

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

JOSEPH S. CALABRETTA,

a Justice of the Supreme Court, Eleventh
Judicial District (Queens County).

Determination

THE COMMISSION:

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
John J. Bower, Esq.
David Bromberg, Esq.
E. Garrett Cleary, Esq.
Dolores DelBello
Victor A. Kovner, Esq.
Honorable William J. Ostrowski
Honorable Isaac Rubin
Honorable Felice K. Shea
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel)
for the Commission

Suozzi, English & Cianciulli, P.C. (J. Irwin
Shapiro, Of Counsel) for Respondent

The respondent, Joseph S. Calabretta, a justice of the
Supreme Court, Eleventh Judicial District, was served with a Formal
Written Complaint dated June 27, 1983, alleging that he interceded
on behalf of a relative in a case pending before another judge. Re-
spondent filed an answer dated July 5, 1983.

On December 7, 1983, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement on December 15, 1983, and on February 10, 1984, heard oral argument on the issues herein. Respondent and his counsel appeared for oral argument. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

1. On January 10, 1983, the case of Norman P. Weiss v. G. Ronald Hoffman appeared on the calendar in Supreme Court, Nassau County, Special Term, Part II, before Supreme Court Justice Vincent R. Balletta, Jr. Allen Paul Ansell represented the plaintiff, and Joseph Derrico represented the defendant.

2. Mr. Derrico requested an adjournment of one month because the attorney in his office who was to try the case was actually engaged in another matter. After hearing both sides on the request, including opposition by the plaintiff's attorney, Judge Balletta noted that the case had already been adjourned several times and suggested to Mr. Derrico that someone else in his firm be prepared to try the case. Judge Balletta then scheduled the case for trial before himself on January 12, 1983.

3. On the evening of January 10, 1983, Mr. Derrico went to respondent's home and requested respondent's help in getting an adjournment in Weiss v. Hoffman. Respondent and Mr. Derrico are first cousins once removed.

4. While Mr. Derrico was still at respondent's home but not in the same room where the telephone conversation took place, respondent telephoned Judge Balletta at his home and in the ensuing conversation:

(a) Respondent called Judge Balletta's attention to Weiss v. Hoffman;

(b) respondent advised Judge Balletta that he had a relative who was involved in the case;

(c) respondent, in order to refresh Judge Balletta's recollection of the case, told him that the case involved the dissolution of a partnership;

(d) respondent told Judge Balletta that the relative would like to have an adjournment of the case and would make an application to that effect on January 12, 1983, by submitting an affidavit of actual engagement;

(e) after Judge Balletta advised respondent that he would make no commitment over the telephone on the prospective application, respondent reiterated that the relative would submit an affidavit of actual engagement.

5. Respondent's telephone call to Judge Balletta on January 10, 1983, was a request for an adjournment on behalf of his relative.

6. As a result of respondent's telephone call, Judge Balletta disqualified himself on January 12, 1983, from further participation on the application for adjournment and the trial of Weiss v. Hoffman.

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.

By his call to Judge Balletta, respondent sought special consideration for a relative. Such conduct violates ethical standards and warrants public discipline. See Section 100.2 of the Rules Governing Judicial Conduct; Matter of Byrne, 420 NYS2d 70, 71, 72 (Ct. on the Judiciary, 1979); Matter of Montaneli, unreported (Com. on Jud. Conduct, Sept. 10, 1982); Matter of Kaplan, NYLJ, May 20, 1983, p. 7, col. 1 (Com. on Jud. Conduct, May 17, 1983).

In determining appropriate sanction, the Commission has considered respondent's fine record on the bench and that

he was candid, cooperative and contrite throughout this proceeding.

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

Mrs. Robb, Mr. Bromberg, Mrs. DelBello, Mr. Kovner, Judge Ostrowski and Judge Shea concur.

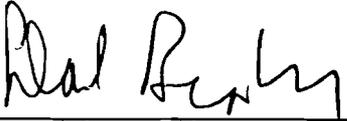
Mr. Bower, Mr. Cleary and Judge Rubin dissent and vote that the appropriate disposition would be a letter of dismissal and caution.

Judge Alexander and Mr. Sheehy 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: April 11, 1984



David Bromberg, Esq.
Member