

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

LEIGH W. FULLER,

a Justice of the Canajoharie Town and
Village Courts, Montgomery County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the
Commission

Kelli P. McCoski for Respondent

The respondent, Leigh W. Fuller, a justice of the Canajoharie Town and
Village Courts, Montgomery County was served with a Superseding Formal Written

Complaint dated March 17, 2003, containing two charges. Respondent filed an undated answer.

On August 25, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 18, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Canajoharie Town Court since 1981 and a justice of the Canajoharie Village Court since 1985. He is not an attorney. Respondent has successfully completed all required training sessions for town and village justices.

As to Charge I of the Formal Written Complaint:

2. As set forth below, respondent was rude, made statements at arraignment which indicated bias and prejudice concerning the charges, and engaged the defendants in improper *ex parte* communications, notwithstanding that the Commission, by a determination of December 26, 2001, had publicly admonished respondent for engaging in an improper, *ex parte* communication.

- (a) On or about April 12, 2002, at the arraignment of the defendant in *People v. Trey Wilson* on a charge of Criminal Trespass, 3rd Degree:

(i) respondent stated in a raised voice to the defendant, who had not yet entered a plea, “What part of trespassing don’t you understand?” and “You can’t be up at the school trespassing”;

(ii) respondent further stated to the defendant, “You’re a good looking fellow. I don’t want to see you get in any deeper than you already are”;

(iii) when the defendant’s mother objected that her son was not guilty, respondent threatened to hold her in contempt and to send her to jail if she spoke further; and

(iv) after the defendant pleaded not guilty, respondent said he could “throw” the defendant in jail, but would release him on recognizance.

(b) On or about August 2, 2002, at the arraignment of the defendant in *People v. Christopher Mickus*, after informing the defendant that he was charged with Consuming Alcohol In A Motor Vehicle, respondent added, “Which is pretty stupid,” notwithstanding that the defendant had not yet entered a plea.

(c) On or about August 2, 2002, at the arraignment of the defendant in *People v. Stephanie Homkey* on a charge of Falsely Reporting An Incident, 2nd Degree, a felony, respondent stated to the defendant that she “should know better, even if [she] didn’t do it.”

(d) On or about August 2, 2002, at the arraignment of the defendant in *People v. Richard Dodson*, prior to any plea by the defendant, respondent informed the defendant that he was charged with Petit Larceny (for allegedly stealing beer) and then

said, “Why do you do things like this?” When the defendant replied that he did not know, respondent stated that the defendant’s actions made no sense and that it was probably the most expensive beer the defendant would ever drink in his life. Respondent added that the defendant should not even have been drinking and stated, “Why there aren’t more charges, I don’t know.”

(e) On or about August 2, 2002, at the arraignment of the defendant in *People v. James Blair* on a charge of Harassment, respondent listened to the defendant’s *ex parte* recitation of the circumstances surrounding the offense and then commented that respondent did not blame the defendant for defending himself during the altercation.

(f) On or about October 4, 2002, at the arraignment of the defendant in *People v. Richard Dodson* on charges of Possession Of Alcohol Under 21 and Consuming Alcohol In A Motor Vehicle, respondent stated to the defendant, who had not yet entered a plea, “Don’t you understand you can’t drink? You shouldn’t even drink at 21 in a motor vehicle.”

(g) On or about October 4, 2002, at the arraignment of the defendant in *People v. Gregory Zelezny*, respondent informed the defendant, who had not yet entered a plea to the charge of Disorderly Conduct, that had the defendant been immediately arraigned after the incident, respondent would have sent him to jail.

3. Respondent made the statements set forth in paragraphs 2(a) to (g) above in a misguided attempt to deter the young defendants from further transgressions

with the law. Respondent now recognizes that his remarks were improper and conveyed the impression that he had prejudged the defendants' guilt.

As to Charge II of the Formal Written Complaint:

4. As set forth below, respondent failed to properly advise defendants of their rights to counsel and to assigned counsel, and failed to take affirmative action to effectuate the defendants' rights to counsel, as required by Section 170.10(4) of the Criminal Procedure Law.

(a) On or about August 2, 2002, at the arraignment of the defendant in *People v. James Blair* on a charge of Harassment, respondent failed to inform the defendant of his right to counsel and to assigned counsel.

(b) On or about August 2, 2002, at the arraignment of the defendant in *People v. William Skotarczak* on charges of Aggravated Unlicensed Operation, 3rd Degree, No Front Plate and Unlawful Possession Of Marijuana, respondent failed to advise the defendant of his right to counsel and to assigned counsel before accepting the defendant's guilty plea to the charges and imposing fines.

(c) On or about August 2, 2002, at arraignment, respondent accepted a guilty plea to a charge of Disorderly Conduct from the defendant in *People v. Joseph Dolly* without advising the defendant of his right to counsel and to assigned counsel.

(d) On or about August 2, 2002, at arraignment, respondent accepted a guilty plea from the defendant in *People v. John Doxstader* to a charge of Disorderly Conduct without advising the defendant of the right to counsel and to assigned counsel.

(e) On or about August 2, 2002, at arraignment on a charge of Consuming Alcohol In A Motor Vehicle, respondent failed to advise the defendant in *People v. Christopher Mickus* of his right to counsel before accepting a guilty plea and imposing a fine.

(f) On or about August 9, 2002, respondent arraigned the defendant in *People v. Katina Sarantopoulos* on a charge of Disorderly Conduct and accepted the defendant's guilty plea to the charge without advising her of her right to counsel; in addition, respondent told the defendant she was not entitled to assigned counsel.

