

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

WILLIAM C. PELELLA,

a Judge of the Binghamton City Court,
Broome County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Colleen C. DiPirro¹
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the
Commission

Honorable William C. Pelella, *pro se*

¹ Ms. DiPirro resigned from the Commission on October 30, 2008. The vote in this matter was taken on September 19, 2008.

The respondent, William C. Pelella, a Judge of the Binghamton City Court, Broome County, was served with a Formal Written Complaint dated June 15, 2007, containing one charge. The Formal Written Complaint alleged that respondent permitted his co-judge's law partners to appear before him in the Binghamton City Court. Respondent filed a Verified Answer dated August 9, 2007.

On April 2, 2008, the administrator of the Commission 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 and providing for written and oral argument on the issue of sanctions. The Commission accepted the Agreed Statement on May 7, 2008. Each side submitted memoranda as to sanction.

On September 19, 2008, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following determination.

1. Respondent has been an elected, full-time Binghamton City Court Judge since January 1, 2005. He was admitted to the practice of law in New York in 1981.

2. Mary Anne Lehmann has been an elected, full-time Binghamton City Court Judge since 1997.

3. Robert C. Murphy was an appointed, part-time Binghamton City Court Judge from June 14, 2002, to June 14, 2008. During that time, he was in private practice as an attorney with a law office in Binghamton.

4. When respondent became a judge in 2005, he and Judge Lehmann

were the only full-time judges of the Binghamton City Court, and Judge Murphy was the only part-time judge on the court.

5. From January 2004 to about June 1, 2006, Judge Murphy, Alan J. Pope and Kurt D. Schrader were law partners in, and James A. Sacco was of counsel to, the law firm of Pope, Schrader & Murphy LLP. During that time, Messrs. Pope, Schrader and Sacco were persons connected in law business with Judge Murphy. On or about June 1, 2006, Judge Murphy left the firm and became a sole practitioner.

6. From at least January 1, 2005, to about June 1, 2006, respondent knew Messrs. Pope, Schrader and Sacco professionally and knew that each was in the practice of law with Judge Murphy.

7. From in or about January 2005 to in or about March 2006, respondent permitted Messrs. Pope, Schrader and Sacco to appear before him in the Binghamton City Court in 14 criminal cases and five civil cases, as set forth more fully in the Agreed Statement of Facts, knowing that those attorneys were law partners or associates of Judge Murphy.

8. From March 15, 2005, to March 24, 2006, respondent assigned Mr. Schrader, while he was a law partner of Judge Murphy, to be counsel in nine criminal cases, as set forth more fully in the Agreed Statement of Facts.

9. At all times relevant to the matters herein, the process for assigning counsel in Binghamton City Court was as follows. Court staff would consult a list of attorneys who had declared themselves available for assignment and would telephone lawyers on that list in rotation until one was available to serve in the particular matter at

hand. Respondent did not participate in this process, except to sign the assignment letter as to those cases on his docket where such assignment was necessary.

10. There is no indication that any of these assignments were made other than in the ordinary course, or that Mr. Schrader was given preferential treatment over other attorneys who were receiving court assignments, or that Mr. Schrader was reimbursed for his work in excess of reasonable and justifiable fees. Mr. Schrader's total compensation in these matters was \$1,907.50; he only sought compensation for his work in four of the nine cases.

11. In or about February 2006, Judge Elizabeth A. Burns, a part-time Judge of the Cortland City Court, was designated as an Acting City Court Judge of Binghamton to hear two cases in that court involving Judge Murphy's law firm. On March 22, 2006, Mr. Pope appeared before Judge Burns in the Binghamton City Court on behalf of the defendant in *RPI Construction v. A. Anthony Corporation*. Also on that date, Mr. Schrader appeared before Judge Burns on behalf of the plaintiff in *Pope, Schrader & Murphy LLP v. Lown*. Judge Burns adjourned both cases to review the issue of whether or not attorneys from Pope, Schrader & Murphy LLP could practice law in the Binghamton City Court in light of Judge Murphy's status as a part-time judge of that court.

12. On March 24, 2006, Judge Burns entered an Order disqualifying Pope, Schrader & Murphy LLP from representing the defendant in the *RPI* matter on the basis that Section 100.6 of the Rules Governing Judicial Conduct ("Rules") prohibits law partners and associates of a part-time judge from practicing law in that judge's court.

Judge Burns directed the defendant either to appear *pro se* or to retain new counsel. On March 29, 2006, Judge Burns dismissed *Pope, Schrader & Murphy LLP v. Lown*, without prejudice.

