

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

ALOIS W. KRAKER,

DETERMINATION

a Justice of the Greenville Town Court,
Greene County.

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

Maynard, O'Connor, Smith & Catalinotto, LLP (by Kelly M. Monroe)
for Respondent

Respondent, Alois W. Kraker, a Justice of the Greenville Town Court,

Greene County, was served with a Formal Written Complaint (“Complaint”) dated March 15, 2022 containing three charges. Charge I of the Complaint alleged that from June 27, 2018 to July 25, 2018, in connection with his handling of *Muriel Gardner v. Brian Cannon*, respondent: failed to disclose that the plaintiff was a customer of respondent’s auto business or to disqualify himself; failed to administer an oath or affirmation to the *pro se* litigants and witnesses, as required by law; made a series of rude and undignified comments to the defendant, which conveyed an impression of bias against him; failed to properly supervise his court clerk by allowing her to interject repeatedly into the proceeding; failed to admonish a spectator who interjected into the proceeding with his own opinion; and engaged in an *ex parte* conversation about the substance of the case with the plaintiff’s witness and a spectator, during which respondent denigrated the defendant. Charge II alleged that on December 19, 2018, while presiding over *Linda Novello v. Greenville Saw Service, Inc.*, respondent: failed to disclose that the owner of the defendant business was a Greenville Town Council member and a business associate of his; failed to disqualify himself; and failed to administer an oath or affirmation to the *pro se* litigants and witnesses, as required by law. Charge III alleged that from August 2020 through March 2021, respondent failed to discharge his administrative responsibilities diligently, in that he failed to report the receipt of court monies to the State Comptroller in a timely manner, as required

by Section 27(1) of the Town Law. Respondent filed an Answer dated May 11, 2022.

On September 7, 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 respondent be censured and waiving further submissions and oral argument.

On September 22, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Greenville Town Court, Greene County, since January 1, 2017. His current term expires on December 31, 2024. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On June 27, 2018, respondent presided over *Muriel Gardner v. Brian Cannon*, a small claims case in which the plaintiff sought \$500 for the defendant's alleged failure to complete plumbing work at her home. A transcript of the proceeding is annexed as Exhibit A to the Agreed Statement. The parties appeared without counsel.

3. Respondent failed to disclose that the plaintiff was a customer of his business, Lou's Automotive, LLC, or to disqualify himself from the proceeding.

4. 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]). He instead began the proceeding by giving both parties an opportunity to be heard.

5. The plaintiff stated, *inter alia*, that after she called the defendant to repair her shower faucet, he gave her a “proposal” of \$965 for the repair. The plaintiff issued him a deposit check for \$700, and when the defendant returned the next morning to do the repair, the plaintiff questioned why he was charging her so much. He left without doing any work and returned only \$200 of the \$700 she paid him.

6. The defendant explained, *inter alia*, that after fixing an emergency leak for the plaintiff, they reached an agreement to upgrade the plaintiff’s corroded shower body for \$965. When the defendant returned the next morning, the plaintiff angrily repudiated the agreement and demanded her money back. The defendant returned \$200 to the plaintiff and retained \$500 as his fee because he had expended a total of eight hours, at a rate of \$60 per hour, for the plaintiff, including drive time and time spent purchasing and returning materials.

7. The plaintiff responded that another plumber fixed the faucet a few days later for \$125, and she denied that the defendant had spent eight hours working at her house. The plaintiff loudly called the defendant a “liar” and a

“bona fide liar,” which prompted the court clerk to say, “Okay, there’s no name calling in court. Let’s keep it clean.” Respondent said, “Mm-hmm” but did not otherwise say anything to his court clerk.

8. At one point, respondent said he believed them both and asked, “Can we split the difference here?” The defendant declined. Respondent repeatedly said he was in business, too, and referred to his own experiences doing repairs. Respondent stated he wanted to adjourn the matter to hear from the plumber who repaired the faucet and get his opinion of the condition of the plaintiff’s plumbing. The defendant questioned the relevancy of such testimony. Respondent stated that if the other plumber claims to have done a “patch job,” then respondent will rule in favor of the defendant, but if it’s the “opposite, it’s going to be in [the plaintiff’s] favor.” Respondent adjourned the case to July 25, 2018.

