STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

GARY L. MOORE,

a Justice of the Grafton Town Court,
Rensselaer County.

DETERMINATION

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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

Christopher Langlois for Respondent

The respondent, Gary L. Moore, a justice of the Grafton Town Court, Rensselaer County, was served with a Formal Written Complaint dated January 2, 2001, containing six charges. Respondent filed an answer dated January 9, 2001.

On August 14, 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 censured 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 Grafton Town Court since 1993. He is not a lawyer. He has attended and successfully completed all required training sessions for judges.

As to Charge I of the Formal Written Complaint:

2. On or about November 23, 1999, when the defendant in People v. Denis Harrington appeared with his attorney before respondent for arraignment on charges which included a charge of Harassment of the defendant's daughter, respondent stated that he knew the defendant's daughter and that if he were her father, he would have "slapped her around" himself, and respondent decided not to issue an order of protection he had been considering. Respondent was acquainted with the defendant's teen-aged daughter, having worked as a detention supervisor at the school where the defendant's

daughter was a student. The case was later disposed of by respondent's co-justice, who was sitting on the adjourned date.

3. Respondent now recognizes that his statement to the defendant was improper and he will refrain from such comments in the future.

As to Charge II of the Formal Written Complaint:

4. On or about November 23, 1999, at the arraignment of the defendant in People v. Leo Bartowski on a charge of Driving While Intoxicated, respondent declined to suspend the defendant's driver's license pending prosecution (pursuant to Section 1193[2][e][7] of the Vehicle and Traffic Law). In handing the license back to the defendant, respondent said, "I can't do that to a fellow truck driver." While respondent arguably had discretion under the law not to suspend the defendant's license pending prosecution, his statement implied that he had based his decision not to suspend on the fact that respondent and the defendant were both engaged in the same employment.

As to Charge III of the Formal Written Complaint:

5. On or about November 23, 1999, at the arraignment of the defendant in People v. Jonathan Hasbrouk, after the defendant pleaded not guilty to a charge of Failure To Yield under the Vehicle and Traffic Law, respondent questioned the defendant about the circumstances of his arrest and whether the defendant had originally been stopped for Speeding. The defendant denied that he had been speeding and respondent

adjourned the matter for trial. The case was subsequently disposed of by respondent's co-justice, who was sitting on the adjourned date.

6. Respondent now recognizes that he should not question a defendant who has pleaded not guilty about the circumstances of the charge, since the prosecution, and not the defendant, has the burden of proof, and a defendant may make incriminating statements or other statements that might prejudice the defendant's position at trial.

As to Charge IV of the Formal Written Complaint:

7. On or about January 18, 2000, at the arraignment of the defendant in People v. Charles Maxfield on a misdemeanor charge of Criminal Contempt, respondent failed to advise the defendant of his right to assigned counsel, in violation of Section 170.10(4) of the Criminal Procedure Law, and respondent informed the defendant that although he should speak to an attorney, respondent could not assign an attorney to represent the defendant, notwithstanding that respondent had made no inquiry into the defendant's ability to afford counsel. The case was later disposed of by respondent's co-justice, who was sitting on the adjourned date.

8. As a matter of practice, respondent failed to advise defendants, charged with non-Vehicle and Traffic Law infractions, of their right to assigned counsel, in violation of Section 170.10(4) of the Criminal Procedure Law.

9. Respondent now understands that he is required to advise all defendants, charged with offenses for which a sentence of a term of imprisonment is authorized, other than vehicle and traffic infractions, of the right to assigned counsel.

As to Charge V of the Formal Written Complaint:

10. On or about November 23, 1999, respondent held a small claims court hearing in Roark v. Sager without administering an oath to the witnesses, in violation of Section 214.10(j) of the Uniform Civil Rules For The Justice Courts (22 NYCRR 214.10[j]).

As to Charge VI of the Formal Written Complaint:

11. Notwithstanding that respondent was biased in favor of Lisa Dooley in her dispute with Stephen Stasack over rights to property, respondent failed to promptly disqualify himself from a Harassment charge filed by Ms. Dooley against Stephen Stasack arising out of the property dispute, and respondent presided over the charge from October 19, 1999, until January 11, 2000. During the interim, respondent failed to take any action on a Trespass charge filed by Mr. Stasack against Ms. Dooley.

12. Respondent now recognizes that he should immediately disqualify himself in proceedings which he cannot fairly decide due to bias in favor of a party.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In numerous cases, respondent failed to follow the law and abandoned his proper role as a neutral and detached magistrate.

Respondent's gratuitous comment in a Harassment case that if he were the father of the alleged victim, he would have "slapped her around" himself suggests not only bias, but actual approval of domestic violence. Such a remark casts doubt on his ability to be impartial in domestic violence cases generally, and on his decision in the particular case not to issue an Order of Protection to the defendant's daughter, whom respondent knew from his employment at her school. *See* Matter of Roberts v. State Commn on Jud Conduct, 91 NY2d 93 (1997); Matter of Romano v. State Commn on Jud Conduct, 93 NY2d 161 (1999).

The record suggests that in other matters, respondent also acted not as a neutral, impartial arbiter, but out of favoritism and bias. In Bartowski, while declining to suspend the driver's license of a defendant charged with Driving While Intoxicated, respondent stated, "I can't do that to a fellow truck driver." In the Stasack and Dooley

cases, despite his bias in favor of Ms. Dooley, he failed to promptly disqualify himself from the matters and failed to take any action on a Trespass charge filed against Ms. Dooley by Mr. Stasack. Such conduct violates ethical standards requiring a judge to avoid impropriety and the appearance of impropriety, to perform judicial duties without bias and to disqualify himself or herself in a matter where the judge has a personal bias concerning a party (Sections 100.2[A], 100.3[B][4] and 100.3[E][1] of the Rules Governing Judicial Conduct).

Respondent also failed to "respect and comply with the law," to be faithful to the law and to "maintain professional competence in it," in violation of Sections 100.2(A) and 100.3(B)(1) of the Rules. As a matter of practice, respondent failed to advise defendants of their right to assigned counsel when he was legally required to do so, and in the Maxfield case, without making any inquiry into the defendant's ability to afford counsel, he specifically told the defendant that he could not assign counsel (Crim Proc Law §170.10[4]; Matter of Pemrick, 2000 Ann Report of NY Commn on Jud Conduct 141). At an arraignment, he questioned a defendant, who had pleaded not guilty, concerning the underlying facts of the case, thereby placing the defendant in jeopardy of making incriminating admissions. He also violated the law by failing to administer an oath to witnesses at a small claims hearing (22 NYCRR §214.10[j]).

By his conduct, respondent has shown insensitivity to his obligation not only to be impartial, but to appear to be impartial in matters over which he presides. His

conduct undermines public confidence in the fair and impartial administration of justice. In mitigation, respondent has acknowledged his misdeeds and now recognizes his ethical and statutory obligations.

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

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: November 19, 2001

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