

**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

JAMES T. PHILLIPS, JR.,

a Justice of the Morristown Town  
Court, St. Lawrence County.

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**Determination**

THE COMMISSION:

Victor A. Kovner, Esq., Chair  
Honorable Myriam J. Altman  
Henry T. Berger, Esq.  
John J. Bower, Esq.  
Honorable Carmen Beauchamp Ciparick  
E. Garrett Cleary, Esq.  
Dolores Del Bello  
Mrs. Gene Robb\*  
Honorable Isaac Rubin  
Honorable Eugene W. Salisbury  
John J. Sheehy, Esq.

APPEARANCES:

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

Brown and Silver (Michael P. Ribley, Of Counsel) for  
Respondent

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\* Mrs. Robb resigned on October 20, 1989. The vote in this matter was on September 22, 1989.

The respondent, James T. Phillips, Jr., a justice of the Morristown Town Court, St. Lawrence County, was served with a Formal Written Complaint dated January 30, 1989, alleging that he allowed his personal attorney to appear in his court and to draft several documents in a case without the knowledge of the prosecutor and that he neglected his judicial duties in another case. Respondent filed an answer dated March 3, 1989.

On June 12, 1989, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for in Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The parties subsequently stipulated that the transcript of respondent's testimony before a member of the Commission on October 25, 1988, be made part of the record of the proceeding. The Commission approved the agreed statement of facts by letter dated July 19, 1989.

The administrator and respondent submitted memoranda as to sanction.

On September 22, 1989, the Commission heard oral argument, at which respondent appeared by counsel, 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, who is not a lawyer, has been a justice of the Morristown Town Court since July 1977.

2. On October 14, 1987, charges of Driving While Intoxicated and Speeding were filed in respondent's court against Donald Ceresoli.

3. On November 16, 1987, Mr. Ceresoli's attorney, Mahlon T. Clements, filed a motion to dismiss the charges.

4. On November 30, 1987, Mr. Clements and his client appeared before respondent on the motion. No representative of the district attorney's office appeared, and respondent had received no papers in response to the motion. Respondent heard oral argument by Mr. Clements and reserved decision.

5. The next day, December 1, 1987, respondent received an answering affidavit from the district attorney's office, opposing the motion to dismiss.

6. Thereafter, respondent spoke with Mr. Clements and told him that he had decided to grant the motion. Mr. Clements offered to prepare a written decision for respondent, and respondent accepted. Respondent did not write a decision and did not dictate one to Mr. Clements. Respondent did not inform the prosecutor of his decision or of his conversation with Mr. Clements.

7. Mr. Clements prepared an order granting the motion to dismiss in the interest of justice and forwarded it to

respondent without notice to the prosecutor. Respondent signed the order on December 19, 1987, without making any changes.

8. Mr. Clements filed the order and sent a copy to the district attorney's office.

9. Mr. Clements subsequently learned that the prosecutor planned to appeal the dismissal of the charges. He called respondent. Respondent agreed to have Mr. Clements prepare an amended order, specifying the factors a court must consider in granting a motion to dismiss in the interest of justice.

10. Mr. Clements prepared an amended order and forwarded it to respondent without notice to the prosecutor. Respondent signed the amended order on January 21, 1988, without making any changes. He returned it to Mr. Clements, who filed it and sent a copy to the district attorney's office.

11. Respondent never informed the prosecutor of his conversations with Mr. Clements or of the fact that Mr. Clements had prepared the Ceresoli orders.

12. After the district attorney's office filed an Affidavit of Errors with respondent for appeal of the dismissal, respondent spoke again with Mr. Clements. Respondent asked Mr. Clements what he should do to respond. Respondent agreed to have Mr. Clements prepare respondent's return.

13. Mr. Clements prepared a return, and, on March 3, 1988, respondent signed it in the lawyer's office without making

any changes. Respondent then delivered it to the district attorney's office. Respondent did not inform the prosecutor that Mr. Clements had prepared the return. The return erroneously states that respondent had "received testimony" on the motion to dismiss.

14. The district attorney subsequently objected that it appeared that Mr. Clements had prepared respondent's return. Mr. Clements contacted respondent and prepared a draft letter from respondent to the district attorney, replying to the objection. Respondent incorporated portions of Mr. Clements' draft into a letter that he sent to the district attorney.

15. Mr. Clements has represented respondent in several legal matters. Mr. Clements' law firm represented respondent and his wife in the adoption of their children in 1979. He represented respondent in the purchase of real property in 1983 and again in 1984. Mr. Clements represented respondent in a matter before the Department of Environmental Conservation from the Fall of 1984 to April 1985. In 1983, he represented respondent in connection with the filing of a business certificate. From December 1987 to March 1988, while Ceresoli was pending, Mr. Clements represented respondent's wife on a Speeding charge before the Richland Town Court, Oswego County.

