

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

JAMES A. McLEOD,

A Judge of the Buffalo City Court,
Eric 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 James A. McLeod ("respondent"), who is represented in this proceeding by
Michael M. Mohun, 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 was admitted to the practice of law in New York in
1975. He has been a Judge of the Buffalo City Court, Erie County, since 1999.
Respondent's current term expires on December 31, 2018.

2. Respondent was served with a Formal Written Complaint dated
September 14, 2012, and filed an Answer dated October 10, 2012.

As to Charge I

3. On February 16, 2011, respondent presided over the custodial arraignment part of the Buffalo City Court. Two of the cases on the calendar that day involved defendant 1 [REDACTED] [REDACTED], who was 17 years old at the time.

4. In one case, Mr. [REDACTED] was charged with two misdemeanors: Criminal Possession of a Controlled Substance in the Seventh Degree, in violation of Penal Law Section 220.03, and Obstructing Governmental Administration in the Second Degree, in violation of Penal Law Section 195.05. The conduct that led to these charges was alleged to have occurred on November 3, 2010.

5. In the other case, Mr. [REDACTED] was charged with two violations: Harassment in the Second Degree, in violation of Penal Law Section 240.26(3), and Trespass, in violation of Penal Law Section 140.05. The conduct that led to these charges was alleged to have occurred on February 4, 2011.

6. Prior to any plea discussion, respondent characterized the harassment charge as "thuggery" and asked Mr. [REDACTED] if he understood what the word meant. When the defendant said he did not, respondent stated:

It means being a bully, trying to impress people....That's not good. Especially when they say you can't follow through on any of those wolf cries. If they were to gang up on you, you would be the first one yelling mama as you're running home.

7. Mr. [REDACTED]'s attorney, Daniel E. Barry, Jr., proposed that Mr. [REDACTED]

be permitted to plead guilty to Trespass and to Disorderly Conduct, in satisfaction of all the charges. The prosecutor indicated that he would accept those pleas "[w]ith orders of protection," and respondent agreed.

8. Addressing the Trespass charge, respondent asked Mr. [REDACTED], "What's going on with you over there, Mr. Tough guy...?" After Mr. [REDACTED] replied that he did not recall, respondent stated, "Don't play me."

9. Without allocuting Mr. [REDACTED] or having him enter a plea of guilty, respondent convicted him of Trespass and sentenced him to 75 hours of community service, setting March 16, 2011, as the due date for the mandatory surcharge payment.

10. Addressing the Disorderly Conduct offer, respondent informed Mr. [REDACTED] that the police had seen him throw away some drugs. Mr. [REDACTED] denied doing so, and respondent replied, "...don't play me like I'm stupid, you're not bright enough to outsmart me. You want to try it again?"

11. Mr. [REDACTED] again said that he did not have the drugs.

12. Without allocuting Mr. [REDACTED] or having him enter a plea of guilty, respondent convicted him of Disorderly Conduct and sentenced him to 15 days in jail, the maximum sentence, setting March 16, 2011, as the due date for the mandatory surcharge payment.

13. Mr. [REDACTED] responded:

Kiss my ass. Fuck you, you bitch ass nigger. You don't fucking scare me, nigger. I don't care. Kiss my ass, suck my dick, fuck you. I see you next court date, pussy.

14. Respondent thereafter stated, "I think we should vacate the plea." Mr. Barry, the defense attorney, responded, "You're going to have to recuse yourself..." and respondent agreed. Mr. Barry added, "Judge, I don't know that he was interested in taking a plea." and Mr. [REDACTED] said, "Pussy."

15. Respondent replied, "That's his problem. That's what pussies do." Respondent then vacated Mr. [REDACTED]'s Disorderly Conduct conviction and set March 22, 2011, as the trial date for the matter.

16. Respondent then fixed bail at \$50,000, to which Mr. [REDACTED] responded, "You can keep the bail, and keep the trial, and suck my dick."

17. Respondent replied to Mr. [REDACTED], "Why don't you pull it out for me." Mr. [REDACTED] responded that he would if he were not in handcuffs.

18. Respondent stated, "Probably need a magnifying glass, too."

19. The judge ordered bail set at \$50,000 or, in the alternative, release under supervision. On February 24, 2011, Mr. [REDACTED]'s release under supervision was approved by the Probation Department.

20. 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, and failed to be patient, dignified and courteous to litigants and others with whom he deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

Additional Factors

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

22. Respondent recognizes that, even when baited by a disrespectful and profane party, a judge must (A) remain patient, dignified and courteous, (B) refrain from and not escalate the disrespect and profanity directed toward the court, and (C) maintain, not participate in undermining, the decorum of the courtroom. Respondent accepts full responsibility for failing to maintain high standards of conduct when he spoke in an undignified and discourteous way to Mr. [REDACTED].

23. Respondent acknowledges that he failed to comport with the law when he convicted Mr. [REDACTED].

24. Respondent was instrumental in the creation of the Adolescent Diversion Court Program in the Buffalo City Court which provides at-risk youth with educational and treatment resources necessary to assist them in leading productive and law-abiding lives. Respondent has handled the majority of the workload in this court

program since its inception.

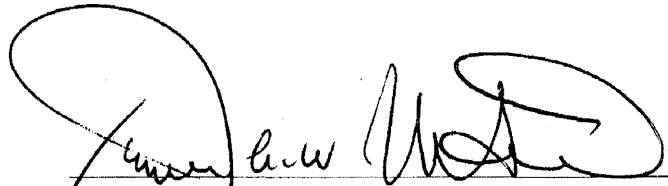
25. In his 13 years on the bench, respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conduct himself in accordance with the Rules for the remainder of his term as a judge.

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 public Admonition based upon the judicial misconduct set forth above.

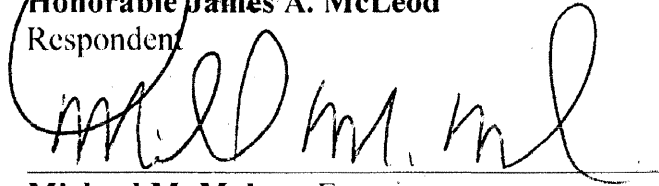
IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further 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: 11/28/2012



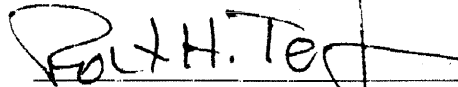
Honorable James A. McLeod
Respondent

Dated: 11/26/2012



Michael M. Mohun, Esq.
Law Office of Michael Mohun

Dated: 11/27/2012



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(David M. Duguay, Of Counsel)