

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

BRUCE J. LOMNICKI,

a Justice of the Mount Morris Village  
Court, Livingston County.

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## Determination

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

Alfred J. Sciarrino for Respondent

The respondent, Bruce J. Lomnicki, a justice of the Mount Morris Village Court, Livingston County, was served with a Formal Written Complaint dated April 10, 1990, alleging that he sat on the bench with another judge and participated in a case pending before her even though he had disqualified himself from the same case. Respondent filed an answer dated April 30, 1990.

On June 19, 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 admonished and waiving further submissions and oral argument.

On August 24, 1990, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Mount Morris Village Court since 1986. Bernice E. Powers has been clerk of the court since 1987 and became acting justice in November 1988.

2. On April 20, 1989, Dr. Jeffrey Hanson filed an information in respondent's court, accusing a neighbor, Donna Jo Carson, of Disorderly Conduct.

3. Ms. Carson worked as a teacher's aide in the school where respondent is a special education teacher. Respondent had talked with Ms. Carson about an on-going dispute with Dr. Hanson which gave rise to the charge, and respondent had advised her to take the dispute to the Community Dispute Resolution Center.

4. On April 24, 1989, respondent disqualified himself from People v. Carson and referred the case to Judge Powers.

5. Judge Powers scheduled a non-jury trial for June 20, 1989.

6. Before the trial, Judge Powers spoke in chambers with respondent. She told him that she was very nervous about presiding over her first trial and questioned him about proper court procedures. Respondent asked Judge Powers whether she would like him to sit with her at the trial as a "friend of the court" and advise her as to trial procedures, and she agreed. Respondent told her that the attorneys in the case would have to consent to the procedure.

7. Respondent entered the courtroom before Judge Powers and asked Assistant District Attorney William A. Mulligan and Ms. Carson's attorney, J. Michael Jones, whether they objected to his sitting at the bench with Judge Powers as a "friend of the court." He did not explain what he meant by this. Neither attorney objected.

8. Respondent took a chair to Judge Powers' left and about a foot behind her. He was wearing his judicial robe; Judge Powers wore no robe.

9. Mr. Mulligan said that he would consent to dismissal of the charge. Mr. Jones began to make a statement that "we've got a lot of disappointed citizens in the Village of Mount Morris...."

10. Respondent interrupted, "As a friend of the court, I'm not going to let you make political statements in this court, Mr. Jones." Mr. Jones again attempted to speak. Respondent declared, "You will say something in this court when and if you are given permission to, but I will not allow you to say whether these

citizens are disappointed or not. That's up to them to decide later on."

11. Mr. Jones challenged respondent's jurisdiction to intervene in the case since it was before Judge Powers. Respondent again referred to himself as "a friend of the court" and said, "I am not going to allow you to use a courtroom for your own political statements...."

12. Respondent was angry, spoke in a loud, harsh tone and, at one point, rose from his chair, leaned forward and pointed at Mr. Jones, who also raised his voice during the colloquy.

13. Judge Powers did not request respondent's advice or intervention during the proceeding. She did not ask respondent to speak to Mr. Jones. Respondent did so on his own because he thought that the lawyer's statements were disrespectful and inaccurate.

14. Judge Powers eventually interrupted the colloquy and, thereafter, dismissed the charge.

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)(3) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(3) and 3C(1) of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

Having disqualified himself from the Carson case, respondent should have had no participation in it. See Matter of Reedy, 1985 Annual Report 212, 215 (Com. on Jud. Conduct, June 29, 1984), accepted, 64 NY2d 299. Therefore, it was improper for him to sit on the bench with the presiding judge and to intercede in the proceeding by precluding the defendant's attorney from making a statement.

By becoming angry, speaking in a loud, harsh tone and leaning forward and pointing at the attorney, respondent also violated Section 100.3(a)(3) of the Rules Governing Judicial Conduct which requires a judge to be "patient, dignified and courteous."

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

All concur.

#### 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 5, 1990

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