

*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

ROBERT N. GOING,

DETERMINATION

a Judge of the Family Court, Montgomery County.

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THE COMMISSION:

Honorable Eugene W. Salisbury, Chair  
Henry T. Berger, Esq.  
Jeremy Ann Brown, C.A.S.A.C.  
Stephen R. Coffey, Esq.  
Lawrence S. Goldman, Esq.  
Christina Hernandez, M.S.W.  
Honorable Daniel F. Luciano  
Honorable Frederick M. Marshall  
Honorable Karen K. Peters  
Alan J. Pope, Esq.  
Honorable Terry Jane Ruderman

APPEARANCES:

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

E. Stewart Jones, PLLC (By Peter J. Moschetti, Jr.) for Respondent

The respondent, Robert N. Going, a judge of the Family Court,  
Montgomery County, was served with a Formal Written Complaint dated June 10, 1999,  
containing two charges. Respondent filed an answer dated July 9, 1999.

By order dated September 16, 1999, the Commission designated Milton Sherman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 20, 21 and 22, 1999, in Albany, New York, and December 2 and 3, 1999, in New York City. The referee filed his report with the Commission on September 7, 2000.

The parties filed briefs and replies with respect to the referee's report. On October 23, 2000, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a judge of the Montgomery County Family Court since 1995, and is the only Family Court judge in the county. Prior to that, he served as a judge of the Amsterdam City Court.
2. Between 1996, when she was admitted to practice law, and early 1998, Karen Judd appeared before respondent as an assigned law guardian and, occasionally, as retained counsel. She and respondent developed a friendship during that period.
3. On February 13, 1998, respondent offered Ms. Judd a position as his law clerk, which she accepted. Ms. Judd began work as respondent's law clerk on March

16, 1998.

4. Shortly after Ms. Judd began working at the court, respondent and Ms. Judd began a consensual, romantic relationship. Respondent and Ms. Judd openly displayed their affection for each other in view of the court staff, and respondent discussed his affection for Ms. Judd with members of the court staff, making them uncomfortable. Respondent also discussed his affection for Ms. Judd with lawyers who appeared before him in the Family Court.

5. Between April 8 and May 19, 1998, respondent wrote letters, notes and poetry expressing his affection for Ms. Judd, which he left for her at her desk. Some of these were written on respondent's judicial stationery. During this period, Ms. Judd did not regard respondent's poetry and messages as unwanted or unwelcome.

6. Chief Clerk Donna Caravella concluded that the interaction between respondent and Ms. Judd was disruptive to the staff. In April 1998, Ms. Caravella informed Ron Stout, executive assistant to the Fourth Judicial District Administrative Judge, of the relationship between respondent and Ms. Judd.

7. On May 20, 1998, after respondent's secretary informed him that Ms. Judd had been seen at a restaurant with another man, respondent left a note on Ms. Judd's desk intimating that their relationship was ended.

8. On or about May 22, 1998, respondent called Ms. Judd into his office and told her that she had "publicly humiliated" him by dating another man and

being seen with the man at a restaurant owned by friends of respondent in respondent's hometown.

9. The romantic relationship between respondent and Ms. Judd ended on or about May 22, 1998. After that date, respondent continued to leave notes and poetry for Ms. Judd at her desk, expressing his feelings for her.

10. After their romantic relationship had ended, the interaction between respondent and Ms. Judd at the court became increasingly hostile. Respondent and Ms. Judd argued frequently about work-related matters, and they had private discussions with members of the court staff in which they derogated each other.

11. As a result of the hostility between respondent and Ms. Judd and their conversations with court staff members concerning these matters, the atmosphere in the court offices became polarized. The termination of the relationship, and respondent's and Ms. Judd's discussions relating to it with members of the staff, detrimentally affected the operation of the court.

12. After the termination of their relationship, respondent told other members of the court staff that he wished he could fire Ms. Judd or that she would leave, statements which were likely to be related to Ms. Judd.

