

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

CHARLES E. DUSEN,

a Justice of the LeRoy Town Court,
Genesee County.

DETERMINATION

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the
Commission

Boylan, Morton & Whiting, LLP (by Paul S. Boylan) for Respondent

The respondent, Charles E. Dusen, a justice of the LeRoy Town Court,
Genesee County, was served with a Formal Written Complaint dated July 15, 2004,

containing one charge. Respondent filed an answer dated August 5, 2004.

On October 6, 2004, the administrator of the Commission, respondent's counsel and respondent 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, recommending that respondent be censured and waiving further submissions and oral argument.

On November 4, 2004, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the LeRoy Town Court, Genesee County since January 1, 1988. Respondent is not an attorney.
2. On or about June 17, 2003, in connection with *People v. Constantino Bahena-Ponce*, respondent arranged for the release of the defendant from the Genesee County Jail by preparing and issuing an order that falsely stated that the defendant had been convicted of Trespass and sentenced to time served, notwithstanding that respondent knew that: (a) respondent had arraigned the defendant on the Trespass charge the prior evening, at which time the defendant pleaded not guilty; (b) the defendant had not been convicted of Trespass and had not been sentenced to time served; and (c) the charge against the defendant had not been adjudicated, and the case was pending before respondent.
3. Respondent engaged in the conduct set forth above in response to a request from agents of the United States Immigration and Naturalization Service (INS)

that he order the defendant released so that the INS agents could arrest the defendant.

4. Respondent felt pressured by the INS agents' request for immediate action. The agents were waiting at the jail for the defendant to be released.

5. Respondent now realizes that he could have simply indicated on the release form that the defendant "be released from custody," without indicating the basis for the release, and that the defendant would then have been released and taken into custody.

6. On July 3, 2003, respondent was contacted by Giovanna Macri, Esq., the attorney representing the defendant in his federal deportation proceeding. Respondent acknowledged to Ms. Macri that the defendant had not been convicted, but that he had believed that it was the only way for him to immediately effectuate the defendant's release for the purpose of his being taken into custody by the INS. Respondent offered to send a letter to Ms. Macri acknowledging that the defendant had not been convicted. On July 8, 2003, respondent sent such a letter to Ms. Macri, and on July 14, 2003, he dismissed the charge against the defendant in the interest of justice.

7. The defendant was found to have no legal status in the United States and was deported on August 7, 2003.

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(C), 100.3(B)(1) and 100.3(B)(6) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and

Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Having decided to release a defendant in response to a request from immigration officials, respondent prepared a release order that falsely stated that the defendant had been convicted of Trespass and sentenced to time served. Respondent not only checked a box on the order form stating that the defendant had been convicted, but added details about the fictitious conviction. The form had another box that, if checked, would have accomplished the release without employing the fiction that the defendant had been convicted. By issuing an order under a pretext that he knew to be false, respondent engaged in misconduct.

In considering an appropriate sanction, we are mindful that removal from office is an extreme sanction to be imposed "only in the event of truly egregious circumstances" and "not normally to be imposed for poor judgment, even extremely poor judgment" (*Matter of Cunningham v. Comm. on Judicial Conduct*, 57 NY2d 270, 275 [1982]; *Matter of Sims v. Comm. on Judicial Conduct*, 61 NY2d 349, 356 [1984]). Although respondent's conduct amounts to extremely poor judgment, removal is not appropriate under the circumstances presented here. Respondent, who is not an attorney, made a decision to accommodate immigration officials, and he erroneously believed that entering a conviction on the release order was the only way to effectuate the defendant's release. Upon being contacted by the defendant's attorney and realizing that his conduct was improper, he attempted to correct his error by advising the attorney in writing that the

defendant had not been convicted, and he dismissed the charge in the interest of justice. Respondent has served as judge for 16 years and has acknowledged his misconduct. In light of these factors, we conclude that respondent should be censured.

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


Mr. Goldman, Judge Ciardullo, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey and Ms. DiPirro were not present.

CERTIFICATION

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

Dated: November 16, 2004



Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct