

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

ROBERT W. ENGLE,

a Justice of the Madison Town Court and Madison
Village Court, Madison County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Neal P. Rose for Respondent

The respondent, Robert W. Engle, a justice of the Madison Town Court, Madison County, was served with a Formal Written Complaint dated May 10, 1996, alleging that he lent the prestige of his office to assist a defendant with a case pending in another court. Respondent filed an answer dated May 31, 1996.

On September 10, 1996, 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 in 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 12, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Madison Town Court since January 1990.
2. On May 13, 1995, respondent prepared and signed a letter on judicial stationery and caused it to be sent to Madison County Court Judge William F. O'Brien, III, Madison County District Attorney Donald F. Cerio and Madison County Assistant District Attorney Renee M. Smith. In the letter, respondent requested leniency in the sentencing of James Friers, a defendant whom respondent knew personally. Mr. Friers had pleaded guilty before Judge O'Brien in March 1995 to Driving While Intoxicated and was awaiting sentencing.
3. Respondent vouched for Mr. Friers's good character, questioned the competence of a probation official who had prepared a pre-sentence report on Mr. Friers, disparaged the police officer who had arrested and charged Mr. Friers, urged Judge O'Brien not to impose a jail sentence and vouched for the defendant's credibility and honesty.
4. Respondent repeatedly referred to his judicial office in the letter.

5. In May 1995, respondent drafted and circulated a petition in the Town of Madison which requested "compassion and mercy" for Mr. Friers. He signed the petition, listed his occupation as "town justice" and mailed it in a town court envelope to the District Attorney.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.2(c), and Canons 1, 2A and 2B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent's flagrant abuse of his judicial office on behalf of Mr. Friers in a criminal action in another court constitutes serious misconduct.

Although respondent appealed to Judge O'Brien on the merits, rather than making a bald request for favoritism, the repeated references to his judicial office violated the proscription that a judge "shall not lend the prestige of judicial office to advance the private interests of the judge or others...." (Rules Governing Judicial Conduct, 22 NYCRR 100.2[C]; see, Matter of Kiley v State Commission on Judicial Conduct, 74 NY2d 364; Matter of Wright, 1989 Ann Report of NY Commn on Jud Conduct, at 147).

As the Court of Appeals stated in Matter of Lonschein v State Commission on Judicial Conduct:

...[N]o Judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others [citation omitted]. Members of the judiciary should be acutely aware that any action

they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved [citation omitted]. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office.

(50 NY2d 569, at 571-72)

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

Mr. Berger, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

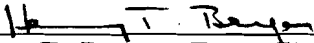
Mr. Sample was not present.

Mr. Pope was not a member of the Commission when the vote was taken in this matter.

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: February 4, 1997


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