

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

GENE R. HEINTZ,

**AGREED
STATEMENT OF FACTS**

A Justice of the Sardinia Town Court,
Erie County.

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Gene R. Heintz ("Respondent"), who is represented in this proceeding by Daniel M. Killelea, Esq., 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 is not an attorney. He has been a Justice of the Sardinia Town Court, Erie County, since January 1, 2014. Respondent's term expires on December 31, 2017.

2. Respondent was served with a Formal Written Complaint dated August 19, 2015, a copy of which is appended as Exhibit A. He filed an Answer dated October 2, 2015, a copy of which is appended as Exhibit B.

As to Charge I

3. In August 2014, while presiding over *Town of Sardinia v Megan Shimburski*, a “dangerous dog” matter pursuant to Section 123 of the Agriculture and Markets Law, Respondent failed to be faithful to the law and created the appearance that he was biased in favor of the town, in that he: (A) *sua sponte* sent hearing notices to witnesses whom he speculated would be needed to testify for the town; (B) summarily ended the hearing at the conclusion of the prosecutor’s case; (C) did not allow Ms. Shimburski or her witnesses to testify; and (D) issued a decision ruling for the town without including statutorily-mandated conditions consistent with the ruling.

As to the Specifications to Charge I

4. On July 31, 2014, Detectives Gregory McCarthy and John Graham of the Erie County Sheriff’s Office affirmed a “dangerous dog” complaint, alleging that on July 25, 2014, a pit bull terrier owned by Megan Shimburski attempted to attack Detective McCarthy as he, Detective Graham, and Detective Matthew Noecker approached the home of Ms. Shimburski’s parents, looking for Ms. Shimburski’s boyfriend.

5. On August 5, 2014, the detectives filed the complaint in the Sardinia Town Court.

6. On August 5, 2014, Respondent issued an order under the provisions of Section 123 of the Agriculture and Markets Law directing Sardinia Dog Control Officer Duane DeGolier to seize Ms. Shimburski’s two-year-old pit bull terrier, known as “Lady.” Respondent also issued a notice to Ms. Shimburski advising her that a hearing concerning her pit bull terrier would be held on August 12, 2014, at 5:00 PM.

7. On August 6, 2014, Respondent *sua sponte* sent witness appearance notices addressed to the complainants, Detectives McCarthy, Noecker and Graham, at the Erie County Sheriff's Office, advising them of the hearing date in *Shimburski*.

8. On August 12, 2014, Respondent commenced the hearing in *Sardinia v Shimburski*. After testimony by the town's first witness, Detective McCarthy, Respondent granted a request by Matthew A. Albert, Ms. Shimburski's attorney, to call two defense witnesses out of order due to scheduling conflicts. After the first witness testified, Sardinia Town Prosecutor Jill S. Anderson objected to the second witness because the second witness had been in the courtroom during the first witness's testimony. Mr. Albert responded that there had been no request to sequester witnesses. Respondent then prohibited testimony by the second witness.

9. Detectives Graham and Noecker then testified for the town, and Ms. Anderson rested her case. Respondent asked Mr. Albert if he was ready to proceed. Mr. Albert said Ms. Shimburski was going to testify, but needed a brief recess. He also stated that he would make a motion to dismiss.

10. After a short recess, Mr. Albert informed Respondent that Erie County Sheriff's deputies had directed Animal Control Officer Joseph Neamon, an intended defense witness, to leave the court before he was called to testify and that such police conduct raised a "serious constitutional issue." Respondent replied, "The problem is, is we have no list of who was to appear on the defense, so I can't say if this person was allowed or not," and "we weren't told that this person was coming ... we needed this knowledge prior and it didn't occur." The following exchange then occurred:

MR. ALBERT: Is that a problem that a witness of mine was kicked out of the courtroom?

THE COURT: No, it's not at all. Obviously, there was an issue.

MR. ALBERT: To me, it's a problem, Your Honor.

