

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

DAVID F. PORTER,

A Justice of the Allegany Town Court,
Cattaraugus County.

**AGREED
STATEMENT OF FACTS**

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 David F. Porter (“Respondent”), who is represented in this proceeding by Vincent Doyle of Connors LLP, 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 is not an attorney. He has been a Justice of the Allegany Town Court, Cattaraugus County, since January 2006. Respondent’s current term expires December 31, 2021.

2. Respondent was served with a Formal Written Complaint dated May 7, 2018. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

6. Ms. C [REDACTED] drafted a three-page letter to Ms. K [REDACTED] dated May 17, 2015, detailing her complaints on their boundary dispute and describing a Mother's Day visit by a Trooper to Ms. C [REDACTED]'s home, during which the Trooper allegedly suggested how the boundary dispute might be resolved. Ms. C [REDACTED] sent a copy of her letter to Respondent.

7. On July 23, 2015, Respondent issued a criminal summons for Mr. K [REDACTED] directing him to appear and answer charges that he committed harassment in the second degree in violation of Penal Law ("PL") §240.26. Before issuing the summons, Respondent reviewed the accusatory instrument alleging that on July 22, 2015, Mr. K [REDACTED] struck the hand of his daughter's neighbor, Mr. M [REDACTED], with a hammer, and Mr. M [REDACTED]'s supporting deposition, in which he requested that the court issue an order of protection against Mr. K [REDACTED].

8. On July 27, 2015, Respondent arraigned Ms. C [REDACTED] for harassment in the second degree pursuant to PL §240.26(2), for allegedly cursing at Ms. K [REDACTED] on July 22, 2015. Respondent did not disclose his May 2015 communication with Mr. K [REDACTED] concerning the boundary dispute. Respondent issued a temporary order of protection against Ms. C [REDACTED] and in favor of Ms. K [REDACTED], pursuant to a telephone request to the court that Respondent understood to have come from Ms. K [REDACTED],

9. On August 17, 2015, Respondent arraigned Mr. M [REDACTED] for criminal tampering in the third degree pursuant to PL §145.14, for allegedly removing Ms. K [REDACTED]'s posted signs on July 22, 2015. The sworn statement filed with the complaint against Mr. M [REDACTED] was affirmed by Mr. K [REDACTED] on July 28, 2015. Respondent did

not disclose his May 2015 communication with Mr. K [REDACTED] concerning the boundary dispute. Respondent issued a temporary order of protection against Mr. M [REDACTED] and in favor of Ms. K [REDACTED], pursuant to a request from the Cattaraugus County Sheriff Deputy who took Mr. K [REDACTED]'s statement and filed the complaint. During the arraignment, Mr. M [REDACTED] again asked for an order of protection against Mr. K [REDACTED].

10. On August 17, 2015, Mr. K [REDACTED]'s arraignment in Allegany Town Court was adjourned by the court so that Mr. K [REDACTED] could attend a Buffalo Bills football practice. Respondent took no action on Mr. M [REDACTED]'s repeated requests for an order of protection against Mr. K [REDACTED].

11. On September 14, 2015, Respondent arraigned Mr. K [REDACTED] for allegedly striking Mr. M [REDACTED] with a hammer on July 22, 2015. Respondent did not issue an order of protection against Mr. K [REDACTED].

12. On September 24, 2015, Respondent disqualified himself from *People v E [REDACTED] K [REDACTED]*, *People v L [REDACTED] C [REDACTED]*, and *People v C [REDACTED] M [REDACTED]*. As a basis for his disqualification in each case, Respondent wrote that he recused himself "on the grounds that I have a conflict of interest. I have spoken with E [REDACTED] K [REDACTED] about this land dispute situation prior to Mr. K [REDACTED] being charged with Harassment 2nd."

13. 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; 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, and failed to disqualify himself in proceedings in which his impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

Additional Factors

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

15. Respondent now recognizes and appreciates that, where a judge has engaged in substantive communications with an interested party or individual about a matter prior to the initiation of legal action, such that the judge should be disqualified, such disqualification must occur at the outset, not after arraignment. Respondent regrets that he did not disqualify himself at the outset of this matter and commits to adhering to the Rules more stringently should similar situations arise in the future.

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 Admonition based upon the judicial misconduct set forth above.

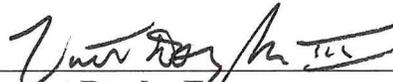
IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further 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, the Respondent or the Administrator and Counsel to the Commission.

Dated: 9/6/18



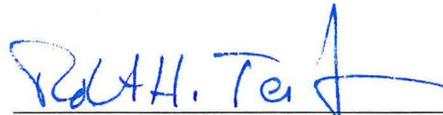
Honorable David F. Porter
Respondent

Dated: 9-13-18



Vincent Doyle, Esq.
Connors LLP
Attorney for Respondent

Dated: 9/24/2018



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