

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

GARY P. ARNDT,

a Justice of the Franklin Town Court,
Delaware County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Andrew Puritz Law Office (by Andrew Puritz) for respondent

Respondent, Gary P. Arndt, a Justice of the Franklin Town Court, Delaware County, was served with a Formal Written Complaint (“Complaint”) dated February 1, 2022 containing four charges. Charge I of the Complaint alleged from August 2018 to July 2019, in connection with his handling of three small claims cases, respondent failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, failed to respect and comply with the law, failed to be faithful to the law and maintain professional competence in it, failed to dispose of judicial matters promptly, efficiently, and fairly, failed to require order and decorum in proceedings, publicly commented on a pending matter, and engaged in and considered improper *ex parte* communications. Charge II alleged that on August 9, 2018, at a sentencing proceeding in *People v. Avery Meehan*, respondent changed the terms of the plea agreement based upon an *ex parte* conversation with the defendant’s attorney and without notice to or the consent of the prosecution. Charge III alleged that between August 9, 2018 and April 11, 2019, in four traffic infraction cases, respondent engaged in unauthorized *ex parte* communications with the defendants and/or reduced or dismissed the charges without notice to or the consent of the prosecution, as required by Sections 170.30, 170.45, 210.45, 220.10(3) and 340.20(1) of the Criminal Procedure Law (“CPL”). Charge IV alleged that on July 25, 2019, in presiding over *People v. Sebastian Swift*, respondent created the

appearance that he had pre-judged the defendant's guilt, failed to advise the defendant of his rights and failed to take any action to accord the defendant an opportunity to exercise those rights. Respondent filed an Answer dated March 20, 2022.

On July 13, 2022, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that, if certain requirements were met, respondent be censured and waiving further submissions and oral argument.

On August 11, 2022, the Commission accepted the Agreed Statement. On September 7, 2022, respondent provided documentation that he had complied with the requirements of Paragraphs 54(A) and (B) of the Agreed Statement.

Accordingly, the Commission made the following determination:

1. Respondent has been a Justice of the Franklin Town Court, Delaware County, since January 1, 2010. Respondent's current term expires on December 31, 2025. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

Charles Hartley v. Rex Safford and Charles Safford

2. On August 9, 2018, respondent presided over *Charles Hartley v. Rex*

Safford and Charles Safford, a small claims case in which the plaintiff sought \$375 from the defendants for failure to complete a painting job. A transcript of the proceeding is annexed as Exhibit A to the Agreed Statement.

3. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

4. Respondent began the proceeding by reading aloud the summary of the cause of action attached to the plaintiff's small claims filing and, without requiring the plaintiff to present any evidence, asked defendant Rex Safford, "So what'd you do with the money?"¹

5. Respondent permitted the plaintiff and his wife to repeatedly interrupt Rex Safford as he attempted to explain that he had started the work but was unable to complete it because his father and business partner, defendant Charles Safford, had been hospitalized due to a stroke, and because the plaintiff locked the defendant's ladders in the plaintiff's garage and demanded a refund without letting the defendant finish the job or access his ladders.

6. Respondent admonished the defendant for interrupting the plaintiff and, at one point, told the defendant, "Just will you stop getting mouthy with me?"

¹ The transcript simply identifies "Mr. Safford" without providing his first name. Based on the testimony provided during the proceeding, it appears that the "Mr. Safford" who spoke during the proceeding was Rex Safford.

7. The plaintiff admitted that he kept the defendant's ladders "someplace where [the defendant could not] get to them" and told the defendant that he would have to countersue him to get the ladders back. Respondent then attempted to resolve the case by persuading the defendant to pay to the plaintiff \$350 for the return of his ladders. After the defendant declined, respondent told him, "I'm going to reserve my decision. If you want to continue the case, very well. But as of now, I'm going to make a decision against you – do you understand that – for the 350 dollars. Actually, 375, at this point. And I want you to get your ladders back. When you pay him the money, you'll get your ladders back, okay? Other than that, you don't have your ladders."