16. Respondent did not disclose to the prosecutor in Ceresoli that Mr. Clements had represented him in personal

matters in the past or that he was representing respondent's wife while the case was pending.

As to Charge II of the Formal Written Complaint:

17. On June 3, 1985, James Franz was arraigned before respondent on charges of Driving While Ability Impaired and Leaving The Scene Of An Accident. Respondent set bail at \$50 and adjourned the case without date.

18. On May 31, 1985, the district attorney's office sent respondent a letter, stating its readiness for trial. On December 20, 1985, the prosecutor wrote to respondent and recommended that the court accept a guilty plea to Driving While Ability Impaired in satisfaction of both charges or, in the alternative, schedule the case for trial. Respondent did not respond or schedule the matter.

19. Fifteen months later, on March 19, 1987, after the case was brought to his attention by his court clerk, respondent issued a warrant for Mr. Franz's arrest for failure to appear in court on September 19, 1986, notwithstanding that the defendant had never been scheduled to appear on that date nor had respondent notified him or his attorney to appear.

20. On March 30, 1987, Mr. Franz's attorney, Katherine Hannan Wears, made a motion to dismiss the charges for failure to provide a speedy trial. The district attorney's office opposed the motion.

21. Respondent did not decide the motion, notwithstanding letters from Ms. Wears on June 3, 1987, September 29, 1987, and January 20, 1988, requesting that he do so.

22. In July or August 1987, respondent went to Ms. Wears' law office and left a message with her secretary, indicating that he would grant the motion to dismiss if Ms. Wears would remove from her papers an allegation that the court was at fault for delaying the Franz trial.

23. Respondent did not decide the motion or schedule the case until June 1988, when he accepted a plea agreed to by defense counsel and the prosecutor.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2, 100.3, 100.3(a)(1), 100.3(a)(4), 100.3(a)(5) and 100.3(c)(1) of the Rules Governing Judicial Conduct and Canons 1, 2, 3, 3A(1), 3A(4), 3A(5) and 3C(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's impartiality might reasonably be questioned in Ceresoli since defense counsel had represented him in personal matters on several past occasions and was representing his wife at the time that the case was pending. Thus, respondent should have disclosed the relationship to the

prosecutor and should have offered to disqualify himself. See Section 100.3(c)(1) of the Rules Governing Judicial Conduct; Matter of Conti v. State Commission on Judicial Conduct, 70 NY2d 416, 418-19 (1987); Matter of Sardonia, 2 Commission Determinations 3 (Com. on Jud. Conduct, Jan. 14, 1980).

The appearance of partiality was greatly exacerbated by respondent's handling of the case. He conducted numerous ex parte communications with defense counsel and treated him as a law secretary, discussing the case and permitting him to draft decisions and court papers without notice to the prosecutor. By signing the attorney's amended order after he knew that his original order would be appealed, respondent was clearly attempting to strengthen the decision and enhance Mr. Clements' chances of winning on appeal.

While we sympathize with respondent's need for assistance, he should have known that it is wrong for him to rely on one party to a dispute for help without notice to the other side. See Matter of Rider, 1988 Annual Report 212 (Com. on Jud. Conduct, Jan. 30, 1987).

Respondent's total neglect of the Franz matter also constituted misconduct. See Matter of Lenney v. State Commission on Judicial Conduct, 71 NY2d 456 (1988). It was especially improper for him to suggest ex parte to defense counsel that he would dismiss the case if she would withdraw her criticism of the court. Respondent had a duty to decide the motion on the merits.



He should not have withheld a favorable decision as barter for the advancement of his personal interests. See Matter of Sullivan, 1984 Annual Report 152, 156 (Com. on Jud. Conduct, Apr. 22, 1983).

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

Mr. Kovner, Judge Altman, Mr. Berger, Judge Ciparick, Mr. Cleary, Judge Rubin and Judge Salisbury concur.

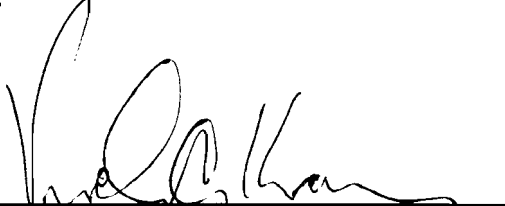
Mrs. Del Bello, Mrs. Robb and Mr. Sheehy dissent as to sanction only and vote that respondent be removed from office.

Mr. Bower 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: November 3, 1989

  
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Victor A. Kovner, Esq., Chair  
New York State  
Commission on Judicial Conduct