

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

ROBERT C. MURPHY,

VERIFIED ANSWER

a Judge of the Binghamton City Court,
Broome County.

ROBERT C. MURPHY, by his attorneys Aswad & Ingraham, Charles O.

Ingraham of counsel, for his Answer to the Verified Complaint, states as follows:

1. Admits the allegations of Paragraph 1.
2. Admits the allegations of Paragraph 2.
3. Denies the allegations of Paragraph 3.
4. Admits the allegations of Paragraph 4.
5. Denies the characterization of events set forth in Paragraph 5. The only persons who “permitted” attorneys affiliated with his private practice to represent clients before them were the full time City Court Judges. Often these affiliated attorneys had been appointed or assigned by the full time City Court Judges or by the Administrative Judge of the Sixth Judicial District. None of these appointments or assignments were made on the advice of, or encouragement of, the respondent Murphy. The Respondent does acknowledge that attorneys affiliated with his private practice on occasion did represent clients in cases where one of the full time City Court Judges was presiding, but as set forth in the First Affirmative

Defense herein, he did not know at that time that this was in violation of any statute, regulation, or canon of ethics.

6. Admits that Respondent was "Of Counsel" to the law firm of O'Connor, Gacioch, Pope & Tait, LLP; but denies that Respondent was a partner of said law firm. Respondent further denies that Kurt Schrader was a partner of said firm. Upon information and belief Kurt Schrader was "Of Counsel" to said firm. Admits the balance of the allegations set forth in Paragraph "6".
7. Denies that James Sacco joined the firm as a partner, but admits the allegations set forth in the balance of Paragraph 7.
8. Admits the allegations contained in Paragraph 8.
9. Denies the characterization of events set forth in Paragraph 9. As indicated in paragraph 5 herein, the only persons who "permitted" attorneys affiliated with his private practice to represent clients before them were the full time City Court Judges. Often these affiliated attorneys had been appointed or assigned by the full time City Court Judges or by the Administrative Judge of the Sixth Judicial District. None of these appointments or assignments were made on the advice of, or encouragement of, the respondent Murphy. Although the Respondent has not researched the accuracy of all the case citations set forth in Schedule A appended to the Complaint, he does acknowledge that attorneys affiliated with his private practice did represent clients in many of those cases, and perhaps all of them. As set forth in the First Affirmative Defense herein, he did not know at that time that this was in violation of any statute, regulation, or canon of ethics.

10. Denies the allegations contained in Paragraph 10, and refers to his First Affirmative Defense herein. With special emphasis, he strenuously denies that he advanced “his own private interest and the private interest of others.”
11. Admits he did not disqualify himself from hearing the case of Wilder and Indira Valle v. Dawn Marvin and Emmanuel Martinez , but denies the Petitioners in that case continued to be Attorney Schrader’s clients at the time the case was heard.
12. Admits the allegations contained in Paragraph 12.
13. Admits the allegations in Paragraph 13, but provides this clarification. The respondents in the case referred to appeared in City Court several hours after the summary proceeding had been scheduled. Judge Pellelela did vacate, and then set the matter down for a new hearing date. On that new hearing date, the Respondents again failed to appear and Judge Pellelela then entered a default judgment in favor of the Petitioners. Hence, the end result was identical to the original decision.
14. Denies the allegations in Paragraph 14.
15. Denies the allegations of Paragraph 15.
16. Denies the characterization in Paragraph 16 that Thomas J. Dellapenna, Jr. pointed out to him that it was inappropriate for Dellapenna to appear before him, and denies the characterization that Attorney James Mack “stood in” for Dellapenna, since Attorney Mack acted as substituted counsel, but admits the balance of the allegations contained in Paragraph 16.
17. With respect to Paragraph 17, denies knowledge as to the identity of the person who filed new affidavits of service, but admits on that the records show that on or

about September 8, 2005, some person in City Court asked him to issue warrants of eviction and that he did so.

