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

MONROE B. BISHOP,

a Justice of the Hinsdale Town Court,
Cattaraugus County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Kathleen Martin, Of Counsel) for the Commission

Honorable Monroe B. Bishop, *pro se*

The respondent, Monroe B. Bishop, a Justice of the Hinsdale Town Court, Cattaraugus County, was served with a Formal Written Complaint dated October 6, 2008, containing one charge. The Formal Written Complaint alleged that in a summary

proceeding for eviction and back rent, respondent ruled against the defendant based upon an improper *ex parte* communication. Respondent filed an answer dated November 13, 2008.

On February 23, 2009, the Administrator of the Commission 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 March 12, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Hinsdale Town Court from May 1995 through December 2001 and from January 2003 to the present. He is not an attorney.

2. On or about July 25, 2007, Scott Witzigman commenced a summary proceeding for eviction and a claim for back rent against Shelly Dunning in the Hinsdale Town Court. The property at issue was located at 4329 Whitehouse Road, Hinsdale, New York.

3. Mr. Witzigman was represented by attorney J. Michael Shane. Ms. Dunning was represented by attorney Jay Carr during negotiations between the parties for her attempted purchase of the property. Mr. Carr did not represent Ms. Dunning in connection with the eviction proceeding.

4. From August 8, 2007, to October 31, 2007, respondent presided over *Witzigman v. Dunning*. The plaintiff was represented by Mr. Shane. The defendant appeared *pro se*.

5. During separate court appearances on August 8, 2007, and September 5, 2007, Ms. Dunning told respondent that she was in the process of obtaining financing for the purchase of the property from Mr. Witzigman. Ms. Dunning indicated to respondent that she wished to allow her daughter to continue in the same school district and that she was in the process of obtaining grants and financing from Neighborhood Works, a community action program, that would enable her to purchase the home. Ms. Dunning also told respondent that she had difficulty reaching her attorney about the financing of the property. Respondent advised Ms. Dunning to go to Mr. Carr's office to learn the status of the grants. Respondent adjourned the summary proceeding twice in order to provide the parties with time to finalize a purchase agreement for the property, with the last court appearance scheduled for October 31, 2007.

6. On October 25, 2007, respondent visited Mr. Carr's office, intending to speak to him regarding Ms. Dunning's attempts to obtain financing for the purchase of the Witzigman property. Respondent did not have the consent of Ms. Dunning, Mr. Witzigman or Mr. Shane to speak with Mr. Carr, and none of them was present when respondent went to the office.

7. At Mr. Carr's office, respondent spoke with Mr. Carr's secretary and learned that Mr. Carr was not present. Respondent told Mr. Carr's secretary that he had

come to the office to see how many grants had been obtained for Ms. Dunning, stating that Ms. Dunning was scheduled to return to court in a few days and respondent wanted to ensure that she had obtained the funding to purchase the Witzigman property. Mr. Carr's secretary informed respondent that there was no record of any grant money in Ms. Dunning's file folder. On the basis of this discussion, respondent concluded that Ms. Dunning had not obtained financing.

8. On October 31, 2007, during the final court appearance in the *Witzigman* case, respondent told Ms. Dunning and Mr. Witzigman that he had spoken with Mr. Carr regarding Ms. Dunning's finances, when in fact he had spoken only to Mr. Carr's secretary. Respondent said he knew Ms. Dunning had not obtained the funds with which to purchase the property.

9. Based on his unauthorized *ex parte* conversation with Mr. Carr's secretary, respondent then ruled in favor of Mr. Witzigman and issued an order of eviction against Ms. Dunning.

10. Respondent has been candid and cooperative throughout this proceeding. Respondent acknowledges that his conversation with Mr. Carr's secretary constituted an improper *ex parte* communication concerning a pending matter and that he should have based his determination only on a proper record of testimony and submissions to the court. Respondent promises in future cases neither to initiate nor consider unauthorized substantive communications outside the presence of the parties, unless the parties consent in advance.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) 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.

In the course of a summary eviction matter, respondent initiated a prohibited *ex parte* communication by visiting the office of an attorney who represented the defendant in a related matter and questioning the attorney's secretary about the defendant's finances. Thereafter, based on the information he obtained in that unauthorized *ex parte* conversation, respondent ruled against the defendant and issued an order of eviction. Respondent's out-of-court conversation, without the knowledge or consent of the parties, was contrary to well-established ethical principles.

Section 100.3[B][6] of the Rules explicitly prohibits a judge from initiating or considering unauthorized *ex parte* communications. Such conduct, which deprives the parties of the right to have their cases decided based upon a proper record of testimony and submissions to the court, warrants public discipline. *See, e.g., Matter of Williams,* 2008 Annual Report 101 (Comm on Judicial Conduct) (after reserving decision in a Harassment case, judge spoke to the arresting officer concerning a matter affecting the defendant's credibility); *Matter of More*, 1996 Annual Report 99 (Comm on Judicial

Conduct) (judge disposed of three cases based on *ex parte* communications and dismissed charges in three traffic cases without notice to the prosecutor); *Matter of Racicot*, 1982 Annual Report 99 (Comm on Judicial Conduct) (judge contacted a defendant's employer, co-workers, neighbors and others to obtain information about disputed evidentiary issues).

Respondent's in-court disclosure of the *ex parte* communication did not cure the adverse effects of his misconduct. Although he apparently recognized that he was obligated to disclose his out-of-court conversation, respondent's statement that he had spoken to the attorney, when in fact he had only spoken to the attorney's secretary, compounded the patent unfairness of his reliance on the information he received. Clearly his belated, misleading disclosure did not rectify the improper *ex parte* communication that he had initiated.

In imposing sanction, we note respondent's previous discipline in 2000 for presiding over his niece's case and for using a criminal summons in a small claims case to secure the defendant's presence in court (*Matter of Bishop*, 2001 Annual Report 83 [Comm on Judicial Conduct]).

We also note that respondent has acknowledged the impropriety of his conduct as described herein and has pledged to avoid such misconduct in the future.

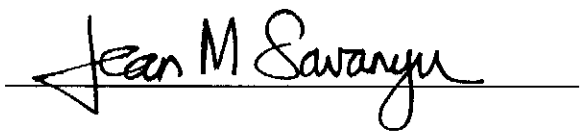
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: March 18, 2009



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