

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 E. McKEVITT,

a Justice of the Malta Town Court,
Saratoga County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission
Francis J. Carroll for Respondent

The respondent, James E. McKevitt, a justice of the Malta Town Court, Saratoga County, was served with a Formal Written Complaint dated January 7, 1998, alleging three charges of misconduct. Respondent filed an undated answer.

On April 30, 1998, the administrator of the Commission, respondent and respondent's counsel entered into an Agreed Statement of Facts pursuant to Judiciary Law

§44(5), 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 18, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Malta Town Court since 1990.
2. On July 11, 1996, Frederick Kennison appeared before respondent for arraignment on charges of Speeding and Driving With One Headlight Out. Mr. Kennison asked for a supporting deposition. Respondent told him that he was not entitled to a supporting deposition because he had not requested one within 48 hours of the time that the ticket was issued, even though that is not the time limit set forth in CPL 100.25(4).
3. When Mr. Kennison again asked for a supporting deposition, respondent replied, "You are going to piss the trooper off. I wouldn't do it if I were you, but it's your ass."
4. The case was tried on August 22, 1996, and respondent convicted Mr. Kennison on the Speeding charge. When Mr. Kennison asked how he could appeal, respondent said in a sarcastic manner, "Smart ass. Get a lawyer."
5. Mr. Kennison retained an attorney, who filed a Notice of Appeal. Respondent then contacted the assistant district attorney who had prosecuted the case and

discussed ex parte the Return on Appeal. The prosecutor prepared a return and sent it to respondent ex parte. Respondent then adopted it and filed it as his own Return on Appeal.

6. Respondent did not carefully examine the return prepared by the prosecutor; it contained numerous factual errors.

7. Mr. Kennison's attorney wrote to respondent, pointing out various inaccuracies in the return. Respondent then had additional ex parte communications with the prosecutor. Respondent subsequently submitted an amended return in which he adopted the prosecutor's ex parte advice as to how to respond.

As to Charge II of the Formal Written Complaint:

8. In April 1996, respondent convicted Eduard Sadykov of Speeding after a bench trial. Mr. Sadykov appealed to County Court. Respondent then requested, ex parte, information about the trial from the assistant district attorney who had prosecuted it because respondent could not remember what had occurred at the trial.

9. Respondent considered ex parte letters from the prosecutor, who suggested what respondent should say in his Return on Appeal.

As to Charge III of the Formal Written Complaint:

10. Respondent failed to effectuate the rights of defendants at arraignment, as required by CPL 170.10(4)(a), in that he:

a) as a general practice, told defendants who requested supporting depositions in traffic cases that they were not entitled to them because they had not made their requests within 48 hours of arrest, even though that is not the time limit set forth in CPL 100.25(4);

b) in People v Christopher Barum on September 10, 1996, People v Clare Colamaria on September 8, 1996, and People v Indranie Roharshan on September 4, 1996, respondent asked unrepresented defendants who had pleaded not guilty at arraignment to explain their pleas.

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), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 100.3(B)(6). Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Taken as a whole, respondent's conduct conveys the impression of bias in favor of the prosecution and against defendants. He attempted to discourage defendants from exercising their rights by asking them to explain why they were pleading not guilty. This certainly may give the appearance to defendants that the judge wants them to admit the charges. (See, Matter of Cavotta, 1996 Ann Report of NY Commn on Jud Conduct, at 75, 78). By insisting upon a 48-hour requirement for requesting supporting

depositions, respondent also was attempting to abridge the rights of defendants.

It was also improper for him to engage in ex parte communications with prosecutors and to rely on them without notice to the defense to draft the legal papers that he is required to submit on appeals. Such conduct compromises the fairness of the proceedings. (Matter of Rider, 1988 Ann Report of NY Commn on Jud Conduct, at 212, 215).

Respondent's reference to Mr. Kennison as "smart ass" and his warning not to "piss the trooper off" also conveyed the appearance of partiality and exhibited intemperate judicial demeanor. (See, Matter of Going, unreported, NY Commn on Jud Conduct, July 18, 1997). Breaches of judicial temperament "impair[] the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society." (Matter of Mertens, 56 AD2d 456, at 470 [1st Dept]).

This is not the first demonstration of poor demeanor by respondent; in 1996, he was censured for telling the father of a defendant that he was denying bail because he had been forced to get out of bed for the arraignment and for referring in court to the county sheriff as a "fucking asshole." (Matter of McKeivitt, 1997 Ann Report of NY Commn on Jud Conduct, at 106).

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

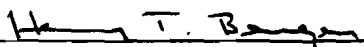
Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur.

Mr. Coffey and Mr. Pope 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: July 27, 1998



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