

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

ANDREW G. TARANTINO, JR.,

a Judge of the Family Court, Suffolk County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Roger J. Schwarz, Of Counsel) for the Commission

Ruth J. Bednarz for the Respondent

The respondent, Andrew G. Tarantino, Jr., a Judge of the Family Court,
Suffolk County, was served with a Formal Written Complaint dated October 13, 2010,
containing one charge. The Formal Written Complaint alleged that respondent had an *ex*

parte out-of-court meeting with a participant in a Family Court Juvenile Treatment program.

On March 3, 2011, the Administrator of the Commission, respondent's counsel 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 March 17, 2011, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Family Court in Suffolk County since January 1, 2007; his term expires on December 31, 2016. He was assigned to the Suffolk County Family Treatment Court ("Treatment Court") until June 2009, when he was transferred to the Civil Term of the County Court, Suffolk County. Respondent was admitted to the practice of law in the State of New York in 1991.

2. J ___ ("J.") was a participant in the Treatment Court program. Respondent presided over J.'s participation in the Treatment Court from June 2008 to June 2009.

3. On May 24, 2007, Suffolk County Family Court Judge Ettore Simeone issued an Order of Protection against J., who was 18 years old, directing *inter alia* that he refrain from consuming, possessing or being under the influence of any illegal drugs or alcohol. The Order of Protection remained in effect until May 24, 2008.

4. On July 25, 2007, the Suffolk County Probation Department (“Probation Department”) filed a violation petition against J. alleging that he violated the Order of Protection by using cocaine, marijuana, oxycontin and alcohol.

5. J. appeared before the court on the violation petition on September 26, 2007. At that time, Judge Simeone placed him on probation, on condition that he enter and successfully complete an in-patient substance abuse rehabilitation program as directed by the Treatment Court and the Probation Department. The probation remained in effect for one year, until September 26, 2008.

6. On or about June 24, 2008, the Probation Department filed another violation petition against J. alleging that he violated the terms of the Order of Protection by failing to return to the in-patient drug rehabilitation program. A warrant was issued for his arrest on June 25, 2008.

7. Upon his return on the warrant, J. appeared before respondent on June 30, 2008. He was represented by attorney J. Gary Waldvogel. Respondent released J. on his own recognizance and adjourned the matter to July 1, 2008.

8. On July 1, 2008, J., his father and Mr. Waldvogel appeared before respondent. An Assistant County Attorney and a member of the Treatment Court team were also present. Respondent extended J.’s probation to September 1, 2009, required him to perform 160 hours of community service, and directed him to re-enter and successfully complete an in-patient substance abuse rehabilitation program as directed by the Treatment Court and the Probation Department.

9. On March 26, 2009, J. was charged in a petition with violating the Order of Protection by overdosing on drugs. He appeared before respondent on March 31, 2009. J.'s attorney, Stephen Hellman, J.'s father and an Assistant County Attorney were also present. J. entered a denial to the violation petition and agreed to continue substance abuse counseling. Respondent met privately with Mr. Hellman in a private corridor near respondent's chambers. It was in this meeting that, respondent believed, Mr. Hellman gave his consent to a meeting with J., if J. approached respondent. However, at no time did respondent and Mr. Hellman discuss the possibility that respondent would take J. out of the courthouse. Respondent adjourned the matter to April 9, 2009.

10. Respondent acknowledges that he never asked the Assistant County Attorney, the Treatment Court team or J.'s family for permission to speak with J.

11. On April 9, 2009, J., Mr. Hellman, an Assistant County Attorney and a Treatment Court team member appeared before respondent, at which time J. agreed to enter an out-patient substance abuse rehabilitation program. Respondent then adjourned the matter to April 16, 2009.

12. J., Mr. Hellman and a Treatment Court team member appeared before respondent on April 16, 2009. Treatment Court staff informed respondent that J. had bereavement issues he did not want to discuss. Respondent indicated to J. that he should obtain grief counseling. Respondent adjourned the matter to April 23, 2009.

13. On or about April 20, 2009, respondent learned from Treatment Court

staff that J. had overdosed a second time.

14. On or about April 21, 2009, Probation filed a violation petition against J., alleging that he violated the terms of the Order of Protection by *inter alia* testing positive for marijuana.

15. On April 23, 2009, J., Mr. Hellman, an Assistant County Attorney, a Treatment Court team member and J.'s aunt appeared before respondent, at which time Mr. Hellman entered a denial of the violation petition on J.'s behalf.