THE COURT: Well, you'll have to discover that yourself. Obviously there was an issue elsewhere, outside of this court, that has nothing to do with this case, obviously.

11. Mr. Albert then made an oral motion to dismiss, which Ms. Anderson opposed. Respondent took another short recess.

12. When the proceeding resumed, Respondent announced his ruling that Ms. Shimburski's dog was dangerous. Mr. Albert objected, stating that he had not had a chance to present the rest of his case on behalf of the defense. Respondent replied, "We're done." The following exchanges then occurred:

MR. ALBERT: No, you cannot cut me off in the middle of my case, Judge. (Inaudible) --

THE COURT: You were done. You were done, sir. The process was completely finished, sir.

MR. ALBERT: Judge, I said --

THE COURT: Have a seat, sir.

MR. ALBERT: -- that was my motion to dismiss.

THE COURT: And continue listening. It was dismiss -- I am not honoring a dismissal, I am giving [] you my judgment. Let me continue. And that is the end.

MR. ALBERT: I have two witnesses.

THE COURT: There is no other witnesses [sic], sir.

MR. ALBERT: Judge, how am I not allowed to put on my case?

THE COURT: Have a seat, sir. We're continued. We're done. Sit down, please.

MR. ALBERT: I made a motion to dismiss. Do you know the procedure?

THE COURT: And I am -- I am not honoring it.

MR. ALBERT: You denied the motion to dismiss --

THE COURT: I heard you out.

MR. ALBERT: -- then I'm supposed to put on my witnesses.

THE COURT: I heard you out and I am not honoring it. That's my decision.

MR. ALBERT: So I'm allowed to put on my witnesses.

THE COURT: Negative. It's through.

MR. ALBERT: I said, before I call my witnesses, I'm making a motion to dismiss.

THE COURT: It's not.

MR. ALBERT: You heard that.

THE COURT: It's done.

MR. ALBERT: It's on the record.

THE COURT: Your motion is not accepted.

MR. ALBERT: You know there's a motion to dismiss. I know --

THE COURT: Your motion's not accepted.

MR. ALBERT: -- it's not accepted, so now I'm bringing on my witnesses.

THE COURT: Negative. It's done.

MR. ALBERT: What are you talking about?

THE COURT: The process is over.

13. In his written decision, dated August 12, 2014, Respondent did not “order neutering or spaying of the dog” and “microchipping of the dog,” as required by Section 123(2) of the Agriculture and Markets Law following a “dangerous dog” determination by a judge after a hearing.

14. 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 perform his judicial duties without bias or prejudice, in violation of Section 100.3(B)(4) 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.

Additional Factors

15. *Sardinia v Shimburski* was the first hearing or trial over which Respondent presided in his judicial career.

16. Respondent provided notice of the *Sardinia v Shimburski* hearing to all interested parties of whom he was aware, including Ms. Shimburski and Town of Sardinia Dog Control Officer, Duane DeGolier, who was called about the trial date by the court clerk.

17. Respondent regrets his failures to be and appear fair and impartial and to

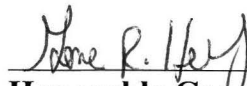
abide by the Rules in this instance. Respondent avers that he has since familiarized himself with the procedural rules governing hearings and trials and discussed his handling of this case with his Supervising Judge. Respondent has also, since the date of the trial, attended additional judicial training seminars. He pledges to conform himself in accordance with the Rules for the remainder of his term as a judge.

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

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 Admonition 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 Admonition 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.

