

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

MARSHALL JARVIS,

Determination

a Justice of the Tupper Lake Village Court
and the Altamont Town Court, Franklin County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
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 for the Commission

Jeremiah M. Hayes for Respondent

The respondent, Marshall Jarvis, a justice of the Altamont Town Court and the Tupper Lake Village Court, Franklin County, was served with a Formal Written Complaint dated January 5, 1998, alleging that he improperly handled a criminal case. Respondent filed an answer dated January 27, 1998.

On July 17, 1998, 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), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished or censured and waiving oral argument. On July 20, 1998, respondent submitted a letter with respect to sanction. The administrator filed a letter dated July 21, 1998.

On July 30, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Tupper Lake Village Court since 1982 and of the Altamont Town Court since 1983.

2. In January 1997, respondent was called by an assistant district attorney, who asked whether he would arraign Calvin Clark, a Tupper Lake police officer who was about to be arrested on charges of Petit Larceny. Respondent replied that he did not want to be involved in the arraignment because he had a close relationship to Mr. Clark's family.

3. Respondent is a former Tupper Lake police officer. He served on the force with Calvin Clark's father. Respondent had played golf with the father and had taken a weekend trip to Pennsylvania with the defendant's parents within the year prior to the arrest.

4. With the agreement of the assistant district attorney assigned to his court, respondent informed the defendant's father of Calvin Clark's imminent arrest

because respondent felt compassion for the father and did not want the arrest to come as a shock.

5. The District Attorney's Office made arrangements for Calvin Clark's arraignment to be conducted on February 3, 1997, by a judge in an adjoining town. The other judge in respondent's court was related to the defendant, and the District Attorney's Office believed that both respondent and the other judge were disqualified from handling the case.

6. On February 3, 1997, respondent called the state police barracks where Calvin Clark was being held and directed that he be brought before respondent for arraignment. An investigator told respondent that the defendant was scheduled for arraignment in an adjoining town, but respondent repeated that he wanted the defendant brought before him.

7. Respondent then spoke to the district attorney and asked whether it was necessary to bring criminal charges against Mr. Clark and whether an adjournment in contemplation of dismissal would be an appropriate disposition. The district attorney insisted that criminal charges were necessary and reported that a plea bargain had already been agreed to by the prosecutor and the defendant. The prosecutor consented to respondent's handling of the arraignment and disposition and told respondent that a sentence would be up to the court.

8. On February 3, 1997, respondent presided over the arraignment. The defendant pleaded guilty and was given a conditional discharge. Respondent rejected a fine of \$1,000 that had been agreed to by the parties and, instead, imposed no fine.

9. Respondent now acknowledges that, because of his relationship with the family, he should not have arraigned Mr. Clark and disposed of the case.

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), 100.3(B)(4) and 100.3(E)(1). Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent reached out to have the criminal charges against a family friend brought before him, knowing that he should not handle the case, then granted a favorable disposition.

Because of his close personal relationship with the defendant's family, respondent's impartiality in the Clark case could reasonably be questioned, and he should have disqualified himself. (See, Matter of Robert, 89 NY2d 745; Matter of Manning, 1987 Ann Report of NY Commn on Jud Conduct, at 115).

Having initially declined to conduct the arraignment because of that relationship, respondent should have had no further participation in the case. (See, Matter of Lomnicki, 1991 Ann Report of NY Commn on Jud Conduct, at 68, 69). Instead he

insisted that the case be brought before him, appealed to the prosecutor to drop the charges, conducted the arraignment, disposed of the case and did so with a disposition more favorable to the defendant than either of the parties had proposed.

“Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequences as if the judicial officer received and was moved by a bribe.” (Matter of Bolte, 97 AD 551, 574 [1st Dept]). It is wrong and always has been wrong. (Matter of Byrne, 47 NY2d [b] [Ct on the Judiciary]).

Respondent’s conduct is mitigated by the facts that this transgression represents an isolated incident in his judicial career and that he has been cooperative and forthcoming with the Commission. (See, Matter of Edwards, 67 NY2d 153, 155).

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

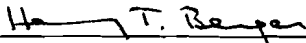
Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey dissents as to sanction only and votes that respondent be admonished.

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: October 20, 1998



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