

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

**MICHAEL FRATI,**

a Justice of the New Baltimore Town  
Court, Greene County.

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**THE COMMISSION:**

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

**APPEARANCES:**

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the  
Commission

McNamee, Lochner, Titus & Williams, P.C. (By David J.  
Wukitsch) for Respondent

The respondent, Michael Frati, a justice of the New Baltimore Town Court, Greene County, was served with a Formal Written Complaint dated August 4, 1994, alleging that he made certain statements indicating bias and prejudice in a civil case. Respondent filed an answer dated August 31, 1994.

On November 22, 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 January 12, 1995, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the New Baltimore Town Court since 1989.

2. On December 29, 1993, respondent conducted a pre-trial conference in Lee Adler v Kevin Kemnah, in which the plaintiff claimed damages for breach of contract and negligence based on the defendant's alleged release of the plaintiff's cattle.

3. Based on ex parte information, respondent dismissed Mr. Adler's claim, sua sponte, without hearing any witnesses or conducting a trial.

4. Respondent stated:

a) that he had been observing the situation in the agricultural community and had done "research" on other, unrelated legal actions by Mr. Adler;

b) that a "cry was raised up in the community" with respect to Mr. Adler and his cattle and that respondent had heard the "cry" and could not ignore it;

c) that, based on his knowledge of other, unrelated court matters involving Mr. Adler and his cattle, respondent believed that the claim against Mr. Kemnah was an attempt by the plaintiff to use the court as an "instrument of oppression and harassment" against his neighbors;

d) that, because of unwritten "codes of honor" in New Baltimore of more than 100 years standing, no one had ever brought an action against a neighbor concerning cattle; and,

e) that respondent felt that Mr. Adler's claim was not in the "spirit" of these unwritten codes.

5. Respondent suggested that Mr. Adler was a "negligent" farmer.

6. Pursuant to UJCA 1810, respondent ordered that Mr. Adler was not permitted to file any court action, civil or criminal, in respondent's court without a review of the merits and approval of the court, even though UJCA 1810 applies only to small claims cases and even though respondent had no basis for such an order.

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, 100.3(a)(1) and 100.3(a)(4), and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The ability to be impartial and to appear impartial is an indispensable requirement for a judge. (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290). In Adler v Kemnah, respondent abandoned his proper role as a neutral and detached magistrate (see, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86) and conveyed the impression that he was biased and had prejudged the case.

He also made it appear that he was influenced by community hostility toward Mr. Adler. "A judge shall be unswayed by partisan interests, public clamor, or fear of criticism." (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][1]).

Based on ex parte information and what he perceived as the "cry" of the community, respondent denied Mr. Adler the opportunity to be heard and dismissed his claim without hearing any evidence at all. (See, Matter of Loper, 1985 Ann Report of NY Commn on Jud Conduct, at 172; Matter of Wilkins, 1986 Ann Report of NY Commn on Jud Conduct, at 173; Matter of Edwards, 1987 Ann Report of NY Commn on Jud Conduct, at 85).

Respondent furthered this impression of bias and failed to follow the law by misapplying a procedure applicable only to small claims cases and telling Mr. Adler that he could not file any future civil or criminal actions without the permission of the court. (Compare, Matter of Zapf, 1988 Ann Report of NY Commn on Jud Conduct, at 251).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary,  
Mr. Goldman, Judge Newton, Judge Salisbury and Judge Thompson  
concur.

Mr. Sample and Mr. Sheehy did not participate.

Ms. Crotty was not present.

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: January 20, 1995

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