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

CHARLES J. ASSINI,

a Justice of the East Greenbush Town Court, Rensselaer County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Dreyer Boyajian, L.L.P. (By William J. Dreyer) for Respondent

The respondent, Charles J. Assini, a justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated January 5, 1998, alleging six charges of misconduct. Respondent filed an answer dated February 17, 1998.

By Order dated February 24, 1998, the Commission designated the Honorable Richard D. Simons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 28 and 29 and June 15 and 16, 1998, and the referee filed his report with the Commission on September 30, 1998.

The parties submitted briefs with respect to the referee's report. On December 18, 1998, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the East Greenbush Town Court since 1986. He is licensed to practice law and works full time for the state Senate.

2. Respondent also has a small private practice. For approximately 20 years, respondent has shared office space in Albany with attorney Lawrence Long. Respondent pays no rent for the office space, but he appears for Mr. Long as an accommodation on occasion at court appearances and real estate closings.

3. Respondent's name appears on the office door below that of Mr. Long. Respondent's professional stationery lists Mr. Long's address and telephone number, and respondent receives mail and telephone calls at the office. Mr. Long's secretary takes

phone messages for respondent and does typing for him on occasion. Respondent has used the office to meet with clients and to conduct closings.

4. Between 1990 and 1997, respondent presided over the following six cases, in which Mr. Long appeared as attorney:

Defendant	Charge	Date of Disposition
Angela M. Le Pore	Petit Larceny; Falsifying Business Records	6/28/90
Joseph J. Rivenburgh	Assault, 3d Degree; Criminal Mischief, 4th Degree	6/13/91
Timothy W. Sullivan	Petit Larceny	10/31/91
Susan J. Collandra	Driving While Intoxicated	2/6/92
Donald R. Stewart	Unlawful Possession of Marijuana	6/11/92
David A. Elliott	Driving While Intoxicated	10/12/95

5. Respondent revealed his relationship with Mr. Long privately to an assistant district attorney on one occasion, but he never disclosed on the record in any of the cases that he shared office space with Mr. Long, nor did he ask whether there were objections to his presiding.

6. In the Elliott case, the defendant had been arraigned by another judge on charges of Driving While Intoxicated and Unsafe Start. On October 12, 1995, Mr. Elliott appeared with Mr. Long before respondent. Respondent was unable to explain how the case came before him when it had originally been assigned to another judge. Respondent accepted Mr. Elliott's guilty plea to a charge of Driving While Ability Impaired, suspended his license for 90 days and imposed a $300 fine. Mr. Elliott was also required to attend a drinking-driver program and a victim-impact panel. Mr. Elliott failed to attend the victim-impact panel and was directed to appear in court on June 20, 1996. Court was canceled on that day, and nothing further was done until March 1997, when Mr. Elliott was directed to appear on March 27. He failed to do so, and a third letter was sent, directing him to appear on April 24, 1997. When the defendant failed to appear on that date, respondent issued an order for his arrest. Respondent acknowledged that it was unusual for so many letters to be sent before a defendant's arrest is ordered for failure to appear in court.

7. Respondent also permitted Mr. Long to appear before other judges of the court.

As to Charge II of the Formal Written Complaint:

8. The charge is not sustained and is therefore dismissed.

As to Charge III of the Formal Written Complaint:

9. In June 1996, respondent's court clerk, Roberta Reno, was suspended by the town board. At the time, there were more than 100 of respondent's case files in the clerk's office awaiting action.

10. Respondent was asked several times by court personnel during the summer of 1996 to review the files and authorize action. He failed to do so.

11. On June 18, 1996, Michael Poorman, a town councilman who was liaison to the court, investigated the situation and found that a restitution check had not been deposited and that there were two tables piled with case files, cash, outdated money orders and outdated checks that had not been processed. The town board brought the situation to respondent's attention and asked that he acknowledge his responsibility for handling the cases. He did so in writing.

12. In August 1996, the state comptroller began an audit of the court. Before issuing a report in October 1996, an examiner advised respondent that approximately 120 case files required action. The situation was again discussed with respondent by the auditor on December 9, 1996.

13. Respondent failed to work on the files until February or March 1997.

As to Charge IV of the Formal Written Complaint:

14. Ms. Reno was suspended after difficulties and complaints by respondent's fellow judge, Catherine Cholakis. After Judge Cholakis had demanded that the town board fire Ms. Reno, Councilman Poorman met with respondent and Judge Cholakis on April 2, 1996. Respondent arrived 30 minutes late for the meeting, which, because of his attitude and conduct, lasted only a matter of minutes. Respondent directed questions at Judge Cholakis in a confrontational manner, without allowing her to respond. Judge Cholakis left in frustration.

15. After her departure, respondent turned to Mr. Poorman and referred to Judge Cholakis as a "fucking cunt."

16. In or after June 1996, respondent stopped at the court to tell clerk Jay Amodeo that respondent was not well and intended to cancel a court session scheduled for that day. When Mr. Amodeo inquired whether respondent would like him to ask Judge Cholakis to substitute, respondent referred to her as a "fucking bitch."

17. In the late summer of 1997, respondent suggested to Mr. Amodeo and the court officer, Ray Ingoldsby, that the Democratic party should run a candidate against that "fucking cunt," referring to Judge Cholakis. A third person was also present.

18. On another occasion, Mr. Amodeo asked respondent whether he should move a case to Judge Cholakis's calendar. Respondent replied that he did not want to give anything to that "fucking bitch."

As to Charge V of the Formal Written Complaint:

19. Prior to May 1995, respondent allowed E. Robert Duffy, the director of a private defensive-driving program, to make recommendations outside of court as to which defendants should be sentenced to take a defensive-driving program. During courtroom sessions, Mr. Duffy was allowed to sit at the bench next to the bailiff. When respondent sentenced defendants to a defensive-driving course, he gave them pamphlets advertising Mr. Duffy's course, stating in bold letters that defendants were required to contact Mr. Duffy's program and, "No other course is acceptable."

20. In 1994 and 1995, Commission staff investigated a complaint concerning this conduct. On January 7, 1995, respondent testified and acknowledged Mr. Duffy's role in the court and that he had allowed Mr. Duffy to write and warn defendants who had failed to attend the program as directed.

21. On May 3, 1995, the Commission cautioned respondent that his conduct violated the Rules Governing Judicial Conduct. "By these practices, you have lent the prestige of your office to private interests," the Commission advised respondent. "Defendants would reasonably believe that Mr. Duffy and his program were an adjunct to the court and that they had no choice of programs.... You should not permit Mr. Duffy to sit near you as you preside. Nor should you permit Mr. Duffy to speak for the court or write letters that are distributed by the court as the court's letters."

27. Thereafter, respondent referred the matter to Mr. Long, but respondent continued to work on the case. He served a second petition for an Order to Show Cause on the town, and he appeared, but did not argue, at oral argument on the petition.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1; 100.2(A); 100.2(C); 100.3(A); 100.3(B)(3); 100.3(B)(4); 100.3(B)(6) and its predecessor, Section 100.3(a)(4); 100.3(B)(7); 100.3(C)(1); 100.3(E)(1) and its predecessor, Section 100.3(c)(1), and 100.6(B)(3) and its predecessor, Section 100.5(f) [renumbered eff. Jan. 1, 1996]. Charges I, III, IV, V and VI of the Formal Written Complaint are sustained, and respondent's misconduct is established. Charge II is dismissed.

Respondent has engaged in a pattern of conduct that demonstrates his inattention to the adjudicative, administrative and ethical obligations of his office.

Respondent's persistent refusal over the course of eight months to deal with more than 100 pending cases constitutes neglect of his duties, and it appears to have been motivated by pique over the suspension of his court clerk. This is not a situation in which a hard-working judge was "devoting his full time and energies to his judicial activities" but was "overly optimistic with respect to his management abilities...." (Contra, Matter of Greenfield, 76 NY2d 293, at 295-96). Rather, respondent was repeatedly reminded by

22. After receipt of the Commission's Letter of Dismissal and Caution, until at least March 1996, respondent continued to allow Mr. Duffy to sit at the bench, and respondent continued to distribute his pamphlet. Until Mr. Duffy closed his program sometime in 1996, respondent continued to allow him to make ex parte recommendations as to whom should be required to take the defensive-driving program.

23. After Mr. Duffy no longer appeared in the court, respondent began distributing the pamphlet of another local driving school, E&E.

24. Only if a defendant asked respondent whether a different course could be taken would respondent concede that any certified course was acceptable.

As to Charge VI of the Formal Written Complaint:

25. On July 19, 1996, respondent sought an Order to Show Cause in Supreme Court, listing himself as attorney of record for Ms. Reno, in an action against the East Greenbush Town Board, alleging that her suspension was illegal because the board had not sought his advice and consent. Respondent signed an affidavit in support of the petition.

26. The attorney for the town opposed the motion, inter alia, on the ground that it was improper for respondent to proceed against the municipality in which he sits as judge.

court personnel, the town board and state auditors that there was a crisis in the court, and he deliberately failed to remedy it, apparently to make the point that Ms. Reno was needed in the clerk's office.

Such refusal to cooperate with authorities and such persistence in neglecting court duties calls for discipline, not administrative action. (See, Matter of Greenfield, supra, at 298; see similarly, Matter of Reeves, 63 NY2d 105, 111; Matter of Hanofee, 1990 Ann Report of NY Commn on Jud Conduct, at 109, 114).

Similarly, respondent's continued disparagement of Judge Cholakis before court employees and his obstructionism in dealing with her complaints undermined proper administration of the court.

Moreover, respondent's language in referring to Judge Cholakis was vulgar and unbecoming a judge, especially since it was uttered in connection with judicial duties. (See, Matter of Collazo, 91 NY2d 251, 253-54; Matter of Aldrich, 58 NY2d 279, 281, 283; Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104, 105).

It is also evident from his involvement with Mr. Duffy (Charge V), Mr. Long (Charge I) and Ms. Reno's lawsuit against the town (Charge VI) that respondent is not sensitive to the ethical conflicts that arise between his judicial office and personal and professional interests.

By using Mr. Duffy and his private program as an adjunct to the court, respondent lent the prestige of judicial office to private interests, in contravention of the

Rules Governing Judicial Conduct (22 NYCRR 100.2[C]). Especially inappropriate was the practice of allowing Mr. Duffy to make ex parte recommendations as to which defendants should be ordered to attend the defensive-driving course. To what extent respondent followed the recommendations is not the issue; that he received and entertained them without notice to the parties and without allowing them to comment constitutes the wrong. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[B] [6][b]; Matter of Fuchsberg, 43 NY2d [j],[u]-[y] [Ct on the Judiciary]). This is not the same as taking the assistance of court personnel. Court clerks and law clerks are disinterested employees of the court, and lawyers and the public at large are aware that judges receive such aid. Without disclosure by the judge, they are not aware that private individuals with a financial stake in their advice are working behind the scenes and counseling the judge. (See, Matter of Fuchsberg, supra).

His misconduct with respect to Mr. Duffy is compounded by the fact that it continued after the Commission investigated it and cautioned respondent that it was improper. (See, Matter of Lenney, 71 NY2d 456, 458-59).

Although they were not partners or associates in the practice of law in the usual sense, respondent and Mr. Long held themselves out to the public as affiliated in some way. Therefore, it was improper for respondent to permit Mr. Long to appear before him or other judges of his court. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.6[B][3]; Matter of Watson, 1989 Ann Report of NY Commn on Jud

Conduct, at 139, 142, 143). It would be reasonable for members of the public to presume that they could curry special favor from respondent by employing a lawyer with whom he shared office space or, conversely, for adversaries of Mr. Long to doubt respondent's fairness in their cases. (See similarly, Matter of Sims, 61 NY2d 349, 355).

Based on the totality of the misconduct, we conclude that respondent is not fit to be a judge.

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Joy, Judge Luciano, Judge Newton and Mr. Pope concur as to sanction.

Mr. Berger dissents only as to Charge II and votes that the charge be sustained.

Judge Luicano dissents only as to Charge VI and votes that the charge be dismissed.

Mr. Pope dissents only to Charge II and votes that the charge be sustained and dissents as to Charge III and votes that that charge be dismissed.

Mr. Coffey and Judge Marshall dissent as to Charges III and VI and vote that the charges be dismissed and dissent as to sanction and vote that respondent be censured.

Judge Salisbury dissents as to Charge VI and votes that the charge be dismissed and dissents as to sanction and votes that respondent be censured.

Ms. Hernandez was not a member of the Commission when the vote was taken in this matter.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: March 4, 1999

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