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

KARL RIDSDALE,

a Justice of the Antwerp Town Court,
Jefferson County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Honorable Karen K. Peters
Richard A. Stoloff, Esq.

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Honorable Karl Ridsdale, *pro se*

The respondent, Karl Ridsdale, a Justice of the Antwerp Town Court, Jefferson County, was served with a Formal Written Complaint dated October 8, 2010, containing two charges. The Formal Written Complaint alleged that respondent presided

over a case in which his co-judge's son was the defendant and that he failed to record the proceedings. Respondent filed an answer dated October 21, 2010.

On June 3, 2011, the Administrator 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 censured and waiving further submissions and oral argument. Between December 2010 and May 2011, the Commission rejected three earlier Agreed Statements of Facts.

On June 16, 2011, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Antwerp Town Court, Jefferson County, since 2006. His current term expires on December 31, 2013. Respondent is not an attorney.

2. Donald Hull is respondent's co-judge and has been a part-time Justice of the Antwerp Town Court since 1979.

As to Charge I of the Formal Written Complaint:

3. On March 12, 2009, respondent's co-judge, Donald Hull, called the New York State Police after an incident at his home involving his 20-year-old son, Tyrone Hull. Tyrone, who had a history of behavioral problems and anger, had intentionally not taken his prescribed medication, [redacted] Tyrone had an explosive outburst toward his mother in which he claimed she put too much salt in

a dish she was preparing for the family's dinner. Tyrone yelled and threatened his siblings, warning that he was going to get a gun. Tyrone punched a hole in a wall and rampaged through the house searching for a gun owned by the family. Judge Hull warned Tyrone that he would call the police and Tyrone replied that he might hurt someone. A New York State Trooper and an Antwerp Village Police Officer responded to the call.

4. Tyrone Hull was arrested that evening and charged with Criminal Mischief in the Fourth Degree, a Class A misdemeanor and a violation of Penal Law Section 145.00. Tyrone was transported to the Antwerp Town Court for arraignment at about 8:30 PM.

5. Sometime between 8:30 PM and 9:30 PM on March 12, 2009, respondent presided over the arraignment in *People v. Tyrone Hull*. A New York State Trooper was present.

6. At the arraignment, respondent read the charge to Tyrone Hull and asked him if he understood the charge, which Tyrone said he did. Respondent then advised Tyrone of his right to counsel at every stage of the proceeding and said that if he could not afford counsel, one would be appointed. When respondent asked Tyrone if he wanted an attorney, Tyrone declined.

7. Respondent asked Tyrone Hull how he wished to plead to the charge, and Tyrone said that he wished to plead guilty. Respondent advised Tyrone that if he pleaded guilty, he would be sentenced to 30 days in jail. Pursuant to Penal Law Sections 70.15 and 145.00, the maximum sentence of incarceration allowed was one year.

Respondent then sentenced Tyrone, who had no prior criminal record, to 30 days in jail. Respondent also ordered that Tyrone receive a mental health exam.

8. At the time he presided over the arraignment, respondent was aware that Tyrone Hull was the son of his co-judge and that his co-judge was the complaining witness. Respondent did not disclose his relationship with Judge Hull to Tyrone Hull or offer to disqualify himself from the case because he did not know that it was improper to preside over a matter involving his co-judge and his co-judge's son.

9. Prior to Tyrone's arraignment and plea, respondent did not speak to Judge Hull about any aspect of Tyrone's case.

10. After the arraignment, respondent telephoned Judge Hull and said that he had arraigned Tyrone and that Tyrone pleaded guilty to Criminal Mischief and was sentenced to 30 days in jail. Respondent indicated that he would issue an Order of Protection against Tyrone and asked Judge Hull to provide the names and ages of the twelve children residing at the home. Judge Hull and respondent did not discuss anything else about Tyrone.

11. Respondent did not obtain a pre-sentence report prior to sentencing Tyrone Hull because under Section 390.20(2) of the Criminal Procedure Law, a pre-sentence report is not required where a person is convicted of a misdemeanor, except in limited circumstances not applicable here.

