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

SPERO PINES,

a Judge of the Family Court,
Broome County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard[1]
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission

Hinman, Howard & Kattell, LLP (by Philip J. Kramer) for the Respondent

---

[1] Ms. Hubbard was appointed to the Commission on June 10, 2008. The vote in this matter was taken on May 7, 2008.

The respondent, Spero Pines, a Judge of the Family Court, Broome County, was served with a Formal Written Complaint dated August 21, 2007, containing three charges. The Formal Written Complaint alleged that respondent failed to be patient, dignified and courteous to litigants in three cases.

On April 29, 2008, the Administrator of the Commission, respondent's counsel 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 May 7, 2008, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was admitted to the practice of law in 1977 and has been a Judge of the Broome County Family Court since January 1994. His current term of office expires on December 31, 2013.

As to Charge I of the Formal Written Complaint:

2. On February 23, 2006, respondent presided over an initial appearance on a petition by Margaret Albanese for custody of her son. Andrew Albanese, Sr., the father of the child, was also present. Mr. Albanese was serving a state prison sentence at the time and appeared before respondent in custody.

3. During the proceeding, when respondent asked whether any of the

parties wished to be represented by an attorney, Mr. Albanese said he did. The following then ensued between respondent and Mr. Albanese:

> [Respondent]: Mr. Albanese, you're in state prison. What could you possibly want an attorney for on the issue of custody? You're entitled to it, but I'm just kind of curious what in the world you would want an attorney and waste my time for?
>
> Mr. A. Albanese: I don't want to waste your time. I want --
>
> [Respondent]: Well, you're wasting my time, but I'll give you an attorney and we'll come back in for a hearing at a later date. I'm not going to waste any more time with this application. It'll be put down for a conference in as much as this dedicated father wishes to have an attorney. We'll do it on notice. Get him out of here.

4. In making the above-referenced remarks above, respondent's inflection and tone of voice toward Mr. Albanese were sarcastic.

5. Mr. Albanese was returned to prison immediately after the proceeding on February 23, 2006.

6. On June 19, 2006, respondent held a hearing in the matter. Mr. Albanese, who again appeared before respondent in custody, was represented by his assigned counsel, Norbert Higgins. During the proceeding, respondent called Mr. Albanese's testimony "inane" and told Albanese that he had "never heard more ridiculous testimony in twelve years on the bench." Respondent also called Mr. Albanese's interest in joint custody "patently ridiculous" and again reproached Mr. Albanese for his "absolute waste of everyone's time."[2] Respondent thereafter issued a decision granting

[2] The transcript of the proceeding inadvertently inverts respondent's words.

sole custody of the child to the mother, with mail visitation to Mr. Albanese.

7. In making the above-referenced remarks, respondent's inflection and tone of voice toward Mr. Albanese were sarcastic.

8. By Decision and Order dated October 18, 2007, the Appellate Division, Third Department, modified respondent's determination as to visitation, and remitted the matter to Family Court before a different judge, noting as follows:

> As an initial matter, we have reviewed the entire record and do not find that [Mr. Albanese] was denied a fair trial by either Family Court's conduct or its remarks. With that said, we do not condone the frequent and unprovoked intemperate and denigrating remarks directed at [Mr. Albanese] by [respondent] which were clearly inappropriate and served only to undermine "public confidence in the integrity, fair-mindedness and impartiality of the judiciary." [Citations omitted.] Inasmuch as [Mr. Albanese] had an unquestioned, fundamental statutory right to be represented by counsel in these proceedings [citations omitted], he should not have been chastised by the court for exercising that right and "wasting [the court's] time" at the initial hearing.

As to Charge II of the Formal Written Complaint:

9. On February 1, 2006, respondent presided over an initial appearance on petitions by Juana Finnerty for custody of her three children. Also present was Marcos Henderson, the father of the children.

10. At the time of the February 1st proceeding, both Ms. Finnerty and Mr. Henderson were in the custody of the Broome County Jail. Mr. Henderson had been arrested in April 2005 on Grand Larceny charges, and Ms. Finnerty had recently been charged as an accessory in the same matter.

11. At the February 1st proceeding, after stating that he would assign counsel to represent Mr. Henderson and after establishing that both litigants were currently incarcerated, respondent made the following statements:

> [Respondent]: Well, as far as I'm concerned, both of you are unfit and neither one of you are worthy of any kind of custody. How do you think you're going to have custody of your kids when you're both sitting in jail for God knows how long?
>
> Ms. Finnerty: But I'm sitting there not guilty of this.
>
> [Respondent]: Well, you're sitting there not guilty, nevertheless you're sitting there. What do you think, your kids are going to sit there with you?
>
> Ms. Finnerty: No, they're not, but I'm coming out this week.
>
> [Respondent]: Your petitions – your petitions are going to be dismissed, and I'm going to allow your mother to file an appropriate application regarding these proceedings. I'm denying your request for court assigned counsel. You're absolutely, totally wasting my time in this matter. You put yourself in situations, you put your children at risk. I'm going to notify the Department of Social Services, these kids are not safe with suitable relatives, and they will file the appropriate neglect proceedings against both of you. You're in no position – neither one of you are in any position to take care of these children. As far as I'm concerned, you're not in a position to take care of pets, much less children. Get 'em both out of here. You can file something, ma'am. I'll consider your application. And if you – if anybody gets a hold of Pedro Ithier [the paternal grandfather], tell him he better be in court next time, or I will issue a warrant for his arrest.

12. In making the above-referenced remarks above, respondent's inflection and tone of voice toward the parties were angry and scolding.

