

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

MATTHEW J. PARKER,

a Justice of the Ellenville Village Court,
Ulster 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 (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel)
for the Commission

Honorable Matthew J. Parker, Respondent *pro se*

Respondent, Matthew J. Parker, a Justice of the Ellenville Village Court, Ulster

County, was served with a Formal Written Complaint dated May 14, 2020, containing three charges. He filed an undated Answer on June 2, 2020. Charge I of the Formal Written Complaint alleged that on April 11, 2017, after presiding over the arraignment of E ■ B ■ in the Ellenville Village Court, respondent offered to give, and then gave, Mr. B ■ a ride to Mr. B ■' residence.¹ Charge I further alleged that on April 18, 2017, respondent presided over and disposed of Mr. B ■' case, without disclosing to the prosecution that he had given Mr. B ■ a ride home after the arraignment and without offering to recuse himself. Charge II of the Formal Written Complaint alleged that in October and November 2018, in *People v. Laquisha Brown* and *People v. Aljenia Douglas*, respondent failed to advise the unrepresented defendants of the right to have counsel assigned by the court and otherwise failed to comply with requirements of the Criminal Procedure Law in connection with those matters. Charge III of the Formal Written Complaint alleged that on August 7, 2018, respondent summarily directed that a man be removed from the courtroom based on the man's attire without giving him the opportunity to be heard.

On July 1, 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.

¹ The allegation in the Formal Written Complaint that respondent failed to mechanically record Mr. B ■' arraignment as required was withdrawn. Subsequent to service of the Formal Written Complaint, Commission Counsel discovered evidence that the arraignment was, in fact, recorded.

On August 6, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Ellenville Village Court, Ulster County, since January 1, 2000, having previously served as an Acting Village Justice of the Ellenville Village Court from 1993 to December 31, 1999. His current term expires on December 31, 2022. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On April 11, 2017, at the Ellenville Village Court, respondent presided over the arraignment of E ■ B ■■■■■, who was charged with Grand Larceny in the fourth degree, a felony. Mr. B ■■■■■, who is not an attorney, appeared without counsel, and no one from the District Attorney's Office was present. During the arraignment, Mr. B ■■■■■ *inter alia* told respondent that he was a professional musician. Respondent released Mr. B ■■■■■ on his own recognizance.

3. After the arraignment, while still at the court, respondent engaged Mr. B ■■■■■ in a conversation about music and the musicians with whom Mr. B ■■■■■ had performed. Respondent then offered to give Mr. B ■■■■■ a ride to his residence, which Mr. B ■■■■■ accepted. Respondent drove Mr. B ■■■■■ to his residence in the Village of Wurtsboro, Sullivan County, which was on respondent's way to Middletown in Orange County, where he planned to go shopping. Respondent and Mr. B ■■■■■ continued to converse throughout the car ride, which lasted approximately 15 minutes.

4. During the Commission's investigation, Mr. B ■■■■■ stated that he and respondent did not discuss the pending case against him during the car ride, but that he

could not otherwise recall what they discussed. In his sworn testimony during the investigation, respondent averred that he and Mr. B [REDACTED] only discussed music and did not discuss Mr. B [REDACTED]' case.

5. On April 18, 2017, Mr. B [REDACTED] appeared without counsel before respondent in the Ellenville Village Court. At the recommendation of the prosecutor, the charge against Mr. B [REDACTED] was reduced, and respondent disposed of the case by granting an adjournment in contemplation of dismissal. Respondent neither disclosed to the prosecutor that he had given Mr. B [REDACTED] a ride home after his arraignment nor offered to recuse himself from the case.

As to Charge II of the Formal Written Complaint

6. On October 16, 2018, at the Ellenville Village Court, respondent presided over the arraignment of Aljenia Douglas, who was charged with harassment in the second degree, a violation, stemming from an incident involving Laquisha Brown. Ms. Douglas appeared without an attorney. A transcript of the proceeding in *People v. Aljenia Douglas* is annexed as Exhibit A to the Agreed Statement.

