

COPY

STATE OF NEW YORK  
APPELLATE DIVISION

SUPREME COURT  
THIRD DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

RESPONSE TO ORDER  
TO SHOW CAUSE

JOSHUA R. HUGHES

Appellant

Appeal No. 106397

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MARY E. RAIN, an attorney-at-law duly admitted to practice before the courts of the State of New York, hereby affirms the following under the penalty of perjury:

1. I am the District Attorney for St. Lawrence County, having been elected for the term of January 1, 2014 to December 31, 2017. As such I am in charge of the day-to-day operations of this office including the supervision and management of the staff.
2. In January of 2015 the St. Lawrence County District Attorney's Office was composed of three Assistant District Attorneys assigned to the local courts, three Assistant District Attorneys and the Chief Assistant District Attorney assigned to felonies and one part-time Assistant District Attorney assigned to all the appeals.
3. In January of 2015, because of a grant, the part-time Assistant District Attorney position was made in to a full time position.
4. Because the part-time Appellate Assistant District Attorney did not want a full-time position, I decided four Assistant District Attorneys would handle the town courts and the appeals and four Assistants would handle the felonies.
5. The District Attorney's Office is physically divided. On the second floor are the felony attorneys and in the basement are the local court attorneys. Because of this lack of direct access to more experienced attorneys, I placed Assistant District Attorney A. Michael Gebo in the basement to offer guidance on a continual basis to the less experienced attorneys.

6. Assistant District Attorney A. Michael Gebo not only has over 30 years of legal practice but, has accomplished substantial appellate work. A.D.A. Gebo had successfully argued before the Court of Appeals in *The Matter of Leon RR*, 48 NY2d 117 (1979).
7. Assistant District Attorney Gebo has many years of experience as an acting City of Ogdensburg Court judge. This well rounded experience made him a natural mentor for the newer Assistant District Attorneys.
8. Assistant District Attorney Gebo was placed in charge of overseeing the appeals which including reviewing them, assigning them to the other two Assistant District Attorneys and insuring they were timely filed. Because of his experience doing appellate work he was to guide and mentor the younger Assistants.
9. On March 24, 2015 I provided Assistant District Attorney A. Michael Gebo with an e-mail stating all appellate paperwork would go directly to him. It would be provided in his mailbox which is located in the second floor office. **See Exhibit One.**
10. The e-mail also provided that “we” – me and Chief Assistant District Attorney David Haggard, would be available for questions whether or not we had a direct answer to them.
11. This office receives hundreds of pieces of mail each week. Generally it takes one secretary in excess of three hours each day to process the mail and direct it to the proper person.
12. In the March 24<sup>th</sup> e-mail, secretaries Laken Hawes, Jill Wilson and Jenelle Whitmarsh were copied in on the e-mail so they would know to direct all the mail from the Appellate Division to Assistant District Attorney A. Michael Gebo.
13. As a general rule, I do not review other Assistant’s mail for obvious reasons. After March 24, 2015 I rarely saw mail received from this Court.
14. Mr. Mayberger references conversations I had with the Appellate Division on June 10, 2015 and June 22, 2015. I do recall the Court’s staff being extremely helpful with explaining procedures for extensions as that was the reason for their call.
15. After my conversations with the Court’s staff I met, either that day or the next, with Assistant District Attorney A. Michael Gebo. One of the immediate concerns was the Joshua Hughes appeal because, two extensions had been requested and the appeal had not been filed.

16. Previously I discussed the immediacy of filing this appeal with Assistant District Attorney A. Michael Gebo. Based on my conversation with the Court's staff I was informed it had not been filed.
17. It should be noted, of the four assistant district attorneys assigned to the local court and appeals, due to paid leave by one A.D.A. and then his choice to resign, only three A.D.A.'s had been working since mid-February 2015 until June 8, 2015. The A.D.A. hired on June 8, 2015 resigned on June 26, 2015.
18. St. Lawrence County is the largest county in the state; we have a significant number of courts and caseloads which require an additional three Assistant District Attorneys. Even though the County Board of Legislators agreed that we need more Assistant District Attorneys the Legislators exacerbated the problem when it refused to fill this vacancy, despite my repeated requests that we be provided additional A.D.A.s.
19. Because of their massive caseload in the 37 local courts in this county, assistance was continually offered and provided to handle the caseloads of Assistant District Attorney A. Michael Gebo and the other two assistants handling the appeals and local courts. For the reasons stated above, I was sympathetic that an appeal deadline may be unintentionally missed as explained to me by A.D.A. Gebo; however I was firm with him about not missing any further deadlines. I provided him with a procedure to avoid this in future which he never implemented.
20. After the phone calls from the Appellate Division, I directed Assistant District Attorney A. Michael Gebo to provide me with a rough draft of the Joshua Hughes appeal within 4-5 business days which he did.
21. After providing me with the draft, I then directed him to file it with the Appellate Division within 4-5 business days. Assistant District Attorney A. Michael Gebo assured me that the appeal had been filed. I had no reason to disbelieve him.
22. Believing the Hughes appeals was filed I inquired of A.D.A. Gebo about the Murdie appeal. I was assured by Assistant District Attorney Gebo that the Murdie brief was also filed; however, after reviewing the Court's Order to Show Cause on the Murdie case and investigation into the matter over the Labor Day weekend it was determined no work was ever done on it.
23. After both conversations with the Court's staff I reviewed the procedures for extensions with Assistant District Attorney A. Michael Gebo. I also reviewed the extension procedure with the other two assistants at least once.

24. I had numerous conversations with Assistant District Attorney A. Michael Gebo about the status of the appeals. He assured me repeatedly that he had properly prioritized his work and that the appeals were in order and being answered in a timely fashion.
25. I consistently encouraged Assistant District Attorney Gebo to ask for assistance if it was needed so I could properly direct the workforce. He insisted that long hours were being put in and the appeals were under control. It should be noted that every Assistant District Attorney in my office puts in long hours, with several of the felony Assistant District Attorneys putting in over 1,000 hours of compensatory time last year. Time that will never be taken.
26. Because I know the Assistant District Attorneys have high caseloads and work long hours I constantly remind them to let me know if they are getting behind so others can assist in “catching them up.” The team “catch-up” approach has been successfully accomplished several times.
27. I, too, enjoy a heavy caseload, handling all the felony sexual assaults and other serious felonies such as murder and kidnapping in addition to my administrative and training responsibilities.
28. Since Assistant District Attorney A. Michael Gebo enjoys respect in this community and the St. Lawrence County District Attorney’s office I had no reason to question his word that appeals were being filed. I accepted his excuse that the filing deadlines were inadvertently missed because of the massive caseload and was repeatedly assured by him that he corrected the issues.
29. On August 20, 2015, after the office was closed, I happened to look at information on the fax machine and found a Decision and Order on Motion from this Court regarding The People of State of New York v. Kevan Therrien No. 105984 and The People of the State of New York v. Tyler J. Moulton No. 106545 and 106591. The Orders directed this office to file and serve the responding brief on or before August 27, 2015. **See Exhibit two.** [ Even though I directly placed it in his hands, the faxed copy for the Moulton case was misplaced by A.D.A. Gebo therefore, the copy mailed to this office was placed as an exhibit]
30. It was clear from this Order and Decision that Assistant District Attorney A. Michael Gebo had not asked for the appropriate extensions and had not provided a response to the appeals.

31. Because the fax was reviewed after the office was closed I contacted Assistant District Attorneys A. Michael Gebo, Ramy Louis and Abigail Hind the next morning to meet with me at 2:00 p.m. that day, August 21, 2015.
32. At that time I provided the three Assistants with the Decisions and Orders and directed them to file the two responses by Tuesday, August 25, 2015.
33. I asked Assistant District Attorney A. Michael Gebo if there were other Appeals that needed attention immediately so I could provide additional assistance. He stated no appeal needed urgent attention.
34. In that meeting, I relieved him of his authority to oversee the appeals and assigned it to Assist District Attorney Ramy Louis.
35. A.D.A. Louis confirmed with me the following week that the Therrien and Moulton appeals had been filed as directed.
36. I advised A.D.A. Louis to review the appellate files to determine a time line for each appeal and to immediately look for any other Decisions and Orders from the Court. To that end he requested from the Appellate Division of list of pending appeals to be filed. The Appellate Division requested that it be placed in writing which was completed. The list was not completed before September 4, 2015.
37. On September 4, 2015 at approximately 6:00 p.m. I received a voicemail from the media inquiring about the three Orders to Show Causes filed by this Court. The three files were The People of the State of New York v. Joshua R. Hughes, The People of the State of New York v. John L. Murdie Jr. and The People of the State of New York v. Roger Martin.
38. Because I do not receive the mail from the Appellate Division I had no idea what this was about and immediately contacted A.D.A. Gebo who was still receiving the mail from the Appellate Division.
39. Assistant District Attorney A. Michael Gebo stated he knew about the Orders. He either negligently, recklessly or intentionally did not inform me of them. I requested he meet with me at the St. Lawrence County District Attorney's Office on Saturday September 5, 2015 at 9:00 a.m.
40. On September 5, 2015 Assistant District Attorney A. Michael Gebo could provide me with no legitimate or logical excuse regarding why he did not tell me about the Orders to

Show Cause or why he did nothing with the prior Decisions and Orders provided by this Court on these cases or why he failed to tell me about many other Orders and Decisions when I inquired at the August 21<sup>st</sup> meeting.