13. As a result of Judge Burns' Order in the *RPI* matter, by letter dated March 30, 2006, respondent and Judge Lehmann advised the attorneys at Pope, Schrader & Murphy LLP that their firm was prohibited from practicing law in the Binghamton City Court, directed the firm to take steps to withdraw from any civil actions then pending in the Binghamton City Court and to inform criminal defendants that the Pope firm could no longer represent them, and gave notice to the firm that new counsel would be assigned to criminal defendants whose cases had been assigned to the firm.

14. By letter dated May 4, 2006, Judge Lehmann reported Judge Murphy's conduct to the Commission for, *inter alia*, allowing his partners and associates to practice law in the Binghamton City Court.

15. Notwithstanding that as early as January 1, 2005, respondent was aware that Messrs. Pope, Schrader and Sacco had appeared in the Binghamton City Court and respondent later concluded that in doing so, they had likely committed substantial violations of Section 471 of the Judiciary Law and the New York Lawyer's Code of Professional Responsibility, respondent did not take appropriate action to prohibit these attorneys from practicing in the court until March 30, 2006, and did not act to refer the information to an appropriate lawyers' disciplinary or grievance committee.

16. Notwithstanding that respondent received information indicating a substantial likelihood that Judge Murphy had committed a substantial violation of the

Rules by not prohibiting his law partners and associates from practicing in the Binghamton City Court, contrary to the requirements of Section 471 of the Judiciary Law and Section 100.6(B)(3) of the Rules, respondent failed to take appropriate action, such as referring the information to the Commission. Respondent did confront Judge Murphy concerning the issue in or about April 2006 and understood that Judge Murphy was communicating with the Advisory Committee on Judicial Ethics. Respondent further understood that Judge Lehmann was submitting a complaint to the Commission.

17. From June 14, 2002, when Judge Murphy became a judge of the Binghamton City Court, until January 2005, when respondent became a judge of that court, respondent often appeared as an attorney in that court. He regularly observed attorneys Pope, Schrader and Sacco practicing before the other judges of that court. Respondent had respect for Messrs. Pope, Schrader and Sacco and the judges of the court. Respondent was aware that Mr. Pope was a member of the Commission on Judicial Conduct and had become its Vice Chair in 2004. In observing members of the Pope firm practice law in the Binghamton City Court, it did not occur to respondent that Mr. Pope, his partners or the other judges of court would be acting contrary to law or the Rules.

18. When respondent became a judge, Administrative Judge Judith F. O’Shea asked Judge Lehmann to serve as his “mentor judge,” which *inter alia* meant that respondent observed Judge Lehmann preside over cases in her own courtroom. Respondent was aware that Judge Lehmann permitted members of the Pope law firm to appear before her, and he did not know that such appearances were prohibited. Until

Judge Burns issued her Order in *RPI Construction v. A. Anthony Corporation* in March 2006, Judge Lehmann and respondent did not discuss the issue.

19. By early 2006, respondent began to feel uncomfortable about permitting the Pope law firm to practice in the Binghamton City Court. Respondent asked court staff to research the issue and was told there was no procedure in place for handling cases involving the Pope firm any differently than cases involving other law firms. Shortly thereafter, Judge Burns issued her March 2006 Order in *RPI Construction v. A. Anthony Corporation*.

20. Before Judge Burns issued her Order in the *RPI* matter, respondent was not aware of Section 471 of the Judiciary Law or Section 100.6(B)(3) of the Rules. Although he was the newest judge on the Binghamton City Court during the period at issue and was following a practice that predated his arrival to the court, respondent concedes that he was obliged to be aware of and to ensure compliance with the statutes and Rules, and that he failed to be so aware and compliant during the period at issue.

23. Judge Burns' action impressed upon respondent that it was improper for lawyers associated with the Pope law firm to appear in the Binghamton City Court. Respondent acted promptly thereafter to prohibit appearances in his court by lawyers of that firm.

24. Respondent has been candid and cooperative with the Commission throughout this proceeding.

25. There is no indication that respondent conferred any preferential treatment or special beneficial disposition, or unfavorable treatment, upon Judge

Murphy's partners and associates, or any of their respective clients, in any of the cases in which those attorneys appeared before him, or that he acted in those cases in any manner other than impartially and in the ordinary course. Respondent nevertheless recognizes that public confidence in the judiciary requires both impartiality and the appearance of impartiality and that his conduct did not satisfy this standard.

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(C), 100.3(B)(1), 100.3(D)(1) and 100.3(D)(2) of the 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. Charge I is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

It is well-established that the law partners and associates of a part-time judge who is permitted to practice law are barred from practicing law in the judge's court (Jud. Law §471). This statutory prohibition is reflected in the ethical rules, which provide that such a part-time lawyer-judge "shall not permit his or her partners or associates," or those of a co-judge, to practice in the judge's court (Rules, §100.6[B][3]). Public confidence in the courts is diminished by the appearance of favoritism when a judge presides over a case in which a party is represented by the law partners of his or her judicial colleague.

