

State of New York  
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

JAMES R. BRADIGAN, SR.,

a Justice of the Villenova Town Court,  
Chautauqua County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Helaine M. Barnett, Esq.  
Honorable Evelyn L. Braun  
E. Garrett Cleary, Esq.  
Mary Ann Crotty  
Lawrence S. Goldman, Esq.  
Honorable Juanita Bing Newton  
Honorable Eugene W. Salisbury  
Barry C. Sample  
John J. Sheehy, Esq.  
Honorable William C. Thompson

APPEARANCES:

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

Honorable James R. Bradigan, Sr., pro se

The respondent, James R. Bradigan, Sr., a justice of the Villenova Town Court, Chautauqua County, was served with a Formal Written Complaint dated April 25, 1994, alleging that he presided in court while intoxicated and that he engaged in ex parte communications. Respondent filed an answer dated June 9, 1994.

On August 10, 1994, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the Formal Written Complaint and the agreed upon facts. The Commission approved the agreed statement by letter dated September 26, 1994.

The administrator submitted a memorandum as to sanction. Respondent neither submitted a memorandum nor requested oral argument. By letters dated November 28 and December 16, 1994, the Commission solicited further information from respondent. He responded on December 12 and 27, 1994. The administrator replied by letter dated January 4, 1995.

On January 12, 1995, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Villenova Town Court since January 1, 1990.

2. On March 11, 1991, Christopher A. Mekus appeared before respondent for a bench trial on charges of Driving While Intoxicated, Driving With Blood Alcohol Content In Excess of .10 Percent, Failure To Keep Right and Criminal Possession Of A Weapon, Fourth Degree.

3. Respondent presided over the bench trial, even though he was intoxicated from the consumption of alcohol.

4. Respondent questioned the defendant, who was seated at counsel table, about the circumstances of his arrest, even though the defendant had not been called as a witness and had not been sworn.

5. Respondent then dismissed the charge of Criminal Possession Of A Weapon, Fourth Degree, and convicted the defendant of the charges of Driving While Intoxicated, Driving With Blood Alcohol Content In Excess of .10 Percent and Failure To Keep Right. He precluded the defendant's attorney from concluding his case.

As to Charge II of the Formal Written Complaint:

6. On July 8, 1993, Mark A. Schindler appeared before respondent on charges of Driving While Intoxicated and Unsafe Turn.

7. Respondent presided over the proceeding, even though he was intoxicated from the consumption of alcohol.

As to Charge III of the Formal Written Complaint:

8. On January 4, 1992, Raymond J. Ortel brought a small claims action for \$148 against Robert Stetler in respondent's court. Respondent spoke with Mr. Ortel outside of court concerning the basis for the claim. On January 25, 1992, Mr. Stetler appeared for trial; Mr. Ortel did not appear. Based

on his out-of-court discussion with the plaintiff and without holding a trial or swearing or questioning witnesses, respondent awarded Mr. Ortel \$148.

9. On May 9, 1992, Karen Cave brought a small claims action for \$20 against Andrea Partyka in respondent's court. Respondent spoke with Ms. Partyka outside of court; she presented a defense to the claim and disputed the amount of damages. Respondent also spoke about the substance of the claim with Ms. Partyka's daughter. On May 30, 1992, Ms. Cave appeared for trial; Ms. Partyka was not present. Respondent awarded Ms. Cave \$10 and told her that he had assured Ms. Partyka that he would do so, based on his out-of-court discussion with her.

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)(2), 100.3(a)(3) and 100.3(a)(4), and Canons 1, 2A, 3A(2), 3A(3) and 3A(4) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

While he was intoxicated, respondent presided over two drunk-driving cases on different days. Such gross conduct seriously undermines confidence in the judiciary. Litigants and the public can have little faith in the decisions and judgment of a judge who is under the influence of alcohol. (See, Matter of

Aldrich v State Commission on Judicial Conduct, 58 NY2d 279, 282).

Respondent compounded this wrongdoing in one of the cases by eliciting information from a criminal defendant who was not sworn and had not taken the witness stand and by rendering a verdict without according the defendant his full right to be heard. (See, Matter of VonderHeide v State Commission on Judicial Conduct, 72 NY2d 658; Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870; Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290).

It was also improper for respondent to base his decisions in two small claims cases on unsworn, ex parte communications. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][4]; Matter of Spiehs, 1988 Ann Report of NY Commn on Jud Conduct, at 222; see also, Matter of Loper, 1985 Ann Report of NY Commn on Jud Conduct, at 172).

Despite the gravity of respondent's presiding while intoxicated, we are not convinced that his removal is warranted. His conduct is not as egregious as that of the only other two judges in this state found to have been intoxicated in the courtroom. (Compare, Matter of Aldrich, supra, in which the conduct included vulgar, racial and sexist remarks and the threatening display of a knife; Matter of Wangler, 1985 Ann Report of NY Commn on Jud Conduct, at 241, which included conduct involving persistent financial irregularities in the court).

Furthermore, respondent has submitted documentation that indicates that his conduct may have been the result of alcoholism, a condition which "has had an irregular history in the law and [to which] the proper legal response is still subject to debate and adjustment," (Matter of Quinn v State Commission on Judicial Conduct, 54 NY2d 386, 393). Alcoholism is sometimes considered as an illness which must be treated as a public health problem; in federal employment law, it is recognized as a disability. (See, Matter of Quinn, supra, at 394). The Court of Appeals has suggested that, in judicial disciplinary cases, "When misconduct is the result of alcoholism, retirement for disability may be most appropriate in cases where discretion is called for." (Matter of Quinn, supra, at 393). On the other hand, when the conduct is so egregious as to result in the irretrievable loss of public confidence in a judge, removal is appropriate. (Matter of Aldrich, supra, at 283).

Respondent avers that he has undertaken an in-patient alcohol detoxification program in March 1994 and has abstained from alcohol since that time.

In view of all of the circumstances, we conclude that censure is the appropriate sanction. However, staff is hereby authorized to observe periodically respondent's public court sessions after a three-month interval from the date of this decision, and the Commission will consider authorization of a new investigation and additional charges upon any observation that suggests that respondent is presiding while under the influence

of alcohol. This does not constitute "a contingent or probationary penalty conditioned on treatment...." (Contra, Matter of Aldrich, supra, at 282).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sample and Judge Thompson concur.

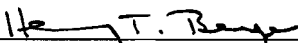
Mr. Sheehy concurs as to the sanction of censure but dissents insofar as periodic court observation is authorized.

Ms. Crotty was not present.

CERTIFICATION

It is determined 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 10, 1995

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