

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

MARY E. HOWARD,

a Justice of the Ontario Town Court,
Wayne County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern for the Commission

Fiandach & Fiandach (By Edward L. Fiandach) for Respondent

The respondent, Mary E. Howard, a justice of the Ontario Town Court,
Wayne County, was served with a Formal Written Complaint dated April 13, 1999,
alleging two charges of misconduct. Respondent filed an answer dated May 12, 1999.

On October 28, 1999, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law § 44(5), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 28, 1999, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Ontario Town Court since 1988.
2. On May 8, 1998, respondent issued two subpoenas each to Lieutenant Tack and Deputy Benedict of the Wayne County Sheriff's Department, ordering them to appear in court on May 12, 1998, in connection with People v Jeremy C. Peets and People v Roxanne O'Neil.
3. Also on May 8, 1998, respondent issued subpoenas to Lieutenant Tack and Deputy Andriaansen, ordering them to appear on May 12, 1998, in connection with People v Michael W. Johnson.

4. Neither the prosecution nor the defense in Peets, O'Neil, or Johnson had requested the subpoenas, and no one had intended to call Lieutenant Tack as a witness in any of the cases.

5. Respondent issued the three subpoenas for Lieutenant Tack because she was disturbed that a deputy sheriff had not appeared before her as a witness in a traffic case on May 8, 1998.

As to Charge II of the Formal Written Complaint:

6. On November 3, 1997, respondent sent a letter to Wayne County Court Judge Dennis M. Kehoe in which she requested that Judge Kehoe grant youthful-offender status to a defendant in a case pending before him. Respondent discussed the youth's emotional difficulties and noted that he had no criminal history; she wrote of his family's contributions to the community and predicted that he would not be a danger in the future. Respondent also advised Judge Kehoe that he could contact her at court to discuss the matter further.

7. Respondent sent the letter at the request of the defendant's mother, who was an employee of the Town of Ontario.

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(A), 100.2(B), 100.2(C) and 100.3(B)(1). Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

Because she was irritated that a member of the sheriff's department had not appeared before her as scheduled, respondent, on her own motion, subpoenaed a ranking officer in the department to appear in three subsequent cases, even though he was not a witness. The subpoena power is limited to securing the appearance in court of witnesses. (See, CPL 610.10[2], 610.20[1]). Respondent could have used other administrative or legal methods of assuring that the court was not unduly inconvenienced by missing witnesses, but it was an abuse of the subpoena power to bring Lieutenant Tack to court on three cases in which deputies in his department were to testify.

By writing to Judge Kehoe, respondent used the prestige of her office to advance the private interests of others. She appealed to the other judge to grant youthful-offender status to the son of a town employee, putting forth mitigating circumstances and listing her court telephone. "[A]ny communication from a Judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office." (Matter of Lonschein, 50 NY2d 569, at 572). Letters from one judge to another concerning the merits of pending cases have long been held to constitute appeals for special consideration. (See, Matter of Dixon, 47 NY2d 523; Matter of Engle, 1998 Ann

Report of NY Commn on Jud Conduct, at 125; Matter of Freeman, 1992 Ann Report of NY Commn on Jud Conduct, at 44).

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

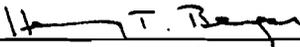
Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall 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: December 22, 1999



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