

**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

DUANE R. MERRILL,

a Justice of the Hamden Town Court, Delaware County.

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**Determination**

THE COMMISSION:

Henry T. Berger, Esq., Chair  
Jeremy Ann Brown  
Stephen R. Coffey, Esq.  
Mary Ann Crotty  
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

O'Leary & Van Buren (By Terence P. O'Leary) for Respondent

The respondent, Duane R. Merrill, a justice of the Hamden Town Court, Delaware County, was served with a Formal Written Complaint dated August 8, 1997, alleging that he improperly handled a housing dispute. Respondent filed an answer dated September 15, 1997.

On January 9, 1998, 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 admonished and waiving further submissions and oral argument.

On January 29, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Hamden Town Court since 1988.
2. In the Fall of 1996, Ed Barbieri called respondent by telephone several times and asked about evicting Charles and Wilhelmina Wright from their home, which Mr. Barbieri had bought at a tax sale.
3. Although no proceeding had been initiated in respondent's court, respondent went to the Wright home on October 5, 1996, and asked the Wrights and their son, Kevin, when they would vacate the property.
4. In this conversation, respondent:
  - a) identified himself as the town justice;
  - b) stated that he had come to the house because Mr. Barbieri had called him several times;
  - c) told Mr. and Ms. Wright and their son that they did not have to have counsel and that it would be best not to bring lawyers into the dispute but that they could do so;

d) stated that, because he was a judge, he would decide how much time they had to move out if they could not resolve the dispute with Mr. Barbieri; and,

e) became embroiled in a heated discussion with Kevin Wright and implied that the family would be evicted if a proceeding were commenced.

5. Mr. Barbieri later brought an eviction proceeding against Charles, Wilhelmina and Kevin Wright in respondent's court, and respondent presided when the parties appeared in court. Respondent did not offer to disqualify himself. The parties agreed to a settlement before the matter was tried.

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) and 100.3(B)(6). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent acted as an advocate for one of the parties to a dispute, using the prestige of his judicial office to advance that party's position. Respondent discouraged the other parties from obtaining representation and implied that he would decide against them if the matter came to court. In doing so, he abused his judicial power and conveyed the appearance of favoritism. (See, Matter of Kristoffersen, 1991 Ann Report of NY Commn on Jud Conduct, at 66; Matter of Colf, 1987 Ann Report of NY Commn on Jud Conduct, at 71).

Having engaged in ex parte communications and having compromised his impartiality, respondent should have offered to disqualify himself when the matter did come to court. (See, Matter of LaMountain, 1989 Ann Report of NY Commn on Jud Conduct, at 99).

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

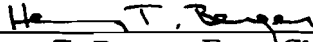
Mr. Berger, Ms. Brown, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey 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: March 17, 1998

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