

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding  
Pursuant to Section 44, subdivision 4,  
of the Judiciary Law in Relation to

**DETERMINATION**

P. MICHAEL SHANLEY,

a Judge of the Oswego City Court,  
Oswego County.

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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 (David M. Duguay, Of Counsel) for the Commission

Honorable P. Michael Shanley, *pro se*

The respondent, P. Michael Shanley, a Judge of the Oswego City Court,  
Oswego County, was served with a Formal Written Complaint dated May 17, 2011,  
containing one charge. The Formal Written Complaint alleged that respondent, a part-

time judge who is permitted to practice law, acted as an attorney in four cases that originated in or were heard in the Oswego City Court. Respondent filed an Answer dated June 8, 2011.

On September 15, 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.

On November 3, 2011, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Oswego City Court, Oswego County, since December 20, 2007. His term expires on December 19, 2013. Respondent was admitted to the practice of law in New York in 1970.

2. Respondent practices law under the firm name “Shanley Law Offices,” which maintains offices in Oswego and Mexico, New York. Between December 20, 2007, and July 2008, the only other attorney at Shanley Law Offices was respondent’s daughter, Kristin A. Shanley, Esq.

3. Respondent was appointed by Randolph F. Bateman, the mayor of the City of Oswego, as a part-time judge of the Oswego City Court, effective December 20, 2007.

4. Shortly after respondent’s appointment, Oswego City Court Judge James M. Metcalf was assigned to mentor respondent. On or about January 16, 2008,

Judge Metcalf met with respondent and advised him to dispose of any outstanding matters he had pending in Oswego City Court.

5. As set forth below, respondent represented clients in four matters pending or originating in Oswego City Court notwithstanding that, during his representation of those clients, he was a judge of that court.

6. Respondent acknowledges that, after his judicial appointment, his representation of clients in cases pending or originating in Oswego City Court violated Section 100.6(B)(2) of the Rules Governing Judicial Conduct (“Rules”) and Judiciary Law Section 16.

*People v. Kelly King (nee White)*

7. On or about August 2, 2007, Kelly King was involved in a traffic accident in the City of Oswego. Ms. King was charged by the Oswego City Police with Failure To Yield, in violation of Section 1141 of the Vehicle and Traffic Law (“VTL”). The traffic ticket was returnable in the Oswego City Court on August 30, 2007.

8. In or about August 2007, Ms. King retained respondent to represent her with respect to the traffic ticket. Ms. King also retained respondent to represent her in a personal injury action arising from the August 2<sup>nd</sup> traffic accident.

9. After respondent was retained, he took possession of the traffic ticket and told Ms. King in words or substance that he would “take care of it.”

10. In March 2008, respondent met with Ms. King at the Shanley Law Offices to discuss the traffic ticket. Respondent presented Ms. King with a plea reduction

letter dated March 13, 2008, obtained from the Oswego County District Attorney's Office, which offered a reduction of the original charge to a violation of Section 1201(a) of the VTL, No Parking.

11. After Ms. King agreed to accept the District Attorney's plea offer, respondent secured her signature on the waiver portion of the plea reduction letter. The waiver bore a handwritten date of "3-14-08," which was written by respondent. Respondent's office then forwarded Ms. King's plea reduction letter to the Oswego City Court.

12. On or about May 28, 2008, Oswego City Court Judge James M. Metcalf accepted Ms. King's plea and sentenced her to pay a \$75 fine and \$35 surcharge. Ms. King paid the monies to the Oswego City Court prior to the July 2, 2008, due date.

*People v. C.J. MacCaull*

13. On or about February 22, 2008, C.J. MacCaull was issued two tickets by the Oswego City Police for Operating a Vehicle Without Insurance, in violation of Section 319(1) of the VTL, and Operating a Vehicle While Registration Suspended/Revoked, in violation of Section 512 of the VTL. The tickets were returnable in the Oswego City Court on March 13, 2008.

14. In or about February 2008, Mr. MacCaull retained Shanley Law Offices to represent him on the two February 22<sup>nd</sup> tickets.

15. In or about April 2008, respondent met with Mr. MacCaull at the Shanley Law Offices, at which time he presented Mr. MacCaull with a plea reduction

letter dated April 14, 2008, obtained from the Oswego County District Attorney's Office.

16. Mr. MacCaull accepted the District Attorney's plea offer to violations of Section 1201(a) of the VTL (No Parking) and Section 401(1)(a) of the VTL (Unregistered Motor Vehicle). Respondent secured Mr. MacCaull's signature on the waiver portion of the plea reduction letter. The waiver bore a handwritten date of "4/30/08," which was written by respondent.

17. Respondent gave the plea reduction letter to Mr. MacCaull and advised him to take it to his scheduled court appearance on May 1, 2008.

18. On May 1, 2008, Mr. MacCaull appeared at the Oswego City Court. Mr. MacCaull waited into the afternoon for respondent to appear on his behalf. Respondent never appeared.

19. When Mr. MacCaull's case was called on the May 1, 2008, calendar, he told Oswego City Court Judge James M. Metcalf that he had retained respondent as his attorney and he presented the proposed plea agreement. The judge informed Mr. MacCaull that since respondent was a judge in the Oswego City Court he could not accept the proposed disposition.

20. Judge Metcalf entered a plea of not guilty on Mr. MacCaull's behalf and allowed Mr. MacCaull to confer with an Assistant District Attorney. After the Assistant District Attorney present in court that day consented to the proposed disposition, Judge Metcalf accepted Mr. MacCaull's plea to the reduced traffic charges as set forth in the plea reduction letter dated April 14, 2008.

Oswego Community Housing Co., Inc. v. Donna J. Tunis

21. In or about June 2008, Donna J. Tunis was served with a summons and complaint in *Oswego Community Housing Co., Inc. v. Donna J. Tunis* (“*Oswego Housing v. Tunis*”), a civil action which had been filed in Oswego City Court by Ms. Tunis’s subsidized housing provider seeking a judgment for \$1,599 for rent owed.

22. In or about June 2008, Ms. Tunis contacted respondent, who had provided legal services to Ms. Tunis in the past. Respondent told Ms. Tunis that he would assist her with the action.

23. In or about June 2008, respondent and his office drafted an Answer on behalf of Ms. Tunis. The Answer was presented to Ms. Tunis by Nicole K. Reed, a paralegal employed by Shanley Law Offices, who verified Ms. Tunis’s signature on June 17, 2008. The Answer did not list respondent or his office as the attorney for Ms. Tunis.

24. In or about June 2008 and July 2008, respondent communicated with James P. McGrath, Esq., counsel for the Oswego Community Housing Co., Inc., regarding a resolution of *Oswego Housing v. Tunis*.

25. In or about July 2008, in accordance with an agreement reached through his communication with Mr. McGrath, respondent advised Ms. Tunis to make prorated payments of rent in arrears to the Oswego Community Housing Co., Inc. along with her current rent payments. Ms. Tunis did so.

People v. Jeanine Buske

b. On May 14, 2008, Jeanine Buske was arraigned in Oswego City

Court by Judge James M. Metcalf on two sets of charges: (a) Docket No. 08-0644, which consisted of two counts of Rape in the Third Degree (a felony), in violation of Section 130.25(2) of the Penal Law, and three counts of Endangering the Welfare of a Child (a misdemeanor), in violation of Section 260.10(1) of the Penal Law; and (b) Docket No. 08-0645, which consisted of Criminal Impersonation in the Second Degree (a misdemeanor), in violation of Section 190.25 of the Penal Law, Endangering the Welfare of a Child (a misdemeanor), in violation of Section 260.10(1) of the Penal Law, and Forgery in the Third Degree (a misdemeanor), in violation of Section 170.05 of the Penal Law.

26. Judge Metcalf assigned Edward Izyk, Esq., to represent Ms. Buske on all charges.

27. Between May 14, 2008, and June 4, 2008, respondent spoke with Ms. Buske, whom he was representing on matters pending in Oswego Family Court. Respondent agreed to represent Ms. Buske on the criminal charges and advised her to request that Mr. Izyk waive the felony charges to Oswego County Court. Ms. Buske wrote to Mr. Izyk on or about May 27, 2008, directing him to waive her charges to County Court. On or about May 28, 2008, Mr. Izyk wrote a letter to Judge Metcalf requesting that the charges be waived to the Oswego County Court.

28. On or about June 4, 2008, Mr. Izyk wrote a letter to Judge Metcalf in which he forwarded Ms. Buske's May 27, 2008, letter, and advised: (1) that Ms. Buske had retained respondent as counsel and (2) that respondent had advised Ms. Buske to

waive the felony charges to Oswego County Court because he could not represent her in Oswego City Court.

