

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

SCOTT J. PAUTZ,

a Justice of the Horseheads Town Court,
Chemung County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Hon. Scott J. Pautz, *pro se*

The respondent, Scott J. Pautz, a Justice of the Horseheads Town Court,
Chemung County, was served with a Superseding Formal Written Complaint dated April
2, 2003, containing one charge. Respondent filed a verified answer dated November 19,

2003.

On March 1, 2004, the Administrator of the Commission and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On March 18, 2004, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Horseheads Town Court, Chemung County since 1998. Respondent is an attorney. Respondent has attended and successfully completed all required training sessions for judges.

2. Prior to September 2000, respondent had been involved in an intimate personal relationship with Darlene Fivie.

3. From June 2000 through August 2000, respondent's relationship with Ms. Fivie entered a period of significant disagreement during which they unsuccessfully attempted, a number of times, to terminate the relationship.

4. The relationship thereafter concluded and on October 4, 2000, Ms. Fivie sent respondent a letter directing him to desist from all further contact with her.

5. On October 10, 2000, respondent sent Ms. Fivie a letter in which he castigated her for having ended their relationship and indicated that she might be incorrect about the statement in her letter that respondent would never again be a part of her life.

6. On October 12, 2000, respondent followed Ms. Fivie during her workout at the Club Nautilus fitness center by using equipment located adjacent to the equipment Ms. Fivie was using during her workout and thereafter left a soda can for Ms. Fivie at her vehicle.

7. On October 21, 2000, and October 28, 2000, at 5:29 A.M. and 12:45 A.M., respectively, respondent made “hang-up” calls to Ms. Fivie’s residence.

8. On November 18, 2000, at approximately 2:30 A.M., respondent sat in his vehicle in the parking lot opposite the rear entrance of the Hanover Grille, where Ms. Fivie was employed, and drove away quickly when he was approached by Ms. Fivie.

9. On or about November 21, 2000, the charge of Harassment, Second Degree, a violation of Section 240.26(3) of the Penal Law, was filed against respondent based upon a criminal complaint filed by Ms. Fivie in connection with the incident on November 18, 2000. On or about January 9, 2001, respondent was granted an Adjournment in Contemplation of Dismissal as to the charge.

10. Respondent satisfied the conditions of the Adjournment in Contemplation of Dismissal and had no further contact with Ms. Fivie. In July 2001, the Harassment, Second Degree charge was dismissed.

Upon the ~~foregoing findings~~ of fact, the Commission concludes as a matter of law that respondent engaged in misconduct as defined by Article 6, Section 22 of the New York State Constitution and Section 44(1) of the Judiciary Law and violated

Sections 100.1, 100.2, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings, and respondent's misconduct is established.

Both on and off the bench, judges are held to standards of conduct "much higher than for those of society as a whole." *Matter of Kuehnel v. Commn on Jud Conduct*, 49 NY2d 465, 469 (1980). Even personal conduct by a judge unrelated to judicial office may be subject to discipline. *See, e.g., Matter of Miller*, 1997 Annual Report 108 (Commn on Jud Conduct) (judge sent anonymous, harassing mailings concerning an individual with whom she had had a personal relationship); *Matter of Cipolla*, 2003 Annual Report 84 (Commn on Jud Conduct) (judge wrote a letter under false pretenses seeking personal information about a woman he was dating); *Matter of Roepe*, 2002 Annual Report 153 (Commn on Jud Conduct) (judge threatened his wife with a knife during an angry confrontation).

For several weeks following the break-up of a personal relationship, respondent engaged in a series of annoying acts toward Ms. Fivie, notwithstanding that she had sent him a letter directing him to desist from further contact with her. Respondent's behavior detracted from the dignity of judicial office and constitutes a departure from the exacting standards of personal conduct required of judges (Section 100.4[A][2] of the Rules). As respondent has stipulated, his acts constitute misconduct notwithstanding the dismissal of criminal charges (*see, e.g., Matter of Roepe, supra* [Menacing charge was dismissed]; *Matter of Ciganek*, 2002 Annual Report 85 [Commn

on Jud Conduct] [judge fired a gun several times near a highway to scare a wild turkey; Reckless Endangerment charge was adjourned in contemplation of dismissal]).

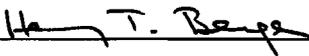
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 30, 2004



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