 18, 1996, respondent was advised that Mr. Hulkow had not kept an appointment for the evaluation, and, on December 30, 1996, the probation department reported that the defendant had not arranged to complete his community service.

21. Even though he had assigned an attorney to represent him, respondent called Mr. Hulkow by telephone on January 2, 1997, and told him to report the following day to the probation department and St. Joseph's Clinic in Malone.

22. On January 4 and 9, 1997, respondent prepared and signed informations, supporting depositions and bench warrants for Mr. Hulkow's arrest, alleging Criminal Contempt, Second Degree, for failing to fulfill the terms of his Conditional Discharge.

23. On January 13, 1997, respondent arraigned Mr. Hulkow on a charge of Criminal Contempt, Second Degree, and committed him to jail in lieu of bail, even though respondent was the complaining witness. Mr. Bickel was not present. The defendant was released on bail on January 15, 1997.

24. On January 16, 1997, Mr. Hulkow again appeared before respondent without counsel. Mr. Hulkow did not plead guilty, and no trial was held. However, respondent entered a conviction to a charge of Criminal Contempt, Second Degree, and a sentence to time served.

25. Mr. Bickel never saw any paperwork in connection with the case, and neither the attorney nor Mr. Hulkow were aware that the defendant had been convicted of Criminal Contempt.

As to Charge III of the Formal Written Complaint:

26. On May 21, 1997, David Velie, who was then 19 years old and had a history of psychiatric problems, was arraigned before respondent on a charge of Endangering the Welfare of a Child, a misdemeanor. Respondent remanded him to jail without bail, even though CPL 530.20(1) requires that bail be set on a misdemeanor. Respondent assigned attorney John Carter to represent him. The following day, respondent called the jail and ordered Mr. Velie released.

27. On May 24, 1997, after speaking with Mr. Velie and his father by telephone, respondent prepared and signed a supporting deposition and a bench warrant for Mr. Velie's arrest on the grounds that he had left his home for purposes other than employment, contrary to what respondent said were his directions. He did not notify Mr. Carter.

28. Mr. Velie was arrested and brought before respondent. When he refused to sit down and attempted to leave, he was arrested for Resisting Arrest, a misdemeanor. Respondent was a witness to the incident and filed his own supporting deposition regarding the charge.

29. Respondent again committed Mr. Velie to jail without bail, contrary to law.

30. Respondent continued to preside and disposed of the charges on September 4, 1997. The Resisting Arrest charge was dismissed; Mr. Velie pleaded guilty to Endangering the Welfare of a Child and was sentenced to 30 days in jail.

As to Charge IV of the Formal Written Complaint:

31. On July 30, 1997, respondent found Deborah E. Bordeau, who was a neighbor of respondent, guilty of Harboring a Dangerous Dog, ordered her to keep it confined and threatened to have it destroyed if she did not.

32. After Ms. Bordeau returned home, her husband, Mark, went to court and questioned respondent about the case. Respondent angrily told him, "I don't know any stupid ass that would go to jail over a dog," and used the work "fuck."

33. Respondent saw the Bordeaus' dog running loose on August 25 and 26, 1997, and summarily issued an order to have it seized and destroyed.

34. However, respondent then consulted an attorney for the State Department of Agriculture and Markets who suggested that he hold a hearing before having the dog destroyed.

35. He held a hearing on September 4, 1997, even though no new charge had been filed and even though he was a witness to the events. Respondent refused Ms. Bordeau's request for an adjournment to obtain an attorney and ordered her to surrender the dog to be destroyed.

36. On October 2, 1997, respondent called Ms. Bordeau on two occasions and threatened to have her incarcerated if she did not surrender the dog.

37. Ms. Bordeau then retained an attorney, Darrell L. Bowen. On October 16, 1997, Mr. Bowen asked respondent to recuse himself inasmuch as he had personal knowledge of facts underlying the case. Respondent refused.

38. However, respondent agreed to give Ms. Bordeau another hearing on October 23, 1997. After the re-hearing, respondent again ordered the dog destroyed.

As to Charge V of the Formal Written Complaint:

39. On June 15, 1995, respondent sentenced Jason Waldron to three years probation on a charge of Criminal Mischief, Fourth Degree. Mr. Waldron was represented in that proceeding by attorney John Carter.

