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

ROBERT P. MERINO,

a Judge of the Niagara Falls City Court,
Niagara County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (David M. Duguay, Of Counsel) for the Commission

Connors & Vilardo, LLP (by Terrence M. Connors) for the Respondent

The respondent, Robert P. Merino, a Judge of the Niagara Falls City Court, Niagara County, was served with a Formal Written Complaint dated March 3, 2014, containing one charge. The Formal Written Complaint alleged that respondent compromised a Spanish-speaking tenant's right to be heard in a summary eviction

proceeding by failing to appoint an interpreter. Respondent filed a verified Answer dated March 27, 2014.

On September 5, 2014, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On September 18, 2014, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Niagara Falls City Court, Niagara County, since January 1, 2008. His current term expires on December 31, 2017. Respondent was admitted to the practice of law in New York in 1973.

2. On January 2, 2013, respondent presided over the summary eviction proceeding of *9234 Niemel Drive Holdings L.L.C. v Edwin Santana and All Occupants* (*"Niemel Drive v Santana"*).

3. The petition in *Niemel Drive v Santana*, filed in Niagara Falls City Court on or about December 26, 2012, alleged that in or about March 2012, Mr. Santana entered into a lease agreement providing for "equal monthly installments" of $450. The petition further alleged that on November 1, 2012, there was due from Mr. Santana, "under said agreement," $565 as monthly rent for November 2012. The petition sought, *inter alia*, a judgment of eviction against Mr. Santana and all occupants, unpaid rent for

November and December 2012 in the amount of $1,130, a $50 late fee, and any additional unpaid rent up to the date of the judgment of eviction.

4. The lease agreement itself was not annexed to the petition, presented as evidence, or otherwise included in the court record.

5. Attorney Robert T. Koryl appeared at the January 2nd court proceeding on behalf of the petitioner, 9234 Niemel Drive Holdings LLC. Mark DeLorenzo, who signed the petition as the landlord, was also present.

6. Mr. Santana and his wife, Gladiana Vasquez, who resided in the apartment with their daughter, appeared without counsel.

7. Mr. Santana, a Spanish-speaking native of Puerto Rico with an eighth-grade education, was not proficient in English. Ms. Vasquez, who also speaks Spanish, is somewhat more proficient in English than Mr. Santana.

8. At the outset of the proceeding, Mr. Santana and Ms. Vasquez requested that respondent provide them with an interpreter.

9. When Mr. Koryl indicated that his client (Mr. DeLorenzo) had spoken to Mr. Santana and Ms. Vasquez, respondent administered an oath to Mr. DeLorenzo. Mr. DeLorenzo told the court that Ms. Vasquez spoke "broken English" and that Mr. Santana had used an interpreter to communicate with him in the past.

10. Respondent stated that he was going to order an interpreter and adjourn the matter because Mr. Santana was the party and that "he has to understand." Respondent repeated that he was going to adjourn the matter and twice repeated that he would "bring in an interpreter."

11. Respondent asked Mr. Santana if he could come back at two o'clock in the afternoon "for an interpreter." Mr. Santana indicated that he could.

12. Respondent asked Mr. Santana some basic informational questions about, *inter alia*, his employment, family and birthplace. Mr. Santana gave the name of his employer, but then said something in Spanish and indicated he could not understand respondent's inquiry regarding the nature of his work. When respondent asked, "Where were you born?" Mr. Santana asked, "Como es?" Ms. Vasquez said, "Pardon me?" Respondent repeated the question, and Ms. Vasquez answered, "Puerto Rico." Mr. Santana then stated, "Puerto Rico, yeah."

13. Respondent thereupon stated:

> Okay. Go ahead, Mr. Koryl. I think he understands English. The last time I heard, I think Puerto Rico was bilingual.

14. Respondent did not inform Mr. Santana and Ms. Vasquez that no interpreter would be appointed and that the proceeding would not be adjourned.

15. Following factual assertions by Mr. Koryl concerning the failure to pay rent for November and December 2012, respondent asked Ms. Vasquez, "Do you want to interpret and tell your husband? Or does he – ask him if he understood what was just said." Ms. Vasquez indicated that she was neither competent nor willing to act as an interpreter:

> Ms. Vasquez: I no can interpreter.
> Judge Merino: Pardon me?
> Ms. Vasquez: I no can make interpreter.
> Judge Merino: You can't tell your husband what was--
> Ms. Vasquez: --No--

16. Ms. Vasquez later attempted to explain that they had refused to pay a higher rent because of the condition of the apartment and that they never signed a "new lease." She tried to show respondent a photograph depicting the condition of the apartment.

17. Without looking at the proffered picture or requesting a copy of the lease agreement, respondent announced his decision:

> Warrant of Eviction is granted. Judgment for the amount requested. Have a good day.

18. After respondent announced his decision, Mr. Santana asked three times if, as respondent had repeatedly indicated earlier, an interpreter was coming and if they were to return to court:

> Is coming today? ... Is coming today, or what? ... Is coming today? Me, am coming back?

19. Respondent stated, "No... Go talk to the clerk downstairs. They'll explain what happens."

20. Respondent did not explain or attempt to clarify to Mr. Santana or Ms. Vasquez that he had conducted the proceeding in the absence of an interpreter and had granted a judgment for the landlord for all of the rent requested in the petition, an additional $565 in rent for January 2013, $45 for filing costs, and a warrant of eviction without a stay, by which Mr. Santana and his family could be physically removed from their apartment within 72 hours of service.

Additional Factors

21. Respondent has been cooperative with the Commission throughout

its inquiry.

22. Since this incident, respondent has attended a seminar regarding interpretive services provided by the 8th Judicial District and now better understands how to properly conduct matters involving parties with English language proficiency issues.

23. In his six years on the bench, respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conform himself in accordance with the Rules for the remainder of his term as a judge.

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)(3) and 100.3(B)(6) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State 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.

"Access to justice is not attainable for those who are not proficient in English unless they also have access to language services that will enable them to understand and be understood."[1]

---

[1] ABA, *Standards for Language Access in Courts* at VIII (Feb. 2012), cited in *People v. Lee*, 21 NY3d 176, 184 (2013) (Rivera, J., dissenting), available at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf.

When a litigant in a summary eviction proceeding requested an interpreter at the outset of the proceeding, it was the judge's responsibility to make a fair and informed determination as to whether the party was "unable to understand and communicate in English to the extent that he or she cannot meaningfully participate in the court proceedings" (22 NYCRR §217.1[a]). A party's right to be heard according to law (Rules, §100.3[B][6]) and to participate in court proceedings is meaningless when, because of the party's limited proficiency in English, the proceeding is incomprehensible to him.

Although respondent initially declared several times that he would adjourn the matter so that an interpreter could be provided, the transcript suggests that he changed his mind after Mr. Santana gave rudimentary responses to some simple questions about his family, schooling and employment. As respondent should have recognized, Mr. Santana's minimal responses demonstrated his limited English proficiency, not the ability to understand and meaningfully participate in a court proceeding where his family was facing eviction from their home. This is particularly so since Mr. Santana clearly indicated that he did not understand some questions at all. When asked, "What do you have to say about this?", he responded, "No speaking English." When asked, "What type of work do you do in the warehouse?", he responded, "I don't understand that. I'm sorry." Nor did he understand, "Where were you born?" Even the landlord acknowledged under oath that when he had previously spoken to Mr. Santana, someone had interpreted for him. It is obviously unacceptable if a party with limited knowledge of English understands only some of what is being said in a court proceeding while the rest

remains incomprehensible.

Mr. Santana was in an especially vulnerable position since he was unrepresented by counsel and was facing an adversary with an attorney. With no lawyer to protect his rights, the fact that he could barely communicate in English compounded his vulnerability and left him virtually defenseless.

Respondent's comment about bilingualism ("The last time I heard, I think Puerto Rico was bilingual") was irrelevant and, in context, snide.

As the proceeding continued, respondent, who never made clear that the case would not be adjourned, continued to ignore red flags indicating Mr. Santana's limited proficiency in English. The litigant responded to some questions in Spanish, or told his wife to respond, or did not respond at all as his wife answered for him. While his wife attempted to present defenses for non-payment of rent, Mr. Santana barely participated in the proceeding. In this context, when respondent asked Mr. Santana several times if he understood what was said, his halting affirmative responses hardly seem convincing. Even after respondent announced that the warrant of eviction was granted, Mr. Santana asked if an interpreter was coming and if they had to return to court, suggesting he did not realize he had just been evicted. Despite Mr. Santana's evident confusion about what had transpired, respondent simply told him to "talk to the clerk downstairs" who would "explain what happens next."

The consequences of this case were significant: a family was summarily evicted. Even if the result might have been the same had Mr. Santana had the assistance of an interpreter, Mr. Santana's rights to be heard according to law and to meaningfully

participate in the proceeding were compromised.

Access to interpreting services when needed is a critical element of access to justice. It is an issue that the Unified Court System has addressed in a public report and has emphasized in judicial training.[2] Every judge must be sensitive to this important issue and respond appropriately when the issue is raised.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

CERTIFICATION

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

Dated: October 2, 2014

Jean M Savanyu

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

[2] *Court Interpreting in New York, A Plan of Action: Moving Forward* (June 2011) (available at http://www.nycourts.gov/publications/pdfs/ActionPlanCourtInterpretingUpdate-2011.pdf). The report describes a two-page "Benchcard" distributed to judges, which states in part: "A judge may presume a need for an interpreter when an attorney or self-represented party advises the Court that a party or witness has difficulty communicating or understanding English..." (available at http://www.nycourts.gov/courtinterpreter/PDFs/JudBenchcard08.pdf).