41. From the time A.D.A. Gebo received the Orders to Show Cause I was completely accessible for him to speak with me during working hours. We were even at an office social function on Friday evening September 4, 2015 just prior to the call from the media. He has my cell phone number, my e-mail and we even live within three blocks from one another. I cannot fathom any reason why he did not inform me of these Orders to Show Cause.
42. On Saturday September 5, 2015 Chief Assistant District Attorney David Haggard was informed by A.D.A. Gebo that he thought he could speak with this Court's Clerks over the phone to resolve the Orders to Show Cause and that is why he did not tell me about them. This reasoning implies he intended to hide the Orders to Show Cause from me.
43. On Monday September 7, 2015 I met with A.D.A. Louis regarding the status of the other appeals and if there were any further Decisions and Orders of the Court that remained unanswered.
44. A.D.A. Louis provided that Assistant District Attorney A. Michael Gebo had not placed any paperwork from the Appellate Division in files since taking over the Appeals in March 2015. Instead, they were in a stack on his desk, in his credenza and on various tables which he eventually "dumped" in Assistant District Attorney Louis' office.
45. According to A.D.A. Louis there was absolutely no organization to the paperwork. He and A.D.A. Abigail Hind had spent the better part of the last week organizing the files with an eye to creating a timeline. To that end, A.D.A. Louis contacted the Appellate Division by phone to request information regarding any immediate filing deadlines. He was asked to place the request in writing which was done.
46. A.D.A. Louis also provided me with several e-mails which came from the Appellate Division addressed to him regarding the Orders to Show Cause. He stated he forwarded those e-mails to A.D.A. Gebo because they were appeals assigned to A.D.A. Gebo. **See Exhibit Three.**
47. At the request of A.D.A. Gebo, A.D.A. Louis asked for extensions from the Appellate Division on several appeals. Because his name was on the request naturally the Appellate Division directed all future inquiries to A.D.A. Louis which he passed on to A.D.A. Gebo. Unfortunately, the Appellate Division was not copied in on that transfer of

information and it appeared as though A.D.A. Louis did nothing with the e-mails when he actually had. **See Exhibit Three.**

48. One e-mail demonstrates that within a minute of receiving the e-mail from the Appellate Division, A.D.A. Louis forwarded it to A.D.A. Gebo. **See Exhibit Three.**

49. In short, despite the fact that assistance was consistently offered and provided to all members of this office, A.D.A. Gebo willfully ignored the lawful mandates of this Court. I can only conclude they were intentionally kept from me for no logical or legitimate reason.

50. A.D.A. Gebo's actions left me and the office in an untenable situation which we are working to rectify. Along with me, six Assistant District Attorneys came to work over the Labor Day weekend, as a team to correct this problem. They were not ordered they came willingly which is why this situation is confusing and exasperating. This team will mobilize and forego their personal plans with a single call for help. That is all A.D.A. Gebo had to do was simply ask and he did not.

51. A.D.A. Gebo was offered assistance repeatedly. He was aware and had personal knowledge that on many occasions aid was rendered to other Assistant District Attorneys when needed including his direct participation within the office team. I am absolutely flabbergasted that the Orders of the this Court were ignored when I was repeatedly assured he had taken care of everything.

52. I am also flabbergasted that he was never going to tell me about these Orders to Show Cause and allow a warrant for my arrest to be issued by this Court. I will never understand why he would allow this to happen as it not only affects me but, the colleagues with whom he enjoyed much camaraderie and who are now left in a wake of despair and disbelief.

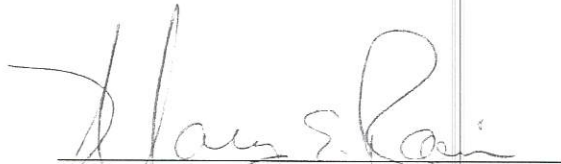
53. Attached is a sworn affidavit from Assistant District Attorney A. Michael Gebo in support of my response. **See Exhibit Four.**

54. Assistant District Attorney A. Michael Gebo was directed to file the appeal in this case. He assured me the appeal was completed and filed. He received all mail pertaining to the appeals including that from the Appellate Division and admits under oath in his affidavit that he never notified me or provided me with the Orders and Decisions of the Court in this case nor did he respond to them. Until I was notified by the media on September 4, 2015 I was left totally unaware of this Order to Show Cause. Had it not been for this notification it is my belief that A.D.A. Gebo would not have advised me of this Order and

I would have been held in Contempt of Court. Once I became aware of the Orders of the Court pertaining to this case a team of Assistant District Attorneys was gathered the next morning on Saturday September 5, 2015, the Appeal was responded to and information for the Order to Show Cause was gathered over the holiday weekend.

WHEREFORE the Your Deponent prays, for all the reasons provided above and the affidavit of Assistant District Attorney A. Michael Gebo attached hereto, that this Court should not find your deponent in willful neglect or violation of duty and/or disobedience to a lawful mandate of this Court in connection with the appeal in the above-referenced matter and therefore should not hold your deponent in Contempt of Court.


Dated: September 9, 2015



Mary E. Rain  
District Attorney, St. Lawrence County  
48 Court Street  
Canton, New York 13617  
(315) 379-2225

Sworn to before me this

9<sup>th</sup> day of Sept., 2015



NOTARY PUBLIC

Jill R. Wilson  
Notary Public in the State of New York  
St. Lawrence County #01WI6008012  
My Commission Expires June 1, 2018