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

JOHN C. HOWELL,

a Justice of the Lansing Town Court,
Tompkins County.

Determination

THE COMMISSION:

Honorable Eugene W. Salisbury
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 W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern for the Commission

Williamson, Clune & Stevens (By Robert J. Clune) for Respondent

The respondent, John C. Howell, a justice of the Lansing Town Court, Tompkins County, was served with a Formal Written Complaint dated September 29, 1999, alleging that he wrote to another judge in connection with a pending criminal case. Respondent filed an undated answer.

On December 16, 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 February 4, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Lansing Town Court since 1991.

2. On November 3, 1997, based on a request from an assistant district attorney, respondent wrote a letter on court stationery to the judge who was presiding over People v Carmen DeChellis, which was then pending in the Tompkins County Court. Respondent stated that:

a) the defendant had appeared before respondent "almost continuously since January 1993";

b) respondent had "heard this line of 'B.S.' before";

c) the defendant "is a menace to our community"; and,

d) there was no doubt in respondent's mind that the defendant "needs to do real time in State Prison."

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(C), 100.3(B)(3) and 100.3(B)(8). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

In an intemperate letter, respondent used the prestige of his judicial office to advance the prosecutor's position in a criminal case pending before another judge. As the Court of Appeals stated in Matter of Lonschein (50 NY2d 569, at 571-72):

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others [citation omitted]. Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved [citation omitted]. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any 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.

In the past, such conduct has occasioned either admonition or censure, depending on the circumstances. (See, Matter of Putnam, 1999 Ann Report of NY Commn on Jud Conduct, at 131 [judge admonished after writing to another judge on the

merits of a pending custody case]; Matter of Engle, 1998 Ann Report of NY Commn on Jud Conduct, at 125 [judge censured after writing to another judge and pleading for a lenient sentence for a defendant in a pending case and after circulating, signing and delivering a petition to the prosecutor on behalf of the same defendant]; Matter of Freeman, 1992 Ann Report of NY Commn on Jud Conduct, at 44 [judge admonished after writing to another judge on behalf of an individual who was seeking to have his pistol permit reinstated]).

In the instant case, we are persuaded that admonition is appropriate. Although it does not excuse his wrongdoing, respondent's misconduct is mitigated by the fact that he wrote the letter at the urging of the prosecutor. (See, Matter of Abbott, 1990 Ann Report of NY Commn on Jud Conduct, at 69, 72; Matter of Reyome, 1988 Ann Report of NY Commn on Jud Conduct, at 207, 209).

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

Mr. Berger, Ms. Hernandez, Judge Joy, Judge Luciano, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Brown, Mr. Goldman and Judge Marshall dissent and vote to reject the Agreed Statement of Facts.

Mr. Coffey 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: April 6, 2000

Honorable Eugene W. Salisbury
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DISSENTING OPINION BY MR. GOLDMAN

Although I ordinarily accept a factual and/or sanction stipulation agreed upon by the parties, I vote to reject the Agreed Statement of Facts. In determining sanction, I believe it important to know whether respondent sent the letter ex parte to the county judge and whether defense counsel was made aware of the letter. The determination of these facts, either in a hearing or by a revised stipulated statement, may be crucial to my decision as to the appropriate sanction in this matter.

Dated: April 6, 2000

Lawrence S. Goldman, Esq., Member
New York State
Commission on Judicial Conduct