18. Denies the allegations contained in Paragraph 18.
19. Admits the allegations contained in Paragraph 19
20. Denies the allegations contained in Paragraph 20.
21. Denies the allegations contained in Paragraph 21.
22. Admits the allegations contained in Paragraph 22.
23. Admits the allegations contained in Paragraph 23.
24. Admits the allegations contained in Paragraph 24.
25. Admits the allegations contained in Paragraph 25.
26. Admits the allegations contained in Paragraph 26.
27. Admits the allegations contained in Paragraph 27.
28. Denies the allegations contained in Paragraph 28.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
WITH RESPECT TO CHARGE I

29. Respondent began service as a part-time City Court Judge on very little notice, and had no prior experience in this role. He was appointed to City Court Judge on June 12, 2002, was sworn in on June 14, 2002 and sat as a City Court Judge the next day. He discussed procedures during the early months of his tenure with the two full time City Court Judges, one of whom had been in the position for decades. He also discussed various aspect of his new job with personnel at the Office of Court Administration and with the Chief Administrative Judge of the Sixth Judicial District.

30. Prior to the events in early 2006, no one ever advised him that it was improper in any manner for attorneys affiliated with the private law office where he worked to appear before the other City Court Judges, and the thought did not occur to the Respondent.
31. In fact, the two experienced full time City Court Judges often appointed or assigned attorneys who they knew to be affiliated with the Respondent's private law office to handle cases before them, thereby encouraging and abetting the practice. When a new full time City Court Judge was elected, he followed the same practice. In addition, the Chief Administrative Judge on occasion would arrange for attorneys affiliated with the Respondent's law office to represent clients in matters in front of the full time City Court Judges, and obviously was not aware of this prohibition. In addition, one of the attorneys affiliated with the Respondent, and with knowledge of the fact that attorneys from that office were practicing before the full time Judges on City Court was a member of the Commission on Judicial Conduct, and he never raised or expressed any concern about the practice, and thus obviously was not aware of this prohibition.
32. During this same time period, other private attorneys, the offices of the district attorney and public defender, and Court personnel were all aware of this practice and never cautioned against it or raised any objection.
33. In early 2006, City Court Judge Pellele raised some concern about whether it was proper for an attorney affiliated with the Respondent's private law practice to bring before him an action to collect money on behalf the said law firm, and this is how the issue first surfaced.

34. Upon information and belief, Judge Pellelela asked the full time City Court law clerk to research the question, and the clerk responded by making a copy of a page of the annotated NYCRR, and the clerk circled a summary of an opinion letter which seemed to him to infer that such a practice was proper (although the opinion was not exactly on point). A copy of the page provided by the City Court law clerk is attached as Exhibit A.
35. Within weeks of that inquiry by Judge Pellelela, further discussions about this subject were conducted when an out of town local Judge expressed the opinion that attorneys affiliated with a part-time Judge's private office should not appear in City Court at all, irrespective of the Judge.
36. When that opinion was made known, the Respondent immediately (April 6, 2006) contacted by letter the Advisory Committee on Judicial Ethics with questions about how best to proceed, and at about the same time, all City Court Judges in Binghamton ceased to allow attorneys affiliated with the Respondent's law firm to practice before the Court. Respondent received a reply to this letter, merely acknowledging the letter a few days later, but did not receive a substantive response for more than a year.
37. Hence, remedial action had been taken prior to Judge Lehmann's May 2006 letter of complaint. Respectfully, Judge Lehmann's complaint was less about her concern about alleged improprieties in Binghamton City Court than about her personal animosity toward the Respondent. Judge Lehmann had countenanced the practice being complained about for almost four years without voicing any

concern about it, and without any effort to counsel or mentor the Respondent in his role as a new part-time City Court Judge.

38. Moreover, Respondent attended seminars and other training sessions organized by OCA and the unique issues and problems faced by part-time Judges was not discussed or analyzed. In none of those sessions was there any information provided, or caution given, about this issue.

39. Hence, any violation of the applicable statute by other City Court Judges in allowing attorneys affiliated with the Respondent to practice before them was an innocent error by those Judges, based on their lack of knowledge about the statute and its implications. Similarly, Respondent did not caution the other Judges about this practice because he also did not know of the statute or its implications.

