

**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

JAMES E. MC KEVITT,

a Justice of the Malta Town Court,  
Saratoga County.

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**Determination**

THE COMMISSION:

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

APPEARANCES:

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

Riebel Law Firm (By David L. Riebel) for Respondent

The respondent, James E. McKevitt, a justice of the  
Malta Town Court, Saratoga County, was served with a Formal  
Written Complaint dated March 26, 1996, alleging that he stated  
that he was refusing to release a defendant because he had been  
required to get out of bed to conduct the arraignment.

Respondent filed an answer dated April 26, 1996.

On June 6, 1996, 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), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On June 6, 1996, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Malta Town Court since 1990.

2. On August 13, 1994, at approximately 11:30 P.M., respondent arraigned Timothy Walsh on a charge of Driving While Intoxicated. Respondent told Mr. Walsh's father that he intended to remand the defendant to jail. When the father asked respondent to release the defendant on his own recognizance, respondent replied that he was denying the request because he had had to get out of bed for the arraignment.

3. Respondent then set bail at \$1,000 cash or \$2,000 bond. The defendant posted bail the following day and was released.

4. Respondent and staff counsel have stipulated that, because of the nature of the charges, it is likely that bail would have been set in the Walsh case, even if respondent had not expressed pique at having been called to conduct the arraignment.

5. After the arraignment in Walsh, in the presence of the defendant and his father, respondent spoke to the deputy

sheriff who was transporting the defendant. Respondent asked whether he was being "black-balled" by the sheriff's department inasmuch as he had not been contacted to conduct many arraignments recently. Respondent referred to the Saratoga County Sheriff as a "fucking asshole."

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)(3)\*, and Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

"The public has every right to expect that a jurist will carefully weigh the matters at issue and, in good faith, render reasoned rulings and decisions." (Matter of Friess, 1984 Ann Report of NY Commn on Jud Conduct, at 84, 88). A judge who makes, or appears to make, decisions for reasons other than the merits demeans the judicial process and diminishes respect for the courts. (See, Matter of Myers, 1985 Ann Report of NY Commn on Jud Conduct, at 203, 207; Matter of Friess, supra). It is especially improper for a judge to create the impression that a decision is being made out of personal irritation with a party. (See, Matter of Schiff v State Commission on Judicial Conduct, 83

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\*Now Section 100.3(B)(3)

NY2d 689, 693-94; Matter of Miller, 1981 Ann Report of NY Commn on Jud Conduct, at 121, 122).

By his angry and profane remark concerning the sheriff, respondent violated his obligation to be patient, dignified and courteous in carrying out judicial duties. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[B][3]; Matter of Aldrich v State Commission on Judicial Conduct, 58 NY2d 279, 281-82).

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

Mr. Berger, Mr. Cleary, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Mr. Sample concur.

Judge Thompson 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: August 8, 1996

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