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

JOHN D. PEMRICK,

a Justice of the Greenwich Town and Village Courts, Washington County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel W. Joy
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman
Honorable Eugene W. Salisbury

APPEARANCES:

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

Catalfimo & Catalfimo (By Michael J. Catalfimo) for Respondent

The respondent, John D. Pemrick, a justice of the Greenwich Town Court and the Greenwich Village Court, Washington County, was served with a Formal Written Complaint dated March 9, 1999, alleging two charges of misconduct. Respondent did not answer the charges.

On October 14, 1999, 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 October 28, 1999, 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 Greenwich Town Court and the Greenwich Village Court since 1987. He was acting justice of the Greenwich Village Court from 1976 to 1987. He is not a lawyer.

2. Ross Davenport was arraigned before respondent on September 18, 1997, on a charge of Misapplication Of Property. He was alleged to have failed to make payments or return a television set pursuant to a rental agreement. Respondent failed to advise Mr. Davenport of his right to counsel and his right to have counsel assigned by the court if he was unable to afford a lawyer, in violation of CPL 170.10(4)(a). Respondent committed the defendant to jail in lieu of $500 bail.

3. On October 7, 1997, Mr. Davenport reappeared in court and asked to be represented by a public defender. Respondent replied that he would have to check with

the assistant district attorney. Respondent then spoke about the case with the prosecutor outside the presence of the defendant and adjourned the case without taking any steps to effectuate the defendant's right to assigned counsel. The assistant district attorney recommended that the case be adjourned in contemplation of dismissal on the condition that Mr. Davenport make restitution.

4. On December 2, 1997, Mr. Davenport returned to court. Respondent informed him that he had waited too long to request a public defender and suggested that he begin making restitution payments before his next court appearance, even though Mr. Davenport had not pleaded guilty and no trial had been held. Respondent had not granted an Adjournment in Contemplation of Dismissal at this point.

5. Mr. Davenport told respondent that the television could not be returned because it had been stolen, but respondent failed to consider this a defense to the charge, even though Penal Law § 165.00(3) provides that it shall be a defense to the charge of Misapplication Of Property that the property has been stolen. Respondent was unfamiliar with this section, since he had never previously handled such a charge or heard of such a defense.

6. Respondent never provided Mr. Davenport with an application to obtain assigned counsel, which, in Washington County, may only be obtained through the court. Nonetheless, Mr. Davenport was able to obtain, through outside intervention, representation by the public defender's office.

7. On February 3, 1998, Mr. Davenport appeared in court, represented by the public defender, and respondent adjourned the charge in contemplation of dismissal. On February 10, 1998, respondent held a restitution hearing in the absence of the public defender and ordered Mr. Davenport to pay $400 for the television.

As to Charge II of the Formal Written Complaint:

8. In Davenport and another case that respondent heard on June 4, 1998, respondent engaged in conferences with the assistant district attorney on the merits of the cases outside the presence of the defense.

9. In three traffic cases that respondent heard on April 8, June 4 and June 9, 1998, respondent granted dismissals or adjournments in contemplation of dismissal without the knowledge and consent of the prosecution, in violation of CPL 170.40, 170.45, 210.45(1) and 170.55(1).

10. In nine cases between January and June 1998, respondent failed at arraignment to advise the defendants -- who were charged with misdemeanors, violations or traffic infractions -- of their right to counsel, in violation of CPL 170.10(4)(a).

11. In one case in June 1998, respondent advised a defendant who was charged with Disorderly Conduct that he was not entitled to assigned counsel, in violation of CPL 170.10(4)(a).

12. In nine cases between January and June 1998, respondent elicited from defendants who had pleaded not guilty statements concerning the charges against them or explanations of 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) and 100.3(B)(6). Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

At every stage of a criminal proceeding, a defendant has the right to counsel. (CPL 170.10[3]). In all cases except those alleging traffic infractions, the defendant also has the right to have counsel assigned by the court if he or she cannot afford a lawyer. (CPL 170.10[3][c]). The judge presiding has an obligation to advise defendants of these rights, to offer them an opportunity to exercise them and to "take such affirmative action as is necessary to effectuate them." (CPL 170.10[4][a]; see, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86).

In the Davenport case, respondent violated his obligation to respect and comply with the law and to be faithful to the law. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.2[A], 100.3[B][1]). Respondent failed to advise Mr. Davenport

of these important rights at arraignment or in subsequent proceedings. When the defendant asked for a public defender, respondent failed to give him an application or to take any other steps to ensure that he had representation. Indeed, respondent even discouraged him from getting a lawyer by telling him that he hadn't applied early enough, even though the law grants the right "at the arraignment and at every subsequent stage of the action." (CPL 170.10[3]).

Respondent also made a number of other fundamental errors in the Davenport case that gave the appearance that he was biased against the defendant. He suggested that Mr. Davenport begin paying restitution before the case had been adjudicated. He failed to consider a defense raised by the defendant and clearly denoted in the statute. Once an attorney had made an appearance and the case had been disposed of, respondent held a restitution hearing, even though the attorney was not present.

The facts conceded in Charge II indicate that respondent's failure to properly advise defendants of their rights is not limited to the Davenport case. In addition, he committed a number of other legal errors and ethical transgressions, even though he has more than 20 years of experience as a judge. It is a judge's responsibility to maintain professional competence in the law, and a judge -- lawyer or non-lawyer -- has an obligation to learn and obey ethical rules. (Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 91).

A pattern of failing to advise defendants of constitutional and statutory rights is serious misconduct. (Matter of Reeves, 63 NY2d 105, 109; see, Matter of Sardino, 58 NY2d 286, 289). Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty. (Matter of Spiehs, 1988 Ann Report of NY Commn on Jud Conduct, at 222, 224-25).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Joy, Mr. Pope, Judge Ruderman and Judge Salisbury concur.

Ms. Hernandez, Judge Luciano and Judge Marshall 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: December 22, 1999

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