

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 M. HENSLEY,

A Judge of the District Court,
Suffolk 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 M. Hensley ("respondent"), who is represented in this proceeding by David H. Besso, Esq., of Long, Tuminello, Besso, Seligman, Werner & Sullivan, LLP, 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 1987. He has been a Judge of the District Court, Suffolk County, since 2002.

Respondent's current term expires December 31, 2014.

2. During 2008, respondent was an announced candidate for re-election to the office of District Court Judge and was actively campaigning for that position.

3. Respondent was served with a Formal Written Complaint dated October 26, 2010, and filed an Answer dated November 12, 2010, and an amended

Answer on May 16, 2011. The parties submitted an Agreed Statement of Facts dated April 24, 2012, which the Commission rejected. Upon obtaining clarification from the Commission as to the reasons the original Agreed Statement of Facts was rejected, the parties entered into this second Agreed Statement of Facts.

As to Charge I

4. From August 13, 2008, to November 5, 2008, respondent attended and/or participated in numerous for-profit poker games called "Texas Hold 'Em" held at a facility owned and operated by the Fraternal Order of Eagles ("FOE") in Northport, New York.

5. Respondent is a member of the FOE but has never been an officer or otherwise managed its business affairs. It was well known among the membership that respondent was a judge.

6. From August 13, 2008, to November 5, 2008, the FOE rented its facility on Wednesday evenings, for \$300 per time, to an individual named Frank Servidio, who organized and hosted the poker games on those evenings. On the nights that respondent attended, card games were usually taking place at one or two tables, with a dealer at each table provided by the host. In such games, it is called "raking the pot" when the dealer takes money from the ante or "pot" for the benefit of the "house" or host/organizer.

7. There were tournament games, in which players paid entry fees of \$120, and the evening's top three or four winners were awarded prizes ranging from \$300 to \$1250, depending on the number of participants. There were also "cash

games," in which participants at the table played against each other for individual stakes, with a minimum buy-in of \$200.

8. The players included members of the FOE and their guests, or guests of Mr. Servidio, the host. Among the players in attendance on one or more occasions was a Suffolk County police officer.

9. While it is a crime under the New York State Penal Law to advance or profit from unlawful gambling activity, and to run (A) a for-profit game in which the dealer "rakes the pot" for the benefit of the "house" or (B) a tournament game where all the entry fees are not paid out in prizes to the players, it is not unlawful to attend gambling events, or to participate as a player.

10. On August 13, 2008, respondent participated in a for-profit tournament card game at the FOE. The total amount of the prizes paid out was less than the amount of entry fees collected from the players; the remaining funds were kept by the "house." Respondent understood that a cash game was scheduled to start later; however, respondent left the premises prior to the start of the cash game.

11. On August 20, 2008, respondent participated in a for-profit tournament card game at the FOE and observed prizes being paid to tournament winners from the pot. The total amount of prizes paid out was less than the amount of entry fees collected from the players; the remaining funds were kept by the "house."

12. On September 10, 2008, respondent attended for-profit cash card games at the FOE during which the dealer "raked the pot," but respondent did not play

in such games.

13. Between October 1 and 8, 2008, respondent learned from other card players at the FOE that a Suffolk County police sergeant had come to the facility to investigate a complaint regarding an illegal Texas Hold 'Em poker game and noise. Respondent had not been there at the time. No arrests were made, and no additional action was taken.

14. On October 8, 2008, respondent went to the FOE to play cards. Smoking is not permitted inside the facility. Respondent did not observe anyone smoking cigarettes or marijuana inside or outside the FOE. However, on prior occasions he thought it possible that when some players stepped outside for a break, some may have smoked marijuana.

15. In the course of conversation on October 8, 2008, during and between card games, respondent and other players commented on the possibility that the police would return to the FOE one day. In that context, respondent said it would be a good idea to "get rid of your pot," to which one player responded, "I don't have any," to which respondent replied, "I'm not suggesting you do."

16. On October 22, 2008, respondent attended for-profit cash card games at the FOE during which the dealer "raked the pot," but respondent did not play in such games.

17. On November 5, 2008, respondent arrived at the FOE at approximately 11:45 PM, to celebrate his having been re-elected to District Court the day before. Respondent had been at other election

celebrations earlier in the evening, including one at the local Knights of Columbus and one at his campaign manager's home.

