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

GEORGE B. JENSEN,

a Justice of the Jerusalem Town Court, Yates County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Barry C. Sample
Honorable William C. Thompson

APPEARANCES:

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

Donald A. Schneider (Joseph P. Griffiths, Of Counsel) for Respondent

The respondent, George B. Jensen, a justice of the Jerusalem Town Court, Yates County, was served with a Formal Written Complaint dated August 7, 1996, alleging improper demeanor and that he conditioned his disqualification in a case upon the withdrawal of complaints against him. Respondent filed an answer dated August 27, 1996.

On January 28, 1997, 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 February 3, 1997.

Both parties filed memoranda as to sanction. On March 27, 1997, the Commission heard oral argument, at which respondent appeared by counsel. Although respondent did not appear personally, he was permitted by consent to submit a letter dated March 22, 1997, in lieu of a statement to the Commission. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact.

As to Paragraph 4 of Charge I of the Formal Written Complaint:

1. The allegation is not sustained and is, therefore, dismissed.

As to Paragraph 5 of Charge I of the Formal Written Complaint:

2. Respondent has been a justice of the Jerusalem Town Court since 1976.

3. On February 8, 1995, Ronald P. Hart, an attorney representing the defendant in People v Andrew McNeil then pending before respondent, moved to have respondent recuse himself from further proceedings in the case.

4. On February 27, 1995, the motion was argued before respondent. During the argument, respondent learned for the first time that complaints had been filed against him with the Commission concerning his conduct at an earlier proceeding in the case. The complaints had

been filed by Mr. McNeil and David M. Sweet, Mr. McNeil's college basketball coach, who had been present at the earlier proceeding.

5. Respondent stated that he would recuse himself only if Mr. McNeil and Mr. Sweet would agree to withdraw their complaints to the Commission. Respondent repeated this more than ten times during the course of the argument.

6. Within a month after the argument, respondent recused himself, even though no further proceeding in the case had taken place and even though he had not received a response concerning the terms of his proposal.

As to Charge II of the Formal Written Complaint:

7. Mr. McNeil and two other defendants had been arrested in connection with a disturbance at Keuka College. Respondent presided over preliminary proceedings on May 17, 1994, involving all three defendants, who are black.

8. Several hours after the proceedings had been concluded and after the defendants and their attorneys had left the court, someone asked respondent how he was doing. He responded, "Oh, it's been a rough day—all those blacks in here." Members of the public were present in the courtroom at the time.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(1)*, and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct.

* Now Section 100.3(B)(1)

Paragraph 5 of Charge I and Charge II are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraph 4 of Charge I is dismissed.

Respondent's public remark in court conveyed the impression that he had had a stressful day merely because of the race of the defendants who had appeared earlier. Remarks with racial overtones cast doubt on a judge's ability to be impartial in all matters that come before the court. (Matter of Schiff v State Commission on Judicial Conduct, 83 NY2d 689, 693; see also, Matter of Agresta v State Commission on Judicial Conduct, 64 NY2d 327; Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51).

Respondent's statement is not as serious as that of Judge Schiff, who made a deliberate and calculated remark intended to offend a particular individual (83 NY2d 689, at 692-93) or as that of Judge Agresta, who used an offensive and derogatory word referring to race during a court proceeding with defendants of that race before him (64 NY2d 327, at 329).

More troublesome are respondent's relentless efforts in a later proceeding to coerce two grievants to abandon their complaints to the Commission in exchange for a favorable decision on a motion for his recusal. More than ten times, respondent reiterated that he would disqualify himself if the complaints were withdrawn. If they were not, he would continue to hear the case. He made clear that the merits of the defense's claim that he could not be impartial were not a consideration. "The powers and prestige of judicial office are not meant as barter for the advancement of a judge's personal interests." (Matter of Sullivan, 1984 Ann Report of NY Commn on Jud Conduct, at 152, 156; see, Matter of Phillips, 1990 Ann Report of NY Commn on

Jud Conduct, at 145, 149). It is wrong for a judge to attempt to dissuade a grievant from pursuing the legal right to complain about the judge's conduct. (Matter of Mahar, 1983 Ann Report of NY Commn on Jud Conduct, at 139, 141). Such behavior constitutes an attempt to obstruct the Commission in its discharge of its lawful mandate. (See, Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; Matter of Menard, 1996 Ann Report of NY Commn on Jud Conduct, at 93).

In Matter of Sullivan (supra), the Commission censured a judge who bargained with a litigant, promising to withdraw a judgment that he had improperly entered in exchange for her withdrawal of a complaint against him. In Matter of Phillips (supra), the sanction was also censure for a judge who had agreed to grant a dismissal motion if an attorney withdrew from her motion papers criticism of the court. The censures in both cases were also based on additional misconduct.

In this case, we have considered as mitigating that respondent has conceded his wrongdoing and that he has a long and heretofore unblemished record on the bench. (See, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155).

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

Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Newton, Mr. Pope and Judge Thompson concur.

Mr. Berger and Judge Salisbury dissent as to sanction only and vote that respondent be removed from office.

Judge Luciano, Judge Marshall and Mr. Sample were not present.

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DISSENTING OPINION BY MR. BERGER IN WHICH JUDGE SALISBURY JOINS

I respectfully dissent as to sanction only and vote that respondent be removed from office.

Respondent persistently conditioned his decision on a recusal motion upon the withdrawal of complaints to the Commission against him. In so doing, for his own personal ends, he abandoned his obligation to rule on the merits, attempted to coerce the complainants from pursuing their legal rights and interfered with the Commission's discharge of its lawful mandate. Such repeated attempts by a judge to undermine the proper administration of justice mandates, in my view, removal from office. (See, Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; Matter of Fabrizio v State Commission on Judicial Conduct, 65 NY2d 275).

Furthermore, respondent's comment attributing his "rough day" to the race of the persons appearing before him was clearly racist. In 1983, the Commission pronounced, "The law of New York is now clear that racist conduct by a member of the judiciary will not be tolerated." (Matter of Cerbone, 1984 Ann Report of NY Commn on Jud Conduct, at 76, 78, accepted, 61 NY2d 93). Surely, by 1995, a racist comment by a judge in his courtroom before members of the public cannot be countenanced.

The proper purpose of the sanction of a judge is, not punishment, but protection of the public from unfit incumbents. (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660). In the face of such serious misconduct as is demonstrated in this record, it cannot be considered as mitigating that respondent has a long tenure on the bench. (See, Matter of Esworthy v State Commission on Judicial Conduct, 77 NY2d 280, 283).

Respondent has shown that he is not fit to be a judge and should be removed from office.

Dated: May 29, 1997

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