12. Respondent was not required to obtain the consent of the District Attorney's Office before sentencing Tyrone Hull upon his guilty plea at arraignment

under Section 170.10 of the Criminal Procedure Law. As a general practice, and in this case, the Assistant District Attorney assigned to respondent's court did not ask for the opportunity to make a sentencing recommendation before respondent imposed sentence at arraignment.

13. Respondent had not previously accepted a guilty plea at arraignment from a defendant who chose to proceed without counsel. Respondent accepted Tyrone Hull's guilty plea because Tyrone indicated he wanted to plead guilty, Tyrone understood everything respondent said, and respondent was authorized by law to accept the plea.

14. Mr. Hull served 19 days of his 30-day sentence in the Jefferson County Jail and then was released.

Mitigating Factors

15. Respondent has been contrite and cooperative with the Commission throughout its inquiry.

16. Respondent has no previous disciplinary record. Respondent regrets his failure to know and abide by the applicable Rules in this instance and pledges to conduct himself in accordance with the Rules in the future.

Additional Factors

17. Respondent failed to mechanically record the arraignment and plea proceedings in *People v. Tyrone Hull,* as required by Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the

Courts dated May 21, 2008.[1]

18. Respondent's practice is to record proceedings, including after-hours arraignments. His court clerk typically turns on the digital recording equipment. When Tyrone Hull appeared before him for arraignment, respondent forgot to turn on his computer and to activate the recording equipment.

As to Charge II of the Formal Written Complaint:

19. The charge was withdrawn (*see* fn. 1).

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), 100.3(E)(1) and 100.3(E)(1)(a)(i) 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. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established. Charge II was withdrawn.

Since his impartiality "might reasonably be questioned" (Rules, §100.3[E][1]), respondent was required to disqualify himself in a criminal case in which

[1] The Formal Written Complaint charged respondent's failure to mechanically record the proceedings in *People v. Tyrone Hull* as a separate and independent charge of misconduct. Upon reflection, the Administrator agreed that these allegations should be characterized as an aggravating factor for the Commission's consideration with respect to Charge I and, therefore, Charge II of the Formal Written Complaint was withdrawn.

the complaining witness was his co-judge and the defendant was his co-judge's son (*see*, Adv Op 98-18; *see also*, *Matter of Menard*, 2011 Annual Report 126 [judge failed to disqualify himself in four small claims cases in which his co-justice was the claimant]). Instead of doing so, respondent conducted the arraignment, accepted the defendant's guilty plea to Criminal Mischief in the Fourth Degree and sentenced him to 30 days in jail. Respondent did not disclose the conflict or offer to disqualify himself, although even with disclosure, remittal was unavailable since the defendant was unrepresented (*see*, Rules, §100.3[F]).

In view of the conflict, respondent's handling of the case was unavoidably tinged with an appearance of impropriety. Even though the defendant had a right to plead guilty to the charge at the arraignment, under these circumstances it was particularly disturbing for respondent to accept a guilty plea to a misdemeanor from the unrepresented defendant – whose mental state prompted respondent to order a mental exam – and to sentence him to jail. Notwithstanding that respondent advised the defendant of the right to counsel and assigned counsel and the defendant chose to proceed without an attorney, it is unclear whether respondent conducted any inquiry, as required by law, to determine whether the defendant's waiver of counsel was "unequivocal, voluntary and intelligent" or that he attempted to impress on the defendant the "dangers and disadvantages" of giving up the fundamental right to counsel (*People v. Smith*, 92 NY2d 516, 520 [1998]). There is no indication that the defendant appreciated the importance of consulting with counsel regarding the significant consequences of pleading guilty to a crime and being

sentenced to incarceration.

The impropriety was compounded by respondent's failure to record the proceeding, as mandated by a statewide Order of the Chief Administrative Judge. This important administrative requirement, which was promulgated in 2008, protects everyone, including the judge. The absence of a recording of the arraignment makes it more difficult to determine precisely what transpired at the proceeding.

