

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

JAMES P. KRAUCIUNAS,

a Justice of the Ohio Town Court,
Herkimer County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Honorable James P. Krauciunas, *pro se*

The respondent, James P. Krauciunas, a Justice of the Ohio Town Court,
Herkimer County, was served with a Formal Written Complaint dated November 20,
2001, containing one charge. Respondent filed an answer dated January 23, 2002.

By Order dated January 8, 2002, the Commission designated Steven Wechsler, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 26, 2002, in Utica, New York, and the referee filed his report dated July 1, 2002, with the Commission.

The parties submitted briefs with respect to the referee's report. Oral argument was waived. On September 19, 2002, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Ohio Town Court since 1997. He is not an attorney. He has attended and successfully completed all required training sessions for judges and, at all times relevant herein, he has been familiar with the Rules Governing Judicial Conduct.

2. On or about April 9, 2001, respondent appeared at the Whitestown Town Court, Oneida County, while court was in session, to file a small claims court action. Respondent had already filled out the notice of claim form, which he obtained from his own court, and had listed himself and his daughter, Cassandra, as co-claimants. The claim was against Cassandra's landlady, Lois Finegan, for \$88, consisting of a \$40 security deposit, \$38 for a damaged art project and \$10 in court costs.

3. On April 9, 2001, respondent spoke with Whitestown Town Justice Christ Alexander, who was at the bench, so that Judge Alexander could determine whether he had any conflict of interest and could hear the case. In their discussion concerning the parties to the claim, respondent acknowledged that his daughter was over

the age of 18, that she was the lessee of the apartment and that she paid the rent directly to the landlady. Judge Alexander ruled that respondent could not be a co-claimant. During his discussion with Judge Alexander, respondent referred to his own judicial status.

4. On April 9, 2001, respondent was rude and argumentative with the Whitestown Town Court clerk. Respondent first insisted upon using his own small claims court form, although the court's procedure was to enter the information into the computer and then generate the form. Respondent also argued with the court clerk about the postage for mailing the notice to the defendant; respondent repeated two or three times that the postage was included in the filing fee and stated that he knew this because he was a judge in Herkimer County. Respondent spoke in an elevated voice and in a demeaning manner. At one point, Judge Alexander intervened because respondent was so hostile.

5. Respondent mailed the notice of the small claim to the defendant and commenced the suit in his daughter's name, hoping that the defendant would settle it. The small claims hearing was set for May 14, 2001.

6. On May 14, 2001, respondent and his daughter appeared in the Whitestown Town Court, as did the defendant, Ms. Finegan. At the outset of the proceeding, respondent argued with Judge Alexander, in an elevated voice, that he had sent a letter to the court requesting a "change of venue" based upon Judge Alexander's alleged bias against respondent; the court never received that letter. Respondent had no legal basis for a change of venue, and his factual bases were spurious.

7. Because of respondent's hostile demeanor on April 9, Judge Alexander had decided in advance to tape record the proceedings in *Krauciunas v. Finegan* scheduled for May 14, 2001, and the proceedings were recorded.

8. At the May 14, 2001, proceeding, after Judge Alexander informed respondent that he was denying respondent's request for a change of venue, respondent announced that he was not going to try the case, that he was "not ready" and that he wanted to "discontinue" it and start it in another court, notwithstanding that the defendant was present and ready.

9. Judge Alexander told respondent that he would dismiss the case if respondent was not ready. Respondent argued, "I'm going to discontinue it...without prejudice" and "there's a difference between dismissing it and discontinuing it." Respondent also argued again that he should have been named a claimant.

10. Judge Alexander asked respondent's daughter to answer questions. When Judge Alexander asked Ms. Krauciunas if she wished to continue or withdraw the matter, respondent said, "Well, I am going to speak for my daughter." Judge Alexander stated that respondent's daughter was of age, that respondent was not an attorney and that if respondent's daughter wanted an attorney, he would adjourn the proceeding. Respondent argued, "She doesn't need an attorney. She can have someone helping her that's not an attorney in Small Claims."

11. Judge Alexander informed respondent that he could speak to his daughter but could not speak for her. Respondent said, in a voice loud enough to be

heard by everyone present, “Tell the judge that he is going to be reported to the Commission on Judicial Conduct and we’ll discontinue the case.” Respondent’s daughter stated that she would discontinue the case, and respondent added, “With leave to start a different venue.”

12. Judge Alexander stated that the case was dismissed.

13. At the Commission hearing, respondent denied that his conduct on May 14 was argumentative and testified that it was not inappropriate to state that he was going to contact the Commission.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.2(C) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

Respondent violated established ethical standards by asserting his judicial office and by his rude, inappropriate conduct in connection with his daughter’s small claims case.

The ethical rules explicitly prohibit a judge from lending the prestige of judicial office to advance private interests (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals stated in *Matter of Lonschein*, 50 NY2d 569, 571-72 (1980):

[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. Members of the judiciary should be acutely aware that any action they take, 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. 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. [Citations omitted.]

It was improper for respondent to refer to his judicial office while arguing that he should be listed as co-claimant in his daughter's case and again in his dispute with the court clerk over the filing fee. *See Matter of Nesbitt*, 2003 Ann Rep __ (Commn on Jud Conduct, June 21, 2002); *Matter of Ohlig*, 2002 Ann Rep 135 (Commn on Jud Conduct, Nov. 19, 2001). Respondent's gratuitous references to his judicial status were obviously intended to persuade and intimidate. Compounding the impropriety, respondent's rude, argumentative demeanor was unseemly and detracted from the dignity of his judicial office.

Respondent's insistence on appearing in his daughter's case, in which he was neither a party nor a lawyer, was inappropriate. Even after the presiding judge had advised respondent that he could not speak for his daughter, respondent, who is not an attorney, persisted in acting as his daughter's advocate, making motions in the case, arguing with the presiding judge and repeatedly attempting to speak on his daughter's behalf. His conduct was not only prejudicial to the defendant, who had been summoned to court, but rude and overbearing, culminating in a snide threat to report the presiding judge to the Commission. Respondent's conduct showed insensitivity to the special ethical obligations of judges.

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

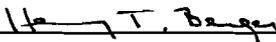
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Luciano, Ms. Moore, Judge Peters and Judge Ruderman concur.

Mr. Pope dissents as to the disposition only and votes that respondent be censured.

CERTIFICATION

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

Dated: November 18, 2002


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