13. Respondent told Ms. Judd that she "served at [his] pleasure" as his law clerk. This statement was incorrect.

14. The termination of the relationship adversely affected respondent's

ability to carry out his judicial duties. Respondent experienced symptoms of anxiety and depression and exhibited mood swings. On several occasions in or about June 1998, respondent slept during the work day on a cot in the basement of the court building, in his office and on the bench, although not while court was in session. At times, staff members had to awaken respondent to conduct court business.

15. Respondent occasionally played music in his chambers at a loud volume which was disruptive to staff; at such times, staff would ask respondent to lower to volume, close his door or lower the volume themselves.

16. In June 1998, Ms. Judd informed respondent that she was dating Geoffrey Major, an attorney who had appeared in Family Court as a law guardian. On June 22, 1998, respondent directed Ms. Caravella not to assign any new cases to Mr. Major as law guardian. Respondent also prepared and signed a letter disqualifying himself for “personal reasons” from the four pending cases to which Mr. Major was assigned. Respondent told Ms. Caravella, “the less I see of [Mr. Major], the better.” Respondent’s actions directed to Mr. Major were intended as retaliation against Ms. Judd.

17. By directing the Chief Clerk not to make new law guardianship assignments to Mr. Major, respondent ignored the rules established by the Appellate Division for the removal of a law guardian.

18. On Friday, June 19, 1998, at lunchtime, respondent began to experience anxiety symptoms and left the courthouse. He returned a short time later and,

without speaking to anyone, went into the basement of the court building. A few minutes later he emerged from the basement, went into his office, and then, in view of members of the court staff, returned to the basement carrying his Swiss Army knife. After Ms. Caravella asked respondent's secretary to check on him, the secretary found respondent sitting on a chair in the basement drinking a beer. After leaving the basement, respondent substantively disposed of a case that had been scheduled, completed some paperwork and left the court. In the parking lot, he began to experience anxiety symptoms and returned to his office. Respondent then decided that he needed time away from the tensions created by working with Ms. Judd. He told his secretary that he needed some time off and went home.

19. At approximately 4:45 P.M. that day, respondent called from home to direct that the following week's court proceedings be cancelled. The timing of respondent's decision forced the court staff to hurriedly take action to notify the parties scheduled to appear on June 22, 1998, that the court would be adjourned.

20. On Monday, June 22, 1998, respondent arrived unexpectedly at the court building. When Ms. Caravella asked respondent why he had come to work after having said he was taking the week off, respondent said he would have to take things "day by day." Ms. Caravella suggested to respondent that he take some time off and said that she would arrange to have judicial hearing officers provide coverage for the rest of the week. Respondent agreed.

21. After Ms. Caravella left a message at the district administrative offices that judicial hearing officers were needed because respondent was having personal problems, Fourth Judicial District Administrative Judge Jan Plumadore called Ms. Caravella and pressed her for details as to the reasons for respondent's unavailability. Ms. Caravella related to Judge Plumadore the events of the previous Friday, June 22, 1998.

22. Respondent did not preside in court during the rest of that week. Judicial hearing officers provided coverage for the court.

23. On June 22, 1998, respondent wrote a letter of recommendation for Ms. Judd, which he left on his desk in a place where he expected she would find it. Ms. Judd saw the letter and made a copy of it. Ms. Judd had not requested a letter of recommendation and had not expressed any intention to seek other employment.

24. On June 25, 1998, respondent received a telephone call at his home from Judge Plumadore, who directed respondent not to return to the court until after meeting with Judge Plumadore and Deputy Chief Administrative Judge Joseph Traficanti on June 30, 1998. Respondent disregarded Judge Plumadore's directive and went to the court, where he questioned members of the staff about their conversations with Judge Plumadore. While at the court, respondent received a phone call from Judge Plumadore, who told respondent to leave the court and not speak to any of the court staff until after the meeting scheduled for June 30, 1998. Mr. Stout directed a deputy sheriff to take

whatever measures were necessary to keep respondent out of the court.

25. Ms. Judd was transferred to an equivalent position in the Saratoga County Family Court. On July 9, 1998, the day before her last day in Montgomery County Family Court, respondent called Ms. Judd into his office and confronted her regarding statements he believed she had been making about him to members of the court staff. Respondent then angrily told Ms. Judd to “Get the fuck out of my office.”