For over a year, in 14 criminal cases and five civil matters, respondent allowed to appear before him in the Binghamton City Court the law partners and

associate of his co-judge, Robert C. Murphy. In nine of the criminal cases, he actively facilitated these improper appearances by assigning Judge Murphy's partner to represent the defendants. By permitting these attorneys to appear before him though they were statutorily barred from doing so, respondent was complicit in persistent violations of the law. *See, Matter of Harris*, 56 NY2d 365 (1982); *Matter of Falsioni*, 1982 Annual Report 123 (Comm on Judicial Conduct).

The statutory prohibition (Jud. Law §471) is clear. It applies to all judges, making no distinction between appearances before part-time and full-time judges. Thus, although the Rule prohibiting a judge from sitting on a co-judge's partners' cases on its face applies only to part-time judges (§100.6[B][3]), the obligation to implement the statutory prohibition is not limited to part-time judges. *See*, Adv. Op. 05-124, 06-61.

It has been stipulated that respondent was unaware of these specific prohibitions regarding the appearances of his co-judge's partners and associates. Even without specific knowledge of the applicable law, it should have been readily apparent to respondent that such appearances not only would provide a direct financial benefit to his co-judge, but would create an unacceptable perception that parties represented by his co-judge's partners might receive special treatment. In this regard it is noteworthy that a visiting judge assigned to handle two cases involving Judge Murphy's firm immediately recognized the impropriety of such appearances, issuing an order disqualifying the firm from one case and dismissing the second case without prejudice. Moreover, as the Court of Appeals has stated, ignorance does not excuse violations of legal or ethical mandates since every judge is required to maintain professional competence in the law. *See, Matter*

of VonderHeide, 72 NY2d 658, 660 (1988); *Matter of Kane*, 50 NY2d 360, 363 (1980); Rules, §100.3(B)(1). Further, since he was unaware of the applicable law, respondent did not bar the attorneys from appearing in the court or report the conduct of Judge Murphy and his partners to the appropriate disciplinary authorities (*see* Rules, §100.3[D][1], [2]), thereby permitting the improper practice to continue.

The record indicates that in early 2006 respondent was concerned about the appearances of his co-judge's firm, asked his staff to research the issue and was advised that Judge Murphy's firm was treated like any other attorneys. Given his concerns that the practice was or could be improper, it is clear that respondent should have done more, such as seeking an opinion from the Advisory Committee on Judicial Ethics, to determine whether he could preside over those attorneys' cases. As respondent concedes, he did not "question the system" sufficiently (Oral argument, p. 19).

In considering an appropriate sanction, we note several factors in mitigation.

First, it is clear from this record that there was a widespread practice of appearances by Judge Murphy's firm in the Binghamton City Court that predicated respondent's tenure as a judge. Respondent knew that his predecessors, other judges of the court and attorneys whom he respected were involved in the practice, and he was guided by their precedent. While this does not excuse his own participation in the practice, it casts his behavior in a relatively less culpable light.

Second, there is no indication that respondent conferred any preferential treatment upon Judge Murphy's firm or their respective clients in the cases cited herein.

Third, respondent was on the bench for a relatively short period before the misconduct was identified.

Fourth, when the impropriety of the appearances by Judge Murphy's firm was brought to respondent's attention, he and his co-judge, Mary Anne Lehmann, took prompt action to bar the firm from appearing in the court in the future.

Fifth, the record demonstrates that respondent followed and respected the practices of his mentor judge, Mary Anne Lehmann, who engaged in this same misconduct for nearly four years.

Finally, throughout this proceeding respondent has been cooperative and contrite and has forthrightly acknowledged his misconduct. *See, e.g., Matter of LaBelle*, 79 NY2d 350, 363 (1992); *Matter of Allman*, 2006 Annual Report 83 (Comm on Judicial Conduct). In this regard, we note respondent's avowal that he has learned from this experience and his pledge to be guided by his duty to uphold the integrity of the judiciary.

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

Judge Klonick, Mr. Emery, Ms. Hubbard, Mr. Jacob, Judge Peters and Judge Ruderman concur.

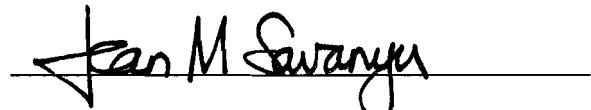
Mr. Belluck and Mr. Harding dissent and vote that respondent be issued a confidential letter of caution.

Mr. Coffey, Ms. DiPirro and Judge Konviser were not present.

CERTIFICATION

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

Dated: November 10, 2008



Jean M. Savanyu, Esq., Clerk
New York State
Commission on Judicial Conduct