40. Respondent did not profit or have any financial interest in the fact that attorneys affiliated with his office practiced in City Court. Most of the fees generated, especially for assigned cases, were barely enough to cover overhead. In fact, in some instances fees were not charged at all, because the time necessary to complete the paperwork was not worth the amount of the possible fee.

41. During this period of time, attorney appearances pursuant to assigned counsel were considered courtesies to the Court, not as helpful in revenue production. This is evidenced by “thank you” letters and notes Judge Lehmann sent to Attorneys Schrader and Sacco after they agreed to take her assignments (which paid \$25 hourly for “out of court” time and \$40 hourly for court appearances).

42. Respondent was never a partner in O’Connor, Gacioch, Pope & Tait, LLP.

43. Respondent did not share income within the law firm of Pope, Schrader & Murphy.
44. In the one year of existence of the law firm of Pope, Tait & Murphy, most of the appearances were assign counsel appearances by Attorneys Schrader and Sacco, who were both of counsel to said firm.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
WITH RESPECT TO CHARGE II

45. Respondent allowed Petitioner Valle to proceed pro se before him because the Valle's had driven over three hours from Kingston, New York and the Defendants had defaulted. Even after Judge Pellele stayed Respondent's Judgment, the Respondents' defaulted again at the adjourned hearing and Judge Pellele signed a warrant of eviction based on the Respondents' second default. Hence the same result was obtained, and no injustice was done.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
WITH RESPECT TO CHARGE III

46. There is no indication that an injustice occurred in this matter, or that any party was prejudiced by any bias on the part of the Court. In fact, Respondent was careful in examining the Petitioner's papers before him, even though the respondents in that matter were in default, and noticed that the affidavits of service were improper. Hence, he did not sign an eviction at that time.
47. In retrospect, Respondent acknowledges it would have been preferable to insure that Attorney Dellapenna left the Courtroom before agreeing to hear Attorney Mack on the matter, and he should have been more sensitive to the possibility that

this could be perceived as allowing Dellapenna to continue to play some role. He has taken pains since this matter came under investigation to insure that no part-time Judge will practice in any manner before him, or take part in any way in any matter pending before him.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
WITH RESPECT TO CHARGE IV

48. Respondent's taking a guilty plea of a felony on Saturday, February 25, 2006, was a mistake which was corrected the following Monday by Judge Pellela.
49. The Defendant had a considerable criminal record and brushed aside Respondent's attempts to provide him consultation of a public defender and advise of his rights.
50. Defendant concedes he was mistaken in accepting the guilty plea from the defendant, but in no way does the Charge show how Respondent's mistake was intended or calculated in any manner to subvert the defendant's rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
WITH RESPECT TO CHARGE V

51. A balanced reading of the cases set forth in Charge V does not show any prejudice towards the defendants. Rather, they were attempt to emphasize to the defendants that they should not conduct themselves in a way that would prevent them from making required court appearances.
52. Rather than simply processing young offenders, setting bail and washing his hands of the defendants, Respondent engaged the defendants, especially younger defendants, in the hope of eliciting positive action by the defendants to avoid the need for bail.

53. None of the defendants complained of Respondent's attempts to deal with their problems.
54. In fact, an audit of arraignments by Judge Hillis and Lehmann in comparison with Judge Murphy would likely show that Respondent is much more likely to release a Defendant without bail or within the PTRP and much less likely to sign bench warrants for simple failures to appear on minor charges. These are much better indicia of whether a judge is treating a defendant as "innocent until proven guilty," than whether a judge lectures a young defendant in the hope he might "get through" and encourage the young person to avoid trouble with the law in the future.
55. Charge V mischaracterizes Respondent's questioning of Defendants in regard to possible use of controlled substances. Inquiries of this sort are solely for the purpose of evaluating whether a particular defendant might benefit from the City of Binghamton's Adult Drug Treatment Court. This is consistent with the City Court policy and even encouraged by the Office of Court Administration, which provides pamphlets with respect to the advantages to certain individuals of this Court.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
WITH RESPECT TO ALL CHARGES AND BY WAY OF MITIGATION

56. Prior to being appointed City Court Judge, Respondent had served the City of Binghamton as Corporation Counsel 1994 to 1998. He has volunteered his time and efforts to numerous pro bono activities for the benefit of the people of the community.