18. Approximately eight other men were present, with a congratulatory ice cream cake in honor of respondent's re-election.

19. Although others may have been playing poker before respondent arrived, respondent himself did not play. About ten minutes after respondent arrived at the FOE, before the celebratory cake was eaten, four officers from the Suffolk County Police Department arrived and executed a search warrant of the premises.

20. At least some of the officers in attendance already knew respondent was a judge. In response to police officer inquiries that all in attendance identify themselves and produce identification, respondent showed Detective Anthony Schwartz his New York State Driver's license and judicial identification card. Respondent also asked to speak to the "person in charge" and was directed to Lieutenant William Madigan.

21. Respondent and Lieutenant Madigan spoke in the kitchen of the FOE. Referring to the celebratory cake, respondent said he had been re-elected to the bench the day before, was at the FOE to celebrate, and had not played in any card games that night.

22. Lieutenant Madigan asked respondent if he would be conducting any arraignments that might eventuate from the search warrant then being executed at the FOE. Respondent responded that he was not assigned to arraignments.

23. Lieutenant Madigan asked respondent who was running the gaming tables, and respondent said he did not know because he only just arrived, but the Lieutenant could find out by determining who was sitting in the dealer's chair at each table. Respondent did not know whether one or two tables had been in use for poker before his arrival. Respondent said he knew that many of the people in attendance were members of the FOE.¹

24. While the police on the scene were talking to other players, respondent was approached by a man whom he recognized as a card player from previous visits to the FOE. Unknown to respondent, the man was an undercover police officer. The man asked what respondent would do if the police asked him questions, and respondent said that he did not want to make a statement.

25. Frank Servidio, the host, was arrested and charged with gambling-related offenses. The charges were eventually disposed on consent of the District Attorney with an Adjournment in Contemplation of Dismissal and were dismissed on July 23, 2009.

26. Neither respondent nor any of the other players were arrested or charged with any offenses. The police did not accord respondent special consideration or otherwise treat him differently than any of the other players at the FOE.

27. By reason of the foregoing, respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and

¹ The Administrator withdraws that portion of the Formal Written Complaint alleging that respondent made false statements to the police.

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 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; lent the prestige of his judicial office to advance his own private interest or the interest of others, in violation of Section 100.2(C) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he conducted his extra-judicial activities in a manner that was incompatible with and detracted from the dignity of judicial office, in violation of Sections 100.4(A)(2) and (3) of the Rules.

Additional Factors

28. Respondent's participation in the poker games did not violate any law, and he was not arrested or charged with a crime.

29. Respondent recognizes that his participation in for-profit tournament games and presence at for-profit cash games was inconsistent with his role as a judge and his obligation to respect and comply with the law, because he was voluntarily in the presence of those who *were* violating the law by operating such games. He acknowledges that, at least, he should have left the premises upon observing that illegal games were taking place.

30. Respondent is extremely remorseful and assures the Commission

that such lapses in judgment will not recur. Respondent avers that he has not attended any gambling tournaments or similar events since November 5, 2008.

31. Respondent has never before been disciplined by the Commission.

32. Respondent has been fully cooperative with the Commission's investigation.

33. Respondent has submitted significant evidence of his good character.

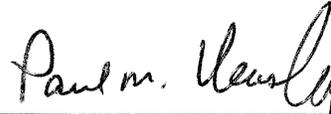
IT IS FURTHER STIPULATED AND AGREED that respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

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 a 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 waive further submission 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: 6/1/12



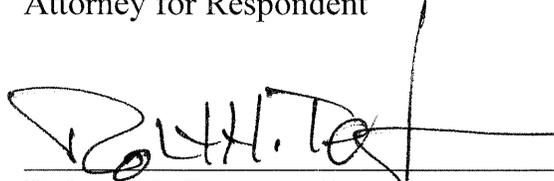
Honorable Paul M. Hensley
Respondent

Dated: 6/1/12



David H. Besso, Esq.
Long, Tuminello, Besso, Seligman, Werner &
Sullivan, LLP
Attorney for Respondent

Dated: 6/5/12



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(Pamela Tishman, Of Counsel)