

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

WILLIAM J. GORI,

DETERMINATION

a Justice of the Duane Town Court, Franklin
County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chair
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

John A. Piasecki for Respondent

The respondent, William J. Gori, a justice of the Duane Town Court,
Franklin County, was served with a Formal Written Complaint dated February 14, 2000,
containing one charge. The charge alleged that in a small claims case, respondent failed

to follow the law, engaged in improper *ex parte* communications and failed to afford the defendant full opportunity to be heard.

By order dated April 3, 2000, the Commission designated Roger W. Robinson, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 20, 2000, in Albany, New York. The referee filed a report with the Commission dated October 31, 2000.

The parties filed briefs with respect to the referee's report. Oral argument was waived. On February 1, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Duane Town Court since January 1, 1998. Respondent, who is not a lawyer, has completed all required judicial training.

2. In December 1998, Gary Betters filed a small claims court action in the Malone Village Court against the Village of Malone, seeking \$1,588.60 in back wages for his previous employment as co-director of the Malone Memorial Recreation Park, run by the Malone Recreation Commission.

3. After the village justices disqualified themselves, the case was transferred to the Malone Town Court. It was thereafter transferred to the Duane Town Court because of an apparent conflict of interest, since the Town of Malone also

contributed to the recreation commission's budget.

4. Respondent set a trial date for February 1999, then adjourned it to March 11, 1999, at the request of Derek Champagne, the Malone village attorney.

5. On March 9, 1999, Mr. Champagne served a motion to dismiss Mr. Betters' claim on the basis that the appropriate defendant was the Malone Recreation Commission, not the Village of Malone. Mr. Champagne attached to his motion copies of the Malone Village Law, setting up the recreation commission jointly with the Town of Malone, and the relevant portion of the General Municipal Law.

6. On March 10 or March 11, 1999, Mr. Champagne telephoned respondent to ask about the status of his motion. Mr. Champagne wanted to avoid making an unnecessary trip to court if respondent had decided to grant the motion. Respondent told Mr. Champagne that if he provided clarification regarding the payments to Mr. Betters, respondent would grant the motion and Mr. Champagne's appearance in court would not be necessary. At respondent's request, Mr. Champagne dictated a memorandum to a village employee, who then faxed it to respondent. A copy of the memorandum was not sent to Mr. Betters. The memorandum states:

As Village Attorney, I have examined the issue of whether the Village of Malone authorized at anytime to pay Gary Betters the additional funds requested he be paid in the Small Claims Action Gary Betters vs. The Village of Malone.

The Recreation Commission informed the Village of Malone that Mr. Betters has previously been paid for any and all

services provided in his previous employment with the Malone Recreation Commission.

7. Prior to the scheduled trial, respondent went to the Village of Malone offices and spoke *ex parte* with Richard Robare, Village treasurer and budget officer, concerning Gary Betters' compensation history. Respondent told Mr. Robare that respondent had a pending case regarding Mr. Betters' claim and that he wanted to know something about who paid Mr. Betters and his connection with the Village. Mr. Robare told respondent that Mr. Betters was under the direction of the recreation commission and that the Town and Village paid the funds jointly, but that the Village actually disbursed the money. Mr. Robare, who would have been one of the key witnesses in the Betters trial, also told respondent that he did not feel that Mr. Betters was entitled to any more money.

8. Respondent advised Mr. Champagne that he had spoken to Mr. Robare, but he never informed Mr. Betters of his conversation with Mr. Robare.

9. On March 11, 1999, the scheduled trial date, Mr. Betters appeared before respondent. Respondent began the proceeding by saying that he had "stepped on some toes" regarding the case but that he was not going to dismiss the claim.

10. Notwithstanding that respondent had previously indicated to Mr. Champagne that he would grant the motion to dismiss and that Mr. Champagne was not required to appear for trial on March 11, 1999, respondent held a hearing on that date in

the absence of Mr. Champagne.

11. Respondent failed to administer an oath to Mr. Betters, in violation of Section 214.10(j) of the Uniform Civil Rules for the Justice Courts. Respondent received unsworn testimony from Mr. Betters concerning the substance of his claim for back wages.

12. During the proceeding on March 11, 1999, Mr. Betters objected that no one was present on behalf of the defendant. Respondent read to Mr. Betters the memorandum respondent had received from Mr. Champagne, but did not provide a copy of it to Mr. Betters.

13. At the conclusion of the proceeding, respondent told Mr. Betters that he could submit additional information in support of his claim before respondent made his decision and that he would render a decision by March 19, 1999. Mr. Betters agreed to furnish the additional material by Monday, March 15, 1999.

14. On March 15, 1999, Mr. Betters mailed additional documents to respondent regarding his claim. On March 14, 1999, before he had received Mr. Betters' submission, respondent sent his decision to Mr. Champagne dismissing Mr. Betters' claim, and on March 15, 1999, respondent sent a similar decision to Mr. Betters, which Mr. Betters received the following day. Respondent's decision states that he had reviewed documents and Mr. Betters' "testimony."

15. After receiving respondent's decision, Mr. Betters telephoned

respondent, who said that he had dismissed the claim because the recreation commission had not authorized the payment.

16. On March 16, 1999, Mr. Betters sent respondent a letter in which he objected to the manner in which respondent had handled the claim, specifically protesting that respondent had received evidence from Mr. Champagne in advance of the trial, that respondent had failed to administer an oath to Mr. Betters, and that respondent had not reviewed Mr. Betters' additional evidence. Mr. Betters requested that respondent declare a mistrial and transfer the case to another court. Respondent did not respond to Mr. Betters' letter.

17. Mr. Champagne was unaware that respondent had held any proceeding on March 11, 1999, until he received a copy of Mr. Betters' letter to respondent complaining that the proceeding was unfair.

18. Thereafter, Mr. Betters was unable to find a local attorney who would handle his appeal, which was ultimately dismissed by the County Court for failure to perfect the appeal.

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

Respondent's handling of the small claims case of Besters v. Village of Malone was fraught with errors as to basic procedures and conveyed the appearance that he prejudged the case based upon inappropriate, *ex parte* contacts. Respondent solicited *ex parte* information regarding the merits of Mr. Besters' claim from both the Village treasurer and the defendant's attorney, and advised the defendant's attorney that he did not have to appear on the scheduled date since respondent intended to grant the motion to dismiss pending receipt of the requested information. Thereafter, respondent held a hearing in the absence of the defendant's attorney and accepted unsworn testimony from Mr. Besters as to the merits of the claim; significantly, the defendant's attorney was unaware that any proceeding had been held until he received a copy of Mr. Besters' letter complaining that the hearing had been unfair. Compounding the appearance that he prejudged the case, respondent rendered a decision granting the motion to dismiss prior to the deadline he had set for Mr. Besters to submit additional material regarding his claim.

Respondent's conduct violated established ethical standards requiring a judge to respect and comply with the law, to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and to accord the parties full opportunity to be heard according to law (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A], 100.3[B][1] and 100.3[B][6]).

We reject the contention of respondent's counsel that the concept of *ex parte* communications is "esoteric" and that it is unrealistic to expect lay justices to be fully

familiar with the ethical and procedural rules. Town and village justices wield enormous power in civil and criminal cases, and it is not unreasonable to expect them to know and follow basic statutory procedures. As the Court of Appeals has held, ignorance and lack of competence do not excuse ethical violations, and every judge has an obligation to learn and abide by the Rules Governing Judicial Conduct. Matter of VonderHeide v. Comm. on Judicial Conduct, 72 NY2d 658, 660 (1988). Moreover, respondent's testimony that he understood that each party should have the opportunity to hear the other's evidence and to cross-examine witnesses belies any suggestion that he was unfamiliar with the appropriate standards.

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

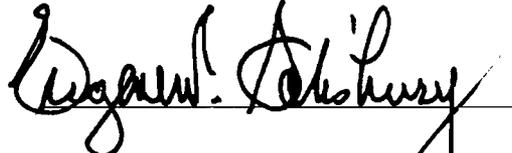
Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

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

Dated: March 29, 2001



Hon. Eugene W. Salisbury, Chair
New York State
Commission on Judicial Conduct