

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

ROBIN J. CURTIS,

a Justice of the Lyme Town Court,
Jefferson County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Capone Law Firm LLP (by Andrew N. Capone) for the Respondent

The respondent, Robin J. Curtis, a Justice of the Lyme Town Court,
Jefferson County, was served with a Formal Written Complaint dated October 19, 2011,
containing two charges. The Formal Written Complaint alleged that respondent

unlawfully issued two orders of protection notwithstanding that there was no pending criminal action against the individual and thereafter issued two additional orders of protection without basis in law. Respondent filed an Answer dated November 14, 2011, and verified November 18, 2011.

On January 10, 2012, the Administrator, 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. The Commission had rejected an earlier Agreed Statement of Facts.

On January 26, 2012, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Lyme Town Court, Jefferson County, since 1991. Respondent's term expires on December 31, 2015. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On May 13, 2008, at a time when there was no criminal action pending against Arnold Montgomery, approximately five of his neighbors appeared before respondent in Lyme Town Court to complain about Mr. Montgomery's conduct and to request that respondent issue orders of protection on their behalf. Thomas DeMasi was among the neighbors who engaged in the exchange with respondent.

3. Respondent was familiar with both Mr. Montgomery and Mr. DeMasi from having presided over a matter in 2007 in which Mr. Montgomery was the alleged victim of harassment by Mr. DeMasi. Based on respondent's involvement in that matter, which was not prosecuted to conviction and had been finally resolved three months earlier, respondent had formed a negative opinion of Mr. Montgomery.

4. On May 13, 2008, after speaking *ex parte* with Mr. DeMasi and the other neighbors of Mr. Montgomery who had come to court, respondent issued two orders of protection against Mr. Montgomery. One order listed the following as protected persons: Linda DeMasi, Thomas DeMasi and Michael DeMasi. The second order listed the following as protected persons: Peggy Chambry, Walter Chambry, Krista Chambry, Kevin Chambry, Donna Walsh and Corey Walsh. Both orders had identical provisions directing Mr. Montgomery to refrain from offensive conduct against the listed persons and further directing in handwritten specifications, "Do not trespass on others['] property." The orders were to remain in effect until May 13, 2009.

5. The two May 13, 2008, *ex parte* orders of protection that respondent issued against Arnold Montgomery were served on Mr. Montgomery in May of 2008 by two Town of Lyme police officers.

6. The two May 13, 2008, *ex parte* orders of protection that respondent issued against Arnold Montgomery were unlawful because there was no pending criminal action against Mr. Montgomery, as required by Criminal Procedure Law §530.13.

7. On or about July 21, 2008, Trooper Keith Kloster of the New York

State Police served Mr. Montgomery at his home with a criminal summons dated July 14, 2008, alleging Trespass, a violation of Penal Law §140.05, and Criminal Contempt in the Second Degree, a violation of Penal Law §215.50(3), for allegedly walking on Thomas DeMasi's property on June 6, 2008, in violation of the May 13, 2008, order of protection. Mr. Montgomery appeared in the Lyme Town Court on the day he was served with the summons; he was arraigned on the Trespass and Criminal Contempt charges by respondent and released on his own recognizance. On or about August 4, 2008, Jane G. LaRock, Esq., filed a written notice of appearance as counsel for Mr. Montgomery.

8. On or about September 26, 2008, Mr. Montgomery was arrested at his home by New York State Troopers for the offenses of Harassment in the Second Degree, a violation of Penal Law §240.26(3), and Criminal Contempt in the Second Degree, a violation of Penal Law §215.50(3), for allegedly harassing Mr. DeMasi on August 22, 2008, in violation of the order of protection issued on May 13, 2008. Mr. Montgomery was processed on the Harassment and Criminal Contempt charges at the Watertown barracks of the New York State Police and released on an appearance ticket. On or about September 29, 2008, Ms. LaRock filed a written notice of appearance as counsel for Mr. Montgomery in this case.

9. On or about May 13, 2009, Mr. Montgomery's attorney filed a motion in the Lyme Town Court alleging, *inter alia*, that respondent acted without authority and contrary to Criminal Procedure Law §530.13, when he issued the May 13, 2008, orders of protection because no criminal action was pending against Mr.

Montgomery on that date. The District Attorney opposed the motion.

10. On or about August 8, 2009, respondent dismissed all pending charges on the ground that the May 13, 2008, orders of protection were improperly issued in the absence of a pending criminal proceeding.