16. J. and a Treatment Court team member appeared before respondent on April 29, 2009. J. confirmed that he had entered an out-patient substance abuse rehabilitation program, and respondent adjourned the violation until August 6, 2009.

17. J. appeared before respondent on May 6, 2009 and May 14, 2009. A Treatment Court team member was present at each appearance. At the May 14, 2009, appearance, J. stated he was "miserable," "a little depressed" and "not happy."

18. On May 27, 2009, J. came to the courthouse for a meeting with a Treatment Court Case Manager. He did not have a case on respondent's calendar that day.

19. During the meeting, J. asked to speak to respondent. The Case Manager accompanied him to respondent's courtroom and asked respondent if he would be willing to speak with J.

20. Respondent met briefly with J. in his court before the lunch recess. The Case Manager was not present for the meeting. Respondent asked if J. would like to

sit in the courtroom and talk, go to the courthouse cafeteria and talk, or go for a car ride.

21. During the court's lunch recess, respondent took J., alone, for a ride in his personal automobile. Respondent drove J. to Robert Moses State Park, on the western end of Fire Island, approximately 16 miles from the courthouse. The ride to the park lasted approximately 20 minutes.

22. At the park, respondent and J. parked on the roadway adjacent to a public wildlife observation deck and walked to the observation deck, where they remained for approximately ten minutes.

23. En route to, at and after they left the observation deck, respondent spoke with J. about the reasons for his continuing substance abuse, including his mother's death and his need for grief counseling.

24. While respondent and J. were at the observation deck, two police officers in a patrol car stopped alongside respondent's vehicle and asked if they needed assistance. Respondent said they did not, that he was a Family Court judge and that J. was one of his respondents. The police officers departed without further inquiry. Respondent then drove J. back to the courthouse.

25. Respondent states under penalty of perjury that he and J. never had any relationship other than as a judge and litigant, and that no untoward behavior occurred between them at Robert Moses State Park or anywhere else, at any time. Commission Counsel interviewed J. and has no evidence to the contrary.

26. Throughout the Commission's investigation, respondent has been

candid and fully cooperative. Respondent admits that he made a serious error in judgment resulting from what he believed were exigent circumstances created by J.'s two drug overdoses within a month's time. Respondent acknowledges that he has no training as a social worker or as a medical or mental health professional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(6) 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.

It was improper for respondent to make an *ex parte*, out-of-court excursion with a Treatment Court participant, in which he took the defendant for a ride in his personal car over a lunch recess and spoke privately with him about personal issues, including the defendant's drug use and his mother's death. Although a Treatment Court case manager had asked respondent if he would be willing to speak with the defendant and respondent believed that the defendant's attorney had consented to a meeting, it is clear that neither the Treatment Court team, the defendant's attorney nor anyone else was aware of, or consented to, respondent's extended out-of-court excursion with the defendant. Such behavior, no matter how well-intentioned, was inappropriate and showed extremely poor judgment, as respondent has conceded.

Nor do the unique dynamics and relative informality of Treatment Court proceedings excuse such conduct, which overstepped the appropriate boundaries between a judge and a defendant in pending proceedings. Even in Treatment Court, a judge is not a social worker or therapist (*Matter of Abramson*, 2011 Annual Report ___), but must maintain the role of a neutral and detached arbiter who at all times remains “cloaked figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others” (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]). Respondent’s behavior showed a serious misunderstanding of the role of a judge.

Having served as a Family Court judge for more than two years at the time, respondent should have realized that this extra-judicial meeting with the defendant -- a vulnerable young man who had recently been charged with violating an order of protection for overdosing on drugs -- not only would compromise respondent’s impartiality at a time when he wielded considerable power over this defendant, but would create a potential for suspicion and misunderstanding. At all times a judge’s conduct must not only be, but appear to be, beyond reproach if respect for the court is to be maintained (Rules, §100.2[A]). *See, e.g., Matter of Singer*, 2010 Annual Report 228 (Family Court judge made an improper *ex parte* hospital visit to a 14-year old boy, who was being held for a mental evaluation); *Matter of Friess*, 1982 Annual Report 109 (judge, who was “motivated by compassion,” permitted a female defendant to spend the night at his home after an arraignment).

Respondent has acknowledged that his actions were inconsistent with the high ethical standards required of judges and warrant public rebuke.

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

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Belluck, Mr. Cohen, Mr. Harding, Ms. Hubbard, Ms. Moore, Judge Peters and Judge Ruderman concur.

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

CERTIFICATION

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

Dated: March 28, 2011

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a horizontal line.

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