8. After the defendant left the courtroom, the plaintiff's wife asked respondent, "So what happens now?" Respondent replied, "I'm going to think this out and do a judgment against him, more than likely . . . And then you put a lien on his house, but I'm not sure about your ladders. You might have to give him his ladder back."

9. Respondent allowed the plaintiff and his wife to continue speaking about the substance of the claim until Robert Gouldin, an attorney present for an unrelated case, intervened and advised the plaintiff that respondent was not permitted to give him legal advice or listen to him after the proceeding had ended.²

² In the transcript, Mr. Gouldin is identified as "UNIDENTIFIED ATTORNEY."

10. After the plaintiff and his wife left the courtroom, Mr. Gouldin told respondent that he was “making the wrong decision.” Mr. Gouldin advised respondent that the defendant performed work for which he was entitled to be compensated, and that the plaintiff refused to let him finish the rest of the job and took his ladders. In response to the comments made by Mr. Gouldin, respondent said he had “some more thinking” to do but that the defendant “was getting real snotty” and had “disappeared” on the plaintiff. At the conclusion of another set of proceedings, respondent discussed the *Hartley* case with the court clerk and told the clerk that he dealt with the defendant as he did because the defendant “was being a real dirtbag.”

11. Between August 9 and August 23, 2018, respondent separately telephoned and spoke with the parties. Consistent with the advice respondent received from Mr. Gouldin during the foregoing *ex parte* communications, respondent instructed the plaintiff to return the defendant’s ladders to him, and the plaintiff agreed. Respondent told the defendant about his instruction to the plaintiff. The plaintiff subsequently called the court and left a message stating that he had returned the ladders.

12. On August 23, 2018, respondent issued a judgment dismissing the claim. A copy of the Notice of Small Claims Judgment is annexed as Exhibit B to the Agreed Statement.

Ralph Franzese v. Amanda and Jesse Scott

13. On February 14, 2019, respondent presided over *Ralph Franzese v. Amanda and Jesse Scott*, a small claims case in which the plaintiff sought \$3,000 for damages to a furnace allegedly caused by the defendants' removal of the furnace's fuel line cap. A transcript of the proceeding is annexed as Exhibit C to the Agreed Statement.

14. During that proceeding, respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

15. Respondent began the proceeding by reading the cause of action on the plaintiff's small claims filing and asking the plaintiff if it was "correct" and "That's what happened[.]" Respondent then asked the defendants, "What's the story?" After directing the parties to speak one at a time, respondent permitted the parties to argue back and forth and speak out of order throughout the rest of the proceeding. At the end of the proceeding, respondent adjourned the hearing to April 11, 2019, to give both parties an opportunity to call witnesses.

16. On April 11, 2019, respondent presided over the adjourned hearing in *Franzese v. Scott*. A transcript of the proceeding is annexed as Exhibit D to the Agreed Statement.

17. The plaintiff did not call a witness in support of his claim. The

defendants called a witness, Dave Allen. After the parties spoke, an unidentified woman and respondent spoke in an apparent colloquy, then Mr. Allen started to speak, at which time respondent interjected and administered an oath to “everybody” at the same time. The unidentified woman and the plaintiff were the only individuals who responded to the oath. Amid intermittent testimony from Mr. Allen, respondent permitted the parties and the unidentified woman to argue back and forth and speak out of order throughout the rest of the proceeding.

18. Near the end of the proceeding, respondent asked the defendants if they would pay half of the damages sought by the plaintiff. When one of the defendants replied, “I don’t care. You’re the judge,” respondent said, “Well, I’m trying to be fair, okay? . . . It’s pretty hard to make a decision on who . . . who did what”

19. Respondent allowed the parties to interrupt him as he was speaking and said nothing when the defendant used profanity.

20. In response to the defendant stating, “Whatever you do – whatever – I don’t care,” respondent said, “Oh, I hate these civil cases.” Respondent stated that he would reserve judgment and ended the proceeding.

21. On April 24, 2019, respondent issued a judgment in favor of the defendants, dismissing the small claim.

Susan Gregory v. David Stanton, Jr.

