

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

WILLIAM A. CARTER,
a Judge of the County Court,
Albany County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission
Stephen F. Downs for respondent

Respondent, William A. Carter, a Judge of the County Court, Albany County, was served with a Formal Written Complaint dated December 17, 2019, containing two charges. Respondent filed an Answer dated January 17, 2020. Charge I of the Formal

Written Complaint alleged that in January 2018, respondent initiated, engaged in and considered an *ex parte* communication with an Albany County Deputy Sheriff concerning a policy and practice of the county jail that pertained to the merits of a motion then pending before him in *People v. Richard Quinn*, in which the defendant was charged with murder in the second degree. Charge I further alleged that respondent failed to disclose the communication to the defense or prosecution. Charge II of the Formal Written Complaint alleged that from approximately April 2017 to September 2019, respondent failed to diligently discharge his administrative responsibilities, in that he failed to report to his administrative judge on his quarterly reports of pending cases, as required, several cases that were pending longer than 60 days without decision.

On March 2, 2020, the Administrator, respondent's counsel 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 March 12, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the County Court, Albany County, since January 2017, having previously served as a Judge of the Albany City Court, Albany County, from 2002 to 2016. Respondent's current term expires on December 31, 2026. He was admitted to the practice of law in New York in 1992.

As to Charge I of the Formal Written Complaint

2. The murder trial in *People v. Richard Quinn* was scheduled to begin before respondent on Tuesday, January 16, 2018. On January 10, 2018, the defendant's attorney, Angela Kelley, made a motion *in limine* to preclude certain material from admission into evidence, including certain telephone calls the defendant made from – and that were recorded by – the Albany County Correctional Facility, where he was incarcerated pending trial. A copy of the motion papers is attached as Exhibit A to the Agreed Statement. The defense motion was based on an equal protection argument that the defendant was disadvantaged because of his incarcerated status and could not therefore speak freely with friends or relatives regarding his defense in the way an unincarcerated defendant could. Respondent's concern, however, was whether inmate-defendants were given sufficient notice by the correctional facility that their calls were being monitored, consistent with Court of Appeals precedent.

3. Respondent or his court attorney scheduled oral argument on the motion for the afternoon of Friday, January 12, 2018. A fact-finding hearing was to be held in the event the motion could not be resolved after oral argument. The prosecution intended to call Lt. Ronald M. Murray as a witness should the matter proceed to a hearing, although respondent was not informed of this.

4. On January 11, 2018, after reading the defendant's motion papers, respondent telephoned the Albany County Correctional Facility and spoke with Lt. Murray. No one else was on the telephone call. Respondent told Lt. Murray that he had some questions pertaining to a trial scheduled to start the following Tuesday. Respondent

asked Lt. Murray about how the inmate calling system operated and specifically about how inmates are notified that their phone calls are being monitored. Lt. Murray informed respondent that the Inmate Rulebook and a pre-recorded message advise inmates that their conversations are recorded prior to each phone call. Lt. Murray then played the pre-recorded message for respondent.

5. On January 11, 2018, the prosecution filed a response to the defense motion, a copy of which is annexed as Exhibit B to the Agreed Statement.

6. On January 12, 2018, the defense attorney filed a Supplemental Affirmation in support of the motion *in limine*, a copy of which is annexed as Exhibit C to the Agreed Statement.

7. On January 12, 2018, respondent held oral argument on the defense motion and denied it on the submitted papers when no party requested a hearing. The transcript of the argument is annexed as Exhibit D to the Agreed Statement.

8. Respondent considered the information provided to him by Lt. Murray in deciding the motion.

9. At the defendant's trial, respondent admitted into evidence certain of the defendant's recorded phone conversations, over the objection of the defense. The jury convicted the defendant of murder in the second degree.

10. On March 8, 2018, Ms. Kelley made a motion pursuant to Criminal Procedure Law §330.30 for an order setting aside the jury verdict, based in part on the argument that the People's receipt and use of the defendant's recorded jail telephone calls as evidence was improper. On March 13, 2018, respondent denied the motion.

11. On April 9, 2018, respondent sentenced Mr. Quinn to 25 years to life in prison.

12. Respondent never disclosed his *ex parte* communication with Lt. Murray to the prosecution or defense counsel.

As to Charge II of the Formal Written Complaint

13. Section 4.1(a) of the Rules of the Chief Judge requires that, in such form or times as required by the Chief Administrative Judge, a judge must report on matters pending undecided before him or her for 60 days after final submission. Such forms are required to be filed quarterly.

14. Respondent delegated the preparation and filing of his quarterly reports of undecided cases to his secretary and failed to review the reports prior to his secretary's submission of the reports.

15. From April 21, 2017 to September 10, 2019, respondent failed to report on his quarterly reports that for each period, he had several cases pending decision longer than 60 days. Instead, each such report erroneously stated that respondent had "no civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission."

16. On September 10, 2019, respondent amended his reports as a result of the Commission's inquiry. Copies of his amended reports are annexed as Exhibit E to the Agreed Statement.

Additional Factors

17. Respondent has been cooperative and contrite with the Commission

throughout this inquiry.

18. As to his *ex parte* telephone conversation with Lt. Murray regarding the correctional facility's practices as to inmate telephone calls, respondent avers that he called the correctional facility in preparation for the oral argument, to get a description of the procedures routinely used at the correctional facility as to inmate phone calls, and not as to defendant Quinn in particular. He and Lt. Murray did not discuss the defendant or his case. Respondent avers that at the time of his conversation, he did not consider it to be an improper *ex parte* contact, but after reading the complaint he recognized that he was wrong. Respondent further avers that while he considered the information provided to him by Lt. Murray when rendering his decision on the motion, it confirmed the same information provided to him by the prosecution and the defense attorney, both of whom had spoken to Lt. Murray before the oral argument on the motion and appeared to agree with Lt. Murray's description of the procedures at the Albany County Correctional Facility for handling inmate phone calls.

