

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,

Determination

a Justice of the Marion Town Court, Wayne County.

THE COMMISSION:

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

APPEARANCES:

Gerald Stern for the Commission

Honorable Paul F. Bender, pro se

The respondent, Paul F. Bender, a justice of the Marion Town Court,
Wayne County, was served with a Formal Written Complaint dated October 13, 1999,

alleging two charges of misconduct. Respondent did not answer the Formal Written Complaint.

On October 27, 1999, the administrator of the Commission and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On October 28, 1999, the Commission approved the agreed statement and made the following determination.

Preliminary findings:

1. Respondent has been a justice of the Marion Town Court since 1978. His term ends on December 31, 1999; he did not run for re-election.
2. In 1992, respondent was admonished by the Commission for his remarks during the arraignment of a man for assaulting the woman with whom he lived. Respondent had asked a police investigator whether the case was “just a Saturday night brawl where he smacks her around and she wants him back in the morning.” Respondent also advised the defendant to “watch your back” because “women can set you up.”

As to Charge I of the Formal Written Complaint:

3. On January 22, 1999, respondent arraigned Robert W. VanDuser on charges of Assault, Third Degree, and Disorderly Conduct based on an incident involving his girlfriend.

4. During the course of the arraignment:

a) respondent stated that the woman could be charged with Trespass;

b) respondent advised the defendant that he could bring an eviction proceeding against the woman;

c) respondent agreed with Mr. VanDuser's statement that he should "dump" the woman; and,

d) when Mr. VanDuser stated that women had caused him problems, respondent replied, "They can do that," and, "Women can be problems."

As to Charge II of the Formal Written Complaint:

5. Also on January 22, 1999, respondent spoke with a reporter for the Rochester Democrat & Chronicle about the VanDuser case. Although he was aware that a judge is required to abstain from public comment about a pending proceeding, respondent told the reporter:

a) "At the time of the arraignment, there were facts deduced that, perhaps, he should have had her arrested because she assaulted him";

b) that respondent did not expect the woman to return to the home that she shared with the defendant; and,

c) “There was not any reason for the alleged victim to be at the apartment to make a problem.”

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(B)(2), 100.3(B)(4) and 100.3(B)(8). Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent’s misconduct is established.

Respondent’s remarks at an arraignment and to a newspaper reporter afterward indicated a predisposition to believe the defendant and to disfavor the woman that he was charged with assaulting. It was inappropriate and unnecessary for respondent to give advice to the defendant as to what his legal remedies against the woman might be, and it was inexcusable for respondent to publicly suggest that the woman might be guilty of a crime.

Before he had heard any sworn evidence, respondent made remarks indicating that he had taken sides in the dispute before him. A judge’s ability to be impartial goes to the heart of proper decision-making. (See, Matter of Sardino, 58 NY2d 286, 290-91). Remarks that indicate gender bias are particularly reprehensible; they have the effect of discouraging victims of domestic abuse from seeking protection from the courts. (Matter of

Chase, 1992 Ann Report of NY Commn on Jud Conduct, at 41, 43; Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 138). Such indifference to the victims of domestic violence constitutes serious misconduct. (See, Matter of Romano, 93 NY2d 161, 163; Matter of Roberts, 91 NY2d 93, 96).

It was improper for respondent to make any comment to a newspaper reporter concerning a pending case. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][8]; Matter of McKeon, 1999 Ann Report of NY Commn on Jud Conduct, at 117, 120-21; Matter of Fromer, *supra*, at 137). It was especially wrong for him to publicly accuse the alleged victim in VanDuser of committing a crime, particularly since the remark was based only on unsworn conversations at an arraignment.

Respondent knew that he was forbidden to publicly comment on a case before him, and he ignored this Commission's admonition that similar comments in court in a similar case "conveyed the impression that respondent favors the men in such incidents over the women making the accusations," (Matter of Bender, 1993 Ann Report of NY Commn on Jud Conduct, at 54, 55).

Such repeated conduct casts doubt on respondent's fitness to hold judicial office. However, the purpose of the sanction of removal is not punishment but to protect the public by removing unfit incumbents from the bench. (See, Matter of Duckman, 92 NY2d 141, 152; Matter of Reeves, 63 NY2d 105, 111). Respondent did not seek re-election and is leaving the bench on December 31, 1999. Under these circumstances, the

Commission concludes that public rebuke of his conduct is sufficient. (See similarly, Matter of Quinn, 54 NY2d 386, 394-95).

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

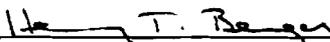
Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall 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: December 21, 1999



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