22. On June 13, 2019, respondent presided over the small claims hearing of *Susan Gregory v. David Stanton, Jr.* A transcript of the proceeding is annexed as Exhibit E to the Agreed Statement.

23. The plaintiff sought over \$1,264 from the defendant as the remaining balance on payments for the purchase of a tractor.

24. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

25. The plaintiff presented her case and offered paperwork to the court in support of her claim. Respondent did not accept any of the plaintiff's paperwork into evidence.

26. After providing the defendant an opportunity to respond, respondent permitted the litigants to argue back and forth until he stated, "You're really asking the Court an awful lot to try to figure out on this, okay? It's extremely confusing and there's two words against – the two of you against each other." Respondent then told the plaintiff to "[g]et a lawyer and maybe you can put it all together with a lawyer and have a lawyer explain it to me." Respondent added, "You're trying to get me to figure out this whole mess and it's really a mess . . . This is not something I can do fairly and understand . . . I'm not that qualified to take care of it, to be honest with you." Without rendering a decision, respondent told the

plaintiff to come back to the court to “start another proceeding” after consulting with an attorney, “because really, it’s way over my head.” Respondent did not adjourn the proceeding to a new date or give the plaintiff a deadline to return to the court.

27. After the plaintiff left the courtroom, respondent told the defendant that the plaintiff had “bombarded [him] with a bunch of stuff,” which was “impossible” for him “to try to decipher,” and that he “can’t understand a word [the plaintiff’s] saying.” Outside the plaintiff’s presence, respondent told the defendant that he was not going to make a decision, and that he was “going to adjourn the case, probably do a dismissal.”

28. During this *ex parte* communication with the defendant, respondent advised the defendant that if the plaintiff returned to court, she would have to “open up the case again,” at which time the court would send the defendant a notice to appear in court and that, if the plaintiff “has a lawyer and she has the proper paperwork and I can understand it, I’ll go from there.”

29. The defendant continued to speak to respondent about the substance of the small claim until the court clerk told the defendant that respondent had to “stop hearing,” which prompted respondent to state, “Yeah, I can’t really hear much more.” At that point, the defendant left the courtroom.

30. On July 11, 2019, respondent dismissed the small claim without

notifying the parties or issuing a decision from which the plaintiff could appeal. Copies of the Small Claim History Report and case file folder, both noting the dismissal, are annexed as Exhibit F to the Agreed Statement.

As to Charge II of the Formal Written Complaint

31. On August 9, 2018, in connection with *People v. Avery Meehan*, Delaware County Assistant District Attorney (ADA) Richard K. Caister, Jr., faxed to respondent's court a signed Memorandum of Plea Bargain, Release on Conditional Discharge form, and Community Service Program Court Order. Copies of those documents are annexed as Exhibits G, H, and I to the Agreed Statement, respectively. Under the terms of the Memorandum of Plea Bargain, the defendant agreed to plead guilty to Driving While Ability Impaired by Drugs, in violation of Vehicle and Traffic Law (VTL) Section 1192(4), and Aggravated Unlicensed Operation, in violation of VTL Section 511(1)(a), in satisfaction of all outstanding charges and in exchange for a sentence of a one-year conditional discharge, 25 hours of community service, an unspecified fine and requirements that the defendant attend a victim impact panel, undergo an impaired driver program and participate in an alcohol and drug evaluation and treatment program.

32. On August 9, 2018, ADA Caister emailed the court clerk, advising

her that he had sent the court the documents related to the plea and had been assured by the defendant's attorney, Robert Gouldin, that his appearance for the sentencing scheduled that night was unnecessary. ADA Caister added, "However, I wanted to ensure that [the] Court fully understands the plea agreement. The plea agreement as offered was that Mr. Meehan plead guilty to VTL §1192(4) DWAI Drugs and VTL §511(1)(a) with conditional discharges, and a condition of 25 hours of community service in full satisfaction of all remaining charges. If there are any issues or you have any questions, please don't hesitate to contact me on my cell phone." ADA Caister included his cell phone number in the email. A copy of the email is annexed as Exhibit J to the Agreed Statement.

