

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

RICHARD H. ROCK,

DETERMINATION

a Justice of the Chesterfield Town Court, Essex
County.

THE COMMISSION:

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

APPEARANCES:

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

Claudia A. Russell for Respondent

*Judge Salisbury's and Ms. Brown's terms expired on March 31, 2001. The vote in this matter was on March 29, 2001. The Honorable Frances A. Ciardullo was appointed to the Commission for a term commencing April 1, 2001.

The respondent, Richard H. Rock, a justice of the Chesterfield Town Court, Essex County, was served with a Formal Written Complaint dated September 23, 1999, containing four charges. Respondent filed an answer dated October 18, 1999.

On March 19, 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 censured and waiving further submissions and oral argument.

On March 29, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Chesterfield Town Court, Essex County, since January 1997. Respondent has successfully completed all required training sessions sponsored by the Office of Court Administration.

As to Charge I of the Formal Written Complaint:

2. On May 29, 1997, respondent arraigned the two 16-year-old defendants in People v. A.** and People v. B., on charges of Harassment, 2nd Degree, for

** For purposes of this determination, defendants who were youthful offenders are identified by letter only.

allegedly “threatening” and spitting at two other individuals. Saying that it was to teach the defendants “a lesson,” respondent committed the defendants to jail overnight in lieu of \$500 bail, without properly advising them of their right to counsel and to assigned counsel as required by Section 170.10(4) of the Criminal Procedure Law and without determining whether the defendants desired counsel or whether they could afford counsel.

3. On May 30, 1997, when the unrepresented defendants A. and B. were returned to court from jail, respondent accepted their guilty pleas to the charges of Harassment, 2nd Degree, and sentenced them to ten days in jail, without effectuating their right to counsel and without receiving a knowing and intelligent waiver of their rights as required by Section 170.10(6) of the Criminal Procedure Law and the New York State and United States Constitutions. Respondent based his decision to sentence the defendants to jail upon allegations by the police that the defendants had committed other, uncharged criminal acts.

4. On June 4, 1997, after defendants A. and B. had served the ten-day jail sentences imposed by respondent, they were returned to respondent’s court from jail for arraignment on a series of criminal charges emanating from the incident for which the defendants had earlier pleaded guilty to Harassment. Prior to conducting the arraignments, respondent questioned the unrepresented defendants as to whether they would give a statement to police concerning alleged crimes committed by others.

5. After A., a mandatory Youthful Offender, gave a statement to the

police, respondent accepted his guilty plea to charges of Endangering the Welfare of a Child (for having committed the earlier Harassment in the presence of his 14-year-old brother), Conspiracy 6th Degree, Harassment 1st Degree, and Trespass, without effectuating the defendant's right to counsel and without conducting a searching inquiry into the defendant's decision to plead guilty without counsel.

6. Respondent now recognizes the importance of the right to counsel, which includes the right to assigned counsel, and further recognizes that, on these facts in particular, it is likely that counsel would have protected the rights of the youthful defendants by raising defenses to the repeated charges brought by the police and by raising other objections to the procedures that respondent employed.

As to Charge II of the Formal Written Complaint:

7. On March 5, 1997, in People v. Terry Gordon, at the arraignment of the defendant on a charge of Failure To License Dogs, respondent, in violation of Section 170.10 of the Criminal Procedure Law, refused to allow the defendant to plead not guilty to the charge, denied the defendant's request for an adjournment to obtain counsel, and issued an order to seize the dogs unless they were registered within two days, notwithstanding that the defendant never pleaded guilty to the charge and respondent had not accorded him a trial.

8. Respondent had been present in November 1996 when his co-justice

found Mr. Gordon guilty of failing to license his dogs, and respondent considered the March 1997 charges to be an “extension” of the same matter and, therefore, did not feel that he was required to conduct an arraignment of Mr. Gordon.

As to Charge III of the Formal Written Complaint:

9. On or about January 19, 1997, after completing the arraignment in People v. Kenneth Bedard, in which the defendant pleaded not guilty to Harassment on the complaint of his wife, respondent questioned the defendant as to whether he had previously struck his wife, which Mr. Bedard denied.

10. Thereafter, while the charge against Mr. Bedard was still pending, respondent engaged in an *ex parte* conversation about Mr. and Mrs. Bedard with respondent’s daughter, who told respondent that Mr. Bedard had previously beaten his wife.

