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

JOHN G. DIER,

a Justice of the Supreme Court,
4th Judicial District, Warren County.

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

Sise & Sise (By Robert J. Sise) for Respondent

The respondent, John G. Dier, a justice of the Supreme Court, 4th Judicial District, was served with a Formal Written Complaint dated November 14, 1994, alleging that he defied appellate authority and created the appearance that he is biased and arbitrary, that he refused to disqualify himself in a case in which he had had a personal dispute with one of the parties and that he failed to fully disclose his income and liabilities on ethics forms. Respondent filed an answer dated December 2, 1994.

On April 12, 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 censured and waiving further submissions and oral argument.

On April 27, 1995, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since January 1980. He has been a judge since 1957, first in the Lake George town and village courts and later in the Warren County family, county and surrogate's courts.

2. Since 1985, respondent has repeatedly issued dispositive orders without making findings of fact or setting forth his reasoning, contrary to CPLR 4213(b) and even though the Appellate Division, Third Department, in Niagara Mohawk v Peryea on October 10, 1985, criticized respondent's decision in the lower court, stating, "The statement of essential facts may not be waived or dispensed with since it is necessary to insure a proper adjudication in the trial court and adequate appellate review [citation omitted]." The case was remitted to respondent for "detailed findings as to how the damages were calculated [citation omitted]."

3. The Appellate Division further criticized respondent for similar omissions in Buchwald v Waldron on June 13, 1991; Ireland v Queensbury Zoning Board on June 27, 1991; C.R. Drywall, Inc. v Wade Lupe Construction Corp. on November 21, 1991; Beverina v West on July 29, 1993; Dupell v Levesque on November 18, 1993; and, Brender v Brender on December 9, 1993. On April 2, 1992, in Schulz v Warren County Board of Supervisors, the Appellate Division noted that respondent "gave no rationale for [his] determination, either in written form or on the record, a practice this court has discouraged in the past [citation omitted] and one which we are disturbed to see reoccur, especially in a factually and procedurally complex case such as the one at bar." The court advised respondent, "Such a practice not only deprives this court of the benefit of Supreme Court's rationale, but also conveys, especially to pro se litigants, the impression that their efforts to studiously prepare their case were not worthy of comment. Moreover...it can also give the impression of bias." On December 9, 1993, in New York TRW Title Insurance v Wade's Canadian Inn and Cocktail Lounge, Inc., the court wrote, "We note, again, our displeasure with Supreme Court's continued disregard of our comments regarding the issuance of written decisions." On December 30, 1993, in Flynn v Timms, the Appellate Division remarked that respondent had denied motions without a written decision and said, "We cannot emphasize

too strenuously our displeasure with Supreme Court Justices who, despite admonitions, continue to decide cases without written decisions."

4. In testimony during the Commission's investigation of this matter on March 2, 1994, respondent stated that he intends to continue writing decisions only in "complicated" matters in which he reserves decision. In other cases, he intends to continue to rule from the bench without making written findings or setting forth his reasoning, respondent testified.

5. On March 23, 1989, in W.I.L.D. W.A.T.E.R.S., Ltd. v Martinez, the Appellate Division, Third Department, reversed respondent's decision in the lower court, in part because respondent had refused to accept and consider answering papers of one of the defendants, even though the papers had been timely served. The court stated, "Had Supreme Court considered the opposing papers...a preliminary injunction would undoubtedly have been found inappropriate inasmuch as plaintiff is unlikely to succeed on the merits [citation omitted]."

6. Since the Martinez decision in 1989, respondent has repeatedly refused and says that he will continue to refuse to accept reply papers on the day of oral argument with respect to contested motions, even though the papers were served within the permissible time period.

As to Charge II of the Formal Written Complaint:

7. In March 1986, respondent was involved in a heated verbal confrontation with Robert D. Leombruno, Sr., who lived near respondent. Respondent was questioned by the police in connection with the incident.

8. Thereafter, a matrimonial action in which Mr. Leombruno was a party was assigned to respondent for trial. Mr. Leombruno's attorney asked respondent to recuse himself from the case. On July 1, 1988, respondent denied the motion. Mr. Leombruno appealed, and the Appellate Division, Third Department, reversed, ruling, "Defendant's allegations and documentary evidence raise serious questions as to the relationship between Justice Dier and defendant which could easily be interpreted by some as affecting the Justice's impartiality. Accordingly, Justice Dier should have disqualified himself...."

As to Charge III of the Formal Written Complaint:

9. On February 19, 1993, respondent filed with the Ethics Commission for the Unified Court System a financial disclosure statement required by Judiciary Law §211(4) and the Rules of the Chief Judge, 22 NYCRR 40.2. Respondent failed to fully disclose his income and liabilities for 1992, in that he:

a) failed to disclose that he was co-mortgagor of another individual's property and that his own property was collateral security on the mortgage; and,

b) failed to disclose income from rental property that he owned.

10. After he was questioned by the Ethics Commission, respondent disclosed his 1992 income and liabilities on an amended financial disclosure statement filed on August 18, 1993.

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)(4) and 100.3(c)(1), and Canons 1, 2A, 3A(1), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In the performance of adjudicative responsibilities, a judge must "be faithful to the law and maintain professional competence in it." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][1]). For a trial judge, the law is comprised of both statutes and appellate directives.

Statutory law (CPLR 4213[b]) and numerous decisions of the Appellate Division, Third Department, required respondent to make a record of his findings of fact and the reasoning for his rulings in civil cases. Notwithstanding the repeated and numerous directives of the appellate court in appeals of respondent's cases, he refused to comply with this requirement. The willful refusal to abide by appellate authority is

sanctionable misconduct (Matter of Bolte, 97 AD 551, 574-75 [1st Dept]; see generally, Matter of Jutkofsky, 1986 Ann Report of NY Commn on Jud Conduct, at 111, 126-27; Matter of Leff, 1983 Ann Report of NY Commn on Jud Conduct, at 119).

By his continued refusal to state his reasons for his decisions, respondent has created the appearance that he is biased and arbitrary, has impaired appellate review and has wasted the resources of the judiciary and the litigants.

Even in light of the Appellate Division's rebukes and its clear explanations of the importance of making such findings and even in the face of an investigation by this Commission, respondent has insisted that he will persist in his refusal to make a proper record. This compounds his wrongdoing. (See, Matter of Sims v State Commission on Judicial Conduct, 61 NY2d 349, 357; Matter of Shilling v State Commission on Judicial Conduct, 51 NY2d 397, 404). Continued defiance of appellate authority and of the law he is sworn to administer may lead us to determine that respondent is not fit to be a judge.

At this time, we conclude that censure is an adequate sanction, even in view of respondent's prior record of misconduct (see, Matter of Dier v State Commission on Judicial Conduct, 48 NY2d 874; Matter of Dier, 1994 Ann Report of NY Commn on Jud Conduct, at 60) and of the other misconduct established in this record (findings 5 through 10, supra).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Ms. Crotty, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sample concur.

Mr. Coffey and Judge Thompson were not present.

CERTIFICATION

It is determined 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: July 14, 1995

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