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

LEO P. MENARD,

a Justice of the Beekmantown Town Court and Acting Justice of the Rouses Point Village Court, Clinton County.

# Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Helaine M. Barnett, Esq.
Honorable Evelyn L. Braun
E. Garrett Cleary, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Juanita Bing Newton
Honorable Eugene W. Salisbury
Barry C. Sample
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

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

Carter, Conboy, Case, Blackmore, Napierski & Maloney, P.C. (By Gregory S. Mills) for Respondent

The respondent, Leo P. Menard, a justice of the Beekmantown Town Court and the Rouses Point Village Court, Clinton County, was served with a Formal Written Complaint dated June 25, 1993, containing five charges of misconduct. Respondent filed an answer dated August 17, 1993.

By order dated August 31, 1993, the Commission designated Maureen J.M. Ely, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 17 and 18, 1993, and January 14 and February 15, and 16, 1994, and the referee filed her report with the Commission on October 17, 1994.

By motion dated October 26, 1994, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion on November 28, 1994. The administrator filed a reply on December 2, 1994.

On January 12, 1995, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Beekmantown Town Court since 1982. He also sits as acting justice of the Rouses Point Village Court.

2. In January 1993, respondent received an inquiry from Commission staff concerning his handling of a case in 1990 involving John P. Weightman, Jr. Respondent called Mr. Weightman by telephone and asked him to come to respondent's home.

3. After Mr. Weightman arrived, respondent told him that his secretary had "turned him in."

4. Respondent told Mr. Weightman that, if questioned, he should tell the Commission that he had pleaded guilty to Driving While Intoxicated and Speeding and that he had been represented by counsel. This would "save both our asses," respondent told Mr. Weightman.

5. Mr. Weightman had no lawyer when his case was disposed of before respondent in 1990.

6. Mr. Weightman pointed out to respondent that the computer records of the Department of Motor Vehicles showed a conviction of Driving While Ability Impaired, rather than Driving While Intoxicated. "They don't look in the computers," respondent replied.

7. The allegations in Paragraphs 4 and 5 of Charge I are not sustained and are, therefore, dismissed.

As to Charge II of the Formal Written Complaint:

8. The charge is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

9. The charge is not sustained and is, therefore, dismissed.

As to Charge IV of the Formal Written Complaint:

10. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

11. The charge is not sustained and is, therefore, dismissed.

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 and 100.2(a), and Canons 1 and 2A of the Code of Judicial Conduct. Paragraphs 6 and 7 of Charge I are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established. Paragraphs 4 and 5 of Charge I and Charges II, III, IV and V are dismissed.

Knowing that Commission staff was investigating his handling of the Weightman case, respondent approached the defendant and suggested a version of the events that he should give if questioned. Such conduct was clearly intended to obstruct the Commission's discharge of its lawful mandate and does not promote public confidence in the integrity of the judiciary. (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; Matter of Mossman, 1992 Ann Report of NY Commn on Jud Conduct, at 59, 62-63; Matter of Mahar, 1983 Ann Report of NY Commn on Jud Conduct, at 139).

Having concluded that this is the only misconduct established in this record, we determine that a warning that it not be repeated is sufficient. (Contra, Matter of Myers, supra,

which included the involvement as a judge in a case in which personal and family interests were at stake, as well as the threatening of a Commission witness; Matter of Mossman, supra, which also involved the handling of a case in which family members had an interest and false testimony by the judge; Matter of Mahar, supra, which included a threat of reprisal against a Commission witness, encouraging a witness to make a false statement in a criminal proceeding and a drunken and vulgar verbal attack in a bar against a Commission witness).

With respect to misconduct, the Commission records the following votes:

Paragraphs 4 and 5 of Charge I are dismissed by a vote of 9 to 1. Judge Braun dissents.

Paragraphs 6 and 7 of Charge I are sustained by a vote of 7 to 3. Mr. Cleary, Mr. Sheehy and Judge Thompson dissent.

Paragraphs 8, 9 and 10 of Charge II are dismissed by a vote of 8 to 2. Mr. Berger and Judge Braun dissent.