33. Later that day, the defendant and Mr. Gouldin appeared before respondent. ADA Caister was not present. After a brief discussion about ADA Caister's absence, Mr. Gouldin raised the topic of the condition of the 25-hours of community service in the Memorandum of Plea Bargain and requested that respondent not sentence the defendant to that condition. Without notice to or the consent of any member of the prosecution, respondent granted Mr. Gouldin's request that the defendant not be sentenced to community service. Respondent sentenced the defendant to a one-year conditional discharge, the minimum fine

amounts (totaling \$1,193 including surcharges) and the other conditions outlined in the Memorandum of Plea Bargain.

As to Charge III of the Formal Written Complaint

People v. F.

34. On August 9, 2018, while presiding over *People v. F.*, in which the defendant was charged with Failure to Keep Right in violation of VTL Section 1120(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, in the absence of the prosecution and without the defendant having entered a guilty plea. A transcript of the proceeding is included in Exhibit A to the Agreed Statement.

People v. Song Jee Juong

35. On August 9, 2018, while presiding over *People v. Song Jee Juong*, in which the defendant was charged with Speed Not Reasonable and Prudent in violation of VTL Section 1180(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, in the absence of any member of the prosecution and without the defendant having entered a guilty plea. A transcript of the proceeding is included in Exhibit A to the Agreed Statement.

People v. Randall Cowles

36. On February 14, 2019, while presiding over *People v. Randall*

Cowles, in which the defendant was charged with Speeding for driving 71 mph in a 55-mph zone, in violation of VTL Section 1180-a, respondent received unauthorized *ex parte* information from the defendant, after the defendant entered a not-guilty plea and in the absence of any member of the prosecution. A copy of the transcript is annexed as Exhibit K to the Agreed Statement. Respondent then granted a reduction in the Speeding charge to driving 63 mph, without notice to and the consent of the prosecution, as required by CPL Sections 220.10(3) and 340.20(1).

People v. M. B.

37. On April 11, 2019, while presiding over *People v. M. B.*, in which the defendant was charged with Unregistered Motor Vehicle in violation of VTL Section 410(1)(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, without the defendant having entered a guilty plea thereto and in the absence of any member of the prosecution. A transcript of the proceeding is annexed as Exhibit L to the Agreed Statement. A copy of the Simplified Information/Certificate Concerning Violation of Law Relating to Vehicles is annexed as Exhibit M to the Agreed Statement. That same day, respondent dismissed the charge, based upon the defendant's *ex parte* submission of proof of

registration, without notice to and the consent of the prosecution, as required by CPL Sections 170.30, 170.45 and 210.45.

As to Charge IV of the Formal Written Complaint

38. On July 25, 2019, respondent presided over the arraignment of Sebastian Swift, who was charged with Unlawful Disposal of Solid Waste, in violation of Section 360.9(b)(3) of the New York Codes, Rules and Regulations (6 NYCRR §360.9[b][3]), and Disposal of Substances Injurious to Fish and Wildlife in a Stream, in violation of Environmental Conservation Law Section 11-0503(1). A transcript of the proceeding is annexed as Exhibit N to the Agreed Statement.

39. Before asking the defendant – who appeared without an attorney – how he pled to the charges, respondent asked the defendant, “So you have been dumping some waste off the side of the road, in streams and so on?” The defendant replied, “Just once. Yes, sir.”

40. Respondent stated, “I’m going to read you the rights. Well, in this case, I don’t think it’s necessary.” Respondent then asked the defendant how he pled to the charges, without informing him of his rights to the aid of counsel at the arraignment and at every subsequent stage of the action, to an adjournment for the purpose of obtaining counsel, and to have counsel assigned by the court if he was financially unable to obtain an attorney, and without according the defendant an

opportunity to exercise such rights and taking any affirmative action as is necessary to effectuate them, in violation of CPL Sections 170.10(3) and (4)(a).