19. As to his failure to file accurate reports of pending cases, respondent had a total of 16 cases with undecided motions or appeals that should have been reported. Of the 16, four were inherited from a prior judge and were already pending when respondent began his term in County Court. The remaining 12 originated with respondent. None of the delays in rendering decision was excessive. All of the matters respondent initially failed to report were post-conviction motions or appeals, which his secretary and law clerk mistakenly believed were not reportable.

20. Respondent's disciplinary history is as follows.

- a. Respondent was privately cautioned by the Commission in 2004 for failing to disqualify himself in arraignments of unrepresented defendants, notwithstanding that the complaining witness and alleged victim was his co-judge.
- b. Respondent was privately cautioned again in 2012 for appearing as a guest of honor at a fundraising event for a civic organization.
- c. Respondent was publicly censured by the Commission in 2006 for, *inter alia*, coming off the bench and physically confronting a defendant appearing in his courtroom.

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)(6), 100.3(C)(1) and 100.3(C)(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 and II of the Formal Written Complaint are sustained and respondent’s misconduct is established.

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 must “avoid impropriety and the appearance of impropriety.” (Rules, §100.2(A)) Section 100.3(B)(6) of the Rules prohibits a judge from initiating or considering unauthorized *ex parte* communications regarding a pending matter. Here, after reading the defense motion papers seeking the preclusion of the defendant’s recorded telephone conversations made from the Albany County Correctional Facility, respondent initiated an *ex parte* communication with a Lieutenant at that facility. Respondent stipulated that when he made this call, he sought information related to a matter pending before him. Respondent

admitted that he discussed the Inmate Rulebook with the Lieutenant and the Lieutenant played for him the recorded message that advised inmates that their telephone calls were being monitored. Respondent also acknowledged that he considered the information he obtained during his *ex parte* communication when he denied the defense motion to preclude the introduction of the defendant's recorded telephone conversations.

It is well-settled that judges are prohibited from engaging in such *ex parte* communications about a pending matter. *Matter of Lamson*, 2013 NYSCJC Annual Report 235 (judge censured for *ex parte* conversations with defense counsel and police chief regarding a defendant's sentence); *Matter of Williams*, 2008 NYSCJC Annual Report 227, 229 (in censuring judge for his *ex parte* communication with a State Trooper about a pending matter, the Commission found the judge's "conduct compromised his impartiality and is inimical to the role of a judge."); *Matter of Teresi*, 2005 NYSCJC Annual Report 215 (judge censured for an *ex parte* communication with an expert witness who was scheduled to testify in a matter pending before him later that day).

Compounding his misconduct, respondent failed to comply with his obligation to disclose his *ex parte* communication to the parties in the pending murder case even though the parties appeared before him the day after his improper *ex parte* communication. In *Matter of Curran*, 2018 NYSCJC Annual Report 145, the Commission held,

[t]he requirement to disclose *ex parte* communications is inherent in a judge's obligation 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][6]) A party who is unaware of *ex parte*

information a judge has received is unable to address or rebut it.

Id. at 154. Even “brief and unsolicited” *ex parte* communications must be disclosed to the parties. *Matter of Marshall*, 2008 NYSCJC Annual Report 161, 165, *aff’d* 8 N.Y.3d 741 (2007).

In addition to his undisclosed *ex parte* communication, respondent also failed to properly perform his administrative responsibilities when he failed to supervise his secretary in connection with the submission of his quarterly reports of pending cases which were inaccurate. Respondent stipulated that he delegated this task to his secretary and he did not review the reports before they were submitted. By this conduct, respondent violated his obligation to “maintain professional competence in judicial administration.” (Rules, §100.3(C)(1) and (C)(2))

With respect to the sanction to be imposed, respondent’s disciplinary history, which included being censured in 2006 and cautioned in 2004 and 2012, is an aggravating factor. *Matter of Doyle*, 23 N.Y.3d 656, 662 (2014). Given his prior discipline, respondent should have been aware of the Rules and his obligation to comply with the Rules. *Id.*

In mitigation, we note that respondent’s *ex parte* communication was limited to one general conversation and did not specifically concern the defendant’s case or telephone calls. In addition, the information respondent received was confirmed by information provided to him by defense counsel and the prosecutor. It was stipulated that, before oral argument on the motion, both defense counsel and the prosecutor had

spoken with the same Lieutenant at the correctional facility with whom respondent had spoken. It was also stipulated that the parties appeared to agree with the Lieutenant's description of the procedures at the facility regarding inmate telephone calls.

We also note that with respect to respondent's failure to report certain cases pending longer than 60 days as required, this involved a total of 16 cases over a 29-month period and none of the delays in rendering a decision was excessive. We also note that respondent filed corrected reports after the Commission's inquiry.

In accepting the jointly recommended sanction of censure, we have also taken into consideration that respondent has acknowledged that his conduct warrants public discipline. We expect that respondent has learned from this experience and in the future will act in strict 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.

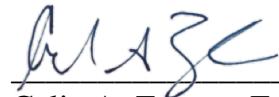
Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, and Mr. Raskin concur.

Ms. Yeboah did not participate.

CERTIFICATION

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

Dated: March 31, 2020



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