26. On August 4, 1998, after Ms. Judd had been transferred to the Saratoga County Family Court, respondent wrote a letter to Judge Plumadore asserting that Ms. Judd “continues to serve at my discretion” and intimating that he would terminate her if requested by Judge Plumadore or the Saratoga County Family Court judges. Respondent sent copies of the letter to several individuals, including Ms. Judd. In response, Judge Plumadore sent a letter to respondent stating that he (respondent) did not have the authority to terminate Ms. Judd.

27. After respondent became aware that Ms. Caravella had reported his conduct to the administrative office, their previous good working relationship became strained. On August 27, 1998, respondent told Ms. Caravella that three of the court staff were threatening to leave because of her and that it was easier to replace one employee than three. On August 31, 1998, respondent wrote a letter to Judge Plumadore, with a copy to Ms. Caravella, recommending that Ms. Caravella be demoted.

28. One member of the staff, Donna Soper, was transferred out of the



office, and another staff member requested a transfer. On October 16, 1998, respondent called Ms. Caravella into his office and angrily accused her of lying to him about her asserted non-involvement in Ms. Soper's transfer. When Ms. Caravella returned to her office, respondent followed her, shouting that he was not through with her yet.

Respondent shook the doorknob and pounded on the door, which Ms. Caravella had locked, shouting that Ms. Caravella did not belong in her office and that she should sit at the desk of one of the staff members who had left. Respondent shouted to his secretary to have someone remove Ms. Caravella's things from her office. Standing at the window of Ms. Caravella's office, respondent pressed his face against the glass, then took a seat nearby, staring at her through the window. Ms. Caravella remained locked in her office for several hours, unable to work.

29. When respondent received a telephone call concerning this incident from Judge Traficanti, respondent angrily defended his actions and threatened to "go to the press" before hanging up the phone. Respondent then went back to Ms. Caravella's office and accused her of "ruining lives," by which he meant his life and Ms. Soper's life.

30. Respondent and Ms Judd's former fiancé, an attorney and a hearing officer for the Family Court, exchanged e-mail messages for a few months beginning in late June 1998. In one message, following the announcement of Ms. Judd's transfer to the Saratoga County Family Court, respondent wrote, "One down, two to go," referring to his desire that Ms. Judd and two other members of the court staff leave the court. In

several messages, respondent stated that Ms. Judd had psychological problems and made other disparaging statements about her. Respondent also made disparaging comments about Ms. Judd to an attorney who appears in the court.

31. In August 1997, when a member of the court staff told respondent that she was expecting a child, respondent replied that he was “shocked” that she “would have a child outside the matrix of holy matrimony.” The staff member was upset and hurt by respondent’s comment. Respondent’s comment was insensitive and improper.

As to Charge II of the Formal Written Complaint:

32. Respondent and John Bintz are “friendly acquaintances” who have known each other since childhood. When respondent ran for Family Court in 1994, Mr. and Mrs. Bintz displayed his campaign sign on their lawn. Beginning in February 1999, respondent and Mr. Bintz participated in weekly rehearsals for a local theater production.

33. In February 1999, Mr. Bintz received notice from the Department of Motor Vehicles that his driver’s license would be suspended because he was in arrears in child support payments. After trying unsuccessfully to reach his attorney, during which time the license suspension became effective, Mr. Bintz went to the Montgomery County Family Court on March 8, 1999, and asked to see respondent. Respondent’s secretary told respondent that Mr. Bintz wanted to see him and respondent told her to give him an appointment for the next day.

34. Respondent was aware that Mr. and Mrs. Bintz had separated and that they were parties to support cases in the Court.

35. It is the practice of the Court that litigants are not permitted to meet with the judge *ex parte*.

36. On March 9, 1999, respondent met personally with Mr. Bintz in his chambers. Mr. Bintz explained that his driver's license had been suspended for failure to pay child support, that he had been unable to contact his attorney, and that he needed his license reinstated in order to drive to work.

