

State of New York  
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44.  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

ROY H. KRISTOFFERSEN,

a Justice of the Saranac Lake Village  
Court, Franklin County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair  
Honorable Myriam J. Altman  
Helaine M. Barnett, Esq.  
Herbert L. Bellamy, Sr.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Lawrence S. Goldman, Esq.  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.  
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission  
Higgins, Hopkins & Schwartzberg (By Ora Schwartzberg)  
for Respondent

The respondent, Roy H. Kristoffersen, a justice of the Saranac Lake Village Court, Franklin County, was served with a Formal Written Complaint dated April 30, 1990, alleging that he had ex parte conversations with a landlord, then took action against his tenants even though no court action was pending. Respondent did not answer the Formal Written Complaint.

On August 15, 1990, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 27, 1990, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Saranac Lake Village Court since 1985.

2. On August 2, 1989, Edward Magedson came to respondent's court and told him that he had fired an employee, Loraine Rahn, because he suspected that she was taking money from a cash register. He also told respondent that he wanted to evict Ms. Rahn from his apartment building. Mr. Magedson said that he would allow her to remain until August 15, 1989.

3. On August 8, 1989, Mr. Magedson again appeared in respondent's court and showed respondent a document signed by Mr. Magedson and Loraine and Robert Rahn in which the Rahns agreed to vacate the apartment by August 15, 1989.

4. Mr. Magedson told respondent that he felt that the Rahns might take from the apartment building items that did not belong to them and might vandalize the apartment.

5. Mr. Magedson asked respondent whether a hearing was necessary.

6. On August 8, 1989, on the basis of his conversations with Mr. Magedson, respondent sent to Mr. and Ms. Rahn a letter in which he:

a) informed the Rahns that they must vacate the premises that they rented from Mr. Magedson by August 15, 1989;

b) stated that no hearing was necessary;

c) warned that failure to vacate the premises by August 15 would result in the issuance of a warrant to dispossess; and,

d) threatened "definitive action" by the court if unspecified and uncharged "incidents of provocation directed against Mr. Magedson" persisted.

7. In the letter, respondent indicated that the agreement to vacate was "not signed under duress and was signed voluntarily." In fact, the Rahns had signed the agreement under duress and had written the words "under duress" in the corner of the original agreement.

8. At the time respondent wrote the letter, no proceeding by Mr. Magedson against the Rahns was pending before him.

9. On August 16, 1989, Mr. Magedson informed respondent ex parte that the Rahns had not left the premises and asked respondent to issue a warrant to dispossess.

10. On the basis of the request, respondent signed a warrant to evict the Rahns. No petition or notice had been filed pursuant to Sections 731 and 735 of the Real Property Actions and Proceedings Law, and no hearing had been held.

11. On June 14, 1989, based on ex parte communications with Mr. Magedson, respondent wrote two letters to the Franklin County District Attorney's office on behalf of Mr. Magedson concerning charges against him pending in respondent's court. With the consent of the district attorney's office, respondent later dismissed a charge of Harassment against Mr. Magedson and allowed him to plead guilty to one of three vehicle and traffic charges in full satisfaction of the pending charges.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3(a)(1) and 100.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1) and 3A(4) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Respondent used the prestige of his judicial office to advance the interests of one party to a dispute, even though there was no proceeding pending before him and the other party had not been heard. He received improper ex parte communications, violated the law and compromised the impartiality

of the judiciary. Matter of Colf, 1987 Annual Report 71, 72 (Com. on Jud. Conduct, Feb. 26, 1986); Matter of Alessi, 1982 Annual Report 113 (Com. on Jud. Conduct, Nov. 13, 1981). See also Matter of Mullen, 1987 Annual Report 129 (Com. on Jud. Conduct, May 22, 1986); Matter of LaMountain, 1989 Annual Report 99 (Com. on Jud. Conduct, Dec. 23, 1988).

Respondent's activities on behalf of Mr. Magedson constituted a gross abuse of his judicial power and created the appearance of favoritism. Alessi, supra at 115; Matter of Winick, 1988 Annual Report 239 (Com. on Jud. Conduct, Jan. 29, 1987); Matter of Zapf, 1988 Annual Report 251 (Com. on Jud. Conduct, July 24, 1987).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

Mr. Sheehy 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: October 25, 1990

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