7. In response to a question by respondent, Ms. Douglas informed respondent that she was unemployed.

8. Respondent advised Ms. Douglas of the charge against her and informed her that she had the right to the aid of counsel at each stage of the proceedings, to request an adjournment to obtain counsel, and to make a phone call for the purpose of obtaining a lawyer. Respondent then asked Ms. Douglas if she wanted a lawyer, and she replied that she did not. After advising Ms. Douglas that she was charged with a violation for which

she could be sentenced up to 15 days in jail if found guilty, respondent confirmed that she still wished to waive her right to a lawyer.

9. Without advising Ms. Douglas that she had the right to have counsel assigned by the court or taking any affirmative action to effectuate that right, respondent asked how Ms. Douglas pled to the charge. Ms. Douglas pled guilty.

10. Respondent accepted Ms. Douglas' guilty plea and, based on the recommendation of the prosecutor, sentenced her to a conditional discharge and issued an order of protection directing her to stay away from Ms. Brown. Respondent accepted Ms. Douglas' guilty plea without making a searching inquiry into the defendant's understanding of her plea.

11. On October 16, 2018, immediately after presiding over the arraignment of Ms. Douglas, respondent presided over the arraignment of Ms. Brown, who was charged with harassment in the second degree, a violation, stemming from an incident involving Ms. Douglas. A transcript of the proceedings in *People v. Laquisha Brown* is annexed as Exhibit B to the Agreed Statement.

12. In response to a question by respondent, Ms. Brown informed respondent that she was unemployed.

13. Respondent advised Ms. Brown of the charge against her and informed her that she had the right to the aid of counsel at each stage of the proceedings, to request an adjournment to obtain counsel, and to make a phone call for the purpose of obtaining a lawyer. Respondent then asked Ms. Brown if she wanted a lawyer, and she replied that she did not.

14. Without advising Ms. Brown that she had the right to have counsel assigned by the court or taking any affirmative action to effectuate that right, respondent asked how Ms. Brown pled to the charge. Ms. Brown pled not guilty.

15. After advising Ms. Brown that she was charged with a violation for which she could be sentenced up to 15 days in jail if found guilty, respondent confirmed that she still wished to waive her right to a lawyer.

16. Respondent informed Ms. Brown that the prosecutor was offering her a conditional discharge and an order of protection in favor of Ms. Douglas if Ms. Brown pled guilty to the charge. Ms. Brown asserted, in sum or substance, that Ms. Douglas had come to Ms. Brown's child's school to fight Ms. Brown. Respondent scheduled a non-jury trial for November 14, 2018. Although respondent told Ms. Brown to have her attorney contact the court if she chose to retain one, he again failed to advise her of her right to have counsel assigned by the court and took no affirmative action to effectuate that right.

17. On November 14, 2018, Ms. Brown appeared without an attorney for her non-jury trial. At the outset, respondent confirmed with Ms. Brown that she still wanted to proceed without counsel, but again failed to advise her of her right to have counsel assigned by the court and took no affirmative action to effectuate that right.

18. During the non-jury trial, Ms. Douglas testified on behalf of the prosecution, and Ms. Brown testified in her own defense. During Ms. Brown's testimony, respondent sustained an objection by the prosecutor and admonished Ms. Brown, "one of the reasons why we get lawyers is because there are rules of evidence that are . . . part of any court

proceeding.” Nevertheless, respondent did not adjourn the trial to assign counsel to represent Ms. Brown.

19. At the end of the non-jury trial, respondent found Ms. Brown guilty, sentenced her to a conditional discharge, and issued an order of protection directing her to stay away from Ms. Douglas.