37. Respondent consulted Mr. Bintz's Family Court file, which showed that as of January 6, 1999, Mr. Bintz was \$4,888.58 in arrears in child support payments. Respondent saw the Decision and Order of a hearing examiner, who in February 1999 had denied Mr. Bintz's request for a reduction in support payments, holding that he had not made a meaningful attempt to find appropriate employment. Mr. Bintz stated that he intended to file an Objection to the hearing examiner's decision.

38. Respondent called Ms. Caravella into his office and dictated to her a petition and an Order to Show Cause directing Mrs. Bintz to show cause why an order should not be entered terminating the suspension of Mr. Bintz's license. After respondent reviewed the documents, Mr. Bintz signed the petition and respondent signed the Order to Show Cause, returnable before himself on April 12, 1999.

39. Pursuant to respondent's instructions, Ms. Caravella found an order

terminating the license suspension in a form book and gave it to respondent, bringing to his attention the paragraph stating that the support obligation had been satisfied. Respondent crossed out that paragraph and gave the form to Ms. Caravella to be typed. Without giving notice to Mrs. Bintz or her attorney, respondent signed and entered the order terminating the suspension of Mr. Bintz's license.

40. In issuing the order terminating the license suspension, respondent failed to follow the law, which provided that such action could be taken only upon full or partial payment of the arrears (*see* Family Court Act §458-a). Mr. Bintz did not provide respondent with proof of such payment, and respondent did not request proof of such payment.

41. Before he issued the *ex parte* order, respondent did not attempt to determine whether he had statutory authority to rescind the suspension of Mr. Bintz's driving privileges.

42. On March 15, 1999, Mr. Bintz's attorney filed an Objection to the hearing examiner's February 1999 Decision and Order. The Objection was scheduled to be heard by respondent in April 1999. When the matter came before him, respondent recused himself from hearing both the Objection and the Order to Show Cause, in part because of his social relationship with Mr. and Mrs. Bintz.

43. Both proceedings were transferred to the Fulton County Family Court, where a hearing officer denied the Objection to the hearing examiner's Decision

and Order. The hearing officer did not issue an order reinstating the suspension of Mr. Bintz's license, and as of December 1999, Mr. Bintz had not been notified that any further action had been taken to reinstate the suspension of his license.

44. Respondent's involvement in the Bintz case went well beyond the assistance the Court typically provides to *pro se* litigants.

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(B), 100.3(B)(3), 100.3(B)(6), 100.3(C)(1) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charge I is sustained insofar as it is consistent with the above findings of fact. Paragraph 4(m) of Charge I is not sustained and is dismissed. Charge II is sustained.

Respondent engaged in a course of conduct, arising out of a personal relationship with his law clerk, which detracted from the dignity of his office, seriously disrupted the operations of the court and constituted an abuse of his judicial and administrative power.

During the two-month relationship, respondent's conduct, particularly his physical display of affection for the law clerk in view of court staff and his discussions of the relationship with members of the court staff and with attorneys who appeared before him, was so disruptive that the chief clerk felt compelled to report his actions to court

administrators. After the relationship ended, respondent's hostile, retaliatory behavior toward the law clerk created an atmosphere of polarization and mistrust among court staff, further disrupting the operation of the court, and constituted a flagrant abuse of his judicial position. Respondent implicitly threatened the law clerk's continued employment by stating that she served at his pleasure; he wrote an unsolicited letter of recommendation for her, which he intentionally left in a place where he expected she would find it; he derogated her in conversations with court staff and told some that he wished she would leave or that he could fire her. Even after the law clerk was transferred to another court, respondent sent a letter to the administrative judge asserting that she still served at his discretion and intimating that he would terminate her if asked. Respondent's disparaging statements about the law clerk to her former fiancé, a Family Court hearing examiner, and to another attorney further demonstrated the continuing animus motivating respondent's acts. Respondent's actions were clearly intended to damage the law clerk personally and professionally and were threatening, intimidating and retaliatory.

