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

EDWIN R. WILLIAMS,

a Justice of the Manchester Town Court,
Ontario County.

DETERMINATION

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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.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and Kathleen Martin, Of Counsel) for the Commission

Zimmerman & Tyo (by John E. Tyo) for the Respondent

The respondent, Edwin R. Williams, a Justice of the Manchester Town Court, Ontario County, was served with a Formal Written Complaint dated March 13,

2015, containing one charge. The Formal Written Complaint alleged that respondent: (i) issued a warrant of eviction and money judgment in two summary eviction proceedings without according the tenants an opportunity to be heard or reviewing the supporting documents and (ii) failed to mechanically record two eviction proceedings.

On July 15, 2015, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.[1] The Commission previously rejected two earlier Agreed Statements.

On August 6, 2015, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Manchester Town Court, Ontario County, since 1971. Respondent's current term expires on December 31, 2017. He is not an attorney.

2. From October 24, 2012, to May 22, 2013, in various eviction proceedings, respondent engaged in conduct that was and/or appeared lacking in impartiality, fundamental fairness and adherence to court rules, in that he (A) failed to accord a tenant an opportunity to be heard when the tenant attempted to raise defenses,

[1] The Agreed Statement of Facts stipulated that the Formal Written Complaint was deemed amended to include an allegation that respondent violated Section 100.3(B)(6) of the Rules Governing Judicial Conduct.

(B) failed to review the landlords' petitions and supporting documents adequately enough to determine if they complied with the Real Property Law ("RPL") and the Real Property Actions and Proceedings Law ("RPAPL"), and (C) failed to ensure that two of the court proceedings were recorded as required by Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts.

Meadows of Manchester, LLC v Joseph Mallory and Lindsey Toper

3. On November 21, 2012, respondent presided over *Meadows of Manchester, LLC v Joseph Mallory and Lindsey Toper*, a summary eviction proceeding.

4. Respondent did not have any social, professional or other relationship with the landlord, its agents and/or its employees.

5. On November 21, 2012, respondent issued a warrant of eviction against Joseph Mallory and Lindsey Toper, without holding a hearing and taking testimony under oath, despite the fact that the tenants' attorney informed respondent that the petition had not been served on either tenant.

6. As indicated in the transcript of the proceeding on November 21, 2012, respondent engaged in the following colloquy:

> MR. MALLORY: -- that's what the lawyer was saying. We never received the eviction.
>
> ATTORNEY: Yeah, that was still our position. We received a notice of petition. According to the affidavit of -- They--
>
> JUDGE WILLIAMS: -- Did I --
>
> ATTORNEY: -- never received the petition itself.
>
> JUDGE WILLIAMS: Court feels that they owe the money, therefore, I'm going to render that judgment of $3,500 and, 30, $3,530 to Meadows of Manchester.

7. The court file contained no affidavit of service as to Mr. Mallory, and the affidavit of service as to Ms. Toper did not state that the petition had been served, as required by RPAPL Sections 731 and 735.

8. It was respondent's practice to review the supporting documents in a summary proceeding when he took the bench. In this matter, respondent did not note the absence of an affidavit of service as to Mr. Mallory or that the affidavit of service as to Ms. Toper did not indicate service of the petition.

9. During the proceeding, the tenants acknowledged owing the rent demanded by the landlord and having defaulted on an existing payment agreement to pay the back rent.

10. Respondent, based upon his review of the court file and the tenants' acknowledgment of the unpaid rent, concluded that the landlord should be put in possession of the property. In rendering the judgment at that time, respondent was influenced by his belief based upon his long experience that a delay in the proceeding would only result later in increased judgment against the tenants for additional unpaid rent and late and legal fees.

11. Respondent acknowledges that he had not given Mr. Mallory and Ms. Toper an opportunity to be heard regarding a defense.

Old Dutch Properties, Inc. v Nicole Baldwin

12. On May 22, 2013, respondent presided over *Old Dutch Properties, Inc. v Nicole Baldwin*, a summary eviction proceeding.