40. On September 8, 1997, Mr. Waldron's probation officer advised respondent that the defendant had violated the terms of his probation.

41. On September 8, 1997, respondent issued a warrant for Mr. Waldron's arrest. Respondent did not advise Mr. Carter of this action.

42. Mr. Waldron appeared in court on October 4, 1997. Respondent remanded him to jail without bail until October 9, 1997, on a charge of Criminal Contempt, Second Degree, a misdemeanor, even though no accusatory instrument charging him with such an offense had been filed and even though CPL 530.20(1) requires that bail be set on a misdemeanor.

43. Mr. Waldron reappeared on October 9, 1997. When he admitted to violating the terms of his probation, respondent assumed that he had pleaded guilty to Criminal Contempt, although he is not sure that he ever advised Mr. Waldron that he was being charged with Criminal Contempt.

44. Another attorney representing Mr. Waldron, Michael Phillips, ultimately persuaded respondent that the defendant could not be charged with Criminal Contempt.

As to Charge VI of the Formal Written Complaint:

45. On November 2, 1997, Carson F. Arnold, Sr., was charged with Aggravated Harassment, Second Degree, a misdemeanor, on the complaint of Mary A. Yanulavich, stemming from a dispute over some construction work that he had done on her home.

46. Respondent had known Ms. Yanulavich for many years and considered her "more than a casual acquaintance but not a close friend," and he knew that she was dying of cancer. Ms. Yanulavich called respondent before Mr. Arnold's arraignment and told him that she had been threatened by Mr. Arnold.

47. On November 2, 1997, respondent arraigned Mr. Arnold. He read the charge to the defendant but did not advise him of his rights concerning counsel, as required by CPL 170.10(4)(a).

48. Without provocation, respondent told Mr. Arnold to shut up and not to say another word until he was done.

49. Respondent committed Mr. Arnold to jail without bail, even though CPL 530.20(1) requires that bail be set on a misdemeanor.

50. Respondent acknowledges that there was "something about Mr. Arnold" that made him think of "these gypsy contractors" and that he gave Ms. Yanulavich extra credibility in the case.

51. The case was dismissed after Ms. Yanulavich died.

As to Charge VII of the Formal Written Complaint:

52. On November 20, 1997, Sean C. Frey pleaded guilty to Harassment, Second Degree, and was sentenced by respondent to a Conditional Discharge, requiring 40 hours of community service.

53. On January 28, 1998, the probation department advised respondent that Mr. Frey had not completed the community service. On January 30, 1998, respondent issued a warrant for Mr. Frey's arrest, stating as the charge Criminal Contempt, Second Degree.

54. Mr. Frey was arrested the same day and brought before respondent. Mr. Frey requested assigned counsel, and he had been represented by assigned counsel on the original charge. However, respondent did not assign counsel to represent him. Respondent remanded him to jail in lieu of bail. Mr. Frey was released a day later.

55. On February 5, 1998, Mr. Frey reappeared before respondent. The defendant did not know that he was charged with Criminal Contempt and did not plead guilty to that charge. Respondent recorded in his docket and reported to the Department of Criminal Justice Services that Mr. Frey had been convicted of Criminal Contempt and sentenced to time served.

56. On March 31, 1998, the probation department again advised respondent that Mr. Frey had not completed the community service. Respondent issued bench warrants on April 1, 2 and 6, 1998, ordering Mr. Frey's arrest on a charge of Harassment, Second Degree.

57. Mr. Frey was arrested on April 10, 1998, and was brought before respondent. Mr. Frey again asked for assigned counsel, but respondent did not designate one. The defendant was remanded to jail in lieu of bail.

58. On April 16, 1998, Mr. Frey returned to court. Respondent recorded in his docket that Mr. Frey had been found guilty by the court of Harassment, Second Degree, and sentenced to time served and an additional 40 hours of community service.

59. On May 4, 1998, the probation department again reported that Mr. Frey had not completed the community service. On May 9, 1998, respondent again issued a bench warrant on a charge of Harassment, Second Degree.

60. On May 19, 1998, Mr. Frey appeared before respondent. He was committed to jail in lieu of bail.

61. On May 21, 1998, Mr. Frey returned to court. He did not plead guilty to any charge and was not given notice of any additional charge. Respondent recorded in his docket that the defendant pleaded guilty to Harassment, Second Degree, and he

sentenced him to 15 days in jail and increased the community service to 120 hours, to be completed within three weeks.