13. Thereafter, the parents and grandparents filed new petitions, and respondent held a hearing on March 1, 2006. The parties agreed on a custody and visitation plan, with the report and approval of the Broome County Department of Social

Services, and which respondent approved.

As to Charge III of the Formal Written Complaint:

14. On March 11, 2004, in *Christina Davies v. John R. Davies,* Christina Davies filed a family offense petition against John Davies. Respondent granted her an order of protection, ordering Mr. Davies to stay away from the residence. While that petition was pending, on March 15, 2004, Mr. Davies filed a petition to be allowed back into the marital residence to retrieve medical supplies and his children's clothing.

15. On March 16, 2004, respondent dismissed Mr. Davies' petition on the basis that Mr. Davies had been able to retrieve his medical supplies prior to the court appearance.

16. After the parties left the courtroom on March 16th, respondent mocked Mr. Davies' application and twice referred to him as an "asshole" in the presence of court staff.

17. On March 31, 2004, in *Kristy L. Southee v. John R. Davies*, a custody modification proceeding regarding the parties' son, Mr. Davies returned to court before respondent for approval of a custody agreement.

18. Respondent initially read from the first *Davies* petition. When Mr. Davies attempted to speak to state that respondent had the incorrect petition before him, respondent rebuked him for interrupting, said he was reading from the correct file, told Mr. Davies to leave the courtroom "until you're able to conduct yourself properly in court," and declared a brief recess.

19. When the case was recalled a short time later, respondent signed a temporary order of custody in the *Southee* matter and, without elaborating, stated that he was disqualifying himself from all of Mr. Davies' cases, stating that "based on Mr. Davies' behavior, this court finds it very difficult to remain impartial and maintain objectivity." Mr. Davies thereafter said, "I'd like to apologize for earlier, Your Honor," and respondent replied, "I accept your apology, Mr. Davies."

20. Respondent's inflection and tone of voice were impatient and scolding.

Additional Findings:

21. In each of the above three matters, the parties had a long history in Family Court, involving allegations of abuse, neglect, drug or alcohol abuse and domestic violence.

22. Respondent acknowledges that he lost his patience with the litigants in the above cases and should not have treated them sarcastically or otherwise disrespectfully. He is remorseful and assures the Commission that such lapses will not recur. Respondent has been cooperative with the Commission throughout its investigative and adjudicative proceedings in this matter.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4) and 1003.(B)(6)of the Rules Governing Judicial Conduct ("Rules") and

should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge is obliged to be the exemplar of dignity and decorum in the courtroom and to be "patient, dignified and courteous" to litigants (Rules, §100.3[B][3]). A judge must also "be and appear to be unbiased at all times so that 'the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property'" (*Matter of Ain*, 1993 Annual Report 51 [Comm on Judicial Conduct], quoting *Matter of Sardino*, 58 NY2d 286, 290-91 [1983]; Rules, §100.3[B][4]). Respondent's conduct in Family Court, "where matters of the utmost sensitivity are often litigated by those who are unrepresented and unaware of their rights" (*Matter of Esworthy*, 77 NY2d 280, 283 [1991]), did not comport with these standards.

Respondent has acknowledged that in three cases he made rude, intemperate comments to and about litigants that conveyed the appearance of bias. His "angry," "scolding" and "sarcastic" comments were demeaning and admittedly improper. By berating the litigants in two matters for "wasting" his time by seeking custody and by requesting counsel, he also undermined the parties' exercise of their legal rights and showed a disregard for the fundamental right to counsel, which a judge is obligated to effectuate, not to discourage.

In one matter, shortly after the parties had left the courtroom, respondent mocked a litigant's application and twice referred to the litigant as an "asshole" in the presence of court staff. Respondent's acknowledged lack of objectivity towards the litigant ultimately required his recusal from the litigant's cases.

A judge's rudeness is not excused by the fact that a particular litigant may be difficult or have a history of imperfect behavior. Respect for the fairness and impartiality of the court is better fostered by a judge's patience and courtesy than by anger, sarcasm and disrespect. *See, Matter of Going*, 1998 Annual Report 129 (Comm on Judicial Conduct)(judge twice told a Family Court litigant that he seemed "nuts"). "Breaches of judicial temperament "impair[ ] the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society." *Matter of Mertens*, 56 AD2d 456, 470 (1st Dept 1977).

In considering an appropriate sanction, we note that respondent has served as a judge for 14 years and has an otherwise unblemished record. We also note that he is remorseful, has been cooperative throughout the proceedings, and has given assurance that such lapses will not recur.

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

Judge Klonick, Mr. Coffey, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Mr. Belluck and Mr. Emery vote to reject the Agreed Statement on the basis that the stipulated facts in Charge III do not constitute misconduct, but otherwise concur that the appropriate disposition is admonition.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: June 17, 2008

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

SPERO PINES,

a Judge of the Family Court, Broome
County.

DISSENTING OPINION
BY MR. BELLUCK, IN
WHICH MR. EMERY
JOINS

- -

While I concur that there was misconduct with respect to the first two charges and the resulting sanction, I write separately because I would not find misconduct with respect to Charge III. From the record and Agreed Statement of Facts, it appears that after the litigants had left the courtroom, the judge in a private conversation with two court staff used the word "asshole" to refer to one of the parties in a case. While I would certainly agree that there is misconduct if a judge used that term towards a litigant or counsel during a proceeding or in some other formal setting, where words are spoken in what appears to be a private conversation between the judge and his staff, finding misconduct feels to me to be too much of an infringement. This is especially so where the judge, as it appears from the facts here, subsequently disqualified himself from presiding over future proceedings involving the litigant.

Dated: June 17, 2008

Joseph W. Belluck, Esq., Member
New York State
Commission on Judicial Conduct