13. Respondent did not have any social, professional or other relationship with the landlord, its agents and/or its employees.

14. Respondent reviewed the 41-page court file, which indicated that Ms. Baldwin had been personally served with the notice of petition and the petition and that the 30-day notice for a mobile home tenant had been left with a suitable person, Ms. Baldwin's mother, and mailed to Ms. Baldwin.

15. Respondent commenced the proceeding by asking Ms. Baldwin if she owed $1,950 in rent.

16. As indicated in the transcript of the proceeding on May 22, 2013, respondent then engaged in the following colloquy:

> MS. BALDWIN: I do --
> JUDGE WILLIAMS: -- I render that judgment --
> MS. BALDWIN: -- have objections --
> JUDGE WILLIAMS: -- to Old Dutch Properties, and I will sign a judgment and the warrant.
> MS. BALDWIN: (Unintelligible).
> JUDGE WILLIAMS: Have a good night.
> MS. BALDWIN: Can I get it dismissed? I have this signed by counsel of legal assistance.
> COURT CLERK: Well, they have to know that when the case is opened so that --

17. As respondent heard it, Ms. Baldwin acknowledged that she owed the rent. Respondent avers that he did not understand that she had an objection, which, he later learned, she had stated as she walked away from the bench.

18. Ms. Baldwin went over to the court clerk to whom she indicated that she had consulted counsel.

19. Respondent did not hear Ms. Baldwin's reference to having consulted counsel, and the court clerk never advised him that she had done so or that she had not been properly served with the 30-day notice to a mobile home tenant required by RPL Section 233.

20. On May 22, 2013, respondent issued a warrant of eviction and rendered a judgment in the amount of $2,205 against Ms. Baldwin.

21. Respondent acknowledges that he did not give Ms. Baldwin the opportunity to be heard regarding a defense.

Meadows of Manchester, LLC v Elizabeth Flagg and Antoinette Bacon

22. On October 24, 2012, respondent presided over *Meadows of Manchester, LLC v Elizabeth Flagg and Antoinette Bacon*, a summary eviction proceeding, and inadvertently failed to mechanically record the proceeding.

Victor Mobile Home Parks, Inc. v Rebeca Ramos

23. On January 23, 2013, respondent presided over *Victor Mobile Home Parks, Inc. v Rebeca Ramos*, a summary eviction proceeding, and inadvertently failed to mechanically record the proceeding.

24. It has been the practice of the court clerk to set up the court recorder before each court session and the practice of respondent to record all proceedings. Respondent inadvertently failed to record the proceedings in *Meadows of Manchester, LLC v Elizabeth Flagg and Antoinette Bacon* and *Victor Mobile Home Parks, Inc. v Rebeca Ramos,* and he failed to sufficiently supervise the clerk to ensure that he indeed

recorded all proceedings.

Additional Factors

25. Respondent began his judicial career as the Manchester Village Court Justice before becoming the Manchester Town Court Justice and has served continually since April 1, 1971. Respondent has no previous disciplinary history over his lengthy career on the bench.

26. Respondent has been cooperative and contrite throughout the Commission inquiry.

27. Commission Counsel examined respondent's case records for all of 2012 and 2013. There appeared to be 22 summary eviction proceedings. Except as noted above, respondent appears to have been faithful to the law, to have accorded the parties the opportunity to be heard, and to have mechanically recorded the proceedings.

28. Respondent regrets his failure to abide by the applicable Rules in the cases noted herein and pledges henceforth to abide by them faithfully. Respondent recognizes that according litigants their fundamental rights is especially significant when the failure to do so may result in a litigant's eviction. As a consequence of the Commission investigation, respondent has engaged in significantly more probing reviews of the paperwork filed by landlords in summary 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(B)(1), 100.3(B)(4), 100.3(B)(6), 100.3(C)(1) and 100.3(C)(2) 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 insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

Every judge is required to "be faithful to the law and maintain professional competence in it" and to "accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law" (Rules, §§100.3[B][1], 100.3[B][6]). Respondent has acknowledged that his handling of several eviction proceedings was inconsistent with these ethical standards.

