

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

ROY M. DUMAR,

a Justice of the Mohawk Town Court,
Montgomery County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Honorable Roy M. Dumar, *pro se*

The respondent, Roy M. Dumar, a Justice of the Mohawk Town Court,
Montgomery County, was served with a Formal Written Complaint dated February 10,

2004, containing one charge. Respondent filed an answer dated March 3, 2004.

On April 16, 2004, 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 censured and waiving further submissions and oral argument.

On May 6, 2004, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a Justice of the Mohawk Town Court since September 1999. He is not an attorney. He has attended and successfully completed all required training sessions for judges.

2. Prior to February 2003, respondent purchased two snowmobiles, on an "as is" basis, from Gable Motor Sports, Inc., in Cobleskill, New York. Respondent nevertheless believed from his discussions with the salesman that Gable Motor Sports would take care of any problems that arose with the snowmobiles.

3. In or about February 2003, respondent went to Gable Motor Sports, spoke to Chris Gerkin, a salesman, and said that he wanted reimbursement for repairs to the snowmobiles that had been performed at another establishment.

4. When Mr. Gerkin replied that he could not reimburse respondent, respondent stated that he was a judge and that he would take the matter to small claims court.

5. Thereafter, on or about February 26, 2003, respondent returned to

Gable Motor Sports, complained to Sandra Campbell, a secretary, that he would take the matter to small claims court if he did not get reimbursement for the snowmobile repairs, and gave Ms. Campbell his judicial business card, identifying himself as a Mohawk Town Justice.

6. On or about February 28, 2003, respondent again visited Gable Motor Sports, spoke with manager Bob Philips, again demanded reimbursement, stated repeatedly that he was a judge, and said that he did not want to “bad mouth” Gable Motor Sports and that he knew how “the system” worked.

7. On or about March 2, 2003, respondent telephoned the residence of Joseph Gable, the proprietor of Gable Motor Sports, identified himself to Mr. Gable’s wife as “Judge Dumar,” and left a message with her that he wanted to speak with Mr. Gable. In at least one subsequent conversation with Joseph Gable on the subject of reimbursement for the snowmobile repairs, respondent identified himself as a judge.

8. Respondent left voice messages on the telephone answering system at Gable Motor Sports on one or more occasions, identifying himself as a judge.

9. On or about March 11, 2003, respondent went to the Cobleskill Town Court to file a small claims court action against Gable Motor Sports and left his judicial business card with the court clerk along with the paperwork for filing the claim.

10. On April 17, 2003, prior to the small claims court hearing, respondent introduced himself as a judge to one of the justices of the Cobleskill Town Court. Respondent did not know at the time which Cobleskill town justice would be

hearing the claim. As it resulted, the other town justice heard the claim and later dismissed it.

11. On or about April 20, 2003, in a conversation with a New York State Consumer Protection Board representative, respondent identified himself as a judge while making a complaint concerning Gable Motor Sports.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.2(C) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22 of the New York State Constitution and Section 44(1) of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By repeatedly invoking his judicial status in connection with a private dispute, respondent attempted to use the prestige of his judicial office to advance his personal interests, in violation of well-established ethical standards (Rules Governing Judicial Conduct §100.2[C]).

During a series of encounters while negotiating with a dealership in an attempt to be reimbursed for snowmobile repairs, respondent made numerous, gratuitous references to his judicial position. His repeated, pointed references to his judicial status -- to a salesman, a secretary, the manager and the proprietor -- could well be perceived as intimidating, especially in the context of demanding reimbursement for the repairs,

threatening a lawsuit and saying that he knew how “the system” worked. Respondent underscored his judicial status by leaving his judicial business card at the dealership. Regardless of his intent, such conduct creates the appearance that he was attempting to use his judicial prestige to further his personal interests, which is prohibited. *See, e.g., Matter of Werner*, 2003 Ann Rep 198 (Comm’n on Jud Conduct, Oct 1, 2002) (judge displayed his judicial ID card during a traffic stop); *Matter of Ohlig*, 2002 Ann Rep 135 (Comm’n on Jud Conduct, Nov 19, 2001) (judge intervened in a fee dispute involving his wife and left his judicial business card at the office of his wife’s adversary). Respondent’s judicial status was irrelevant to the merits of his claim for reimbursement, and it was unnecessary and inappropriate for respondent to remind the dealership on repeated occasions that he is a judge.

Respondent continued to flaunt his judicial status when he left his business card with the clerk of the court while filing his small claims action, when he introduced himself to a judge of the court where the case was pending, and when he identified himself as a judge while making a complaint about the dealership to a state agency. Viewed in its totality, respondent’s conduct showed insensitivity to the special ethical obligations of judges.

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

Mr. Goldman, Judge Ciardullo, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Judge Luciano dissent and vote to reject the agreed statement of facts on the basis that the disposition is too severe.

Mr. Pope was not present.

CERTIFICATION

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

Dated: May 18, 2004

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct