

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

JOHN CARR,

a Justice of the Gaines Town Court,
Orleans County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
E. Garrett Cleary, Esq.
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Heath & Martin (By Douglas M. Heath) for Respondent

The respondent, John Carr, a justice of the Gaines Town Court, Orleans County, was served with a Formal Written Complaint dated June 8, 1995, alleging that he refused to appoint an interpreter for a defendant who does not speak English, as required by law. Respondent filed an answer dated July 14, 1995.

On September 15, 1995, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating

that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 30, 1995, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Gaines Town Court since 1960.

2. On August 29, 1993, Transito Vasquez, a migrant farm worker, was charged with Driving With Blood Alcohol Content In Excess of .10 Percent, Driving While Intoxicated, Leaving The Scene Of A Personal Injury Accident and Uninspected Motor Vehicle. The case was returnable in respondent's court.

3. Mr. Vasquez does not speak English.

4. On September 2, 1993, Leslie Vasquez of Rural Opportunities, Inc., an agency that provides services to farm workers, contacted respondent and asked him to appoint a court interpreter for Transito Vasquez, as required by Judiciary Law §387.

5. Respondent refused to do so and said, in reference to Transito Vasquez, "If he can get around in a car, why can't he provide his own interpreter."

6. Also on September 2, 1993, Mark J. Van Derwater, another representative of Rural Opportunities, Inc., contacted respondent and asked him to appoint a court interpreter for Transito Vasquez.

7. Respondent refused and, with reference to Transito Vasquez and other Spanish-speaking farm workers, stated that:

- a) they had always brought friends to translate before;
- b) Mr. Vasquez would have to find somebody; and,
- c) these people are lucky to be here and to have jobs.

8. On September 9, 1993, Transito Vasquez appeared before respondent and asked him to provide a court interpreter. Respondent refused and, in reference to the defendant, said, "How does he get jobs if he can't speak English." Respondent adjourned the case without taking any action.

9. On September 23, 1993, respondent accepted Transito Vasquez's guilty plea to Driving While Ability Impaired and Leaving The Scene Of A Property Damage Accident, even though respondent had refused to appoint a court interpreter. Respondent relied on a 17-year-old friend of Transito Vasquez to serve as an unofficial interpreter.

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

In a court in which there is no official interpreter, a judge is required to appoint a temporary interpreter whenever one is needed. (Judiciary Law §387). Respondent's repeated refusal to provide an interpreter for Transito Vasquez violated the law and denied him the right to fully participate in the proceedings against him. Respondent's remarks concerning the defendant and other Spanish-speaking farm workers gave the appearance of ethnic bias.

A judge must be and appear to be unbiased at all times so that "the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290-91). Remarks by a judge that convey the appearance of ethnic bias are "undesirable, inappropriate and inexcusable." (Matter of Cunningham, 1995 Ann Report of NY Commn on Jud Conduct, at 109, 110; see also, Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51).

Respondent's conduct is mitigated by the facts that he has a long and heretofore unblemished record on the bench (see, Matter of Abbott, 1990 Ann Report of NY Commn on Jud Conduct, at 69, 71-72) and that he has been cooperative in this proceeding (see, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

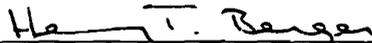
Mr. Berger, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Mr. Sample and Judge Thompson concur.

Ms. Barnett and Judge Salisbury 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: January 22, 1996



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