

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

KEVIN J. HURLEY,

a Justice of the Carlton Town Court,
Orleans County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission
Barth Sullivan Behr (by Philip B. Abramowitz) for the Respondent

The respondent, Kevin J. Hurley, a Justice of the Carlton Town Court,
Orleans County, was served with a Formal Written Complaint dated September 19, 2006,
containing two charges. Respondent filed a Verified Answer dated October 13, 2006.

On February 16, 2007, the administrator of the Commission, 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 admonished and waiving further submissions and oral argument.

On March 8, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Carlton Town Court, Orleans County since January 1, 1998. He is not an attorney.

2. In 2005, at all times relevant to the charges herein, respondent was dating Darlene Cooper; respondent knew that Ms. Cooper had an Order of Protection against her ex-husband, Tracy Cooper; and respondent was acquainted with Ms. Cooper's daughter, Krystal Cooper.

As to Charge I of the Formal Written Complaint:

3. On or about May 27, 2005, at about 3:00 PM, Darlene Cooper was approached on the street in the Village of Albion, New York, by her ex-husband, Tracy Cooper, who expressed an interest in reconciling with her. Ms. Cooper promptly terminated the conversation.

4. At about 6:23 PM that same day, Ms. Cooper received a call on her cell phone from a telephone number she recognized as belonging to Mr. Cooper. She did

not answer the call.

5. Later that night, respondent visited Ms. Cooper at her home in Albion, New York, where she informed him of her encounter with Mr. Cooper and the call to her cell phone. Ms. Cooper said she was upset and had been crying. Ms. Cooper told respondent that she believed that her ex-husband had violated the Order of Protection, and she asked respondent if he had any contacts at the State Police station in Albion.

6. Respondent asked Ms. Cooper if she had called the local sheriff's department. When she said no and added that her ex-husband was friendly with many local law enforcement officers, respondent said he would call the State Police in Albion on her behalf. He thereupon telephoned the State Police from Ms. Cooper's home and spoke with Sergeant David Martek, to whom respondent identified himself as "Kevin Hurley, Carlton Town Justice."

7. Respondent advised Sergeant Martek that there was an Order of Protection against Mr. Cooper in favor of Ms. Cooper, and that Ms. Cooper had said she had been approached on the street and later called by Mr. Cooper. Respondent suggested that the Orleans County Sheriff's Department would not adequately pursue the matter.

8. Sergeant Martek advised respondent that Ms. Cooper could come to the police station to file a complaint if she wished to pursue the matter. Sergeant Martek took no other action in the matter.

9. On June 1, 2005, Ms. Cooper went to the State Police station in

Town Court, where she was arraigned and a Temporary Order of Protection was issued directing her not to have any contact with Darlene Cooper. Notwithstanding that the arraignment took place in Gaines, the case was still within the jurisdiction of the Carlton Town Court.

16. On June 6, 2005, Krystal Cooper appeared for further proceedings in the Carlton Town Court. Both respondent and his co-judge, Carlton Town Court Justice George L. Miller, were sitting at the bench, presiding separately over individual cases. Judge Miller adjourned Krystal Cooper's case at the request of Assistant District Attorney Joseph Cardone.

17. Prior to adjourning the case, Judge Miller reissued the Temporary Order of Protection against Krystal Cooper. As Judge Miller began to read the order to Krystal Cooper, respondent, who was still sitting at the bench, interrupted and stated, "I want that order of protection on the record." A transcript of the proceeding indicates that Judge Miller took no action in response to Judge Hurley's statement.

18. On September 14, 2005, Judge Miller granted Krystal Cooper an Adjournment in Contemplation of Dismissal on the basis of a motion by Mr. Cardone.

19. Other than as described in paragraphs 14 and 17 above, respondent took no part in Krystal Cooper's case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(4) and 100.4(A)(3) 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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The ethical standards specifically prohibit a judge from lending the prestige of judicial office to advance the private interests of the judge or others (Rules, §100.2[C]). Respondent violated this well-established provision in two separate matters involving a woman whom he was dating.

In the first matter, it was improper for respondent to contact the State Police on behalf of his friend, Darlene Cooper, and to identify himself as a town justice when he reported an alleged violation of an order of protection. As soon as Ms. Cooper asked respondent if he "had any contacts" at the police station, respondent should have recognized the potential peril of using his judicial status in any way to obtain an advantage for his friend. Instead, by telephoning the police, identifying himself as a town justice and relating details of the dispute as conveyed to him by Ms. Cooper, respondent, who is not an attorney, acted as his friend's advocate while lending the prestige of his judicial office to advance her private interests. Respondent's gratuitous reference to his judicial status could be interpreted as an implicit request for special treatment, which could have been avoided had Ms. Cooper placed the call on her own behalf. Moreover, because Ms. Cooper had told him that her former husband was friendly with many local law enforcement officers, respondent also suggested to the police that the Sheriff's

Department would not adequately pursue the matter. In its totality, respondent's call was an assertion of special influence and a misuse of his judicial prestige. *See, Matter of Straite*, 1988 Annual Report 226 (Comm. on Judicial Conduct) (judge used his judicial position to influence police to investigate a complaint made by the judge's son); *Matter of Stevens*, 1999 Annual Report 153 (Comm. on Judicial Conduct) (judge interfered in a police dispute involving his son and demanded that his son's antagonist be arrested).

We note that when the police told respondent that Ms. Cooper could come to the police station if she wished to file a complaint, respondent did not pursue the matter, and he did not accompany Ms. Cooper when she later went to the police station.

A few days later, respondent became involved in a second matter, involving Ms. Cooper's daughter, in which Ms. Cooper herself was the criminal complainant. After properly disqualifying himself from the case, respondent assigned counsel to Ms. Cooper's daughter. Shortly thereafter, when the case came before respondent's co-judge, who reissued a Temporary Order of Protection, respondent interjected himself into the case by commenting in open court, "I want that order of protection on the record." Because of his relationship with Ms. Cooper, respondent should have refrained from any participation in the case.

Cumulatively, respondent's conduct suggests that he failed to recognize the importance of avoiding any participation in matters involving an individual with whom he has a close relationship. *See, Matter of Lomnicki*, 1991 Annual Report 68 (Comm. on Judicial Conduct) (judge sat on the bench with another judge and participated in a case

even though he had disqualified himself from the matter).

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

Mr. Felder, Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Peters and Judge Ruderman concur.

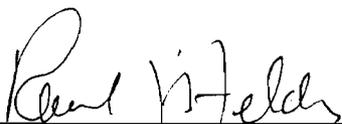
Judge Konviser dissents and votes to reject the Agreed Statement of Facts on the basis that Charge I should not be sustained as there was no suggestion of a malevolent or venal motive on the part of the Judge; rather, he was simply assisting a close personal friend whom he honestly (and correctly) believed was the victim of a crime. Judge Konviser concurs that the appropriate disposition is admonition based on the conduct in Charge II.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: March 16, 2007



Raoul Lionel Felder, Esq., Chair
New York State
Commission on Judicial Conduct