

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

DAVID M. TRICKLER,

a Justice of the Birdsall, Burns and Grove
Town Courts, Allegany 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 (David M. Duguay, Of Counsel) for the Commission
Brian C. Schu for the Respondent

The respondent, David M. Trickler, a Justice of the Birdsall, Burns and
Grove Town Courts, Allegany County, was served with a Formal Written Complaint

dated July 19, 2010, containing one charge. The Formal Written Complaint alleged that respondent failed to disqualify himself in a Harassment case notwithstanding that he was acquainted with the defendant and the alleged victim and had personal knowledge of the underlying facts. Respondent filed a verified answer dated July 27, 2010.

On September 22, 2010, 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 admonished and waiving further submissions and oral argument.

On September 29, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Burns Town Court since November 1, 1980, a Justice of the Grove Town Court since November 1, 1994, and a Justice of the Birdsall Town Court since January 1, 2002. Respondent's terms in the Burns Town Court and the Birdsall Town Court expire on December 31, 2013; his term in the Grove Town Court expires on December 31, 2011. Respondent is not an attorney.
2. Respondent's sister and her husband were very good friends with William L. Ellis and his wife, Julie Meyer, who lived across the street. Respondent was acquainted with Mr. Ellis and Ms. Meyer, having had numerous social contacts with them over the years.
3. On August 25, 2007, respondent was outdoors performing caretaking

chores at his sister's residence in the Village of Canaseraga, which is within the jurisdiction of the Burns Town Court.

4. At around 12:30 PM, respondent noticed that there was a commotion at the Ellis residence. Respondent observed several people at the residence and heard people hollering back and forth. Respondent also noticed that Mr. Ellis' truck was parked in the driveway.

5. After the onset of the commotion, Ms. Meyer walked across the street to where respondent stood. Respondent commented to Ms. Meyer that things sounded "hot" at her residence.

6. Ms. Meyer told respondent that Mr. Ellis had shoved her and that he was taking some of her belongings from the house. She stated that Mr. Ellis wanted to take a shotgun and that his mood and tone made her feel worried about him having the weapon.

7. Ms. Meyer told respondent that she had blocked, or was going to block, Mr. Ellis' truck in the driveway to prevent him from leaving. Respondent observed that Ms. Meyer appeared upset.

8. Ms. Meyer asked for respondent's advice, and respondent told her that there was nothing he could do and that she should call the police.

9. Respondent left his sister's residence minutes after his conversation with Ms. Meyer ended. At the time he left, respondent saw people at the back door of the Ellis house taking property in and out. He did not see law enforcement personnel arrive

at the Ellis residence.

10. Mr. Ellis was charged with Harassment in the Second Degree, a violation of Section 240.26(1) of the Penal Law, and was issued an appearance ticket returnable in the Burns Town Court on September 10, 2007.

11. Prior to September 10, 2007, respondent received an accusatory instrument concerning the incident between Mr. Ellis and Ms. Meyer. After reading the documents, respondent knew that he had observed and spoken to Ms. Meyer about the incident. Respondent also knew that he was scheduled to preside over the case and that he should disqualify himself.

12. On September 10, 2007, respondent arraigned Mr. Ellis, who appeared without counsel, on the charge of Harassment in the Second Degree, arising from the altercation with Ms. Meyer on August 25, 2007. Respondent entered a not guilty plea on Mr. Ellis' behalf and adjourned the matter for Mr. Ellis to hire an attorney. Respondent then released Mr. Ellis on his own recognizance.

13. At the same appearance, respondent issued a "no contact" order of protection in favor of Ms. Meyer and an alleged witness to the charged incident. Mr. Ellis signed the order in court. The order was valid through the next-scheduled court date on October 15, 2007.

14. On October 15, 2007, Mr. Ellis appeared in court without counsel. Respondent extended the order of protection for Ms. Meyer and the alleged witness to October 15, 2008, and adjourned the case to the next-scheduled court date in November

for Mr. Ellis to appear with counsel.

15. Prior to his November court date, Mr. Ellis retained Joseph G. Pelych, Esq., as counsel. Mr. Pelych requested an adjournment to the next-scheduled court date in December, and respondent granted the request.

16. On December 17, 2007, Mr. Ellis appeared before respondent with Mr. Pelych. Respondent informed Mr. Pelych and Assistant District Attorney Andrew Cornell that he knew both parties and was a potential witness in the case. Mr. Pelych requested an adjournment to discuss the conflict and a possible disposition of the case with Mr. Ellis.

17. On January 21, 2008, respondent granted a request made by Mr. Ellis to recuse himself from *People v. Ellis*.

18. On June 16, 2009, Judge Thomas P. Brown of the Allegany County Court entered an order transferring *People v. William L. Ellis* to the Bolivar Village Justice Court for further proceedings.

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 (E)(1) and 100.3(E)(1)(a)(ii) 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 arraign the defendant, issue an order of protection and take other judicial action in *People v. William Ellis* notwithstanding that he knew the defendant and the complaining witness, had personal knowledge of the events that resulted in the Harassment charge and was a potential witness in the case.

A judge's disqualification is required in a proceeding in which the judge's impartiality might reasonably be questioned, including instances where the judge has personal knowledge of disputed evidentiary facts (Rules, §100.3[E][1][a][ii]; *Matter of VonderHeide*, 72 NY2d 658 [1988] [disqualification was required since the judge had witnessed the events underlying the criminal charges]). Since he knew both the defendant and the complaining witness, had observed at least some of the underlying events and had spoken to the complaining witness about the matter, respondent knew that he was obligated to disqualify himself from any participation in the *Ellis* case when it came before him. Nevertheless, instead of immediately stepping down, respondent arraigned the defendant and presided over three court appearances in the case before finally disqualifying himself. Not until the third court appearance did respondent disclose that he knew the parties and was a potential witness in the case. Prior to his recusal, respondent exercised his judicial discretion by releasing the defendant on his own recognizance, granting a one-month order of protection and then extending it to one year, and granting several adjournments. Although respondent eventually disqualified himself at the request of the defendant's attorney, his failure to do so promptly, when the case first came before him, resulted in a needless, four-month delay.

Given his relationship with the parties and his connection to the underlying events, respondent's participation in the case created an appearance of impropriety (Rules, §100.2[A]). Although there is no indication of favoritism, his intentional disregard of the law and dereliction of his ethical responsibilities constitute misconduct.

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

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Cohen, Mr. Emery, Ms. Hubbard, Judge Peters and Judge Ruderman concur.

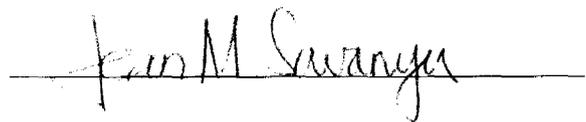
Ms. Moore dissents and votes to reject the Agreed Statement on the basis that the proposed disposition is too lenient.

Mr. Belluck and Mr. Harding were not present.

CERTIFICATION

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

Dated: October 7, 2010

A handwritten signature in black ink, appearing to read "Jean M. Savanyu", is written over a horizontal line.

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