Paragraphs 11 and 12 of Charge II are dismissed by a vote of 6 to 4. Mr. Berger, Ms. Barnett, Judge Braun and Judge Newton dissent.

Charges III and IV are dismissed by unanimous vote.

Charge V is dismissed by a vote of 8 to 2. Judge Braun and Mr. Goldman dissent.

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

Ms. Barnett, Judge Braun, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sample concur as to sanction.

Mr. Berger dissents and votes that the appropriate sanction is removal.

Mr. Cleary, Mr. Sheehy and Judge Thompson, having found that no misconduct is established, dissent and vote that the Formal Written Complaint be dismissed.

Ms. Crotty was not present.

CERTIFICATION

It is determined 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: March 13, 1995

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

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DISSENTING OPINION BY MR. BERGER

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I concur with the majority's determination to sustain Paragraphs 6 and 7 of Charge I and to dismiss the remaining allegations of that charge. I also concur with the dismissal of Charges III, IV and V. I respectfully dissent and vote to sustain Charge II, and I would vote that respondent be removed from office.

With respect to Charge II, the record establishes and the referee found that respondent falsely reported the disposition of a case involving Laurieanne Prue because the fine money had been lost and that he coached Ms. Prue concerning what she should tell Commission investigators. Specifically, the referee found that respondent collected $95 in cash from Ms. Prue at her home after she pleaded guilty to Disorderly Conduct on June 20, 1992. The money was lost, and respondent instructed his court clerk to report to the state comptroller that he had revoked the fine because of the defendant's indigence. The clerk marked the record "indigent," and respondent reviewed and signed it. When respondent learned that Commission staff was investigating his conduct in Prue, he called the defendant by

telephone, advised her that his secretary had "turned him in," urged her to tell investigators that he had come to her house because she was unable to get to court to pay her fine and told her not to reveal that he had called.

In making these findings, the referee credited the testimony of Ms. Prue over respondent's contrary version, found supporting testimony by other, disinterested witnesses and noted the similarity in the testimony of Ms. Prue and Mr. Weightman, who independently swore that respondent had remarked that his secretary had "turned him in."

Conflicts in testimony present questions for the referee who hears the witnesses, observes their demeanor on the stand and weighs their explanations. "It was for the Referee to choose which evidence was to be credited, and when the evidence conflicted, which version was to be believed." (Matter of Jones, 47 NY2d mmm, qqq [Ct on the Judiciary]). Except in unusual circumstances, the Commission should not overturn credibility findings of the referee based on its reading of the cold record out of context.

Respondent's repeated acts of deception in connection with Weightman and Prue demonstrate that he is not fit to be a judge. Deception is "antithetical to the role of a Judge who is sworn to uphold the law and seek the truth." (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554). Indeed, we have held that it is egregious misconduct for a judge who, knowing that witnesses will give evidence before the Commission,

encourages them to change their stories to match his. (Matter of Mossman, 1992 Ann Report of NY Commn on Jud Conduct, at 59). Such conduct may constitute the crime of perjury. (See, Penal Law art. 210 and Donnino, Practice Commentaries, McKinney's Cons Laws of NY, Book 39, "Subornation of perjury", at 525). The deliberate falsification of court records submitted to state agencies also constitutes a significant breach of judicial ethics (Matter of Reeves v State Commission on Judicial Conduct, 63 NY2d 105) and suggests the crime of Offering A False Instrument For Filing (see, Penal Law §§ 175.30 and 175.35).

Admonition is far too lenient a sanction for such egregious misconduct by a judge. "A judicial officer who has so little regard for...the obligations of a witness...is not a fit person to administer oaths and cannot be trusted to faithfully uphold the laws." (Matter of Heburn v State Commission on Judicial Conduct, 84 NY2d 168, 171). By his actions, respondent has clearly demonstrated that he is not fit for judicial office.

Accordingly, I would accept the referee's recommendation that Charge II be sustained, and I vote that respondent be removed from office.

Dated: March 13, 1995

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