

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

JACK A. ELLIS,

a Justice of the Barton Town Court,
Tioga County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Turk, Truman, Bishop & Tillapaugh (By Martin H.
Tillapaugh) for Respondent

The respondent, Jack A. Ellis, a justice of the Barton Town Court, Tioga County, was served with a Formal Written Complaint dated February 8, 1994, alleging that he recommended six persons, including members of his family, to attorneys to be used as process servers in civil actions in his court.

Respondent filed an answer dated February 25, 1994.

On August 4, 1994, 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 pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 23, 1994, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Barton Town Court during the time herein noted.

2. From November 1988 to February 1994, respondent recommended to attorneys who appeared before him six persons to be used as process servers for civil actions in respondent's court. Respondent recommended May Bensen, Denise Spaulding, Wayne Searles, Gary Reeves, Thomas Coolidge and Constance Currier Ellis.

3. Ms. Spaulding is respondent's daughter and was recommended by him as a process server between December 1990 and February 1994. Between December 1990 and April 1992, she served civil complaints or summonses in 534 cases commenced in respondent's court.

4. Ms. Ellis has been respondent's wife since October 1991 and was recommended by him as a process server from that time until February 1994. From December 1991 through December 1993, she served civil complaints or summonses in 403 cases commenced in respondent's court.

5. Ms. Bensen was married to respondent from November 1988 through June 1990 and was recommended by him as a process server during that period. Between November 1988 and February 1990, Ms. Bensen served civil complaints or summonses in 287 cases commenced in respondent's court. In three cases, respondent accompanied Ms. Bensen when she served the complaint or summons.

6. Between November 1988 and April 1992, Mr. Searles served civil complaints or summonses in 19 cases commenced in respondent's court.

7. Between November 1988 and April 1992, Mr. Reeves served civil complaints or summonses in 17 cases commenced in respondent's court.

8. Ms. Bensen and Ms. Spaulding received full payment for their services from respondent, who had received fees from the plaintiffs or their representatives.

9. Respondent recommended the six individuals only in response to inquiries from local attorneys or their representatives. At no time did he insist, require or direct that civil actions be commenced by the filing of a summons or complaint served by one of the six persons.

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), 100.2(b), 100.2(c) and 100.3(a)(1), and Canons 1, 2A, 2B and 3A(1) of the

Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent should have rebuffed the requests of attorneys who appear before him for names of prospective process servers. It was especially improper for him to recommend members of his family, including members of his own household, who benefitted financially from the work.

Lawyers who seek such recommendations might believe that they can curry favor from a judge by employing the judge's nominees, especially when they are giving work to members of the judge's family. "No judge shall lend the prestige of his or her office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him or her." (Rules Governing Judicial Conduct, 22 NYCRR 100.2[c]).

By making the recommendations, respondent also placed himself in a position in which his impartiality or the prompt administration of justice might be compromised unnecessarily. The service of a summons or complaint sometimes becomes an issue in civil cases, and a process server might be called upon to testify in court. In order to determine whether adequate legal notice of an action was given, respondent might have been required to evaluate the testimony and actions of the process servers that he had recommended, including his wife or daughter.

The conflict might have compelled his disqualification, resulting in inconvenience and delay for the parties. This was especially problematic in the three situations in which respondent accompanied the process server and placed himself in a position in which he might have obtained personal knowledge of a matter before him.

While a judge must disqualify himself or herself when impartiality might reasonably be questioned, the judge also has an obligation to avoid situations in which disqualification will become necessary. (See, Matter of Hanofee, 1990 Ann Report of NY Commn on Jud Conduct, at 109, 114).

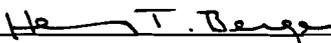
By reason of the foregoing, the Commission determines that the appropriate sanction is censure.

All concur.

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: December 1, 1994


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