In considering an appropriate sanction, we note that respondent has acknowledged his misconduct and has been cooperative throughout the proceedings, that it appears that his errors in this case were isolated, and that he has pledged to conduct himself in accordance with the ethical Rules in the future.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Mr. Harding, Ms. Moore, Judge Peters and Mr. Stoloff concur. Judge Acosta concurs in an opinion.

Mr. Emery dissents in an opinion and votes to reject the Agreed Statement on the basis that the facts as presented are insufficient for the Commission to make a determination.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: July 20, 2011

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

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CONCURRING
OPINION BY JUDGE
ACOSTA

I agree with the majority's conclusion that the stipulated facts amply demonstrate respondent's misconduct and establish that the appropriate sanction is censure. I write separately because I take issue with the dissent's view that the record contains significant deficiencies and is inadequate for the Commission to make an appropriate determination. Even if I were to agree with the dissent that the record presents some unanswered questions about Judge Ridsdale's handling of the case of his co-judge's son, I believe that under the circumstances of this matter, the majority has nevertheless fulfilled its statutory obligations when (1) it deferentially considered an Agreed Statement of Facts without knowledge of the tactical reasons that may have prompted both sides to offer such a stipulation after the Commission had rejected three earlier stipulations, and (2) it accepted an Agreed Statement which, on its face, is credible and sufficient for us to determine whether the respondent engaged in misconduct and what the sanction should be.

Contrary to my dissenting brother, I believe it is unnecessary to require both sides to go through a costly formal hearing where the stipulated facts, in my view, provide a sufficient basis for us to impose a just result. The Agreed Statement accepted by the majority describes a set of circumstances which supports the imposition of discipline for cause, inasmuch as Judge Ridsdale (1) failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that such integrity would be preserved; (2) failed to avoid impropriety and the appearance of impropriety, in that he did not respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; (3) allowed a professional relationship with his co-judge to influence his judicial conduct; (4) failed to perform the duties of judicial office impartially and diligently, in that he failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned; and (5) failed to disqualify himself in a proceeding in which he had a personal bias or prejudice concerning a party.

I fully agree with my dissenting brother that it is the duty of this Commission to review stipulations critically and carefully. The critical question, in my view, is not whether every possible factual question has been answered, but whether the facts as presented are sufficient for the Commission to make a determination as to misconduct and, if so, the appropriate sanction. In this case, recognizing our ultimate responsibility to impose appropriate discipline based upon a fully developed record, we rejected three earlier Agreed Statements due to various deficiencies. The Commission

should, and will, continue to review every stipulation with due care.

Nevertheless, I believe that in exercising its statutory responsibilities, the Commission must be cognizant that tactical decisions by both sides are implicit in every Agreed Statement. While the Commission has the ultimate statutory responsibility to impose discipline, it has no prosecutorial role after authorizing formal charges and, by law, delegates that function to its staff. Thus, the Commission is privy neither to the evidence nor to the tactical considerations of the prosecuting staff when staff determines whether to attempt to negotiate a stipulation or to proceed to a hearing. These tactical choices may be predicated upon such concerns as the availability of witnesses, the credibility of witnesses if called to testify, the nature of the information uncovered during the investigation, and, ultimately, whether the staff believes it can meet its burden before a referee and the Commission. In addition, in negotiating an Agreed Statement, each side compromises on language to avoid the uncertainty that comes with a full hearing. To be sure, we cannot and should not accept an Agreed Statement in which the facts as presented are ambiguous, unclear, inconsistent, or patently incredible on their face. Yet, mindful of such considerations and recognizing that, even after a hearing, unanswered questions often remain, the Commission should give due deference to a negotiated stipulation that permits us to impose appropriate discipline.

I disagree with the dissent that we weigh the Commission's duties differently. I simply choose to accept the Agreed Statement based on the record before me rather than speculate about what a formal hearing on "suspicious circumstances,"

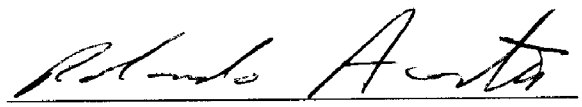
some of which have not been charged, might yield. It is patently obvious that in attempting to resolve this case by stipulation, both sides are making tactical decisions in good faith based on the nature and strength of their case. The Commission, concededly without the evidence available to both sides, should be reluctant to insist that a hearing be held when both sides, for reasons to which we are not privy, have chosen to waive a hearing and to recommend a disposition based on stipulated, credible facts. And our final and ultimate constitutional responsibilities should not be an excuse to do so.

I also disagree with the dissent's characterization of the differences between a judicial prosecutorial model and models followed in administrative disciplinary agencies. Since 1978, by constitutional amendment, New York has had a unitary judicial commission handling investigative, prosecutorial and adjudicatory functions, a system that now exists in 42 states. The combination of functions within the Commission is marked by important procedural safeguards. While the staff investigates complaints authorized by the Commission and regularly reports to the Commission on investigations, once the Commission has authorized formal charges, the staff independently prosecutes those matters before a referee and ultimately the Commission. In this adjudicative stage, the Commission has no private communications with staff about pending matters. Instead, by rule (22 NYCRR §7000.13) and in practice, the Commission is assisted only by its confidential clerk who has no investigative or prosecutorial role. Consequently, our role in reviewing a stipulated recommendation as to discipline is fueled neither by any special knowledge of the underlying circumstances

nor by any institutional bias favoring either side. The final and ultimate constitutional responsibility to impose discipline is not incompatible with a unitary model, which at the core safeguards due process by separating prosecutorial and adjudicatory functions.

For these reasons, I believe that the "suspicious circumstances" presented in respondent's handling of the case at issue, as described by the dissent, are an insufficient basis for the Commission to reject an Agreed Statement which imposes the strongest possible sanction short of removal against Judge Ridsdale, a non-attorney with a heretofore unblemished disciplinary record.

Dated: July 20, 2011



Honorable Rolando T. Acosta, Member
New York State
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DISSENTING OPINION
BY MR. EMERY

Three times previously, the Commission rejected proposed Agreed Statements in this case because of essentially the same defects in the one accepted today. It remains unexplained how an experienced judge could accept a Criminal Mischief guilty plea at an evening off-hours arraignment, with no prosecutor or defense attorney present, without any recording of the proceeding, from a defendant whom the judge knew was his co-judge's son and then sentence the young man to 30 days in jail without any pre-sentence report. Most significantly, at the sentencing the judge ordered a mental health examination for this defendant who apparently had failed to take prescribed anti-psychotic medication, raising a clear doubt that the guilty plea, without counsel and under all the circumstances, was knowing and voluntary. Significantly, this judge had never before sentenced a defendant to jail at arraignment.

Under these extraordinarily suspicious circumstances it is simply impossible to exclude, without a more fully developed record, the likelihood that the

respondent-judge was short-circuiting proper procedure in order to serve the private family interests of his co-judge to incarcerate his unstable son. If this was respondent's motivation, removal should seriously be considered as the mandated sanction for using his judicial office to serve the personal, private interests of his co-judge. No matter how well-intended that undertaking may have been, trampling the due process rights of a defendant for such purposes is very serious misconduct and the record provided to us by this now well-laundered Agreed Statement is inadequate to reach a determination that censure is the appropriate response to this admitted misuse of judicial power. This case cries out for a full hearing rather than a pragmatic resolution.

Instead, the Commission accepts the judge's claim that he sentenced the young man because the defendant had "indicated" that he wanted to plead guilty. And the Commission accepts the staff-recommended woodshed spanking because the judge supposedly did not know it was misconduct to jail his co-judge's son in a matter in which his co-judge was the complaining witness. Yet, the Commission ignores the plain evidence of what appears to be the much more serious misconduct of intentionally denying a defendant due process to serve the personal interests of his co-judge.