9. On July 25, 2018, respondent presided over the adjourned hearing in *Gardner v. Cannon*.

10. Respondent again failed to administer an oath or affirmation to the litigants and witness, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

11. Respondent began the proceeding by stating that his court clerk had calculated that the defendant had expended 3 hours and 45 minutes in connection

with the plaintiff's job and that the defendant had put a hole in the plaintiff's wall, both of which the defendant disputed.

12. Respondent then made a series of rude and undignified statements to the defendant, sometimes in a loud, raised voice, including:

- A. "I think you're abusing this . . . woman."
- B. "You could've just changed the fricken part here."
- C. "You didn't do anything . . . Where the hell did you go in eight hours?" noting that he himself could do plumbing work in his own bathroom and drive to Lowe's in less than eight hours.
- D. "I don't care . . . I really don't care," in response to the defendant asking to show respondent his timeline again.

13. Respondent then had the plaintiff's witness, Arthur Bernard from A.B. Plumbing & Heating, approach the bench.¹ Without administering an oath or affirmation, respondent questioned Mr. Bernard about the condition of the plaintiff's plumbing and then allowed the defendant to question him.

14. Jason Watts, a spectator who was present in the courtroom for another small claims case, interjected to voice his own opinion about the changing of a valve stem. Instead of admonishing Mr. Watts for interjecting, respondent told him to state his name.

¹ Mr. Bernard is incorrectly identified in Exhibit A to the Agreed Statement as "Arthur Beasley" or "Mr. Beasley."

15. Respondent repeated that his court clerk had calculated that the defendant had only done 3 hours and 45 minutes of work in connection with the plaintiff's job. When the defendant asserted that the court clerk was mistaken, respondent demanded, "Give me the proof of it right now . . . Right now. Right now . . . Let's go."

16. After the defendant asked respondent not to pressure and intimidate him, the court clerk interjected, admonished the defendant, and told him several times to "step outside," leading the defendant to question who was in charge of the proceeding. Respondent stated that he was the judge but did not admonish the court clerk.

17. As respondent continued to argue with the defendant about the amount of time he had expended for the plaintiff, the court clerk interjected and questioned the defendant at length about his timeline, which respondent permitted. Based on this line of questioning, the court clerk re-calculated the defendant's claimed time and respondent announced that she had calculated a time of 7 hours and 50 minutes.

18. After stating that he was going to reserve his decision, respondent accused the defendant of having attempted to take advantage of the plaintiff, stating:

- A. “There’s an elderly lady and I think . . . you kind of jumped the gun and tried to get her to do this immediately, okay? And more or less, I call that taking advantage.”;
- B. “I think it’s unfair business practices.”;
- C. “You made her sign a proposal that night.” and
- D. “Most people fix it for \$125 . . . You didn’t do anything but travel back and forth getting parts . . . With a \$125,000 truck I don’t make that [\$60 an hour] towing.”

19. Finally, a Greene County Sheriff’s Department sergeant interceded and suggested that respondent end the proceeding because both sides had presented their cases and it was “starting to get heated.” The proceeding ended.

20. After the defendant left the courtroom, respondent allowed the plaintiff to tell him that Mr. Bernard – her witness – was an “honest man. Very honest man.”

21. After the plaintiff left the courtroom, respondent called the small claims matter of *Watts Oil v. Michael Allen*. Jason Watts, who was representing Watts Oil and had interjected into the *Gardner v. Cannon* proceeding, approached the bench. Mr. Allen apparently did not appear. After respondent stated that he was awarding Mr. Watts a default judgment, respondent permitted and engaged Mr. Watts and Mr. Bernard, who was still present, in an *ex parte* conversation about the substance of *Gardner v. Cannon* and the defendant’s business practices. Respondent agreed with Mr. Watts when Mr. Watts used profanity to describe the

parts the defendant purchased. Respondent stated that Cannon “jumped the gun” and told Mr. Bernard that he “did the right thing . . . I know he did . . . That’s how I—That’s how I operate and Mrs. Gardner would swear to me on that, so . . . That’s unfair business. That’s totally unfair business practice.”

