

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

Determination

LYNNE D. MCCORMICK,

a Justice of the Webb Town Court,
Herkimer County.

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

Arnold A. Dettor for Respondent

The respondent, Lynne D. McCormick, a justice of the Webb Town Court, Herkimer County, was served with a Formal Written Complaint dated August 11, 1992, alleging that she engaged in an ex parte communication concerning a matter pending before her and that she accepted employment incompatible with her role as a judge. Respondent filed an answer dated August 21, 1992.

On February 16, 1993, 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 in 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 March 5, 1993.

The administrator and respondent filed memoranda as to sanction. Oral argument was waived.

On April 22, 1993, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a part-time justice of the Webb Town Court since January 1990.

2. On July 30, 1991, respondent arraigned Albert Gawehn on charges of Unauthorized Use Of A Motor Vehicle and Aggravated Unlicensed Operation and released him on \$200 bail. Mr. Gawehn was accused of taking without permission a vehicle owned by Nathan Young.

3. Arising from the same incident, Mr. Young was charged with Unattended Motor Vehicle. The case was pending in respondent's court, but Mr. Young had not yet appeared on the charge.

4. Respondent was told, outside of court, that Mr. Gawehn was a diabetic, and she concluded that his medical condition caused him to operate Mr. Young's vehicle without authorization.

5. On August 3, 1991, respondent went to Mr. Young's home. She introduced herself as the Webb town justice who was hearing the Gawehn case and as the daughter of a lawyer. During the conversation, Mr. Young concluded that respondent was stating that he should withdraw his complaint against Mr. Gawehn. Respondent denies specifically making such a request but concedes that her actions conveyed the impression that she was attempting to convince Mr. Young to withdraw his complaint.

6. Within a week or two, respondent spoke on separate occasions with the arresting officers in Gawehn, Police Chief Robert Crofut and State Trooper George Brownsell. If called to testify, they would state that respondent told them that she had visited Mr. Young and had asked him to withdraw his complaint because the charges were unjust.

7. After Mr. Young's attorney complained to the district attorney about respondent's communication with Mr. Young, respondent disqualified herself from the Gawehn case.

8. The charge against Mr. Young was ultimately dismissed by the other judge of the court.

As to Charge II of the Formal Written Complaint:

9. Since becoming a judge, respondent has worked as a legal secretary for Peter Shannon, Esq.

10. Until December 1992, Mr. Shannon was an assistant district attorney in Herkimer County and was assigned to prosecute criminal cases in the Webb Town Court before respondent's fellow judge. Mr. Shannon was initially assigned to prosecute Mr. Young for Unattended Motor Vehicle arising from the incident involving Mr. Gawehn. Mr. Shannon disqualified himself after Mr. Young's attorney complained to the district attorney about respondent's employment by the prosecutor.

11. Respondent works between 12 and 20 hours a week for Mr. Shannon and bills him on an hourly basis. She performs secretarial duties and paralegal services. She prepares wills, correspondence and real estate and matrimonial documents and answers the telephone. She also assists Mr. Shannon in criminal matters that he handles as defense attorney in counties outside Herkimer County.

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(c), 100.3(a)(4), 100.5(c)(1) and 100.5(h), and Canons 1, 2A, 2B, 3A(4) and 5C(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A judge should neither initiate nor consider ex parte communications concerning a pending case. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][4]; Matter of Loper, 1985 Ann Report of NY Commn on Jud Conduct, at 172; Matter of Racicot, 1982 Ann Report of NY Commn on Jud Conduct, at 99). He or she must be impartial and appear impartial at all times so that public confidence in the judiciary may be preserved. (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290-91). Judges must recognize that "any communication from a Judge...may be perceived as one backed by the power and prestige of judicial office." (Matter of Lonschein v State Commission on Judicial Conduct, 50 NY2d 569, 572).

Respondent's actions concerning the Gawehn case indicate a lack of sensitivity to these ethical constraints. She considered an ex parte communication concerning a case pending before her and concluded that a defendant's purported diabetic condition was a justification for the criminal conduct alleged. She then initiated an ex parte contact with the complaining witness in which she conveyed the impression that she wanted his complaint withdrawn. In ex parte conversations with the arresting officers, she gave the same impression of prejudgment and partiality. Despite her strong feelings about the case, she did not disqualify herself until she learned that defense counsel had complained about her meeting with the complaining witness.

As to Charge II, a part-time judge may accept private employment that "is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties." (22 NYCRR 100.5[h]). Respondent's employment as a secretary and paralegal for one of the few attorneys in her town is incompatible with her role as a judge. Her duties in assisting the lawyer, Mr. Shannon, in estate, matrimonial, real estate and criminal cases must necessarily place her in contact with attorneys and clients who are likely to appear before her or her court, in violation of 22 NYCRR 100.5(c)(1). The conflict was particularly acute when Mr. Shannon appeared regularly in respondent's court as a prosecutor, even though he did not appear before her. (See, Matter of Moynihan v State Commission on Judicial Conduct, 80 NY2d 322; compare, Matter of Orloff, 1988 Ann Report of NY Commn on Jud Conduct, at 199).

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

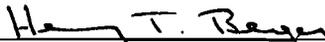
Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman and Judge Salisbury concur.

Mr. Cleary, Mr. Sheehy and Judge Thompson were 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: June 9, 1993


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