62. No attorney was ever assigned by respondent to represent Mr. Frey at his court appearances after the initial conviction.

As to Charge VIII of the Formal Written Complaint:

63. On June 28, 1998, Timothy R. Baker was charged with Harassment, Second Degree, and Disorderly Conduct. Mr. Baker was on probation at the time. Respondent ordered him committed to jail in lieu of bail.

64. On July 2, 1998, respondent held a bail hearing. The probation department urged that bail be revoked, and it asked that respondent declare Mr. Baker delinquent as to his probation and schedule a hearing. Respondent revoked Mr. Baker's bail and signed a Declaration of Delinquency.

65. However, respondent did not schedule another court appearance until September 24, 1998, even though Mr. Baker's attorney requested on two occasions that he do so since her client was incarcerated and even though CPL 410.70(1) requires a prompt hearing on a probation violation. By September 24, 1998, Mr. Baker had served the entire sentence; he pleaded guilty, was sentenced to time served and was released.

66. Respondent acknowledged that he wanted to keep Mr. Baker in jail for his own benefit.

As to Charge IX of the Formal Written Complaint:

67. Since 1990, respondent has required defendants who receive assigned counsel to "work it off" by performing community service. Respondent asks attorneys that he appoints to estimate their legal fees, then calculates the hours of community service at the rate of $5 per hour.

68. Respondent continued this practice, even after three defense attorneys and the District Attorney had advised him that it was improper.

69. At the hearing, respondent testified that he wanted to be shown "in black and white where the Constitution says, exactly, it's illegal to make a person work off their assigned counsel fees..." and asserted that he would not accept "some liberal attorney's interpretation...."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6), 100.3(B)(7), 100.3(E)(1)(a) and 100.3(E)(1)(d)(iv). Charges I, II, III, IV, V, VI, VII, VIII and IX, as amended at the hearing, are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

This record portrays a biased judge who routinely denies defendants their fundamental rights and ignores proper criminal procedure, as well as ethical constraints on his conduct.

Respondent denied defendants their right to counsel by failing to advise them of the right and by taking action against them without notice to their lawyers when he knew that they were represented. (See, CPL 170.10[4][a]; Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82). He exhibited bias before conviction by threatening defendants with jail and by calling them names. (See, Matter of Esworthy, 77 NY2d 280; Matter of Hannigan, 1998 Ann Report of NY Commn on Jud Conduct, at 131). He repeatedly used intemperate language. (See, Matter of Assini, 94 NY2d 26, 29; Matter of McKevitt, 1997 Ann Report of NY Commn on Jud Conduct, at 106, 107).

Respondent has disregarded basic requirements of law by jailing without bail defendants who were statutorily entitled to bail (see, CPL 530.20[1]; Matter of LaBelle, 79 NY2d 350) and by summarily convicting on Criminal Contempt charges individuals whom he concluded, without trial or guilty pleas, had violated some order of the court (see, Matter of Hamel, 88 NY2d 317; Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 90). One defendant was convicted three times on the same charge - without knowing it, since respondent gave him no notice. Respondent simply ordered the defendant's arrest and conviction on the original charge each time he received word that he had not completed community service.

Respondent sat on cases in which he was the complaining witness (see, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][d][iv]; Matter of Ross, 1990 Ann Report of NY Commn on Jud Conduct, at 153, 155) and in which he had knowledge of disputed evidentiary facts (see, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][a][ii]; Matter of Vonder Heide, 72 NY2d 658, 659). He frequently engaged in ex parte communications. (See, 22 NYCRR 100.3[B][6]).

By requiring indigent defendants to "pay" for their assigned counsel by performing community service, respondent ignored a fundamental constitutional precept and the warnings of both prosecuting and defense attorneys that the procedure was improper.

A judge who shows a shocking disregard for due process of law, grossly abuses judicial power and process, denies defendants their rights, ignores the mandates of law and demeans defendants has distorted the proper role of a judge and is unfit to remain in office. (Matter of Sardino, 58 NY2d 286, 291-92).

By reason of the foregoing, the Commission determines that the appropriate sanction is removal.

Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Luciano, Judge Marshall, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Mr. Coffey was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: April 6, 2000

Honorable Eugene W. Salisbury
New York State
Commission on Judicial Conduct