22. On October 26, 2018, respondent issued a judgment awarding the plaintiff in *Gardner v. Cannon* \$250. A copy of the Notice of Small Claims Judgment is annexed as Exhibit B to the Agreed Statement.

As to Charge II of the Formal Written Complaint

23. On December 19, 2018, respondent presided over *Linda Novello v. Greenville Saw Service, Inc.*, a small claims case in which the plaintiff sought \$3,000 from the defendant for failure to properly service a rototiller and a tractor. A transcript of the proceeding is annexed as Exhibit C to the Agreed Statement.

24. Plaintiff Linda Novello appeared at the proceeding with her husband. John Bensen, owner of Greenville Saw Service, Inc., and his wife appeared on behalf of the defendant. Neither party was represented by counsel.

25. At the time of the proceeding, Mr. Bensen was a Greenville Town Council member. As a Town Council member, Mr. Bensen participated in the approval of respondent’s court’s budget and the setting of respondent’s judicial salary.

26. Respondent and Mr. Bensen are also business associates who have known each other for decades. Mr. Bensen is a customer of respondent's business, Lou's Automotive, LLC, and respondent is a customer of Mr. Bensen's business, Greenville Saw Service, Inc.

27. Respondent failed to disqualify himself, failed to disclose that Mr. Bensen was a Town Council member who participated in the approval of the court's budget and the setting of respondent's salary, and failed to disclose that he and Mr. Benson had a business relationship.

28. 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]).

29. After giving both parties an opportunity to be heard, respondent stated that he was going to reserve decision.

30. On January 16, 2019, respondent issued a decision in the defendant's favor, dismissing the claim. A copy of the decision is annexed as Exhibit D to the Agreed Statement.

As to Charge III of the Formal Written Complaint

31. From August 2020 through March 2021, respondent failed to report the receipt of court monies to the State Comptroller within ten days of the month following collection, as required by Section 27(1) of the Town Law.

32. As a result, by letter dated May 20, 2021, the State Comptroller ordered that payment of respondent's judicial salary be stopped. A copy of the letter is annexed as Exhibit E to the Agreed Statement.

33. Although respondent relied on his court clerk to prepare and submit his monthly reports, he took insufficient or no action to ensure that reports were submitted as required by law until after the State Comptroller ordered that payment of his salary be stopped for late reporting.

34. By letter dated June 30, 2021, the State Comptroller notified the Greenville Town Supervisor that respondent was current with his reporting requirements and that payment of his salary should be resumed. A copy of this letter is annexed as Exhibit F to the Agreed Statement.

Additional Factors

35. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

36. Respondent understands that he must follow the disqualification and remittal process outlined in Opinion 21-22(A) of the Advisory Committee on Judicial Ethics whenever his impartiality might reasonably be questioned, including, but not limited to, cases in which a current or past customer of Lou's Automotive, LLC, or any other entity in which respondent has a financial interest, appears before him. A copy of Opinion 21-22(A) is annexed as Exhibit G to the

Agreed Statement.

37. Respondent acknowledges that he allowed the proceedings in *Gardner v. Cannon* to get out of hand and understands he must maintain order and decorum in all court proceedings.

38. Respondent appreciates that his rude and accusatory remarks to and about Mr. Cannon undermined public confidence in his fairness and impartiality. Respondent also recognizes that, after hearing from both parties and stating he would reserve decision, he should have ended the proceeding promptly instead of engaging Mr. Cannon in a prolonged argument.

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), (3) and (4), 100.3(B)(6), 100.3(B)(8), 100.3(C)(1) and (2), 100.3(E)(1) and 100.3(F) 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 and III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

Respondent acted in a manner that was inconsistent with his obligation to “act at all times in a manner that promotes public confidence in the integrity and

impartiality of the judiciary” and to “avoid impropriety and the appearance of impropriety.” (Rules, §100.2(A)) Section 100.3(E)(1) of the Rules specifically provides: “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned” It is well-settled that a judge must disclose or disqualify if he or she has a business relationship with a party in a matter pending before the judge. *Matter of Valentino*, 2004 NYSCJC Annual Report 157 (defendant did snow removal and odd jobs for judge); *Matter of Grems*, 2000 NYSCJC Annual Report 113 (plaintiff automobile repair business did work for judge); *Matter of Barker*, 1999 NYSCJC Annual Report 77 (plaintiff had done grading work on the judge’s property); *Matter of Fabrizio*, 65 N.Y.2d 275 (1985) (defendant was judge’s dentist).

Respondent violated his ethical obligations when he failed to disqualify himself or inform the parties that the plaintiff in the *Gardner* matter and the owner of the defendant in the *Novello* matter were customers of respondent’s business. In addition, in the *Novello* matter, respondent also failed to disclose that the owner of the defendant company, who appeared before respondent on behalf of the company, participated in setting respondent’s judicial salary and that respondent was a customer of the defendant company. When he failed to disqualify or disclose these relationships, respondent violated the Rules and undermined confidence in the integrity and impartiality of the judiciary.

Moreover, in the *Gardner* matter, respondent's rude comments toward the defendant and comments accusing the defendant of taking advantage of the plaintiff or engaging in unfair business practices created at least the appearance that he was biased against the defendant in violation of Section 100.3(B)(4) of the Rules. In making these comments, respondent also failed to "be patient, dignified and courteous" to a litigant in violation of Section 100.3(B)(3) of the Rules. *Matter of Knopf*, 2021 NYSCJC Annual Report 118 (judge referred to defendant as a "deadbeat" who did not pay his rent); *Matter of Pebler*, 2021 NYSCJC Annual Report 263 (judge referred to defendant's actions as "asinine"); *Matter of Frati*, 1996 NYSCJC Annual Report 83 (judge suggested that plaintiff was a "negligent" farmer and that his claim was not in the "spirit" of the community's "codes of honor.") Respondent acknowledged that when he made the accusatory and rude comments to and about the defendant in the *Gardner* matter, he undermined public confidence in his fairness and impartiality.

Moreover, the Rules specifically prohibit a judge from engaging in *ex parte* communications about a pending matter and from making any public comment about a pending case. (Rules, §§100.3(B)(6) and (8)) In violation of the prohibition against *ex parte* communications, respondent allowed the plaintiff in the *Gardner* matter to comment to him about the character of her witness outside the presence of the defendant. Respondent engaged in further *ex parte*

communications and publicly commented on a pending matter which he spoke with the plaintiff's witness and an individual in court for another case about the substance of the *Gardner* matter.

Respondent also violated additional ethical requirements when he presided over the *Gardner* and *Novello* matters. For example, respondent violated Section 100.3(B)(1) of the Rules, which requires all judges to "be faithful to the law and maintain professional competence in it," when he failed to administer an oath or affirmation to the *pro se* litigants and witnesses in those matters. Furthermore, respondent violated Section 100.3(B)(2) of the Rules when he allowed his court clerk to interject and question the defendant in the *Gardner* matter. Respondent acknowledged that he failed to maintain order and decorum in that proceeding.

In addition, respondent failed to diligently discharge his administrative responsibilities in violation of the Rules when he failed to timely submit reports to the State Comptroller as required. Such failure "constitutes misconduct, even if there is no evidence that monies were missing or used for inappropriate purposes." *Matter of Ridgeway*, 2010 NYSCJC Annual Report 205, 209.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline and that he has completed pertinent 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.

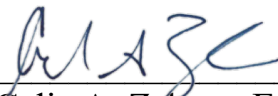
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

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: October 6, 2022



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