

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

MARY REMCHUK,

Determination

a Justice of the Howard Town Court,
Steuben County.

THE COMMISSION:

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

APPEARANCES:

Gerald Stern for the Commission

John K. McCarthy for Respondent

The respondent, Mary Remchuk, a justice of the Howard Town Court,
Steuben County, was served with a Formal Written Complaint dated October 20, 1998,
alleging that she presided over matters involving relatives. Respondent filed an answer on
November 9, 1998.

On February 11, 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 admonished and waiving further submissions and oral argument.

On February 25, 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 Howard Town Court since 1984.
2. On September 15, 1997, respondent went to the home of Douglas Remchuk immediately after an altercation had occurred between him and his wife, Brenda. Mr. Remchuk is the brother of respondent's husband. Respondent spoke with Douglas and Brenda Remchuk about the altercation.
3. On September 25, 1997, respondent arraigned Douglas Remchuk on a charge that he had violated an Order of Protection issued by Family Court inasmuch as he had engaged in the altercation with his wife on September 15, 1997. Respondent released her brother-in-law on his own recognizance.
4. On September 25, 1997, respondent ordered Mr. Remchuk to appear in Family Court the following morning. Respondent then disqualified herself from the case.

As to Charge II of the Formal Written Complaint:

5. On October 10, 1997, respondent issued a criminal summons to Brenda Remchuk on a charge of Assault, Third Degree, stemming from the altercation with Douglas Remchuk on September 15, 1997.

6. On October 14, 1997, respondent issued an Order of Protection against Brenda Remchuk and in favor of Douglas Remchuk.

7. On December 2, 1997, respondent arraigned Brenda Remchuk on the assault charge and released her on her own recognizance.

8. On December 2, 1997, respondent disqualified herself from the case.

As to Charge III of the Formal Written Complaint:

9. On January 20, 1998, respondent arraigned Douglas Remchuk on a charge of Assault, Third Degree, based on the allegations of [REDACTED], who is Douglas Remchuk's daughter and respondent's niece by marriage. Respondent released Mr. Remchuk on his own recognizance.

10. On January 20, 1998, respondent disqualified herself from the case.

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(E)(1)(a) and 100.3(E)(1)(d). Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

A judge's disqualification is mandatory when a party or a material witness to the proceeding is within the sixth degree of relationship to the judge or the judge's spouse or is married to such a relative. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][d][i] and 100.3[E][1][d][iv]). Therefore, respondent should not have participated in any way in cases in which her brother-in-law, his wife and his daughter were parties or complaining witnesses. (See, Matter of Tyler, 75 NY2d 525; Matter of Bruhn, 1988 Ann Report of NY Commn on Jud Conduct, at 133; Matter of Pulver, 1983 Ann Report of NY Commn on Jud Conduct, at 157).

Her participation was wrong, even though respondent did not dispose of the cases. (See, Matter of Poli, 1995 Ann Report of NY Commn on Jud Conduct, at 124). Important decisions concerning counsel and bail are made at arraignment, and a judge's ability to make them impartially can be reasonably questioned when the cases involve family members. "The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary." (Matter of Wait, 67 NY2d 15, at 18).

However, the fact that she disqualified herself before disposition of each of the matters does mitigate the misconduct. (See, Matter of Poli, supra, at 125).

It was also improper for respondent to participate in any way in the cases involving the altercation between her brother-in-law and his wife since respondent had personal knowledge of the situation. (See, Rules Governing Judicial Conduct, 22 NYCRR 100.3[E][1][a][ii]; Matter of Vonder Heide, 72 NY2d 658).

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

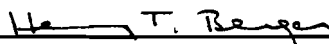
Mr. Berger, Ms. Brown, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Marshall, Judge Newton, Mr. Pope and Judge Salisbury concur.

Mr. Coffey and Judge Luciano 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: March 29, 1999



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