

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

DETERMINATION

THOMAS A. DICKERSON,

a Judge of the County Court and an Acting
Family Court Judge, 9th Judicial District,
Westchester County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern for the Commission

Mancuso, Rubin & Fufidio (By Andrew A. Rubin) for Respondent

The respondent, Thomas A. Dickerson, a judge of the County Court and an acting Family Court Judge, Westchester County, was served with a Formal Written

Complaint dated July 13, 2001, containing one charge.

On September 5, 2001, the Administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On November 8, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a judge of the Yonkers City Court from January 1, 1994, to December 31, 1999, and has served as a judge of the Westchester County Court from January 1, 2000, to the present, sitting as an acting Family Court judge.

2. In November 2000, respondent was sharply criticized in the press for his decision in a Family Court case in which he had dismissed charges against a man who threatened a woman in a telephone conversation. The legal basis of respondent's decision was that the woman had initiated the telephone call.

3. In February 2001, in an interview with a *New York Times* reporter, respondent told the reporter that he had changed his view on whether a person could be held responsible for Aggravated Harassment, Second Degree if he or she threatened another person in a telephone conversation initiated by the person who was threatened.

Respondent further stated to the reporter that in future cases, he would broaden his view of the law to protect the alleged victim of a death threat no matter who initiated the telephone call. Respondent expected his comments to be reported in the press, and his comments were reported in an article dated February 25, 2001.

4. In the course of the interview, respondent indicated what positions he would take in future death-threat cases, including that he would set bail of \$10,000, that he would incarcerate the person who allegedly made a threat against the alleged victim's life, whom he referred to as "the abuser," and that he would find a sufficient basis to charge Aggravated Harassment in the Second Degree.

5. The news article resulting from respondent's comments to the reporter was entitled "An About-Face on Domestic Violence," and a sub-heading, under respondent's posed photo on the bench, was: "Responding to Criticism, Family Court Judge Says He Will Try To Protect Victims of Death Threats."

6. In the interview, respondent referred twice to the alleged abuser as "the abuser," which implies and conveys the impression that respondent believed that all such allegations were true and all alleged abusers were guilty. That impression was bolstered by his other comments to the reporter in which he indicated what action he would take in such cases at the initial appearance. In fact, respondent does not assume the guilt of those who are alleged to have been abusive to their spouses and other partners.

7. Respondent was unaware that he was barred by the applicable rules from announcing publicly how he would act in impending cases in his court. Respondent agrees that such lack of knowledge is not an excuse and is not a mitigating circumstance. He should have been more aware of the applicable rules and he now recognizes that his conduct as set forth in paragraphs 3 through 6 above was improper.

8. Although respondent's comments to the *Times* reporter were made a few weeks after he announced his candidacy for a nomination to a Supreme Court judgeship, he denies that his purpose in granting the interview and making the comments was to enhance his position as a candidate. The evidence would not establish that respondent had a political motive in making the comments or that he gave the interview to make himself a more viable candidate for a Supreme Court nomination.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(B)(1), 100.3(B)(8), 100.4(A)(1), 100.4(A)(2), 100.4(A)(3), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it consistent with the above facts, and respondent's misconduct is established.

By advising the press that he had changed his view of the law with respect to death-threat cases soon after being sharply criticized for a decision in such a case,

respondent conveyed the appearance that he had reshaped his legal views as a result of unfavorable publicity. Such an appearance is antithetical to the proper role of a judge, which is to exercise judgment in an independent, impartial manner, unswayed by concerns about what may be popular or politically correct. Respondent's comments, which were reported in a news article entitled "An About-Face on Domestic Violence," violated well-established standards requiring a judge to avoid impropriety and the appearance of impropriety and "not be swayed by partisan interests, public clamor or fear of criticism" (Rules Governing Judicial Conduct, 22 NYCRR 100.2 and 100.3[B][1]).

The impropriety here is not that respondent changed his view of the law, but that his publicized comments convey the impression of a biased judge whose views shifted in response to public criticism. Although this portrayal is inaccurate, respondent bears responsibility for the impression created by his ill-conceived remarks to the press.

By stating explicitly what position he would take in future death-threat cases (including that he would set bail of \$10,000 and would incarcerate the person who allegedly made the threat), respondent cast reasonable doubt on his capacity to act impartially on issues that were likely to come before him, contrary to Section 100.4(A)(1) of the Rules. His comments convey the appearance of a biased judge who would deal harshly with alleged abusers, rather than judge the merits of individual cases. *See* Matter of Hafner, 2001 Ann Rep 113 (Comm on Jud Conduct); Matter of Maislin, 1999 Ann Rep 113 (Comm on Jud Conduct); Matter of Herrick, 1999 Ann Rep 103 (Comm on Jud Conduct). Respondent's statements also violated Section 100.3(B)(8) of the Rules,

which prohibit a judge from commenting publicly on pending or impending cases.

Respondent's professed unfamiliarity with the relevant ethical prohibitions does not mitigate or excuse his misconduct in this regard. Matter of VonderHeide v. State Commn on Jud Conduct, 72 NY2d 658, 660 (1988).

Respondent, who was then a candidate for a Supreme Court nomination, also violated ethical standards incumbent upon judicial candidates. His statements conveyed the appearance that he was making pledges or promises of conduct in office and appeared to commit him with respect to issues likely to come before the court, contrary to Sections 100.5(A)(4)(d)(i) and (ii) of the Rules. Although the record does not establish that respondent made the comments for the purpose of enhancing his candidacy, his statements were improper and detract from the dignity of judicial office.

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

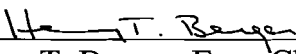
Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur.

Judge Luciano was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State
Commission on Judicial Conduct.

Dated: November 19, 2001



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