As to Charge III of the Formal Written Complaint

20. On August 7, 2018, while presiding over court proceedings at the Ellenville Village Court, respondent summarily directed the removal of a man from the courtroom for wearing a sleeveless t-shirt, without giving the man an opportunity to be heard as to his attire or ascertaining his purpose for attending court, and notwithstanding Section 4 of the Judiciary Law, which provides that the “sittings of every court within this state shall be public, and every citizen may freely attend the same.”

21. The man’s attire was not interfering with court proceedings.

22. The incident was captured on the court’s recording of the day’s proceedings.

The man ejected from the courtroom is not named on the recording, and neither respondent nor Commission Counsel knows his identity or his purpose for attending court.

Additional Factors

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

24. Respondent acknowledges that by offering to give, and giving, Mr. B [REDACTED] a ride home after conducting his arraignment, he demonstrated extremely

poor judgment and created an appearance of impropriety that required his recusal from Mr. B [REDACTED]’ case, even absent any discussion of the B [REDACTED] case during the car ride. *See, Matter of Burke*, 2015 NYSCJC Annual Report 78, 86.

25. Respondent has expressed remorse for his failure to advise defendants Douglas and Brown of their right to have counsel assigned by the court and to take affirmative action to effectuate that right. Respondent understands that he was not excused from effectuating that right simply because the prosecutor had indicated she was not seeking jail time for either defendant, or that the sentences he imposed (conditional discharges) were lenient.

26. Respondent asserts that his failures to advise defendants Douglas and Brown of their right to assigned counsel were isolated incidents and were not deliberate. Respondent avers, and Commission Counsel confirms upon listening to various recordings of court proceedings, that it is respondent’s regular practice to fully advise defendants of their rights. Respondent avers that, because of this inquiry, he now assigns a public defender to all unrepresented defendants at their initial appearances and, for those defendants who state they wish to proceed *pro se*, reads an extensive “waiver of counsel” colloquy to ensure they understand the consequences of proceeding without an attorney, before permitting them to proceed *pro se*.

27. Respondent was cautioned by the Commission in 2015 for conduct that was factually dissimilar to the matter herein, but that involved *inter alia* a similar failure to abide by Section 100.3(B)(6) of the Rules. There, as here, respondent failed to accord all those legally interested in a proceeding the right to be heard according to

law.

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) and (6), 100.3(E)(1), and 100.4(A)(1) and (2) 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. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

Every judge must avoid the appearance of impropriety in all his or her activities and must ensure that his or her extra-judicial conduct does not “cast reasonable doubt on the judge’s capacity to act impartially as a judge” or “detract from the dignity of judicial office.” (Rules, §§100.2(A), 100.4(A)(1) and (2)) Respondent had an extreme lapse in judgment when he offered and then gave a defendant a ride home after conducting the defendant’s arraignment in the absence of a prosecutor and releasing him on his own recognizance. Such extra-judicial conduct involving a defendant whose case is pending in respondent’s court is highly improper. *See, Matter of Burke*, 2015 NYSCJC Annual Report 78 (judge censured for, *inter alia*, riding in police car with defendant, having an *ex parte* conversation about the pending matter and recommending defendant hire an attorney who had a business relationship with the judge); *See, Matter of Friess*, 1982 NYSCJC Annual Report 109 (judge censured for, *inter alia*, providing overnight lodging for a defendant whose arraignment the judge had conducted).

Moreover, a judge’s disqualification is required in matters “in which the judge’s

impartiality might reasonably be questioned.” (Rules, §100.3(E)(1)) A reasonable person might conclude that giving the defendant a ride home indicated that respondent could not be impartial when it came to adjudicating the defendant’s case. Nevertheless, a week after giving the defendant a ride home, respondent compounded his misconduct by disposing of the defendant’s case. Respondent acknowledged that as a result of the ride he provided the defendant, he should have recused himself from the matter.