(g) On or about September 6, 2002, at the arraignment of the defendant in *People v. Joshua Meade* on charges of Harassment and Possession Of Alcohol Under 21, respondent informed the defendant that he was not entitled to assigned counsel because the charges were violations.

(h) On or about October 4, 2002, at the arraignment in *People v. Gregory Zelezny*, respondent accepted a guilty plea from the defendant to a charge of Disorderly Conduct, without advising him of his right to counsel and to assigned counsel.

(i) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Charles Bastedo* of the right to counsel and to assigned counsel.

(j) On or about October 4, 2002, at arraignment, prior to accepting a guilty plea, respondent failed to advise the defendant in *People v. Robert Epting* of his right to counsel and to assigned counsel on a charge of Disorderly Conduct and informed

the defendant that respondent could not assign an attorney because he did not intend to sentence the defendant to jail.

(k) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Christopher Taylor* of his right to counsel and to assigned counsel and informed the defendant that if he wanted an attorney, he could get one himself. The defendant pleaded guilty on a later date without counsel, and respondent imposed a fine.

(l) On or about October 4, 2002, respondent conducted an arraignment of the defendant in *People v. Jamie Herb* on charges of Loitering, Possession Of Alcohol Under 21 and Unlawful Possession Of Marijuana and failed to advise the defendant of the right to counsel and to assigned counsel.

(m) On or about October 4, 2002, at arraignment, respondent failed to advise the defendant in *People v. Trey Wilson* of his right to assigned counsel with respect to charges of Loitering, Possession Of Alcohol Under 21 and Throwing Refuse In Public Water.

(n) On or about October 4, 2002, at arraignment on a charge of Loitering, respondent failed to advise the defendant in *People v. Edward Fehring* of his right to assigned counsel and informed the defendant that if he needed an attorney, "hire one." The defendant pleaded guilty to the charge on a subsequent date, and respondent imposed a fine.

(o) On or about October 4, 2002, at the arraignment of the defendant in *People v. Richard Dodson*, respondent accepted guilty pleas from the defendant to charges of Possession Of Alcohol Under 21 and Consuming Alcohol In A Motor Vehicle, without advising the defendant of his right to counsel.

(p) On or about October 4, 2002, at arraignment on a charge of Possession Of Alcohol Under 21, respondent failed to advise the defendant in *People v. Richard Santos* of the right to counsel.

(q) On or about October 4, 2002, at arraignment, respondent accepted a guilty plea from the defendant in *People v. Destiny Baker* to a charge of Possession Of Alcohol Under 21 and imposed a fine, without informing the defendant of her right to counsel.

5. Respondent asserts that he was under the misapprehension that assigned counsel was not available to defendants charged with violations. He now recognizes the importance of advising all defendants of their right to counsel, and advising defendants of their right to assigned counsel in all cases in which jail is an authorized sentence, other than vehicle and traffic infractions. Respondent stipulates that he will properly advise all defendants in the future and will take such steps as are necessary to effectuate the defendants' rights to counsel and to assigned counsel.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 100.3(B)(6) of the Rules Governing Judicial Conduct, engaged in misconduct in office

prejudicial to the administration of justice and should be disciplined “for cause,” within the meaning of Article 6, Section 22(a) of the State Constitution and Section 44(1) of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent’s misconduct is established.

In numerous cases, respondent made statements at arraignment which indicated bias and prejudgment concerning the charges, engaged in improper, *ex parte* questioning of unrepresented defendants, and failed to advise defendants of the right to counsel as required by law.

At a time when the defendants were entitled to a presumption of innocence, respondent not only made statements which assumed the defendants’ guilt, but cross-examined the defendants about the underlying facts. By his improper, *ex parte* questioning of defendants who had not yet entered a plea, respondent created a risk of eliciting admissions of guilt. Respondent’s conduct was antithetical to the proper role of a judge at an arraignment, which is to be an impartial arbiter, and was inconsistent with the fair and proper administration of justice. It is inappropriate for a judge to lecture defendants about their transgressions before they have been afforded the full panoply of rights and before they have entered a plea. Respondent’s hectoring, biased statements violated his duty to be “patient, dignified and courteous” to litigants and to refrain from improper, *ex parte* communications (Rules Governing Judicial Conduct, 22 NYCRR §§100.3[B][3] and 100.3[B][6]).

A judge is also required to advise all defendants charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel and must take such affirmative steps as are necessary to effectuate the right (Criminal Procedure Law §170.10[4]; *Matter of Pemrick*, 2000 Ann Rep 141 [Comm on Jud Conduct]). Although respondent should be familiar with this fundamental principle of law after more than 20 years of experience as a judge, he repeatedly violated the statutory requirement, either by omission or, in some cases, by erroneously advising unrepresented defendants that they were not entitled to assigned counsel before accepting their guilty pleas. By his conduct, respondent failed to “be faithful to the law” as required by Section 100.3(B)(1) of the Rules Governing Judicial Conduct. In mitigation, respondent now recognizes the importance of properly advising defendants of their right to counsel and asserts that in the future he will properly do so.

We note that in December 2001, only a few months before his misconduct in these matters, respondent was admonished by the Commission for engaging in an improper, *ex parte* communication. In view of his prior discipline, respondent should have been especially sensitive to the high standards of conduct expected of judges.

By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

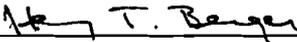
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano and Ms. Moore were not present.

CERTIFICATION

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

Dated: September 19, 2003



Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct