

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

THOMAS G. RESTINO, JR.,

**DETERMINATION**

a Justice of the Hoosick Falls Village Court,  
Rensselaer County.

---

THE COMMISSION:

Henry T. Berger, Esq., Chair  
Honorable Frederick M. Marshall, Vice Chair  
Honorable Frances A. Ciardullo  
Stephen R. Coffey, 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:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission  
Thomas J. McDonough for Respondent

The respondent, Thomas G. Restino, Jr., a justice of the Hoosick Falls Village Court, Rensselaer County, was served with a Formal Written Complaint dated November 29, 2000, containing two charges.

On April 5, 2001, 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 upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Hoosick Falls Village Court since September 1996.

As to Charge I of the Formal Written Complaint:

2. On July 14, 1999, respondent conducted an in-chambers conference in People v. Chad Lockrow, in which the defendant was charged with Assault 3<sup>rd</sup> Degree, a misdemeanor. The defendant had been arraigned two weeks earlier on that charge, and respondent had set bail at that time at \$7,500 bond, \$5,000 cash. Present in chambers were Amy Merkel, an assistant district attorney; Charles Thomas, counsel for the defendant; and the Honorable Lester E. Goodermote, respondent's co-justice. During arguments between counsel addressed to bail, Judge Goodermote interjected into the argument, stating that Barry Wilt, the alleged victim of the assault, was a "piece of shit" and a stalker. By such statement, Judge Goodermote was advocating the defendant's

position for purposes of bail and gave the appearance that he was advocating on the defendant's behalf.

3. During the in-chambers arguments and after Judge Goodermote's interjection under the prevailing circumstances, respondent took no steps to stay Judge Goodermote's advocacy and gave counsel the impression that he was going to reduce cash bail to \$2,500 as a result of Judge Goodermote's intervention. However, when respondent returned to the bench to render his decision on the arguments addressed to bail, bail was continued unchanged at \$7,500 bond, \$5,000 cash, as had been originally set.

4. Respondent failed to immediately eject Judge Goodermote for his conduct and failed to report Judge Goodermote's conduct to the Commission.

As to Charge II of the Formal Written Complaint:

5. Between June 1, 1997, and May 31, 1998, respondent failed to maintain complete and accurate records of cash receipts and disbursements of court funds, in violation of Section 214.11(a)(3) of the Uniform Civil Rules For The Justice Courts, and failed to deposit all court funds within 72 hours of receipt, or to make certain that the Court Clerk made deposits on a timely basis, in violation of Section 214.9(a) of the Uniform Civil Rules For The Justice Courts. Respondent failed to adequately supervise his Court Clerk, who was responsible for maintaining the court's financial

records and for making all deposits.

6. The foregoing problems with records, receipts, disbursements and deposits were unearthed as a result of an audit instituted by respondent when he found deficiencies in his records after a change of clerks.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(D)(1) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established.

Respondent permitted his co-justice to participate in a conference in his chambers, during which the co-justice advocated the defendant's position on the issue of bail by making derogatory comments about the complaining witness. Although his co-justice is not a lawyer (and, in any event, could not practice law in respondent's court), respondent allowed him to be present during the conference and did not rebuke him or direct him to leave even after his inappropriate advocacy on the defendant's behalf. By failing to take any steps to stay his co-justice's advocacy, respondent conveyed the appearance that he condoned his co-justice's actions and, indeed, gave counsel the impression that he was going to reduce bail as a result of his co-justice's intervention, although he did not do so. By such conduct, respondent violated the requirement that a

judge act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 100.2[A] of the Rules Governing Judicial Conduct).

Nor did respondent report his co-justice's misconduct to the Commission, as required by the ethical standards. Section 100.3(D)(1) of the Rules provides that a judge "shall take appropriate action" if the judge "receives information indicating a substantial likelihood that another judge has committed a substantial violation" of the ethical rules. Difficult as it may be for a judge to report the misconduct of a fellow judge, every judge must be mindful of the responsibility to take such action when appropriate. Matter of Gassman, 1987 Ann Rep of NY Commn on Jud Conduct 89.

In addition, respondent failed to maintain complete and accurate records of the receipt and disbursement of court funds and failed to deposit all court funds in a timely manner, in violation of Sections 214.9(a) and 214.11(a)(3) of the Uniform Civil Rules For The Justice Courts. Although these responsibilities were delegated to his court clerk, respondent was required to exercise supervisory vigilance to ensure the proper performance of these important functions. Respondent's supervision was inadequate, as indicated by the problems discovered as a result of a court audit. In mitigation, we note that the problems began in respondent's first year as a judge and that respondent instituted the audit when he found deficiencies in his records after a change of clerks.

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

Mr. Berger, Judge Ciardullo, Ms. Hernandez, Judge Luciano, Judge Peters and Judge Ruderman concur.

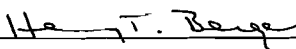
Mr. Coffey and Mr. Goldman dissent and vote to reject the agreed statement of facts on the basis that the disposition is too severe.

Judge Marshall and Mr. Pope were not present.

CERTIFICATION

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

Dated: November 19, 2001

  
\_\_\_\_\_

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