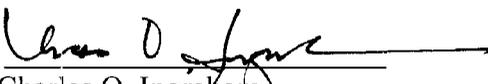
57. Respondent is the one Binghamton City Court judge who makes himself available any time- day or night- to arraign prisoners identified with health risks or suicidal by police screening, or when female guards are not available.

58. Quite contrary to the inferences in the Charges in the Complaint, Respondent has earned a reputation as fair and willing to listen to defendants and to give defendants a chance to go back to their jobs and families rather than simply assuming guilt and setting bail.

WHEREFORE, the Respondent respectfully demands that the Complaint be dismissed.

Dated: August 10, 2007
Binghamton, New York

ASWAD & INGRAHAM

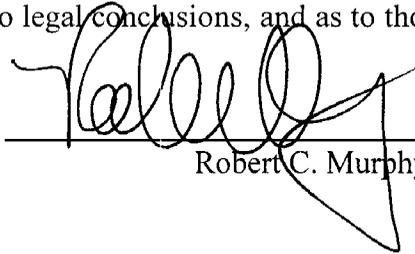
By: 
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VERIFICATION

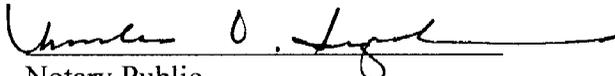
STATE OF NEW YORK)
).SS:
COUNTY OF BROOME)

Robert C. Murphy, being duly sworn says: I am the Respondent in the action herein; I have read the annexed Verified Answer, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief or responses to legal conclusions, and as to those matters I believe them to be true.



Robert C. Murphy

Subscribed and sworn to before me
this 10th day of August, 2007.



Notary Public

CHARLES O INGRAHAM
Notary Public, State of New York
No 9822805
Residing in Broome County
My Commission Expires 2/29/11

Canon 4
[22 NYCRR § 100.4]

Op. Adv. Comm. Jud. Eth. 91-66, Vol. VIII.

A judge may accept an executorship or a trusteeship which does not conflict with the performance of his judicial duties. N.Y. State 72-240.

15. Private practice of law—In general

Acceptance of a judgeship with the duties of conducting misdemeanor trials, and examinations in felony cases to determine whether those accused should be bound over for trial in a higher court, ethically bars the judge from acting as attorney for the defendants upon such trial, whether they were examined by him or by some other judge. ABA Opinion 242 (1942).

Without the approval of the Chief Administrator of the Courts, a full-time judge may not serve as an executor of an estate of a non-relative or as a testamentary trustee for former clients. Op. Adv. Comm. Jud. Eth. 93-84, Vol. XI.

A full-time judge may not represent his or her daughter at a real estate closing. Op. Adv. Comm. Jud. Eth. 92-118, Vol. X.

Judges may offer informal, uncompensated legal advice to friends or relatives when no attorney-client relationship exists. Op. Adv. Comm. Jud. Eth. 91-05, Vol. VIII.

It is not improper for a lawyer who is a justice of the peace in one town to practice law as counsel for criminal defendants in another town so long as there is no reasonable likelihood that his appearance would give rise to prejudice or favoritism. N.Y. State 70-150.

An attorney, serving as a local justice of the peace, may not properly appear in the county court to defend an accused felon when the offense occurred within the county of the local judge's jurisdiction but not within the town where he presides. N.Y. State 70-146(a).

16. Acting or temporary judges, private practice of law

Part-time judge who still practices law may appear before part-time judge who has officially retired from practicing law. Op. Adv. Comm. Jud. Eth. 90-199, Vol. VII.

Part-time judges shall be prohibited from practicing before zoning board of

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appeals and planning board of the same municipality, however, disqualification of partners and associates depends on facts and circumstances. N.Y. State 92-632.