The issuance of an eviction warrant is a significant exercise of discretion. The fact that a tenant is facing the potential loss of his/her home places a special burden on a judge to make sure that the statutory requirements are met. In issuing a warrant, a judge is obliged to know the statutory requirements, review the documents presented and make certain that they are valid. It is stipulated that prior to issuing a warrant of eviction and money judgment in two summary eviction proceedings, respondent did not observe the required safeguards or afford the tenants an opportunity to be heard regarding a defense. In *Mallory and Toper*, he failed to hold a hearing, ignored the tenants' attorney's argument that they had not been served with a petition, and did not adequately review the court file, which supported the tenants' defenses that they had not been properly served. Notwithstanding the tenants' acknowledgment that they owed the

amount at issue and had defaulted on an existing payment agreement, they were entitled to, and did not receive, the full protections afforded by law. In *Baldwin*, respondent interrupted the tenant when she objected to the eviction and failed to provide an opportunity to present her defense that she had not been properly served with a 30-day notice as required by law (the file indicated that the notice had been left with her mother and mailed to her). It was respondent's understanding that the tenant acknowledged owing the rent, and he did not understand that she had an objection, which she stated as she walked away from the bench. Respondent's errors and mishandling of both matters resulted in proceedings that were lacking in fundamental fairness.

While an isolated or inadvertent error of law, standing alone, might not rise to the level of misconduct (s*ee Matter of Tyler*, 75 NY2d 525, 528 [1990]), errors that are fundamental and clearly contrary to well-established law have been found to constitute misconduct, especially where the conduct involves deprivation of fundamental rights. *See Matter of Jung*, 11 NY3d 365 (2008) (Family Court judge was removed for violating the due process rights of five litigants by depriving them of the right to be heard and/or the right to counsel); *see also Matter of Temperato*, 2014 NYSCJC Annual Report 217 (judge issued a warrant of eviction based on a notice of petition that failed to comply with RPAPL Section 731, a month after being cautioned for failing to comply with the same statute) (admonition); *Matter of Holmes*, 1998 NYSCJC Annual Report 139 (judge issued a warrant of eviction, with no notice or opportunity to be heard, based upon landlord's *ex parte* request) (admonition); *Matter of Wood*, 1991 NYSCJC Annual Report 82 (judge

failed to advise numerous defendants of the right to counsel and convicted two defendants without a trial or plea) (censure).

In addition, it is the responsibility of every town and village justice to ensure that court proceedings are recorded as required by Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08 of the Chief Administrative Judge of the Courts. It has been stipulated that respondent inadvertently failed to record two proceedings due to insufficient supervision of the court clerk.

In accepting the stipulated sanction of censure, we note that respondent has no social or other relationship with the landlords in the cases at issue and that his actions appear to be isolated occurrences of impropriety over more than four decades of service as a judge. We also note that he has been cooperative and contrite throughout the Commission's inquiry and has pledged to adhere to the applicable rules in the future.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Ms. Corngold, Mr. Emery and Mr. Harding concur.

Mr. Belluck, Mr. Stoloff and Judge Weinstein dissent and vote to reject the Agreed Statement on the basis that the sanction of censure is too harsh. Judge Weinstein files an opinion, which Mr. Belluck and Mr. Stoloff join.

Mr. Cohen was not present.

CERTIFICATION

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

Dated: November 2, 2015

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

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DISSENTING OPINION
BY JUDGE WEINSTEIN,
WHICH MR. BELLUCK
AND MR. STOLOFF JOIN

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According to the Statement of Facts agreed to by the parties, the entirety of Judge Williams' misconduct in this case, over the course of two years in which he heard 22 summary eviction proceedings, was as follows: First, he inadvertently failed twice to mechanically record the proceedings. Second, on two occasions he did not give tenants an opportunity to be heard on their procedural defenses or ensure that they had been properly served with the papers required by law. The transcripts of these cases appear to reflect some confusion on the judge's part as to the tenants' position, rather than a conscious denial of the tenants' efforts to defend themselves. Moreover, the stipulation makes clear that none of the judge's conduct was motivated by a venal or improper purpose, or involved any favoritism or the appearance thereof for one of the parties.