I find that the facts compel further development of the record. Off his anti-psychotic meds, a mentally unstable son of a judge appears at night before his father's co-judge – the respondent – on charges filed by the judge/father against his son for threatening the judge and his family. Respondent does not turn on the recording device. No lawyer is present – neither a defense attorney nor a prosecutor. We are supposed to believe that the defendant "understood" everything the judge said and "chose" to proceed

without a lawyer and "indicated" he wanted to plead guilty, though only the self-interested judge confirms these vague assertions. Did the young man "indicate" that he wanted to spend 30 days in jail? Did he "understand" the significant consequences of a guilty plea? Did he want the mental exam the judge ordered? What did the judge do to determine, as the law requires, that the defendant's waiver of the right to a lawyer was "unequivocal, voluntary and intelligent" or that he appreciated the "dangers and disadvantages" of giving up the fundamental right to counsel (*People v. Smith*, 92 NY2d 516, 520 [1998])? How could the judge accept a waiver from someone he viewed as sufficiently unstable to warrant a mental exam? Why is this the *only* defendant that the judge has ever sentenced to jail at an arraignment? Did the judge really "forget" to turn on the recording device? Did the judge really think that he was authorized to sit in judgment of his co-judge's family? The Commission's determination resolves all these problematic questions by accepting conclusory, stipulated facts that, on their face, are counter-intuitive. A hearing would likely establish through overwhelming circumstantial and, perhaps, even some direct evidence that the judge was serving his co-judge's personal family interests rather than his duties as a judge to the public.

Once again, I find myself reciting in dissent the bedrock of this Commission's existence: our purpose and function in imposing discipline, according to the Court of Appeals, is "to safeguard the Bench from unfit incumbents" (*Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [111] [Ct on the Judiciary 1975]) (*see*, *Matter of Feeder*, 2010 Annual Report 143; *Matter of Williams*, 2008 Annual Report 207; *Matter of Blackburne*, 2006 Annual Report 103;

Matter of Cook, 2006 Annual Report 119; *Matter of LaClair*, 2006 Annual Report 199 [Emery Dissents]). Judges who, even with the best of motivations, ignore ethical and due process imperatives and knowingly trample litigants' rights must be separated from their awesome power and responsibilities. They should rejoin the citizenry whom we are constitutionally invested to protect. Judge Ridsdale may or may not be such a judge. But this Agreed Statement begs more questions than it answers.

If I had the answers or, at least, was convinced that Ridsdale had been asked under oath to respond to the flaming questions in this case, I might agree that a censure is appropriate. Then again, I might not. But it would be a dereliction of my duty to otherwise pragmatically dispose of this case.

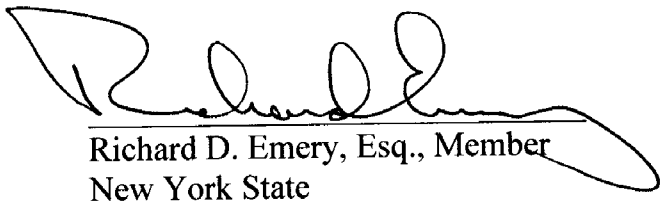
Judge Acosta's concurrence weighs the Commission's duties differently than I do. He is too willing, in my opinion, to defer to the "tactical" considerations that he infers, without any evidentiary basis, *must* exist for staff to agree to what on this record is an unsupported result. Unlike courts and prosecutors whose functions and responsibilities are defined by concepts of separation of powers, we are an administrative disciplinary agency that has final and ultimate constitutional responsibility for protecting the public from wayward jurists. I too am willing to defer to staff when there is a basis to do so. I see none here; in fact, if anything staff is accepting patently false exculpatory statements from the judge that the Commission is adopting. In my view, the judge's excuses would not satisfy a fifth grade teacher who would at least expect that the student have a dog and that the homework presented was partially chewed.

Accordingly, I must again vote to reject an Agreed Statement on the basis

that the record before us lacks information that is the fulcrum for making an appropriate determination. (*See*, *Matter of Valcich*, 2008 Annual Report 221 [Emery Dissent]; *Matter of Honorof*, 2008 Annual Report 133 [Emery Dissent]; *Matter of Carter*, 2007 Annual Report 79 [Emery Concurrence]; *Matter of Clark*, 2007 Annual Report 93 [Emery Dissent].) We should not render a determination where a more fully developed record might reveal that the respondent is unfit to remain on the bench.

Thus, the Agreed Statement should again be rejected and the Formal Written Complaint should proceed to a hearing.

Dated: July 20, 2011



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