

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

MICHAEL E. KNOPF,

a Justice of the Rathbone Town Court,
Steuben County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Paul B. Harding, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Honorable Michael E. Knopf, respondent *pro se*

Respondent, Michael E. Knopf, a Justice of the Rathbone Town Court, Steuben
County, was served with a Formal Written Complaint dated August 19, 2020, containing

one charge. The Formal Written Complaint alleged that from “December 26, 2018 to January 15, 2019, in connection with *Paul Jones v. Seneca Tarby*, a summary proceeding pending before him, Respondent:

- A. engaged in conduct that lacked impartiality, fundamental fairness and professional competence in the law, in that he issued a warrant of eviction against Mr. Tarby after an *ex parte* proceeding at which only Mr. Jones appeared, notwithstanding that neither Respondent nor Mr. Tarby was ever presented with a notice of petition, a petition or an affidavit of service as required by Sections 731 and 735 of the Real Property Actions and Proceedings Law (RPAPL);
- B. failed to record court proceedings 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; and
- C. failed to be patient, dignified and courteous during the proceedings, in that he made an insulting and derogatory remark about Mr. Tarby.”

On September 11, 2020, the Administrator 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.

On September 17, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent, who is not an attorney, has been a Justice of the Rathbone

Town Court, Steuben County, since 2008. Respondent's current term expires on December 31, 2023.

2. On December 14, 2018, Mr. Jones, a landlord, went to the Rathbone Town Court to commence a summary proceeding for eviction and back rent against his tenant, Mr. Tarby.

3. Mr. Jones presented the court with a rent demand letter for four months of back rent and a lease termination notice, which purportedly had been served on Mr. Tarby on November 1, 2018. Mr. Jones's filing included an incomplete affidavit of service, signed only by him, alleging service of the lease termination notice.

4. On December 26, 2018, respondent presided over *Paul Jones v. Seneca Tarby*. Only Mr. Jones was present at this proceeding. Mr. Jones did not provide respondent with a notice of petition, a petition or an executed affidavit of service indicating that a notice of petition and petition had been served on Mr. Tarby.

5. On December 28, 2018, respondent issued a warrant of eviction against Mr. Tarby, notwithstanding that no notice of petition or petition had been served on Mr. Tarby as required by RPAPL Sections 731 and 735. A copy of the warrant of eviction, dated December 28, 2018, is annexed as Exhibit 1 to the Agreed Statement. Respondent did not grant Mr. Jones's request for a judgment for back rent.

6. On January 15, 2019, prior to the execution of the warrant, David Kagle, Mr. Tarby's attorney, filed a motion by order to show cause to vacate the warrant on the basis that Mr. Tarby was never served with a notice of petition and petition as required by RPAPL Sections 731 and 735. A copy of the order to show cause, dated January 15,

2019, is annexed as Exhibit 2 to the Agreed Statement.

7. On January 15, 2019, respondent presided over *Jones v. Tarby* and granted the motion to vacate the warrant of eviction. At the conclusion of the proceeding, respondent referred to Mr. Tarby as a “deadbeat” who did not pay his rent.

8. Respondent failed to mechanically record the proceeding on January 15, 2019, notwithstanding the requirement that he do so pursuant to Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 of the Chief Administrative Judge of the Courts.

Additional Factors

9. Although respondent asserts that he harbored no actual bias against Mr. Tarby, he now acknowledges that his insulting and derogatory remark about Mr. Tarby created the appearance of prejudice. He further acknowledges that the “perception of impartiality is as important as actual impartiality,” and that “[j]udges must conduct themselves ‘in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.’” *Matter of Duckman*, 92 NY2d 141, 153 (1998) (quoting *Matter of Sardino*, 58 NY2d 286, 290-91 (1983)).

10. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

11. Respondent has an otherwise unblemished record during his approximately 12 years on the bench.

12. Commission Counsel examined respondent’s case records from January

2016 through May 2019. Respondent's only summary proceeding was *Jones v. Tarby*.

13. Respondent regrets his failure to abide by the applicable Rules and pledges henceforth to abide by them faithfully. Respondent recognizes that affording litigants the opportunity to be heard is fundamental, especially when the failure to do so may result in a litigant's eviction.

14. The Administrator notes that respondent's decision to vacate the precipitous order of eviction after 18 days, before the eviction was executed, was effectively a corrective order that mitigates as to sanction.

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), (3), (4) and (6) and 100.3(C) (1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the 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.

All judges are 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) and (6)) When respondent issued the warrant of eviction without notice to the tenant, he violated this standard in a proceeding that had the potential to have a significant impact upon the tenant. "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.” *Matter of Williams*, 2016 NYSCJC Annual Report 231, 238. In *Matter of Holmes*, 1998 NYSCJC Annual Report 139, the judge violated the Rules when she issued a warrant of eviction with no notice or opportunity to be heard in violation of the RPAPL. In that matter, the Commission held, “[b]y depriving the tenant of a fundamental right in such a one-sided and summary fashion, respondent violated the law and compromised her impartiality and integrity.” *Id.* at 140 (citation omitted). Here, had respondent properly reviewed the documents the landlord filed, it would have been apparent that they were deficient under the RPAPL.

Respondent compounded his misconduct when, at the end of the proceeding during which he granted the tenant’s attorney’s motion to vacate the warrant of eviction, respondent referred to the tenant as a “deadbeat.” Every judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and to “be patient, dignified and courteous to litigants . . . and others with whom the judge deals in an official capacity.” (Rules §§100.2(A) and 100.3(B)(3)) Judges who are impartial and are viewed as impartial are vital to the essential role of the judiciary in society. When respondent called the defendant a “deadbeat” who did not pay his rent, respondent fell short of this high standard.

Respondent’s comment created at least the appearance that he was biased against the defendant in violation of Section 100.3(B)(4) of the Rules. *Matter of Frati*, 1996 NYSCJC Annual Report at 83, 84 (judge conveyed the appearance of bias when he suggested that the plaintiff was a “negligent” farmer and that his claim was not in the “spirit” of the community’s “codes of honor.”); *Matter of Wylie*, 1991 NYSCJC Annual

Report 89, 92 (judge “compromised his impartiality” when he referred to defendants appearing before him as “a thief”, “scum”, “a bum” and “sick, sick, sick.”) Respondent acknowledged that his comments improperly created the appearance that he had prejudged the defendant’s case.

In addition, respondent admittedly failed to maintain competence in judicial administration when he did not record the proceeding on January 15, 2019. *Matter of Skinner*, 2019 NYSCJC Annual Report 239, 246 (“The absence of a recording in any proceeding is significant since it not only makes it more difficult to determine what transpired at the proceeding but also indicates lack of compliance with an administrative order, which is inconsistent with a judge's ethical responsibilities. . ..”); *Matter of Williams*, 2016 NYSCJC Annual Report 231, 240 (“it is the responsibility of every town and village justice to ensure that court proceedings are recorded as required . . .”).

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline and that he has had an otherwise unblemished record during his approximately 12 years on the bench. We trust that respondent has learned from this experience and in the future will act in accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

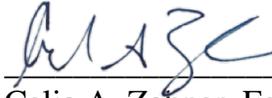
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Ms. Corngold, Judge Falk, Mr. Harding, Judge Leach, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, and Ms. Yeboah concur.

CERTIFICATION

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

Dated: September 23, 2020



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct