

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

P. MICHAEL SHANLEY,

A Judge of the Oswego City Court,
Oswego 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 P. Michael Shanley ("respondent"), 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
1970. He has been a Judge of the Oswego City Court, Oswego County, since December
20, 2007. Respondent's term expires on December 19, 2013.

2. Respondent was served with a Formal Written Complaint dated May
17, 2011, and filed an Answer dated June 8, 2011.

As to Charge I

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 and Judiciary Law Section 16.

People v. Kelly King (nee White)

8. 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.

9. 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 2nd traffic accident.

10. 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."

11. 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 VTL § 1201 (a), No Parking.

12. 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.

13. 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

14. 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

VTL § 319 (1), and Operating a Vehicle While Registration Suspended/Revoked, in violation of VTL § 512. The tickets were returnable in the Oswego City Court on March 13, 2008.

15. In or about February 2008, Mr. MacCaull retained Shanley Law Offices to represent him on the two February 22nd tickets.

16. 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.

17. Mr. MacCaull accepted the District Attorney's plea offer to violations of VTL § 1201 (a), No Parking, and VTL § 401 (1) (a), 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.

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

19. 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.

20. 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.

21. 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

22. 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.

23. 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.

24. 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.

25. 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*.

26. 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

27. 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.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 to act at all times 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; failed to so conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not interfere with the proper performance of judicial duties and are not incompatible with judicial office, in violation of Section 100.4(A)(3) of the Rules; and practiced law in the court on which he served, in violation of Section 100.6(B)(2) of the Rules.

Mitigating Factors

35. 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 in this Statement.

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

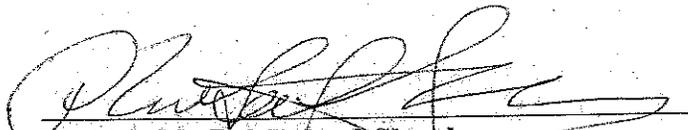
37. Respondent regrets his failure to abide by the Rules in this instance and pledges to accord himself with the Rules.

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 Censure 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 Censure 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: 9-14-11


Honorable P. Michael Shanley
Respondent

Dated: Sept. 15, 2011


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