

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

JO HOOPER,

a Justice of the Hinsdale Town Court,
Cattaraugus County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
DiCerbo & Palumbo (by Daniel R. Palumbo) for Respondent

The respondent, Jo Hooper, a justice of the Hinsdale Town Court,
Cattaraugus County, was served with a Formal Written Complaint dated October 22,
2002, containing one charge. Respondent filed an answer dated December 30, 2002.

On April 10, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Hinsdale Town Court, Cattaraugus County since January 1995. Respondent is not an attorney. Respondent has attended all required judicial training courses and has received appropriate certifications from the Office of Court Administration.

2. On September 12, 2001, respondent arraigned the defendant in *People v. Kelly Howard*, in which the defendant was charged with a traffic violation, and adjourned the case to give the defendant an opportunity to obtain counsel.

3. On September 26, 2001, respondent adjourned the trial that had been scheduled on *People v. Bruce Burlingame*, in which the defendant was charged with a violation of the Environmental Conservation Law, and set the matter down for rescheduling at a later date.

4. On or about September 30, 2001, respondent was told by a local resident that respondent's co-judge, Monroe Bishop, had "urged" Ms. Howard and Mr. Burlingame to file complaints with the Commission concerning respondent's conduct in an unrelated matter.

5. On October 4, 2001, respondent was contacted by Ms. Howard's attorney, who requested that respondent disqualify herself from *People v. Kelly Howard*.

6. On October 5, 2001, respondent sent a letter to Cattaraugus County Court Judge Larry Himelein in which she advised the judge of her disqualification in *People v. Howard* and *People v. Burlingame* and sought the transfer of both cases out of the Hinsdale Town Court. In her letter to Judge Himelein, respondent stated that Judge Bishop, her co-judge, was also disqualified from hearing the two cases "as he has been in contact with all parties to write letters to Judicial Conduct against me...."

7. At the time that respondent sent the letter to Judge Himelein, respondent had no basis in law or fact for requesting such a transfer and no basis in law or fact for representing to Judge Himelein that Judge Bishop was also disqualified from both cases. Respondent had had no discussions with either party to substantiate her hearsay belief that Judge Bishop had spoken with them, and had had no discussions with Judge Bishop about his contacts with either defendant or about whether he would disqualify himself from either case.

8. At the time that respondent sent the letter to Judge Himelein, she had made no attempt to transfer either case to Judge Bishop.

9. At the time that respondent sent the letter to Judge Himelein, Judge Bishop had had no contact with either defendant, as respondent had believed.

10. At the time that respondent sent the letter to Judge Himelein, respondent and Judge Bishop were unfriendly and did not have a speaking relationship.

11. In a determination dated June 29, 1998, respondent was admonished by the Commission as a result of her actions in reducing the charges in two traffic cases without notice to or the consent of the District Attorney, including one case that was pending before Judge Bishop at the time respondent disposed of it.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.3(B) and 100.3(C)(1) of the Rules Governing Judicial Conduct.¹ Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

It was improper for respondent to transfer two cases from her court, disqualifying not only herself but also her co-justice, based upon the unsubstantiated allegations of a third party. By such conduct, respondent failed to be faithful to the law and to maintain professional competence in it and failed to diligently discharge her administrative responsibilities (*see* Sections 100.3[B] and 100.3[C][1] of the Rules

¹ Sections 100.1 and 100.2(A) of the Rules were also charged in the Formal Written Complaint but were not included in the Agreed Statement of Facts, following the decision on February 20, 2003, in *Spargo v. NYS Comm'n on Jud Conduct*, 244 F Supp2d 72 (NDNY 2003), which barred the Commission from enforcing those provisions. Although the *Spargo* decision has been stayed by the U.S. Court of Appeals for the Second Circuit pending appeal, Sections 100.1 and 100.2(A) are not included in this determination, which is limited to the stipulated conclusions of law.

Governing Judicial Conduct).

Respondent had no basis in fact or in law to disqualify her co-justice from the two cases. It was especially inappropriate to do so without any inquiry into the unsubstantiated information she had received, and without even discussing it with her fellow judge. The ethical standards require every judge to “cooperate with other judges and court officials in the administration of court business” (Section 100.3[C][1] of the Rules), and communication and cooperation are an essential element of good administration. Respondent should have been especially sensitive to these ethical mandates since she was previously admonished by the Commission, *inter alia*, for disposing of a case pending before her co-justice. *Matter of Hooper*, 1999 Ann Rep 105 (Commn on Jud Conduct, June 29, 1998).

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Judge Peters was not present.

CERTIFICATION

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

Dated: May 28, 2003



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