

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 Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Norberta Fuller Krupczak for Respondent

The respondent, Leigh W. Fuller, a justice of the Canajoharie Town and Village Courts, Montgomery County, was served with a Formal Written Complaint dated June 5, 2001, containing three charges. Respondent filed an answer dated June 27, 2001.

On November 6, 2001, the Administrator of the Commission, respondent and respondent's counsel 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, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement 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 1995. He is not a lawyer. He has attended and successfully completed all judicial training sessions sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On or about February 10, 2000, the plaintiff in Gregory Duesler v. James Blair appeared before respondent for the scheduled trial of Mr. Duesler's small claim for \$385, plus interest and costs, for services rendered in the defendant's establishment. Mr. Blair did not appear at the scheduled time, and, after waiting 30 minutes, respondent administered an oath to the plaintiff, heard his testimony in support of the claim and received documentary evidence. At the conclusion of the proceeding,

respondent informed Mr. Duesler that respondent would issue a default judgment in his favor, due to the defendant's failure to appear.

3. Shortly after Mr. Duesler left the court, Mr. Blair appeared in court and informed respondent that he adamantly disputed the plaintiff's claim and that he did not owe Mr. Duesler any money. On or about March 13, 2000, respondent issued a judgment in favor of the plaintiff for only \$150, plus costs. Respondent held no rehearing, but lowered the amount of the judgment based upon his *ex parte* discussion with the defendant.

4. On or about March 23, 2000, Gregory Duesler questioned respondent about the reduced amount of the judgment, objected and expressed the view that he wished to confront the defendant on the amount due. Respondent told Mr. Duesler that although respondent had spoken to Mr. Blair, Mr. Duesler did not have the right to confront the defendant in the case.

As to Charge II of the Formal Written Complaint:

5. On or about August 21, 1997, the defendant in People v. Eileen Shafran appeared before respondent for trial on a Speeding charge. Ms. Shafran had previously pleaded not guilty by mail and had requested a supporting deposition. When she arrived at court, she was offered a plea reduction by the assistant district attorney. When Ms. Shafran then went before the bench and requested the arresting officer's

supporting deposition, which she had not received, respondent angrily informed her that she did not have the right to the arresting officer's supporting deposition because she had been offered a plea reduction.

7. By informing Ms. Shafran that she was not entitled to the supporting deposition, respondent coerced the defendant's plea to a reduced charge, notwithstanding that the defendant was entitled to dismissal of the Speeding charge, pursuant to Section 100.25 of the Criminal Procedure Law, because of the officer's failure to furnish the supporting deposition.

With respect to Charge III of the Formal Written Complaint:

8. Until the Commission questioned the practice in early 2001, as a matter of practice, respondent regularly held court in his chambers and called defendants into the room individually. Respondent's practice violated Section 4 of the Judiciary Law, which requires that the proceedings be open to the public. In addition, on monthly district attorney court dates, respondent created the impression that the assistant district attorney (ADA) was in charge of the court proceedings, by allowing the ADA to call cases and offer plea bargains in the courtroom while respondent accepted pleas and imposed sentences in chambers.

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)(1), 100.3(B)(3) and

100.3(B)(6) of the Rules Governing Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Every judge, lawyer or non-lawyer, is required to be competent in the law and to act in a manner that promotes public confidence in the integrity of the judiciary (Sections 100.2[A] and 100.3[B][1] of the Rules Governing Judicial Conduct; Matter of Gori, NY Commn on Jud Conduct, March 29, 2001). As a judge since 1981, respondent should be familiar with fundamental principles of law and the ethical rules.

By engaging in an *ex parte* discussion with the defendant in a small claims case and rendering a judgment based upon the discussion, respondent violated well-established ethical standards prohibiting *ex parte* communications and requiring a judge to afford every person who has a legal interest in a proceeding the right to be heard according to law (Section 100.3[B][6] of the Rules). Respondent compounded his misconduct by advising the plaintiff, who had questioned respondent's conduct, that the plaintiff did not have a right to confront the defendant in the case.

It was also improper for respondent to advise the defendant in a traffic case that she was not entitled to a supporting deposition because she had been offered a plea reduction. Respondent's erroneous statement of the law effectively coerced the defendant's plea to a reduced charge, although she was entitled to dismissal of the Speeding charge, pursuant to Section 100.25 of the Criminal Procedure Law.

By holding court in his chambers, respondent excluded the public from court proceedings, contrary to Section 4 of the Judiciary Law. Public trials are intended to safeguard a defendant's right to a fair trial and to promote public confidence in the integrity of the judicial process. Matter of Shannon (NY Commn on Jud Conduct, Nov. 19, 2001). In addition, by allowing the prosecutor to call cases and offer plea bargains in the courtroom while respondent held court in chambers, respondent conveyed the impression that the prosecutor, not an impartial arbiter, was in charge of court proceedings.

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

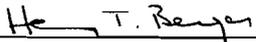
Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

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

Dated: December 26, 2001


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