

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

PAUL F. BENDER,

a Justice of the Marion Town Court,
Wayne County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the
Commission

Lawrence M. Mooney for Respondent

The respondent, Paul F. Bender, a justice of the Marion
Town Court, Wayne County, was served with a Formal Written
Complaint dated March 22, 1991, alleging that he made
inappropriate remarks during a court proceeding. Respondent
filed an answer dated April 18, 1991.

On November 25, 1991, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided in Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On December 12, 1991, the Commission accepted the agreed statement and made the following determination.

1. Respondent has been a justice of the Marion Town Court since 1978.

2. On March 8, 1990, Carl Milke was arraigned before respondent on a charge of Assault, Third Degree. Investigator John E. Robinson and Deputy Richard Salerno of the Wayne County Sheriff's Department and Sarah Utter, coordinator of the Wayne County Victim/Witness Assistance Program, were present.

3. During the arraignment, respondent asked Investigator Robinson whether the alleged assault of the complaining witness, a woman with whom Mr. Milke lived, was "just a Saturday night brawl where he smacks her around and she wants him back in the morning."

4. Respondent granted the prosecution's request for a temporary order of protection and ordered Mr. Milke to avoid any contact with the complaining witness.

5. Respondent advised Mr. Milke of the meaning and significance of the conditions of the temporary order. He told Mr. Milke that his mere presence in the company of the complaining witness could be grounds for his arrest, even if she had initiated the contact. Respondent advised Mr. Milke to "watch your back" because "women can set you up."

6. On May 16, 1990, Mr. Milke pleaded guilty to Attempted Assault, Third Degree. Respondent granted him a conditional discharge, which included an order of protection for one year in favor of the complaining witness.

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), 100.3(a)(1) and 100.3(a)(3), and Canons 1, 2A, 3A(1) and 3A(3) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent's suggestion that the alleged assault might be "just a Saturday night brawl where he smacks her around and she wants him back in the morning," understates the seriousness of such conduct. Such remarks by a judge have the effect of discouraging complaints by the victims of domestic abuse, who

look to the judiciary for protection. (Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 138; Matter of Chase, unreported, NY Commn on Jud Conduct, Mar. 15, 1991).

This comment and respondent's advice to the defendant to "watch you back" because "women can set you up" conveyed the impression that respondent favors the men in such incidents over the women making the accusations. A judge must be impartial and appear impartial at all times in order to promote public confidence in his or her judgment. (Matter of Sardino v. State Commission on Judicial Conduct, 58 NY2d 286, 290-91).

Respondent also failed to display the patience, dignity and courtesy expected of a judge in the courtroom. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][3]).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman and Judge Salisbury concur.

Mr. Sheehy and Judge Thompson were not present.

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: February 7, 1992

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