

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

J. MICHAEL BRUHN,

Determination

a Judge of the Kingston City Court,
Ulster 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

Cook, Tucker, Netter & Cloonan, P.C. (By Robert E.
Netter) for Respondent

The respondent, J. Michael Bruhn, a judge of the
Kingston City Court, Ulster County, was served with a Formal
Written Complaint dated May 5, 1989, alleging that he presided
over a criminal case notwithstanding that as an attorney in
another action, he was representing the complaining witness

against the defendant. Respondent filed an answer dated May 30, 1989.

By order dated June 14, 1989, the Commission designated Daniel G. Collins, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 6, 1989, and the referee filed his report with the Commission on January 26, 1990.

By motion dated February 23, 1990, the administrator of the Commission moved to confirm the referee's report, to adopt additional findings and for a determination that respondent's misconduct be found established. Respondent opposed the motion by cross motion on March 13, 1990. Oral argument was waived.

By determination and order dated April 26, 1990, the Commission made the findings of fact enumerated below and found respondent's misconduct established.

The administrator and respondent submitted memoranda as to sanction. On May 18, 1990, the Commission heard oral argument on the issue of sanction. Respondent and his counsel appeared. Thereafter, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a part-time judge of the Kingston City Court since January 1, 1982. He also practices law in Kingston.

2. In the Fall of 1984, respondent was substituted as counsel for Suzanne Gail Burr in a divorce proceeding against her

husband, Raymond E. Burr, Jr., pending in Supreme Court, Otsego County. On December 12, 1984, the parties entered into a stipulation in which it was agreed, inter alia, that Mr. Burr would pay all support arrears by the end of January 1985.

3. On January 1, 1985, Mr. Burr was charged in the City of Kingston with Assault, Third Degree, on the complaint of Ms. Burr. Between January 1 and January 7, 1985, respondent spoke to Ms. Burr about the assault charge.

4. On January 7, 1985, respondent wrote to Mr. Burr's attorney in the divorce proceeding, Marvin D. Parshall. The letter said, in part:

My client has advised me that as a result of an incident which occurred at the end of visitation over New Years, it was necessary for her to file an assault three charge against Raymond. Allegedly, he got somewhat violent with her, and as a result, she had to be treated at the emergency room of a local hospital. I believe the criminal charges, eventually, can be resolved if he will reimburse her medical expenses.

5. On January 8, 1985, Mr. Burr appeared in respondent's court without an attorney. Respondent informed Mr. Burr of his rights and advised him of the charge against him. Respondent adjourned the matter to January 25, 1985, so that Mr. Burr could consult an attorney. Thereafter, respondent directed his court clerks to adjourn the matter to February 22, 1985.

6. The divorce decree was entered on January 28, 1985.

7. On February 12, 1985, Mr. Parshall wrote to respondent, "...I understand that the [criminal] matter is going to be indefinitely postponed in hopes of having the matter adjourned in contemplation of dismissal." Mr. Parshall asked respondent to confirm that understanding and asked whether he needed to be in court on the adjourned date.

8. On February 15, 1985, respondent wrote to Mr. Parshall that it would not be necessary for him to appear in court. "I will have the matter adjourned to March 22," respondent said. "If at that time everything is working smoothly, I am sure an A.C.D. can be arranged without the necessity of an appearance by you or your client."

9. Thereafter, respondent caused the case to be adjourned four times.

10. On April 30, 1985, two days before the matter was scheduled on his court calendar, respondent called Mr. Parshall's office and left a message that Ms. Burr would withdraw her complaint if Mr. Burr would pay \$175 in medical expenses that she claimed were a result of the alleged assault.

11. By letter of May 1, 1985, Mr. Parshall refused, on behalf of his client, to make payment.

12. Respondent further caused the matter to be adjourned five times. After September 12, 1985, the matter disappeared from the court calendar until May 13, 1986. On that date, the case came before respondent, and he adjourned the matter in contemplation of dismissal. Neither Mr. Burr nor his

attorney was present or consented to the disposition, as required by Section 170.55(1) of the Criminal Procedure Law.

13. The charge was ultimately dismissed on November 13, 1986.

14. Respondent did not disqualify himself or offer to disqualify himself from the Burr assault case. He never informed Mr. Parshall that he was a judge of the Kingston City Court, and Mr. Parshall was not aware that respondent was presiding over the case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1), 100.3(a)(4) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent acted as both judge and attorney in a single case, seriously compromising his impartiality as a judge and the expeditious administration of the matter in his court.

Respondent obtained his client's version of an alleged assault by her estranged husband and proposed a settlement of the dispute to the husband's lawyer. The next day, as judge, respondent arraigned the husband. He then permitted the case to languish on the court calendar for more than a year, causing

continual adjournments, in an obvious attempt to use the pending criminal charge to force the settlement that his client wanted. Although he should have disqualified himself from the outset, respondent eventually disposed of the case.

A part-time judge is permitted to practice law, but he is required to distinguish scrupulously between his judicial function and his role as advocate. Matter of Jacon, 1984 Annual Report 99, 101 (Com. on Jud. Conduct, Nov. 28, 1983).

Respondent previously has been censured for mingling his roles as lawyer and judge. In that case, this Commission found that respondent, contrary to law, had advised clients or appeared in other courts on behalf of clients whose cases had originated in his court; had made appearances as attorney in other courts after he had taken judicial action in the same cases; had permitted his law partner, contrary to law, to represent parties in another court in cases that had originated in respondent's court; had acted as judge in cases involving clients or former clients, and had handled as judge cases involving close relatives. Matter of Bruhn, 1988 Annual Report 133 (Com. on Jud. Conduct, Dec. 24, 1987).

The Burr case came into respondent's court in January 1985, before he had notice of the investigation of the prior Commission proceeding. The record indicates that he appeared before a member of the Commission to give testimony in November 1985 and May 1986. Thus, when he granted the adjournment in contemplation of dismissal in Burr on May 13, 1986, he was on

notice that a complaint had been made about the mingling of his roles as lawyer and judge. This exacerbates his failure to remove himself from the disposition of Burr. See Matter of Sims v. State Commission on Judicial Conduct, 61 NY2d 349, 356.

Respondent should have been aware from the outset that his involvement as a judge in Burr was wrong. As a lawyer-judge, he should be especially sensitive to ethical standards. Matter of Crosbie, 1990 Annual Report 86, 89 (Com. on Jud. Conduct, Sept. 8, 1989).

We would take a harsher view of his conduct if the Burr case had commenced after the prior sanction or after he was on notice of the prior investigation. Under these circumstances, we find that respondent's removal is unwarranted.

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

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

Mr. Cleary 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