“Public confidence in the integrity and impartiality of the judiciary is indispensable to the fair and proper administration of justice. A judge’s conduct must be and appear to be beyond reproach if respect for the court is to be maintained.” *Matter of Friess*, 1982 NYSCJC Annual Report 109, 111. By failing to disqualify himself in the matter after giving the defendant a ride home and failing to even disclose the ride to the prosecutor, respondent created an appearance of impropriety and acted in a manner that was inconsistent with his obligation to maintain high standards of conduct in order to promote public confidence in the integrity of the judiciary. (Rules, §§100.1, 100.2(A)) *See, Matter of Porter*, 2019 NYSCJC Annual Report 215 (judge should have recused in matters involving a boundary dispute which involved his neighbor’s daughter after discussing the dispute with his neighbor). By his improper conduct, respondent brought reproach upon the judiciary and undermined public confidence in the impartiality of the judiciary.

Section 100.3(B)(1) of the Rules requires all judges to “be faithful to the law and maintain professional competence in it.” It was stipulated that respondent violated these provisions when he failed to comply with the Criminal Procedure Law in two matters and

failed to comply with Section 4 of the Judiciary Law when he summarily removed a man from the courtroom.

In the two criminal matters, during arraignment each defendant told respondent that she was unemployed. Nevertheless, respondent admitted that he failed to advise the defendants of their right to have counsel appointed for them and failed to take steps to effectuate that right. In addition, respondent failed to ensure that the defendants fully understood the consequences of the decision to proceed without counsel. By his conduct, respondent failed to perform one of the critical roles of a judge during arraignment. The Commission has held:

As the Court of Appeals has stated: “The right to counsel, in practical respects, remains absolutely fundamental to the protection of a defendant’s other substantive rights” (*Matter of Bauer*, 3 NY3d 158, 164 [2004] Informing defendants of the right to counsel is one of judge’s most important responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable.

Matter of Kline, 2018 NYSCJC Annual Report 161, 183; *Matter of Prince*, 2014 NYSCJC Annual Report 184, 189-190 (“The right to counsel is a fundamental constitutional and statutory right At arraignment, a judge is required, *inter alia*, to advise a defendant of the right to assigned counsel By ignoring this important responsibility, respondent violated his ethical obligation to be faithful to the law”)

In addition, it was stipulated that respondent failed to comply with Section 4 of the Judiciary Law and was discourteous to the man in his courtroom when respondent summarily directed that he be removed based on his attire without determining the man’s

purpose for being present in court that day or giving him the opportunity to be heard. The Commission has held that the right to public proceedings found in the Section 4 of the Judiciary Law, “belongs not only to a defendant, but to the public and press as well.” *Matter of Edward J. Williams*, 2002 NYSCJC Annual Report 175, 177 (judge, *inter alia*, refused to allow a victim’s attorney to attend a trial as an observer); *See, Matter of Shannon*, 2002 NYSCJC Annual Report 161 (judge admonished for, *inter alia*, precluding the public from observing a hearing and closing the courtroom and preventing the public from observing matters that should have been open to the public under Section 4 of the Judiciary Law).

Respondent has been a judge since 1993 and accordingly “should be fully familiar with basic procedures of law as well as the ethical rules.” *Matter of Edward J. Williams*, 2002 NYSCJC Annual Report 175, 177. In addition, in 2015, the Commission issued a letter of dismissal and caution to respondent in which he was cautioned to comply with his obligation to be faithful to the law and to maintain professional competence in the law. Given his long judicial tenure and the Commission’s 2015 letter, respondent should have been particularly attentive to his obligations under the Rules and the law.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline, that his failures to comply with the Criminal Procedure Law appear to have been isolated incidents and that he has taken corrective action by appointing a public defender for unrepresented defendants at arraignment and by taking steps to ensure that defendants understand the consequences of proceeding without counsel. We trust that respondent

has learned from this experience and in the future will act in accordance with his obligation to follow constitutional and statutory mandates and abide by 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: August 13, 2020



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