

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 J. HANNIGAN,

a Surrogate and Judge of the County Court,
Niagara County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
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
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

Stephen P. Shierling for Respondent

The respondent, Charles J. Hannigan, a judge of the County Court and the Surrogate's Court, Niagara County, was served with a Formal Written Complaint dated May 22, 1997, alleging that he made intemperate remarks in two proceedings. Respondent filed an answer dated July 25, 1997.

By motion dated August 4, 1997, and supplemental affidavit dated August 28, 1997, respondent moved for summary determination and dismissal of the Formal Written Complaint. By cross motion dated September 2, 1997, the administrator of the Commission moved for summary determination, a finding that Charge I had been established and dismissal of Charge II. Respondent replied by memorandum dated September 10, 1997. By determination and order dated September 29, 1997, the Commission denied respondent's motion, granted the administrator's motion and determined that Charge I be sustained and that Charge II be dismissed.

Both sides submitted memoranda as to sanction. On October 23, 1997, 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 County Court and Surrogate's Court of Niagara County during the time herein noted.
2. On February 23, 1994, respondent presided at pre-trial plea discussions in People v Tara Mercado, in which the defendant was charged with Assault, First Degree. She was accused of stabbing another woman in the back with a knife.
3. The prosecutor offered a reduction of the charge to Attempted Assault, Second Degree, in exchange for a plea of guilty.
4. Respondent questioned the 19-year-old defendant concerning her residence, education and employment. When Ms. Mercado said that she wasn't working or in school

because she had injured her back, respondent replied, "So now you're a full-time what? Nothing, you're a full-time nothing, is that it?"

5. Respondent then questioned Ms. Mercado concerning the circumstances of the stabbing. During the ensuing colloquy, he made the following remarks:

THE COURT: Usually they die when the lung collapses. Why don't you go to trial and tell the jury about how you were defending your purity and how this woman was beating up on you, that this was self-defense, why don't you do that? Am I supposed to participate, am I supposed to--oh, you want to plead guilty, oh, what can I do to help you, no. I mean, you elected to make your life into a garbage pit, right?

THE DEFENDANT: No.

THE COURT: Well, I think you're messing it up pretty good so far. You got yourself indicted, you got yourself a baby, and you dropped out, you got kicked out or dropped out of high school. You have no education, you have no work, and you got a bad back. Now, what else can we do for you in this land of opportunity?

THE DEFENDANT: Nothing.

THE COURT: We can give you a jury. You can tell them your tail [sic] of woe. I think you're better off telling them because I don't believe a thing you tell me. You stab somebody three times in the back because they're beating up on you, are you sick?

THE DEFENDANT: I wasn't really defending myself.

* * *

THE COURT: How everything happened, you stabbed her three times in the back, you did it because you're a mean-spirited person.

THE DEFENDANT: No, I'm not.

* * *

THE COURT: Then she stands here and tells me she's defending herself and I really can't--I can't take this stuff anymore. I guess--I guess I'm getting too old or too stupid, maybe I'm not stupid enough, I don't know, go ahead.

MR. GRAFF [the prosecutor]: That's the main reason, Judge, her age, lack of criminal history. Another reason being that the witnesses to the incident are persons that the Court's--

THE COURT: They're trash.

* * *

THE COURT: I don't know. Do we encourage this by saying, oh, we'll give you an E felony? What if we just said win or lose, what the hell do we care anymore, just go to trial. You got a poppycock story you want to tell, go tell it. You want to make your life into a garbage pit, you want to be trash, bring your trash into the courtroom and tell the jury about it...

THE COURT: We give them apartments, we give them tutors, we give them this, we give them that, now we give them pleas. They go out and try to kill people and we call it E felony. What else are we supposed to give you? Pat on the hand? You say you're sorry, it's okay, it doesn't really matter. I mean, you only punctured her lung. It isn't as though you cut her heart out. Nothing really serious. I'll bet you went down to the hospital and said how much did this cost? Gees, I'm sorry I did that, at least let me pay the hospital bills, right? You did that, didn't you? Of course you did. I mean, this is insane. It's getting to be insane. I sit here and listen to this stuff and it's insane. And then she's going to walk in and say put me on probation, Judge, because I don't have any previous felony conviction, and I got a child I got to raise.