41. After the defendant entered guilty pleas to both charges, respondent dismissed the Unlawful Disposal of Solid Waste charge and sentenced the defendant to a \$25 fine and \$75 surcharge on the Disposal of Substances Injurious to Fish and Wildlife in a Stream charge.

Additional Factors

42. Respondent has been cooperative, contrite and remorseful with the Commission throughout this inquiry. He has never been disciplined previously.

43. It does not appear that respondent acted out of malice or with intent to violate the rights of litigants in the cases herein. Rather, respondent's conduct appears to have resulted from his unfamiliarity with the law and procedures applicable to the cases herein.

44. Notwithstanding that he is a lay justice, respondent acknowledges his obligation to maintain professional competence in the law he administers, and otherwise be faithful to the ethical rules binding on all judges of the Unified Court System, lawyer and non-lawyer alike.

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), (2), (6), (7) and (8) of the Rules Governing Judicial Conduct ("Rules") and should be

disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law.

Charges I, II, III and IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Every judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must "avoid impropriety and the appearance of impropriety." (Rules, §100.2(A)) The Rules specifically prohibit a judge from initiating, permitting or considering *ex parte* communications about a pending matter and from making any public comment about a pending proceeding. (Rules, §§100.3(B)(6) and (8)) Respondent repeatedly acted in a manner that was inconsistent with these ethical obligations when he engaged in prohibited *ex parte* communications in seven different matters and made public comments about a matter pending before him. In the *Hartley* matter, after the defendant left the courtroom, respondent gave *ex parte* advice to the plaintiff and stated how he planned to rule. Furthermore, in the absence of the parties to the *Hartley* matter, respondent engaged in an *ex parte* conversation about the matter with an attorney in the courtroom for another matter and publicly commented on the matter including stating that the defendant "was getting real snotty." In the *Gregory* matter, after the plaintiff left the courtroom, respondent

engaged in *ex parte* communications with the defendant and later dismissed the matter without notifying the parties or issuing a decision from which an appeal could be taken. In addition, in four traffic infraction matters, respondent engaged in improper *ex parte* communications with unrepresented defendants.

In additional violations of his ethical responsibilities, respondent failed to “be faithful to the law and maintain professional competence in it” and to “accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law.” (Rules §§100.3(B)(1) and (6)) Respondent failed to comply with the Criminal Procedure Law by taking actions without affording the prosecution the required notice and opportunity to be heard. For example, in the *Cowles* matter, respondent granted a reduction in the Speeding charge without notice to and consent of the prosecution as CPL §§220.10(3) and 340.20(1) required. In addition, in three small claims matters, respondent failed to administer an oath or affirmation to the witnesses as Section 214.10(j) of the Uniform Civil Rules for the Justice Courts required.

Significantly, during the arraignment in the *Swift* matter, respondent failed to advise the defendant of the right to counsel as CPL §§170.10(3) and (4)(a) required. Accordingly, respondent failed to perform one of the critical roles of a judge during arraignment. *Matter of Kline*, 2018 NYSCJC Annual Report 161, 183 (“[i]nforming defendants of the right to counsel is one of a judge’s most important

responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable.”) Compounding his misconduct in the *Swift* matter, respondent also appeared to pre-judge the defendant’s guilt.

Respondent has been a judge since 2010 and should be fully familiar with his ethical obligations including the requirements to avoid *ex parte* communications and to abide by the law. “It is a judge’s responsibility to maintain professional competence in the law, and a judge – lawyer or non-lawyer – has an obligation to learn and obey ethical rules. . . . Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty.” *Matter of Pemrick*, 2000 NYSCJC Annual Report 141, 143. The record established that respondent has been inattentive to required procedures and has neglected his important obligation to comply with the Rules.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has no prior disciplinary history, has acknowledged that his conduct was improper and warrants public discipline and has completed several continuing judicial education courses. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

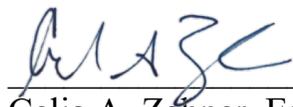
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

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

Dated: September 28, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct