

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

Determination

FRANCIS I. BENJAMIN,

a Justice of the Jewett Town Court,
Greene County.

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

O'Connell and Aronowitz (By Stephen R. Coffey;
Brian D. Premo, Of Counsel) for Respondent

The respondent, Francis I. Benjamin, a justice of the
Jewett Town Court, Greene County, was served with a Formal
Written Complaint dated September 20, 1989, alleging that he
physically abused a woman. Respondent filed an answer dated
October 18, 1989.

By order dated October 25, 1989, the Commission designated Bernard H. Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 11, 1989, and January 9, 1990, and the referee filed his report with the Commission on March 19, 1990.

By motion dated March 23, 1990, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion on April 12, 1990. The administrator filed a reply, supplemented by letter, both dated April 17, 1990.

On April 19, 1990, the Commission heard oral argument by the administrator. Neither respondent nor his counsel appeared for oral argument. The Commission adjourned the matter for further submissions and forwarded the transcript of oral argument to respondent. Respondent and the administrator filed letters, both dated May 8, 1990. On May 18, 1990, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Jewett Town Court since 1983.
2. Respondent has known Mona M., a waitress in a local restaurant, since 1979. He has patronized the restaurant and

installed cable television in her home.

3. On the night of April 13 and 14, 1988, respondent and Mona were present at the Tannersville Yacht Club, a restaurant and bar. Both were present during an altercation between two other patrons in the parking lot outside the club. After the altercation, both respondent and Mona left the parking lot separately.

4. At about 2:30 A.M. on April 14, 1988, Mona returned to the parking lot. After she left her car, she was told by a man in the parking lot that the club was closed.

5. Respondent then drove into the parking lot in a pick-up truck, told the man in the parking lot to leave, took Mona by the arm and pushed her into the truck.

6. He lay on top of Mona, kissed her, attempted to remove her clothing and touched her breasts.

7. Mona resisted and suffered some scratches and bruises. She eventually pinned respondent's head under the truck's steering wheel and fled.

8. Mona then drove to another bar. Later in the day, she reported the incident to police.

9. Respondent was questioned about the incident on May 12, 1988, by State Police Investigator Steven D. Brignoli. Respondent signed a statement acknowledging that Mona was in his truck and that "...I leaned over and put my hand on her breast."

10. Mona subsequently told the prosecutor that she did not wish to pursue her complaint, and no criminal charges were filed against respondent.

Respondent urges dismissal of the Formal Written Complaint on the ground that staff violated the mandate of the Judiciary Law (Section 44, subdivision 4) and Brady v. Maryland (373 US 83) by failing to disclose in advance a note of Commission witness Trooper Peter J. Kusminsky in which he stated he saw Mona shortly after the incident and she "appeared calm not frazzled or messy--also intox stated nothing about supposed (sic) incident". The Kusminsky memo was produced by him during cross-examination by respondent's counsel. Until then staff counsel was unaware of the existence of the document.*

Two questions arise from the failure of staff counsel to produce the document in question. First, was staff counsel obliged to produce the document to respondent? Second, assuming staff counsel was required to disclose the document, does the failure to do so mandate dismissal of the complaint? We find

*The evidence also includes notes of the investigating trooper, Steven D. Brignoli, concerning his interviews with Mona and containing the notation, "Pete sees Monna [sic] at Oscar's," an apparent reference to Trooper Kusminsky's observations. This, too, staff counsel did not disclose to respondent before the hearing, although respondent does not argue failure to disclose this document as a basis for dismissal.

that staff counsel has an obligation to ascertain the existence of written statements by potential witnesses. The lack of knowledge of the existence of the memo in this case does not excuse staff counsel from its obligation to produce a prior statement by a witness, but, since no prejudice to respondent resulted from this failure, dismissal of the complaint is not warranted.

Section 44, subdivision 4, of the Judiciary Law requires staff counsel, upon written request of a respondent, to disclose at least five days prior to a hearing "any written statements made by witnesses who will be called to give testimony" and, whether or not the respondent requests it, "any exculpatory evidentiary data and material relevant to the complaint," thereby making the principles enunciated in Brady v. Maryland (supra) and People v. Rosario (9 NY2d 286) applicable to Commission proceedings.

The Judiciary Law (Section 44, subdivision 4) further states, "The failure of the commission to timely furnish any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission provided that such failure is not substantially prejudicial to the judge."

In criminal cases, the failure to provide exculpatory or witness statements can result in the reversal of convictions and ordering of new trials (see, People v. Novoa, 70 NY2d 490;

People v. Ranghelle, 69 NY2d 56). Such failure to disclose is error, even though the prosecution--like staff counsel here--was not in possession of the statements or even aware of their existence (Ranghelle, supra; People v. D'Amico, 148 AD2d 982 [4th Dept. 1989]).

Commission proceedings, however, are civil proceedings, governed by a statute which provides that the failure of staff counsel to provide discovery materials shall not affect the validity of the proceeding unless the respondent is substantially prejudiced.

Under the circumstances herein, respondent's motion to dismiss must be denied. Although staff counsel failed in its obligation to obtain and disclose the trooper's note, the material was given to respondent's counsel by the witness on cross examination and was received in evidence by the referee. Mona testified after the troopers, and the note was, therefore, available to respondent's counsel before she testified. Further, the notes were produced before respondent presented his case. After disclosure, the proceeding was adjourned for four weeks, which gave respondent ample opportunity to act upon the information contained in the note. Respondent has offered no evidence of prejudice as a result of the delayed disclosure and has failed to cite authority for the proposition that the failure to disclose the note at an earlier stage in the proceedings results in a per se entitlement to dismissal of the proceedings.

Respondent's application for dismissal on this basis is, therefore, denied.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct and Canons 1 and 2 of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

On or off the bench, a judge remains "cloaked figuratively with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others." Any conduct "inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469.

The preponderance of the evidence indicates that respondent physically forced himself on an unwilling victim. Such conduct is reprehensible when committed by any individual. Coming from a judge, it is especially shocking.

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

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

Mr. Sheehy was 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: June 26, 1990

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