

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

JOHN D. HENDERSON, JR.,*

a Justice of the Barre Town Court,
Orleans County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

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

Thomas D. Calandra for Respondent

The respondent, John D. Henderson, Jr., a justice of
the Barre Town Court, Orleans County, was served with a Formal
Written Complaint dated August 12, 1993, alleging that he drove
while intoxicated. Respondent did not answer the Formal Written
Complaint.

*The Formal Written Complaint was filed in the name of John
"O." Henderson, Jr. It is hereby amended to reflect respondent's
correct initial.

On November 22, 1993, 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) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated December 10, 1993.

Both counsel submitted papers as to sanction. Oral argument was waived.

On January 20, 1994, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Barre Town Court since January 1988.

2. On August 15, 1992, at approximately 9:45 P.M., respondent drove his car while he was intoxicated and lost control of the car on Route 237 in Clarendon.

3. When asked his name by an investigating police officer, respondent gave his name and judicial office.

4. Respondent asked the officer, "Isn't there anything we can do?"

5. On March 31, 1993, respondent pleaded guilty to Driving While Intoxicated, was given a conditional discharge and was fined \$500.

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 and 100.2(a), and Canons 1 and 2A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent violated the law and endangered public welfare when he drove while his ability to do so was impaired by alcohol consumption. (See, Matter of Innes, 1985 Ann Report of NY Commn on Jud Conduct, at 152, 154). Such conduct warrants public sanction. (Matter of Winkworth, 1993 Ann Report of NY Commn on Jud Conduct, at 106; Matter of Siebert, unreported, NY Commn on Jud Conduct, Jan. 27, 1993).

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

Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Mr. Sheehy concur.

Mr. Berger dissents as to sanction only and votes that respondent be censured.

Judge Newton and Judge Thompson were 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: March 18, 1994

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

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DISSENTING
OPINION BY
MR. BERGER

Driving while intoxicated can convert an automobile into an instrument of death or serious injury. It is time to recognize that such offenses constitute serious judicial misconduct.

With the high honor and responsibility of judicial office comes an obligation to adhere at all times to high standards of conduct, both on and off the bench, to insure that public confidence in the integrity of the judiciary is maintained.

A judge who drives while under the influence of alcohol not only violates these important ethical standards, but raises doubts about the judge's fitness for office, especially as to his or her presiding over similar or even less serious cases. The public may well wonder about the character, temperament and fitness to serve of a judge who has been convicted of an alcohol-related offense.

In the case at hand, when respondent was asked for his last name by the arresting officer, respondent gave the officer his name and his judicial office, and then asked, "Isn't there anything we can do?" Significantly, the judge has acknowledged

that because of his lack of sobriety, he has no reliable, independent recollection of the facts.

Notwithstanding his cooperation in this disciplinary proceeding, in which he admitted the allegations he remembered and did not challenge those he could not remember, his criminal act of driving while intoxicated was exacerbated by identifying himself as a judge to the arresting officer and then asking whether there is "anything we can do." The latter suggests that he was using his judicial office to assert influence in the hope of avoiding prosecution for his criminal offense.

The Commission should deliver a message that any judge who violates the criminal law, including offenses of this kind, engages in conduct that is inconsistent with the role of a judge, and, when the criminal act is compounded by an explicit or implicit attempt to assert influence, public censure is warranted.

An admonition is the least severe form of public discipline and should be imposed for any conviction of an alcohol-related offense. If aggravating factors exist, censure--defined as a condemnation of certain conduct--would be more appropriate than admonition. Because respondent invoked the authority of his judicial office, I vote for censure, which I believe would deliver a more pointed message as to the seriousness of the prohibited conduct.

Dated: March 18, 1994

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