

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

CARLTON M. CHASE,

Determination

a Justice of the Sullivan Town Court
and the Chittenango Village Court,
Madison 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 for the Commission

Bond, Schoeneck & King (By Francis E. Maloney, Jr.)
for Respondent

The respondent, Carlton M. Chase, a justice of the Sullivan Town Court and the Chittenango Village Court, Madison County, was served with a Formal Written Complaint dated October 12, 1990, alleging that he was rude and created the appearance of bias in a case before him. Respondent filed an answer dated October 26, 1990.

On January 15, 1991, 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 for by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On January 31, 1991, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Sullivan Town Court since 1981. He has been a justice of the Chittenango Village Court since 1973.

2. On September 7, 1989, respondent arraigned Carl Hoyt on charges of Sexual Misconduct, Second Degree, and Sexual Abuse, Second Degree. Mr. Hoyt pled not guilty.

3. On September 7, 1989, the complaining witness in the Hoyt case, Martha G., contacted respondent and asked him to issue a temporary order of protection on her behalf against Mr. Hoyt. Respondent told her that she would have to appear in court personally to request such an order. Martha said that she suffered from night blindness and could not drive to court that night.

4. On October 2, 1989, State Trooper Lisa A. Romero contacted respondent at his home. Trooper Romero said that she had been told by Martha that respondent had refused her telephone request to issue a temporary order of protection. Respondent said that he did not issue such orders in response to telephone requests and that a temporary order of protection was unwarranted in this case. Trooper Romero replied that the basis for the request was that Mr. Hoyt had been seen slowly driving his car by Martha's home and "possibly" on her property. Respondent then yelled, "Listen, she goes up to his place and stays all night, and if you ask me, she was asking for trouble." Trooper Romero reminded respondent that the case had not yet been adjudicated and that Martha should be afforded her rights. The trooper said that Martha owned the house where the alleged crime had taken place. Respondent angrily asserted that Martha would use a temporary order of protection to falsely accuse Mr. Hoyt of being on her property in order to "get back" at him. Trooper Romero said that she was requesting the temporary order as a "precaution." Respondent angrily yelled, "Hey, if you could do a better job, trooper, you come in off the road and try to be a judge and live with these people up here."

5. On October 3, 1989, the district attorney, Neal Rose, sent respondent a letter, requesting that he issue a temporary order of protection for Martha against Mr. Hoyt.

6. On October 5, 1989, Mr. Rose appeared before respondent in connection with the Hoyt case and asked that the proceedings be held in camera. Respondent denied the request. Mr. Rose then asked for a temporary order of protection for "the victim." Respondent loudly and angrily objected to Mr. Rose's letter of October 3, 1989, and yelled, "The D.A.'s office doesn't run this court, and I'll decide when and if I'm going to issue an order of protection and under what circumstances." Respondent rudely and harshly accused Mr. Rose of being a "lousy district attorney" and attributed his recent defeat in a primary election to poor lawyering skills. Respondent denied Mr. Rose's request for a temporary order of protection, stating that he believed that the criminal complaint was unfounded and that the matter appeared to involve only a "marital dispute."

7. Respondent denied Mr. Rose's request that he disqualify himself from the proceeding and the prosecutor's second request to proceed in camera. Respondent loudly said that if Martha had wanted an order of protection, she would have appeared in court to request one. Mr. Rose explained that the Criminal Procedure Law does not require the victim's personal appearance. Respondent loudly replied that he would not issue such an order unless Martha appeared in court.

8. Mr. Rose indicated that Martha was in the courtroom. Respondent directed her to approach the bench. Respondent loudly and angrily chastised her for not appearing in court for prior proceedings in the case. Mr. Rose said that no

prior proceedings in the case had involved Martha and that she had never been notified to appear in court. Martha said that she had received no notices to appear in the past and had been unable to attend because of night blindness. Respondent sarcastically replied, "That's your problem." Martha explained that she was requesting a temporary order of protection because Mr. Hoyt had slowly driven his car past her home on a number of occasions and she was afraid of him. Respondent repeated that he would not issue a temporary order.

9. Mr. Rose repeated his request that respondent disqualify himself, arguing that his actions and statements created the appearance that respondent had already decided how he would rule. Respondent disqualified himself and transferred the case to another judge.

10. During the proceedings on October 5, 1989, respondent was red-faced and angry when speaking with Mr. Rose and Martha and repeatedly waved his arm, hand and finger at them.

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

Respondent's hostility to the complaining witness in a criminal case plainly indicated that he had prejudged the matter. He not only summarily denied her a temporary order of protection without affording her full opportunity to be heard, but he also asserted before the matter had been adjudicated that he saw no merit to her complaint against the defendant. He told a trooper that the complaining witness "was asking for trouble" when the incident occurred, and he gave the prosecutor in open court his opinion that the criminal complaint was unfounded.

"The ability to be impartial is an indispensable requirement for a judicial officer. Equally important is the requirement that a Judge conduct himself in such a way 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).

A judge should treat the possible victims of sex crimes and abuse with special sensitivity and understanding. Such actions as respondent's have the effect of discouraging complaints by those who look to the judiciary for protection (Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 138).

Respondent humiliated the complaining witness by forcing her to come before him in open court. The law contains no such requirement on an application for a temporary order of protection. (See, CPL 530.12). A judge is permitted to issue a

temporary order upon an ex parte application once an accusatory instrument has been filed. (CPL 530.12[3]).

In addition to showing bias, respondent violated his ethical obligations to be patient, dignified and courteous and to maintain order and decorum in his courtroom by his rude, loud and angry statements to the complaining witness and the trooper and the prosecutor who sought to protect her interests (see, Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][2], 100.3[a][3]).

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

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

Mr. Cleary 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: March 15, 1991

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