

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

MICHAEL E. KNOPF

**AGREED
STATEMENT OF FACTS**

a Justice of the Rathbone Town Court,
Steuben County.

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Michael E. Knopf (“Respondent”), that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

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. Respondent was served with a Formal Written Complaint dated August 19, 2020. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

As to Charge I

3. 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.

As to the Specifications to Charge I

4. 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.

5. 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.

6. 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.

7. 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. Respondent did not grant Mr. Jones's request for a judgment for back rent.

8. 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.

9. 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.

10. 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.

11. By reason of the foregoing, Respondent 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, in that Respondent failed to uphold the integrity and

independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”); failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to be patient, dignified and courteous to litigants, lawyers and/or others with whom the judge deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules, failed to perform his judicial duties without bias or prejudice, in violation of Section 100.3(B)(4) of the Rules, failed 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, in violation of Section 100.3(B)(6) of the Rules, and failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules.

Additional Factors

12. 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]).

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

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

15. Commission Counsel examined Respondent’s case records from January 2016 through May 2019. Respondent’s only summary proceeding was *Jones v Tarby*.

16. 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.

17. 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.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

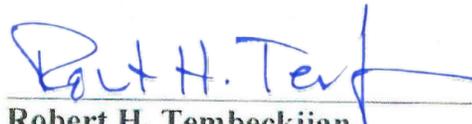
IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, Respondent or the Administrator and Counsel to the Commission.

Dated:



Honorable Michael E. Knopf
Respondent

Dated: September 11, 2020



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

STATE OF NEW YORK
STEUBEN COUNTY

EXHIBIT 1
WARRANT OF EVICTION
RATHBONE TOWN COURT

Paul Jones;
Claimant

Seneca Tarby;
Defendant

JUDGMENT

TO THE COUNTY SHERIFF OF THE COUNTY OF STEUBEN:

Final judgement for petitioner having been entered in the above entitled proceeding of December 26, 2018 awarding to the petitioner the delivery and possession of premises hereafter described,

Therefore, I hereby command you to forthwith remove all persons from the property hereinafter described

6584 Chappel Rd.

Addison, NY 14801

and to put Petitioner in possession thereof, said Warrant to be effective on
12/28/2018



Michael E. Knopf
Town Justice

Dated: December 28, 2018

Tarby, DEFENDANT

RATHBONE TOWN COURT
COUNTY OF STEUBEN: STATE OF NEW YORK

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PAUL JONES

Petitioner,

-against-

SENECA TARBY

Respondent.

**ORDER TO SHOW
CAUSE WITH
TEMPORARY
RESTRAINING ORDER**

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UPON the annexed affirmation of David Kagle, Esq. dated January 15, 2019, and upon all the papers and proceedings herein,

LET Petitioner show cause before this Court at 8088 County Route 21, Addison, New York on the 28th day of January 2019, at 6 in the forenoon of that day, or as soon thereafter as counsel may can be heard, why an order should not be granted pursuant to C.P.L.R. § 5015(a)(4) vacating the judgment and warrant of eviction and dismissing the proceeding for lack of jurisdiction on the grounds that Respondent was never served with a notice of petition and petition in this matter as required by Real Property Actions and Proceedings Law (R.P.A.P.L.) §§ 731 and 735.

TEMPORARY RESTRAINING ORDER

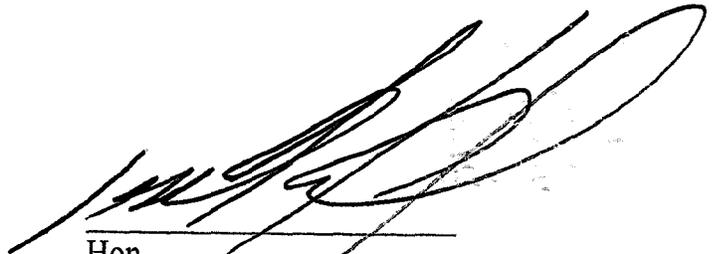
Sufficient Cause Appearing therefore, pending a hearing and determination of this Motion, it is hereby:

ORDERED that the judgment and warrant of eviction against Seneca Tarby, residing at 6584 Chappel Road, Addison, NY 14801, be stayed and that Petitioner, his agents, employees and other persons acting in concert with petitioner, including the office of the Steuben County Sheriff's Department, shall be enjoined from taking any action to enforce the judgment and

warrant of the Town Court or otherwise interfere with the Respondent's right to possession and quiet enjoyment of the subject premises.

LET service of a copy of this order and the papers upon which it is granted, upon Petitioner Paul Jones, by regular and certified mail to the last known address of Petitioner, or by personal delivery, on or before January 13, 2019, be deemed good and sufficient service, such service to be complete upon mailing or personal delivery.

ENTER: _____



Hon.
Town Court Justice