11. On or about January 22, 1997, after Mrs. Bedard agreed to the dismissal of the Harassment charge against Mr. Bedard, respondent, on the basis of his *ex parte* conversation with his daughter, accused Mr. Bedard of lying about not having beaten his wife. Respondent also threatened to charge Mr. Bedard with perjury for allegedly lying in a cross-complaint against his wife, which respondent had dismissed, and informed Mr. Bedard that he should “bring [his] toothbrush” if he ever appeared before respondent again in the future.

As to Charge IV of the Formal Written Complaint:

12. In the cases of People v. Jerry Barber, Laurie Hanson and Scott Hanson, in which the co-defendants were charged with Disorderly Conduct in June 1998, respondent received an *ex parte* note from the arresting officer, requesting “no breaks” for the defendants because, allegedly, they had to be pepper-sprayed during the arrest, and, on the basis of the officer’s note, respondent telephoned the Hanson residence prior to the arraignments and told Mr. Hanson to “bring a lot of money” to court or he and his wife would be going to jail.

13. In People v. C., in which the defendant pleaded guilty to a charge of Driving While Intoxicated as a mandatory Youthful Offender, respondent failed to correct the records of the case to reflect the correct disposition and failed to seal the records, as required by Section 720.35 of the Criminal Procedure Law.

14. In October 1998, respondent had an *ex parte* conversation with the mother of the defendant in People v. Christopher McCray, who was also the complaining witness against the defendant, and, based upon his *ex parte* communication with the mother, respondent later sentenced the unrepresented defendant to jail.

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(A), 100.3(B)(1), 100.3(B)(4), 100.3(B)(6), 100.3(C)(1) and 100.3(E)(1)(a)(i) of the Rules Governing

Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings, and respondent's misconduct is established.

In numerous cases, respondent failed to perform his judicial duties impartially, failed to "respect and comply with the law," and failed to "be faithful to the law and to maintain professional competence in it," in violation of ethical standards (Rules Governing Judicial Conduct, 22 NYCRR 100.2[A] and 100.3[B][1]). By disregarding fundamental, well-established rights of defendants, respondent abused his judicial powers and created the appearance of pro-prosecutorial bias.

In the A. and B. cases, respondent repeatedly violated the rights of two unrepresented 16-year old defendants. Without properly advising them of their right to counsel and to assigned counsel or ascertaining whether they desired counsel, respondent sent the youths to jail overnight "to teach them a lesson," then accepted their guilty pleas and sentenced them to a ten-day jail term, based in part upon *ex parte* information from a police officer alleging other, uncharged criminal acts. After the defendants had served their sentence, respondent arraigned them on additional charges emanating from the same incident for which they had earlier pleaded guilty, and, before accepting another guilty plea, he questioned the still unrepresented defendants as to whether they would give information to police concerning alleged crimes committed by others. Without an

attorney to protect their rights and without having made a knowing and intelligent waiver of the right to counsel, the youthful defendants were subjected to unauthorized procedures dictated by a judge who appeared to be actively assisting the prosecution.

Respondent's handling of the Gordon case also violated the law he is sworn to uphold. After denying the defendant's request for an adjournment to obtain counsel, respondent refused to accept the defendant's not guilty plea and, without a trial, issued an order to seize the defendant's dogs.

In other cases, respondent relied on *ex parte* information to the detriment of defendants. In Bedard, based on information respondent had received from his daughter, respondent accused a defendant of lying and warned the defendant to "bring [his] toothbrush" if he ever appeared before respondent again. In Hanson, after receiving an *ex parte* note from the arresting officer about the defendants' conduct, respondent called a defendant before the arraignment and warned him to "bring a lot of money" to court or the defendant and his wife (another defendant) would be going to jail. In McCray, respondent relied on *ex parte* information from the complaining witness in sentencing the defendant to jail. Respondent's actions created an appearance of bias and violated Section 100.3(B)(6) of the Rules, which prohibits a judge from initiating or considering *ex parte* communications.

Respondent's handling of these cases suggests a serious misunderstanding of fundamental statutory procedures and a misapprehension of the proper role of a judge.

Such conduct may warrant removal from office, especially where, as in this case, the judge's actions deprive individuals of liberty without regard for their rights under the law. Matter of McGee v. Comm. on Jud. Conduct, 59 NY2d 870 (1983); Matter of Hamel v. Comm. on Jud. Conduct, 88 NY2d 317 (1996). In mitigation, respondent now recognizes the importance of the right to counsel, which includes the right to assigned counsel.

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

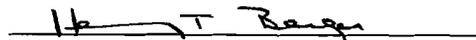
Judge Salisbury, Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Judge Marshall, Mr. Pope and Judge Ruderman concur.

Ms. Hernandez, Judge Peters and Judge Luciano were not present.

CERTIFICATION

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

Dated: June 27, 2001


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