Also retaliatory were respondent's efforts to undermine the authority of the chief clerk, whom he apparently regarded as the law clerk's principal ally and who had reported his actions to administrative authorities, and to bar an attorney from appearing as a law guardian in the court solely because the attorney was dating the law clerk. *See Matter of Hanofee*, 1990 Ann Rep of NY Commn on Jud Conduct 109. Respondent's direction to his staff not to assign any new cases to the attorney, which effectively

removed him as a law guardian without following the rules and procedures of the Appellate Division, was particularly egregious. Respondent's explanation that he did so in order to avoid an appearance of impropriety is unacceptable since other, non-punitive options were available, including disqualifying the law clerk from those cases.

Respondent's bizarre and erratic behavior in the weeks that followed the end of his relationship with the law clerk further disrupted the operations of the court and eroded the dignity of his judicial position. Respondent's decision at 4:45 P.M. on a Friday to cancel all court proceedings for the following week because he was unable to cope with the tension between him and the law clerk, his sleeping during the work day, his drinking beer in the court basement prior to a court proceeding, his display of a knife under circumstances that alarmed his staff, and his explosive display of rage toward the chief clerk exacerbated the turmoil created by his conduct with respect to the law clerk.

With respect to Charge II, respondent engaged in favoritism by issuing an *ex parte* order terminating the suspension of the driver's license of a long-time acquaintance. Although respondent knew of the Bintzes' ongoing support proceedings in Family Court, respondent met privately in chambers with Mr. Bintz, whose license had been suspended because he owed nearly \$5,000 in child support payments. After checking the case file, respondent dictated a petition and an Order to Show Cause, returnable before himself more than a month later. Respondent then directed his chief clerk to type an order terminating the license suspension, crossed out the paragraph stating that the support

obligation had been satisfied and signed the order, without giving Mrs. Bintz or her attorney any opportunity to be heard. Such conduct was contrary to Family Court Act §458-a, which provides that such action can be taken only upon full or partial payment of the arrears. Respondent's actions created an appearance of impropriety, conveying the unmistakable impression that respondent had gone to extraordinary lengths to benefit his long-time acquaintance.

With respect to the issue of sanctions, we are mindful that the extreme sanction of removal "is not normally to be imposed for poor judgment, even extremely poor judgment." Matter of Sims, 61 NY2d 349, 356 (1984). In this case, however, respondent's misconduct "transcends poor judgment," and it is compounded by his persistent, astonishing failure to recognize the impropriety of his admitted acts with respect to both charges. Matter of Sims, *supra*; Matter of Shilling, 51 NY2d 397 (1980). Also permeating this record is evidence of respondent's arrogant insistence that others were responsible for the turmoil in the court and his unwillingness to accept direction from his administrative judges, who were called upon to deal with the consequences of his inappropriate behavior. Such conduct demonstrates a total lack of recognition of the ongoing, serious problems created by his willful, aberrant acts.

We also note that in July 1997, a month before he made an insensitive remark to a member of his staff who was expecting a child, respondent was disciplined for having made an inappropriate, discourteous comment to a litigant. Matter of Going,



1998 Ann Rep of NY Commn on Jud. Conduct 129.

Respondent's conduct "demonstrates a blatant lack not only of judgment but also of judicial temperament, and complete disregard of the appearances of impropriety inherent in his conduct." Matter of Shilling, *supra*, 51 NY2d at 399. Respondent's "complete insensitivity to the special ethical obligations of judges" renders him unfit for judicial office (Matter of Shilling, *supra*, 51 NY2d at 404).

By reason of the foregoing, the Commission determines that the appropriate disposition is removal from office.

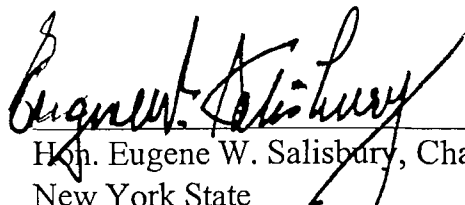
Judge Salisbury, Mr. Berger, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Ms. Brown and Mr. Coffey were not present.

#### CERTIFICATION

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

Dated: December 29, 2000

  
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Hon. Eugene W. Salisbury, Chair  
New York State  
Commission on Judicial Conduct