29. On or about June 5, 2008, in response to Mr. Izyk's letter, the Oswego City Court accepted Ms. Buske's waiver of her right to a preliminary hearing on Docket No. 08-0644 and forwarded all required and pertinent legal documents to the Oswego County Court.

30. At about the same time, respondent was advised by an official with the Office of Court Administration that the Judiciary Law prohibited him from representing Ms. Buske, even after the felony charges were waived to Oswego County Court.

31. On or about June 11, 2008, respondent wrote a letter to Judge Metcalf advising that, because the misdemeanor charges against Ms. Buske remained in Oswego City Court, he was withdrawing from his representation of Ms. Buske in connection with all the charges.

#### Mitigating Factors

32. Respondent did not receive or retain any remuneration from Ms. King, Mr. MacCaull, Ms. Tunis or Ms. Buske for any representation on the matters identified herein.

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

34. Respondent regrets his failure to abide by the Rules in this

instance and pledges to accord himself with the Rules.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.4(A)(3) and 100.6(B)(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 of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A part-time lawyer-judge may practice law subject to certain statutory and ethical restrictions designed to eliminate conflict and the appearance of any conflict between the exercise of judicial duties and the private practice of law. Among other restrictions, a judge may not represent clients in the judge's own court or in any matter that originated in the judge's court, even if the case is transferred to another court (Rules, §100.6[B][2]; Jud Law §16). In the seven months following his appointment to the Oswego City Court in December 2007, respondent violated these well-established standards in four matters. In doing so, he failed to ensure that his judicial duties took precedence over his private practice of law and failed to conduct his private practice of law in a manner compatible with his judicial office, contrary to Section 100.4(A)(3) of the Rules.

For several months after taking judicial office, and after respondent's co-judge had advised him to dispose of any outstanding matters pending in that court,

respondent not only continued to provide legal services to his client in one such case, but became involved in three additional matters pending in the Oswego City Court. In *People v. King*, instead of advising his client that he could no longer represent her on a traffic charge, respondent gave her a letter from the District Attorney's office offering a plea reduction, obtained her signature agreeing to the plea and sent the letter to respondent's own court. In three subsequent cases, respondent or his law firm (consisting at that time of the judge and his daughter) was retained by and/or agreed to provide legal services to individuals whose cases were pending in respondent's court. In *People v. MacCaull*, respondent met with the defendant, gave him a letter from the District Attorney's office offering a plea reduction and advised him to take the letter to court. In *Oswego Community Housing Co. v. Tunis*, he agreed to assist a former client who had been served with a complaint for rent arrears, and he and his firm drafted an answer to the complaint and negotiated a resolution. The fact that respondent did not identify himself or his firm as her attorney on the answer suggests that he was attempting to conceal that he was providing legal assistance to the defendant, which he knew was impermissible.

In *People v. Buske*, after agreeing to represent the defendant who had been arraigned by respondent's co-judge on a felony and several misdemeanors, respondent advised the defendant to ask her court-appointed attorney to waive the felony charges to County Court. Providing such advice was improper since at that time the defendant's case was still pending in respondent's court, where he was prohibited from practicing. Moreover, even after the case was transferred, respondent was precluded from

representing the defendant since the case had originated in his court (Jud Law §16). *See Matter of Aison*, 2010 Annual Report 62; *Matter of Miller*, 2003 Annual Report 140; *Matter of Feeney*, 1988 Annual Report 159; *Matter of Bruhn*, 1988 Annual Report 133 (Comm on Judicial Conduct); *see also* Adv Op 88-50, 99-34. After respondent was advised by an OCA official that it was improper to continue to represent the defendant under such circumstances, respondent withdrew from his representation of the defendant.

Notwithstanding that he did not physically appear in the Oswego City Court in these cases or receive any payment for his actions in the four matters described herein, respondent's involvement in these matters was inconsistent with the statutory and ethical mandates prohibiting him from practicing in his own court. Those restrictions provide no exception for anonymous legal assistance or even uncompensated activity. Every lawyer-judge has a responsibility to learn about and scrupulously adhere to the applicable restrictions on the practice of law in order to avoid conduct that may create an appearance of impropriety and impugn the integrity of judicial office.

In mitigation, we note that respondent has been contrite and cooperative with the Commission and pledges to accord himself with the 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. Emery, Mr. Harding, Ms. Moore, Judge Peters and Mr. Stoloff concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: November 14, 2011

A handwritten signature in black ink that reads "Jean M Savanyu". The signature is written over a solid horizontal line that extends to the right of the text.

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