This is the only blemish on Judge Williams' otherwise pristine disciplinary record, after 44 years of service on the bench.

Given these circumstances, I cannot fathom why this conduct is thought to warrant a sanction of censure, the highest penalty we may impose short of removal. I do not deny that the judge conducted the proceedings at issue improperly. But against the backdrop of a long judicial career without incident, and his cooperation with the Commission and willingness to accept sanction, this seems an exceedingly draconian result for an error of this sort.

I understand that the judge has agreed on this outcome with the Commission staff, and a fair amount of deference must be given to that agreement. Nevertheless, I am concerned that the misconduct at issue here is completely out of line with numerous other rulings, as it censures conduct less egregious than that which we have found to warrant only an admonishment (*see e.g. Matter of Holmes*, 1998 NYSCJC Annual Report 139 [judge admonished for issuing an eviction warrant based on the landlord's *ex parte* request, without any notice of petition or petition and with no opportunity for the tenant to be heard]; *Matter of Hise*, 2003 NYSCJC Annual Report 125 [judge admonished for convicting and sentencing an unrepresented defendant charged with a zoning violation to ten days in jail, without a trial or guilty plea]; *Matter of Shannon*, 2002 NYSCJC Annual Report 161 [judge admonished for routinely failing to advise defendants of the right to assigned counsel and closing his courtroom without legal justification]; *Matter of Christie*, 2002 NYSCJC Annual Report 83 [judge admonished for convicting a defendant without a trial or guilty plea, regularly imposing fines that exceeded the maximum permitted by law, and failing to take corrective action when one excessive fine was brought to his attention]). Accepting a result so far outside

the norm has the potential to unbalance the structure of penalties the Commission imposes, muddies our guidance as to the relative severity of different forms of misconduct, and undermines the significance of a public censure when it is appropriately imposed.

We should also bear in mind the choice the judge has to make when he or she is presented with the Commission staff's position that a censure would be the alternative both to a hearing and the risk of an even more severe sanction. Of particular concern is that a judge may accept a penalty when faced with the prospect of removal if he or she does not agree, even if the Commission when finally presented with the case might never consider that extreme penalty. The precise discussion between staff and the judge's attorney is of course not in the record, but we can take notice of the pressures on a judge, even in the hands of an able lawyer, to accept a stipulated sanction, and should exercise independent judgment to determine whether the outcome imposed is a fair one. I cannot reach that conclusion here.[1]

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[1] These concerns are not new. The observations of the dissent in *Matter of Ridgeway*, 2010 NYSCJC 205, are directly on point here:

> "I recognize that [the judge], represented by counsel, has agreed to the sanction of censure. In my view, the judge's assent to this result, negotiated with Commission counsel, does not make it fair, appropriate or acceptable. With the weight of Commission proceedings bearing down on him for several years, it is not surprising that a judge is willing to conclude the proceedings in any way that permits him to keep his judgeship and move forward. But I cannot vote to accept such a draconian result based on the facts presented here. ... [T]he continued use of censure for wrongdoing that is relatively minor, as in this case – simply because the parties have agreed to the sanction – undermines the significance of this sanction when it is appropriately imposed and undermines public confidence in the Commission's ability to properly distinguish between serious wrongdoing and less serious misbehavior."

In light of the foregoing, I respectfully dissent. I would reject the proposed sanction, and would condition acceptance of the Agreed Statement of Facts on the parties' consent to a sanction of admonition.

Dated: November 2, 2015

Honorable David A. Weinstein, Member
New York State
Commission on Judicial Conduct