

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

JOAN E. SHKANE,

a Judge of the Family Court,
Oneida County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
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 (Thea Hoeth, Of Counsel) for the Commission

Honorable Joan E. Shkane, *pro se*

The respondent, Joan E. Shkane, a Judge of the Family Court, Oneida County, was served with a Formal Written Complaint dated August 7, 2008, containing one charge. The Formal Written Complaint alleged that respondent improperly

threatened to hold an agency and two police investigators in contempt after the investigators took a litigant from the courtroom's waiting area into custody.

On December 4, 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, recommending that respondent be admonished and waiving further submissions and oral argument.

On December 11, 2008, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was admitted to the practice of law in New York in 1978 and has been a Judge of the Oneida County Family Court since January 1, 2007. Her current term of office expires on December 31, 2016.

2. The Oneida County Family Court is located in the Oneida County Office Building in Rome, New York.

3. On the afternoon of September 6, 2007, in the Oneida County Office Building, in advance of a hearing, respondent directed her law clerk and attorneys representing a child, the child's father, and the county department of social services to engage in a pre-hearing conference in a child neglect case. They did so in a conference room while respondent attended to other matters in her chambers. The child's father (hereinafter, "Mr. H") was in the building's shared waiting area outside the view of respondent. He was not in police custody nor was he under arrest.

4. While the conference was in progress, two officers of the Oneida County Child Advocacy Center (“CAC”), Investigator John Dellerba and Rome Police Investigator Edward D’Alessandro, entered the waiting area looking for Mr. H, whom they wished to arrest on charges of Endangering the Welfare of a Child and Sexual Abuse in the Third Degree. They asked if he would accompany them to the Rome Police Station. Mr. H agreed, indicating that he did not believe that his appearance in court was required. The officers informed two deputies in the waiting area that they would be taking Mr. H to the Police Department on charges. Without restraining him, the officers drove Mr. H to the police station.

5. Later on the afternoon of September 6, 2007, when respondent learned from her law clerk that Mr. H had left the building with law enforcement officials, she telephoned CAC Director Kevin Revere and confirmed that the two CAC officers had escorted Mr. H from the office building to arrest him. Respondent then demanded of Mr. Revere that Mr. H be immediately returned to the court and that the incident never be repeated. She angrily threatened to hold the CAC in criminal contempt of court for the two officers’ actions.

6. As a result of respondent’s call to Mr. Revere, Officer Dellerba issued appearance tickets to Mr. H and drove him back to the County Office Building. When respondent was informed that Mr. H had returned, she again telephoned Mr. Revere and angrily demanded that Officers Dellerba and D’Alessandro appear at her court in one-half hour or face an arrest warrant for contempt of court.

7. Officer Dellerba arrived first. When he entered the courtroom, respondent went on the record and directed him to tell Officer D'Alessandro to be in the courtroom that afternoon or she would issue a warrant for his arrest. She told Officer Dellerba that he was potentially in contempt of court for interfering with the judicial process, which was punishable by 30 days in jail and a \$1,000 fine. Officer Dellerba apologized and left the courtroom.

8. Both Officers Dellerba and D'Alessandro were in the courtroom within an hour. Respondent lectured them at length in an angry, impatient and discourteous manner, repeatedly sought admissions of wrongdoing from them and repeatedly threatened them with contempt, notwithstanding that Officer Dellerba apologized several times.

9. At no point was there any accusatory instrument or any matter before respondent to which the CAC, Officer Dellerba or Officer D'Alessandro was a party or witness.

10. Respondent acknowledges that she lost her patience and self control, that she should have accepted the officers' early apologies and that she improperly threatened the officers and the CAC with contempt. She recognizes that under these circumstances, neither the officers nor the CAC was properly subject to criminal or civil contempt and that she should not have intimated that they were.

11. Respondent commits (A) to familiarize herself more fully with the legal and procedural mandates regarding contempt by attending at the earliest opportunity

a judicial education and training program addressing the subject of contempt and reporting to the Commission that she has done so, and (B) to adhere more faithfully to those mandates and the Rules Governing Judicial Conduct (“Rules”) in the future.

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), 100.3(B)(2) and 100.3(B)(3) 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.

Every judge is required to be an exemplar of dignity in the courtroom and to be courteous towards those with whom the judge deals in an official capacity (Rules, §100.3[B][3]). Respondent violated these standards by her abusive treatment of two police officers who had lawfully taken into custody a litigant who had been in the waiting area outside the courtroom. At the time, the litigant’s attorney was participating in a pre-hearing conference in the judge’s chambers.

The record indicates that when respondent learned that officers assigned to the Child Advocacy Center had taken the litigant, she telephoned the CAC, demanded that the litigant be returned to the court immediately, and threatened to hold the agency in criminal contempt for the officers’ actions. She also demanded that the officers return to the court, under threat of contempt, and when they did so, she subjected the officers to an

angry, lengthy harangue. Accusing them of interfering with a court proceeding, respondent repeatedly threatened to hold a contempt hearing and stated that the officers faced 30 days in jail and a \$1,000 fine. Even after the officers had apologized several times, respondent continued to lecture them in an angry, discourteous manner and threatened them with contempt and a jail sentence unless they apologized. Finally the judge accepted their apologies, and no contempt proceeding was held.

Respondent has stipulated that she “lost her patience and self-control,” that neither the officers nor the CAC was properly subject to criminal or civil contempt and that she should not have intimated that they were. Under the circumstances, the threat of contempt or jail against the officers was excessive and inappropriate, notwithstanding that respondent did not act on her threat. *See, Matter of Waltemade*, 37 NY2d (nn), (iii) (Ct on the Judiciary 1975) (judge engaged in misconduct by angrily and inappropriately threatening lawyers and witnesses with “sanctions” and contempt, even though his threats were never followed by a contempt citation or any other disciplinary action); *Matter of Hart*, 2009 Annual Report ___ (Comm on Judicial Conduct) (judge threatened an attorney with contempt or jail if he did not proceed in a case, notwithstanding that the attorney had been sent by his firm to request an adjournment and had advised the judge that he was unprepared to try the case). It was an abuse of discretion for respondent to force the officers to return to court so that she could bully, threaten and chastise them.

In mitigation, we note that respondent now recognizes that her conduct was improper and that she should have accepted the officers’ early apologies. We also note

that she has committed to familiarize herself more fully with the legal and procedural mandates regarding contempt by attending an appropriate training program and to adhere to the ethical mandates in the future.

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

Judge Klonick, Mr. Coffey, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Mr. Belluck dissents and votes to reject the Agreed Statement on the basis that the proposed disposition is too lenient.

Mr. Emery dissents and votes to reject the Agreed Statement on the basis that the proposed disposition is too harsh.

CERTIFICATION

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

Dated: December 29, 2008



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