As to Charge II of the Formal Written Complaint:

11. On or about April 14, 2009, Linda DeMasi and Thomas DeMasi sent respondent a letter: (1) advising that the May 13, 2008, orders of protection were about to expire, (2) requesting that respondent extend the orders and (3) requesting that the new orders include a “stay away” provision.

12. In or about April 2009, Peggy Chambry, Walter Chambry, Krista Chambry, Kevin Chambry, Donna Walsh and Corey Walsh also sent respondent a letter: (1) advising that the May 13, 2008, orders of protection were about to expire, (2) requesting that respondent extend the orders and (3) requesting that the new orders include a “stay away” provision.

13. On May 11, 2009, without prior notice to Mr. Montgomery or his attorney, respondent issued two orders of protection. One order listed the following as protected persons: Linda DeMasi, Thomas DeMasi and Michael DeMasi. The second order listed the following as protected persons: Peggy Chambry, Walter Chambry, Krista Chambry, Kevin Chambry, Donna Walsh and Corey Walsh. Each order included a “stay away” provision.

14. On May 12, 2009, the court mailed the two orders of protection

issued against Mr. Montgomery by respondent on May 11, 2009, to Mr. Montgomery.

15. Respondent also improperly included a provision in each order directing Mr. Montgomery to surrender any and all firearms that he owned or possessed, without finding that, or even considering whether, any of the factors mandated by Criminal Procedure Law §530.14 had been established.

16. On or about August 11, 2009, respondent wrote to Linda DeMasi, Thomas DeMasi, Michael DeMasi, Peggy Chambry, Walter Chambry, Krista Chambry, Kevin Chambry, Donna Walsh and Corey Walsh and advised each of them: (1) that the May 11, 2009, order was “based on a procedural error” and was invalid, (2) that the order was “vacated effective immediately,” and (3) that they could not re-apply for an order of protection unless a criminal action was pending in his court.

Mitigating Factors

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

18. Respondent mistakenly believed he was acting within his authority when he issued all of the orders of protection.

19. Respondent has no previous disciplinary record. Respondent regrets his failure to abide by the Rules in this instance and pledges to accord his conduct with the 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) and 100.3(B)(1) 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. Charges I and II of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

In the absence of any criminal proceeding and based upon *ex parte* complaints from Mr. Montgomery’s neighbors, respondent issued two orders of protection against Mr. Montgomery directing him to refrain from offensive conduct against nine of his neighbors. Thereafter, when the orders were due to expire, respondent issued two additional orders upon the neighbors’ request, with no notice to Mr. Montgomery or his attorney. Respondent’s abuse of judicial authority in connection with a neighborhood dispute was inconsistent with the requirements of the Criminal Procedure Law (§530.13) and overstepped the boundaries of his judicial role, conveying the appearance that he was acting as a law enforcement officer, not as a judge. *See Matter of Barnes*, 2005 Annual Report 81 (judge issued an order involving disputed property although no case was pending); *Matter of Maclaughlin*, 2002 Annual Report 117 (judge sent a threatening letter to a landowner about code violations on her property, although no charges had been filed against her); *Matter of Colf*, 1987 Annual Report 71 (judge sent a letter threatening to hold an individual in contempt, based on *ex parte* information, although no civil or criminal action had been commenced). Respondent’s conduct also

created the appearance of prejudgment and bias against Mr. Montgomery, about whom respondent had formed a negative opinion as a result of an earlier case.

Respondent also failed to follow the law in that his orders directed Mr. Montgomery to surrender his firearms, without consideration of the factors mandated by law (*see* CPL §530.14).

As a consequence of respondent's unlawful orders, Mr. Montgomery was taken into custody twice, had to retain an attorney, and had criminal charges pending against him for over a year until they were dismissed. The fact that respondent vacated the orders after Montgomery's attorney filed a motion citing the applicable law mitigates but does not excuse respondent's misconduct.

Every judge is required to "respect and comply with the law" and to "be faithful to the law and maintain professional competence in it" (Rules, §§100.2[A], 100.3[B][1]). As a judge for almost two decades, respondent should have realized that he lacked authority to issue an order of protection in the absence of a pending criminal proceeding.

In considering the appropriate sanction, we note that respondent is contrite, has accepted responsibility for his conduct and has no previous disciplinary record.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Mr. Emery, Mr. Harding, Ms. Moore, Judge Peters and Mr. Stoloff concur.

CERTIFICATION

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

Dated: January 31, 2012

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

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