MR. CAROSELLA [defense counsel]: There's no--no child, Judge, and she doesn't expect probation as a sentence.

THE COURT: The hell she doesn't.

MR. CAROSELLA: We discussed that, Judge, beforehand.

THE COURT: What's she expect to do, go to state prison down at Bedford Hills, the real tough one? You think you're tough? They'll eat you up, they'll have you for breakfast.

THE DEFENDANT: I'm not tough.

THE COURT: Well, you got a knife, you stabbed her three times, you damn near killed her, you're tough. God, that's tough. You weren't born trash. How come you turned out that way?

THE DEFENDANT: I'm not trying to be.

* * *

THE COURT: I don't want to do business with you. You're too far gone. There's nothing we can do for you. You're not bright enough. You quit too early, you stopped thinking too early, you let them pour glue on your brain too early.

THE DEFENDANT: I was going back.

THE COURT: Sure, we're all going back, tomorrow, as soon as I get around to it, as soon as I get these things done, I'm going to go back. Right now I'm too busy but I'm going to get back. I actually think that by even sitting down and talking to you that I really condone what you're doing and I don't. I think it's terribly wasteful. You're wasting your life, you're wasting everybody you come in contact with, so why don't you just get your constitutional rights in order, line them up like ducks and use them all, same way you use your constitutional right to leave school, constitutional right to have the community support you, to relax, to lay back, constitutional right to have babies, constitutional right to be stupid, use the rest of them. Hell, you haven't even started using them yet. Okay? Good. Hell, you'll probably get off. Go to trial, you'll probably get acquitted. The garbage they parade in here to talk about you, nobody would believe them anyway. You can probably save your defense, you may not even need it. Your defense of self-defense, you may not even need it. You may not even have to tell the jury this poppycock story that you were telling me. Because the trash you hang around with will probably be unbelievable. By the time they get through testifying, the jury will probably think this girl fell on the knife three times. Okay? So get yourself a trial. Go to trial, get your constitutional rights.

6. Respondent rejected the plea offer and presided over Ms. Mercado's jury trial on July 27, 1994.

As to Charge II of the Formal Written Complaint:

7. The charge is not sustained and is, therefore, dismissed.

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 100.3(a)(3)*, and Canons 1, 2A and 3A(3) 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. Charge II is dismissed.

Respondent repeatedly referred to a 19-year-old, first-time defendant who had not yet been convicted of any crime, and her witnesses, as "garbage" and "trash." Respondent sarcastically suggested that she "tell the jury about how you were defending your purity...." Even though she told respondent that she was not claiming self defense, respondent continued to refer to that as her defense, called it a "poppycock story," and stated, "I don't believe a thing you tell me." He declared the defendant "not bright enough" and said she had "let them pour glue on

* Now Section 100.3(B)(3).

your brain too early.” He repeatedly disparaged the recipients of public assistance and sarcastically referred to the defendant’s “constitutional right to leave school, constitutional right to have the community support you, to relax, to lay back, constitutional right to have babies, constitutional right to be stupid....”

By this intemperate diatribe, respondent abandoned his obligation to be patient, dignified and courteous and conveyed the appearance of bias. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]).

It is wrong for a judge to engage in name-calling and dehumanizing remarks, particularly to a litigant. (See, Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290; Matter of Trost, 1980 Ann Report of NY Commn on Jud Conduct, at 153). Even a single instance of intemperate language may be the basis for a finding of misconduct. (See, Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104; Matter of Hanophy, NYLJ, Apr. 14, 1997, p. 6, col. 1 [NY Commn on Jud Conduct, Apr. 2, 1997]; Matter of Going, unreported [NY Commn on Jud Conduct, July 18, 1997]). In addition, a litigant who is the subject of such invective before adjudication of the case may reasonably perceive that the judge is biased.

Because respondent has enjoyed a long and heretofore unblemished tenure on the bench and because this misconduct involved only a single day in that career (see, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155; Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 87), we are convinced that a public warning that it not be repeated is sufficient.

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

Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

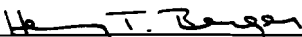
Mr. Berger, Ms. Brown and Mr. Coffey dissent as to sanction only and vote that respondent be censured.

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: December 17, 1997


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