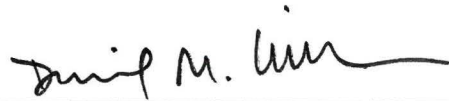
Dated: 11.23.15



Honorable Gene R. Heintz

Respondent

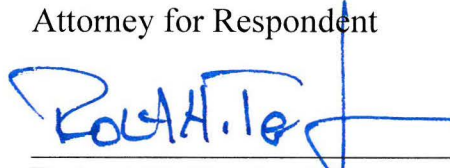
Dated: 11.23.2015



Daniel M. Killelea

Attorney for Respondent

Dated: NOV. 30, 2015



Robert H. Tembeckjian

Administrator & Counsel to the Commission

(John J. Postel and David M. Duguay, Of Counsel)

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

GENE R. HEINTZ,

a Justice of the Sardinia Town Court,
Erie County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Gene R. Heintz, a Justice of the Sardinia Town Court, Erie 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 Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: August 19, 2015
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

To: Honorable Gene R. Heintz
Sardinia Town Justice
Community Center
12320 Savage Road
Sardinia, New York 14134-0219

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

**FORMAL
WRITTEN COMPLAINT**

GENE R. HEINTZ,

a Justice of the Sardinia Town Court,
Erie County.

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 Gene R. Heintz ("Respondent"), a Justice of the Sardinia Town Court, Erie County.

3. The factual allegations set forth in Charge I 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 Sardinia Town Court, Erie County, since January 1, 2014. Respondent's term expires on December 31, 2017. He is not an attorney.

CHARGE I

5. In or about August 2014, while presiding over *Town of Sardinia v Megan Shimburski*, a “dangerous dog” matter pursuant to Section 123 of the Agriculture and Markets Law, Respondent failed to be faithful to the law and created the appearance that he was biased in favor of the town, in that he: (A) *sua sponte* sent hearing notices to witnesses whom he speculated would be needed to testify for the town; (B) summarily ended the hearing at the conclusion of the prosecutor’s case; (C) did not allow Ms. Shimburski or her witnesses to testify; and (D) issued a decision ruling for the town without including statutorily-mandated conditions consistent with the ruling.

Specifications to Charge I

6. On or about July 31, 2014, Detectives Gregory McCarthy and John Graham of the Erie County Sheriff’s Office affirmed a “dangerous dog” complaint, alleging that on July 25, 2014, a pit bull terrier owned by Megan Shimburski attempted to attack Detective McCarthy as he, Detective Graham, and Detective Matthew Noecker approached the home of Ms. Shimburski’s parents, looking for Ms. Shimburski’s boyfriend.

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"Lady." Respondent also issued a notice to Ms. Shimburski advising her that a hearing concerning her pit bull terrier would be held on August 12, 2014, at 5:00 PM.

9. On or about August 6, 2014, Respondent *sua sponte* sent witness appearance notices addressed to the complainants, Detectives McCarthy, Noecker and Graham, at the Erie County Sheriff's Office advising them of the hearing date in *Shimburski*.

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12. After a short recess, Mr. Albert informed Respondent that Erie County Sheriff's deputies had directed Animal Control Officer Joseph Neamon, an intended defense witness, to leave the court before he was called to testify and that such police conduct raised a "serious constitutional issue." Respondent replied, "The problem is, is we have no list of who was to appear on the defense, so I can't say if this person was

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THE COURT: Well, you’ll have to discover that yourself. Obviously there was an issue elsewhere, outside of this court, that has nothing to do with this case, obviously.

13. Mr. Albert then made an oral motion to dismiss, which Ms. Anderson opposed. Respondent took another short recess.

14. When the proceeding resumed, Respondent announced his ruling that Ms. Shimburski’s dog was dangerous. Mr. Albert objected, stating that he had not had a chance to present the rest of his case on behalf of the defense. Respondent replied, “We’re done.” The following exchanges then occurred:

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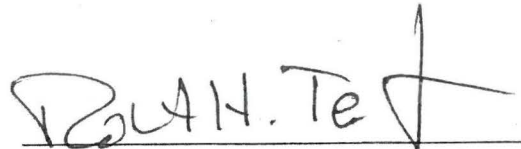
15. In his written decision, dated August 12, 2014, Respondent did not "order neutering or spaying of the dog" and "microchipping of the dog," as required by Section

123(2) of the Agriculture and Markets Law following a "dangerous dog" determination by a judge after a hearing.

16. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to perform his judicial duties without bias or prejudice, in violation of Section 100.3(B)(4) 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.

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: August 19, 2015
New York, New York

A handwritten signature in black ink, appearing to read "R. H. Tembeckjian", written over a horizontal line.

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

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

VERIFICATION

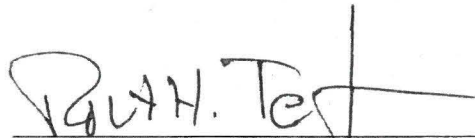
GENE R. HEINTZ,

a Justice of the Sardinia Town Court,
Erie County.

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

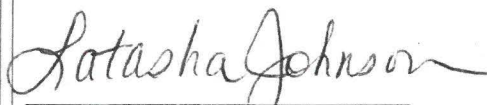
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

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
19th day of August 2015



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235579
Qualified in New York County
Commission Expires Feb. 14, 2019

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

VERIFIED ANSWER

GENE R. HEINTZ

a Justice of the Sardinia Town Court,
Erie County.

Respondent GENE R. HEINTZ, a Justice of the Sardinia Town Court, Erie County, by and through his attorney, DANIEL M. KILLELEA, ESQ., as and for his Verified Answer to the Formal Written Complaint herein, sets forth and alleges as follows:

1. As to paragraphs 1, 4, 6, 7, 8, 10, 11, 13, and 15, Respondent admits the allegations contained therein.
2. As to paragraph 9, Respondent admits to the recitation of events cited therein, but notes that the August 12, 2014 hearing at issue herein was the first hearing or trial over which he presided, and that he sent notices to all interested parties of whom he was aware, including the defendant Megan Shimburski and the Town of Sardinia animal control officer.
3. As to paragraph 12, Respondent admits to the recitation of events cited therein, but notes that he was subsequently informed that "Joe Neiman," who was described as a "dog control officer" by attorney Matthew Albert, was denied entry to the

courthouse on the basis of the fact that he was armed, and because he would not give the deputies securing the courthouse his reason for being there.

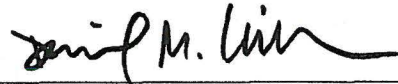
4. As to paragraph 14, Respondent admits to the recitation of events cited therein, but notes that he misunderstood attorney Matthew Albert's statement that he was "wrapping this up" and perceived it to mean that Mr. Albert had decided against presenting any further evidence or testimony on behalf of the defendant.

5. As to paragraph 2, Respondent denies sufficient information so as to form a belief as to the allegations contained therein.

6. As to paragraphs 3, 5 and 16, Respondent denies the allegations contained therein.

DATED: Attica, New York
October 2, 2015

Respectfully submitted,



DANIEL M. KILLELEA, ESQ.

Attorney for Respondent,

GENE R. HEINTZ

Office and Post Office Address

121 Prospect Street, Suite 1

Attica, New York 14011-1100

(585) 937-8987

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

VERIFICATION

GENE R. HEINTZ

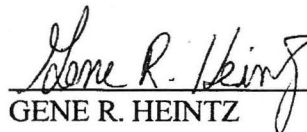
a Justice of the Sardinia Town Court,
Erie County.

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
TOWN OF SARDINIA)

GENE R. HEINTZ, being duly sworn, deposes and says:

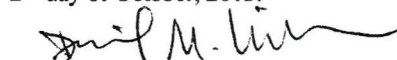
1. I am the Respondent in the above-captioned matter and as such am fully familiar with the allegations contained in the within Formal Written Complaint of the New York State Commission on Judicial Conduct.

2. I have read the foregoing Answer and know the contents thereof, and the same is true to the best of my knowledge, except as to any matters stated upon information and belief, and as to those matters, I believe them to be true.



GENE R. HEINTZ

Subscribed and sworn to before me this
2nd day of October, 2015.



Notary Public

DANIEL M. KILLELEA
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires Oct. 1, 2019