It is not improper for an attorney who occasionally volunteers to serve as a non-paid arbitrator in a small claims part of a local court to practice before the same small claims part. N.Y. State 75-380.

An acting city court judge may not represent a claimant against the city even though the proceeding is brought in Supreme Court. N.Y. State 73-308.

An attorney appointed temporary acting judge to preside during the absence of the regular judge in a criminal court may not properly represent clients in criminal matters before the same court or other criminal courts. N.Y. State 72-265.

A part-time judge with criminal jurisdiction can not represent clients in criminal matters in his private practice. N.Y. State 72-228.

An attorney who is a partner in a firm may not share his salary from the office of part-time town justice with law partners. N.Y. State 71-210.

A part-time judge of city court having limited countywide civil and criminal jurisdiction may not represent a client in a criminal case in the city, but may practice elsewhere. N.Y. State 71-181.

An attorney, who serves as a justice of the peace once a week, may not represent manors and hold felony hearings in a court in which he is not a justice of the peace. N.Y. State 70-146.

It is proper for a part-time justice of the peace of an incorporated village to represent clients in a court other than the one in which he has been appointed. N.Y. State 67-57.

A part-time judge should not be employed in any matter which is brought before the court of which he is a member. N.Y. State 66-39.

It would be improper for a part-time judge in a court in which he is a member to practice in a court in which he is not a member. N.Y. State 66-39.

17. Government attorney practice of law

A town attorney may not practice before town court justice unless he

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and represent the town in that court and here are other justices to hear matters affecting the town. Op. Atty. Gen. (In re) 84-33.

A village attorney may not also serve as village court justice unless he does not represent the village in that court and here are other justices who can preside over matters involving the village. Op. Atty. Gen. (In re) 89-25.

A part-time attorney may not practice as a lawyer-justice in town court when the attorney is acting village justice in the same court. Op. Adv. Comm. Jud. Eth. 90-165, Vol. VII.

An attorney for the town Zoning Board and Planning Board may not serve as town justice. N.Y. State 71-171.

There is no conflict of interest per se if an attorney serves as a Deputy County Attorney of Nassau County to serve as village justice in an incorporated village in Nassau County, as long as the attorney's office has no prosecutive duties in the Village Court. Nassau County 71-6.

Partners or associates, private practice of law

An attorney who is a member of the Motor Vehicle Department or its associates as a quasi-judicial hearing conducted by a motor vehicle or in an Article 78 proceeding or other action against the Department of Motor Vehicles. N.Y. State 71-146.

It is ethically improper for a village police judge to sit in judgment on criminal matters in a jurisdiction where his partner is an assistant district attorney. N.Y. State 69-118.

CANON 5

Judge or Candidate for Elective Judicial Office Shall Refrain From Inappropriate Political Activity

Incumbent judges and others running for public election to judicial office shall, directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or (ii) to vote and to identify himself or herself as a member of a political party or the administration of justice. Prohibited political activity includes:

Canon 5
[22 NYCRR § 100.5]

The partner or associate of a town justice of a first class town may appear before an administrative board or agency under which the town justice may appear, that is, when it is clear that there exists no conflict between the town justice's duties to the public as a judge and where there exists a total absence of even the appearance of professional impartiality. N.Y. State 74-342.

An attorney may not hold the position of town justice when his partner is charged with responsibility for criminal prosecution in behalf of the town. N.Y. State 73-280.

In the absence of any other conflict of interest, an attorney may hold the position of town justice when the legal services performed by partner for the town do not involve criminal prosecution and do not contemplate litigation before that court. N.Y. State 73-280.

It would not be proper in a town which is within county where his office associate is district attorney, for a lawyer to accept the position of justice of the peace. N.Y. State 71-214.

N.Y. State opinions which place limitations on practice of part-time judges apply to a part-time judge's partners and associates. N.Y. State 71-203.

It is ethically improper for a village police judge to sit in judgment on criminal matters in a jurisdiction where his partner is an assistant district attorney. N.Y. State 69-118.

Exhibit A