

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

WESLEY R. EDWARDS,

a Justice of the Stephentown Town Court,
Rensselaer County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Kathryn J. Blake, Of Counsel) for the
Commission

Dreyer Boyajian LLP (by Craig M. Crist) for the Respondent

The respondent, Wesley R. Edwards, a Justice of the Stephentown Town
Court, Rensselaer County, was served with a Formal Written Complaint dated December
1, 2006, containing two charges. The Formal Written Complaint alleged that respondent

mishandled several small claims proceedings, engaged in improper *ex parte* communications and conveyed the appearance of bias. Respondent filed a Verified Answer dated January 22, 2007.

On June 7, 2007, the Administrator of the Commission, respondent's counsel 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 July 12, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Stephentown Town Court, Rensselaer County, since January 1964. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On June 8, 2005, respondent held a hearing in the small claims matter of *Laura Kerber v. Joseph Hodgens*, in which the claimant sought \$3,000 in damages for allegedly incomplete and defective construction work performed at her home by the defendant. Ms. Kerber resided in the City of Albany, and Mr. Hodgens resided in Stephentown.

3. At the hearing on June 8, 2005, respondent failed to offer Ms. Kerber the opportunity to cross-examine the opposing party. At the conclusion of the hearing,

over Ms. Kerber's objection, respondent directed her to allow the defendant to return to her home the following day to complete the construction work.

4. Pursuant to Section 1801 of the Uniform Justice Court Act, respondent had no jurisdiction to order any relief other than a money judgment. Respondent now recognizes he was without authority to order equitable relief in a small claims proceeding, and he acknowledges his obligation under the Rules Governing Judicial Conduct ("Rules") to be faithful to the law and maintain professional competence in it.

5. On June 9, 2005, respondent spoke *ex parte* with Mr. Hodgins, who told respondent he had completed all required work at Ms. Kerber's residence. Respondent did not inform Ms. Kerber that he had spoken with Mr. Hodgins or afford her an opportunity to respond to Mr. Hodgins' assertions.

6. On June 15, 2005, Ms. Kerber sent respondent a letter, a copy of which is annexed as Exhibit A to the Agreed Statement of Facts, in which she stated that despite respondent's direction, Mr. Hodgins had failed to complete the required work at her home on June 9, 2005, and in which she asked respondent what she needed to do to settle the case.

7. On June 23, 2005, respondent telephoned Mr. Hodgins, engaged in another *ex parte* conversation with him and requested that he complete the work at Ms. Kerber's house. Respondent never responded to Ms. Kerber's letter.

8. Respondent recognizes that it was improper for him to engage in such *ex parte* communications, notwithstanding that his intention was to facilitate a resolution

of the dispute. Respondent also recognizes that he should have been mindful of the Court of Appeals decision in *Matter of Wesley Edwards*, 67 NY2d 153 (1986), in which he was censured for *inter alia* initiating *ex parte* communications with another judge in connection with a speeding ticket issued to his son.

As to Charge II of the Formal Written Complaint:

9. On November 9, 2004, Brittany Marbot and Casey Marbot each filed a small claim in the Nassau Village Court against Tony Scott for damages to their automobiles. Brittany Marbot's claim was for \$1,000, and Casey Marbot's claim was for \$3,000. After the Nassau Village Justices recused themselves, the cases were transferred by the County Court to the Stephentown Town Court.

10. On April 9, 2005, respondent sent written notices to the claimants and Mr. Scott that both cases were scheduled for small claims hearings on May 11, 2005.

11. On or about May 11, 2005, after listening to the testimony of only Brittany Marbot, respondent summarily dismissed both claims against Mr. Scott, stating that the matter was criminal, not civil. Respondent now recognizes that, in doing so, he thereby failed to accord the claimants a full and fair opportunity to be heard, as required by the Rules.

12. Thereafter, Brittany Marbot and Casey Marbot attempted to file criminal charges against Mr. Scott with the State Police, but the police declined to process charges and advised them that the matter was civil, not criminal in nature.

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)(4) and 100.3(B)(6) of the 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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's handling of three small claims matters was fraught with errors and violated well-established statutory and ethical mandates. In *Kerber v. Hodgens*, in which the claimant had sought damages for construction work that was allegedly defective and incomplete, respondent initially failed to provide the claimant an opportunity to cross-examine the defendant. Then, over the claimant's objection, respondent ordered the defendant to complete the work, notwithstanding that respondent had no jurisdiction to order any relief other than a money judgment (Uniform Justice Court Act §1801). Respondent compounded his misconduct by engaging in *ex parte* communications with the defendant on two occasions regarding the status of the court-ordered labors. Although it has been stipulated that respondent's intention was to facilitate a resolution of the dispute, his actions went beyond his proper role as a judge. Respondent's mishandling of the case violated his obligation to be faithful to the law and maintain professional competence in it, to refrain from unauthorized *ex parte* communications and to afford the parties a full opportunity to be heard as required by law (Rules, §§100.2[A], 100.3[B][1], 100.3[B][6]).

In two other small claims filed by individuals for alleged damage to their automobiles, respondent summarily dismissed both claims after listening to the testimony of only one of the claimants, stating that the matters were criminal, not civil. In doing so, respondent again failed to accord the claimants a full and fair opportunity to be heard, as required (Rules, §100.3[B][6]).

Town and village justices wield enormous power in civil and criminal cases, and it is reasonable 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*, 72 NY2d 658, 660 (1988); *see also, Matter of Curcio*, 1984 Annual Report 80 (Comm. on Judicial Conduct); *Matter of Muskopf*, 2000 Annual Report 133 (Comm. on Judicial Conduct); *Matter of Nichols*, 2002 Annual Report 133 (Comm. on Judicial Conduct). With more than four decades of experience as a judge, respondent should be familiar with small claims procedures and with the jurisdictional limits of his court. Moreover, having been previously censured by the Court of Appeals for engaging in *ex parte* communications with another judge (*Matter of Edwards*, 67 NY2d 153 [1986]), respondent should have been particularly mindful of his duty to refrain from unauthorized *ex parte* contacts.

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

Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge

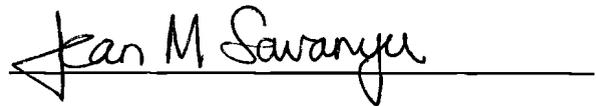
Konviser, Judge Peters and Judge Ruderman concur.

Mr. Felder and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: July 19, 2007

A handwritten signature in black ink that reads "Jean M. Savanyu". The signature is written in a cursive style and is positioned above a solid horizontal line that extends to the right.

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