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

RALPH T. ROMANO,

a Justice of Haverstraw Town Court, Rockland County.

Determination

THE COMMISSION:

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

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Tracy, Bertolino & Edwards (By John S. Edwards) for Respondent

The respondent, Ralph T. Romano, a justice of the Haverstraw Town Court, Rockland County, was served with a Formal Written Complaint dated October 21, 1996, alleging four charges of misconduct. Respondent filed an answer dated November 13, 1996.

By Order dated December 5, 1996, the Commission designated Edward Brodsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law.

A Supplemental Formal Written Complaint, alleging six additional charges, was served on June 3, 1997. Respondent answered the supplemental complaint on June 24, 1997.

A hearing was held on September 24 and 26, October 6 and 8 and November 5, 7 and 12, 1997, and the referee filed his report with the Commission on April 2, 1998.

On May 5, 1998, the parties exchanged briefs concerning the referee's report. The administrator of the Commission filed a reply dated May 16, 1998.

On June 18, 1998, the Commission heard oral argument, at which respondent and his counsel appeared, 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 has been acting justice of the West Haverstraw Village Court since 1976 and a justice of the Haverstraw Town Court since 1978. He is a part-time judge who also practices law in Rockland County.

2. On August 24, 1995, respondent arraigned Steven Whitaker and Juan Espinal on criminal charges. Haverstraw Police Detectives Hector Soto and Michael J. Viohl appeared on the cases. Respondent set bail for Mr. Espinal at $100 and released Mr. Whitaker.

3. After the proceedings, Detectives Soto and Viohl returned to the police station, where Officer John K. Salter was working as desk officer. Officer Salter was a friend of respondent; they have socialized and vacationed together several times. In the presence of Officer Salter, Detective Viohl remarked to Detective Soto that he could not believe that respondent had set bail for Mr. Espinal but let Mr. Whitaker go. The detectives then realized that respondent had failed to sign a commitment order for Mr. Espinal. Detective Soto told Officer Salter to "call your friend, Judge Romano," to ask him to sign the order. Officer Salter later reported to respondent that he had exchanged words with the detectives.

4. On August 25, 1995, respondent entered the police station and complained that Detective Viohl had criticized respondent's bail decision and had talked to Officer Salter about respondent. In a loud and angry manner, respondent said to Detective Viohl, "If you have anything to say to me, grow some balls and say it to my face." "You're nothing but an asshole and everybody in town knows you're an asshole." "You're nothing but a low life scumbag and everybody in town knows you're shit."

5. Detective Viohl refused to speak to respondent and walked to his office, where Detective Soto was seated. Respondent followed him and again referred to him as an "asshole" and a "scumbag."

6. Respondent threatened to subpoena confidential hospital records from the previous year, when Detective Viohl had been treated after a car accident. Respondent alleged that they would show that the detective had been driving while intoxicated. Although the detective had been in a car accident, he had not been charged with any offense.

7. Addressing Detective Soto, respondent said that, if he had anything to say, he should also "grow some balls" and say it to respondent. Respondent then called the detective a "shoplifter and a thief." Although there was once an incident in a store involving Detective Soto and his child, he had never been convicted of shoplifting.

As to Charge II of the Formal Written Complaint:

8. On September 5, 1995, respondent sent a letter on court stationery to the Haverstraw Town Board, complaining about Detectives Viohl and Soto and their supervisor, Sgt. Richard Rogers, who is now a lieutenant. Respondent's remarks, as set forth in the appended Schedule A, were based on rumors or exaggerations which respondent could not support. Respondent wrote the letter because he was angry with Detectives Viohl and Soto for criticizing him in connection with the Whitaker and Espinal cases.

As to Charge III of the Formal Written Complaint:

9. On August 9, 1995, respondent arraigned Robert Rastelli on a charge of Burglary. The complaining witness was Peter Ruggieri, who had been a client of respondent between six months and a year earlier.

10. No prosecutor was present for the arraignment. Respondent had been called to conduct the arraignment by Detective Soto and disclosed his prior representation of Mr. Ruggieri to him.

11. Respondent did not disqualify himself or offer to disqualify himself.

12. In the presence of the defendant and a police officer, respondent said that the case was weak and that Mr. Ruggieri was "no good" and "a piece of shit."

As to Charge IV of the Formal Written Complaint:

13. Anthony Celentano is a friend and client of respondent. In December 1993, Mr. Celentano had a property dispute with a neighbor, Ben Eskinazi. Mr. Celentano consulted respondent, and respondent advised him to file a complaint with the Haverstraw Police Department. The police determined that the matter was not criminal in nature and declined to file charges.

14. After Mr. Celentano advised respondent of this, respondent went to the police station and asked that a criminal complaint be filed against Mr. Eskinazi. The desk officer declined; respondent then went to Chief Paul Allison. The chief also refused to

file charges. Respondent said that there were things that he could do for the chief with the town board and remarked, "One hand washes the other." Chief Allison terminated the conversation.

15. Respondent then spoke with the assistant district attorney assigned to his court, Lisa Cohen, and tried to persuade her to file charges. She looked into the matter and declined to do so.

16. Thereafter, respondent spoke to John Grant, the chief assistant district attorney, and urged him to file charges. Mr. Grant refused, but he directed that the matter be referred for mediation. Ordinarily, no such referrals are made by the District Attorney's Office unless criminal charges are pending.

As to Charge V of the Supplemental Formal Written Complaint:

17. On April 17, 1997, respondent arraigned Robert Schaeffer on charges of Assault and Violation of an Order of Protection. Mr. Schaeffer was accused of striking his wife in the face with a telephone.

18. As respondent was reading the charges from the bench, he said, "What was wrong with this? You need to keep these women in line now and again." Both respondent and the defense attorney, Al Spitzer, laughed.

19. Mr. Spitzer then said, "Do you know why 200,000 women get abused every year?...Because they just don't listen." Respondent and Mr. Spitzer laughed. Respondent did not rebuke the lawyer for the remark.

20. The defendant was present during this colloquy.

As to Charge VI of the Supplemental Formal Written Complaint:

21. On April 2, 1997, respondent arraigned Doreen Folk, who was accused of the sexual abuse of a 12-year-old boy.

22. As respondent read the charges from the bench, he said, "What I want to know is where were girls like this when I was 12." The remark was made in the presence of the defendant and the arresting officer.

23. Respondent then released the defendant in the custody of her mother.

24. After the arraignment and the departure of the defendant and the arresting officer, respondent discussed the case with court clerk Jean Galgano and court officer Richard Hamilton. He again said, "Where was she when I was 12?"

As to Charge VII of the Supplemental Formal Written Complaint:

25. The charge is not sustained and is, therefore, dismissed.

As to Charge VIII of the Supplemental Formal Written Complaint:

26. At various times between 1994 and 1996, respondent made statements off-the-bench to court clerk Jean Galgano and Assistant District Attorney Rachelle Kaufman, indicating that he believed that many domestic assault charges are exaggerated by women and are unfair to men and that he is skeptical about the merits of domestic assault cases in which the primary witness is the victim and the complaint is signed by a police officer instead of the victim.

27. Respondent repeatedly questioned Ms. Kaufman concerning Orders of Protection in such cases. He said that he did not favor issuing an Order of Protection or keeping an alleged abuser out of the home unless the victim had come to court with a "turban of bandages on her head." If a female victim was "truly frightened, [she could] leave the home and go to other family or friends or to the shelter," respondent told Ms. Kaufman. He did not favor throwing a man out of his home on the basis of one person's word, he said. Respondent also told Ms. Kaufman several times that he did not like most domestic violence cases because they involve "he said, she said" issues.

28. Respondent periodically told Ms. Galgano that the police and prosecutors should be "more discreet" with domestic abuse cases and that the police should not always arrest the defendant because, "most likely, the defendant is the father; he's the husband; he's the one who makes the money, and it's not right that they're told that they can't go back into the house."

29. Paragraphs 11, 12, and 13 of Charge VIII are not sustained and are, therefore, dismissed.

As to Charge IX of the Supplemental Formal Written Complaint:

30. In February 1996, respondent arraigned Timothy Harrison on a charge of Harassment. He was accused of threatening Jennifer Ocasio, who had signed the complaint against him.

31. Ms. Ocasio and Police Officer John Weber were present for the arraignment. Ms. Ocasio spoke to respondent and indicated that she did not want the defendant prosecuted. Respondent told her to recant in writing on the complaint itself, and she did so. He did not explain to her the potential adverse consequences of recanting a sworn statement to the police. Respondent then dismissed the charge.

32. Respondent knew that Ms. Ocasio was not represented by counsel. There was no prosecutor present, and respondent did not obtain the consent of the prosecution before dismissing the charge.

As to Charge X of the Supplemental Formal Written Complaint:

33. On January 26, 1994, respondent arraigned Chuck Reynolds on a charge of Driving While Intoxicated. Mr. Reynolds had failed to make previous court appearances because he had been hospitalized with serious injuries, and a bench warrant

had been issued by another judge. He appeared voluntarily before respondent after Detective Viohl made arrangements for him to surrender.

34. Assistant District Attorney Rachelle Kaufman recommended that Mr. Reynolds be released pending trial. Instead, respondent set bail at $500.

35. Detective Viohl then approached the bench, advised respondent that the defendant had been hospitalized and had surrendered himself and assured respondent that the defendant would return to court. Respondent replied in a voice loud enough to be heard throughout the courtroom, "Your word and $500 ought to get him back in court."

36. After court, Detective Viohl went to respondent's chambers and asked why respondent had embarrassed him in a courtroom full of people. Respondent replied, "Well, you stick up for a piece of shit like that, you know that's what happens."

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, 100.2(A), 100.3(B)(1), 100.3(B)(2), 100.3(B)(3) and its predecessor Section 100.3(a)(3) [renumbered eff. Jan. 1, 1996], 100.3(B)(4), 100.3(B)(5), 100.3(B)(6) and 100.3(c)(1) in effect at the time (now Section 100.3[E][1]), and Canons 1, 2, 2A, 3A(1), 3A(2), 3A(3), 3A(4) and 3C(1) of the Code of Judicial Conduct. Charges I, II, III and IV of the Formal Written Complaint and Charges V, VI, IX and X and Paragraph 10 of Charge VIII of the Supplemental Formal Written Complaint are sustained insofar as they

are consistent with the findings herein, and respondent's misconduct is established. Charge VII and Paragraphs 11, 12 and 13 of Charge VIII of the Supplemental Formal Written Complaint are dismissed.

In a series of incidents, respondent has exhibited intemperate and biased behavior, disregard of the law and an egregious assertion of influence for private gain.

Especially improper are events on and off the bench that indicate that respondent does not take seriously domestic violence complaints and is reluctant --- if not negligent --- in properly applying the law in such matters. On a number of occasions, he privately remarked to his court clerk and a prosecutor that he is skeptical about such cases and is reluctant to issue Orders of Protection unless the victims show extraordinary proof of abuse, such as a "turban of bandages." Viewed in conjunction with his on-the-bench behavior in such cases as Harrison (Charge IX), in which he dismissed such a case without consulting the prosecution, and Schaeffer (Charge V), in which he made the remark that women need to be kept "in line," it is apparent that respondent is predisposed against the victims of domestic violence. Such judicial indifference and gross insensitivity is inappropriate (Matter of Roberts, 91 NY2d 93, 96) and has the effect of discouraging complaints from those who look to the judiciary for protection (Matter of Bender, 1993 Ann Report of NY Commn on Jud Conduct, at 54, 55; Matter of Chase, 1992 Ann Report of NY Commn on Jud Conduct, at 41, 43).

Even isolated incidents of such remarks cast doubt on a judge's ability to be impartial and fair-minded. (Matter of Duckman, ___ NY2d ___[Slip Op. No. 66, fn. p. 15, July 7, 1998]; Matter of Schiff, 83 NY2d 689, 692-93).

Respondent's disregard for the law that he is sworn to administer is also evident in Schaeffer (Charge V), in which he dismissed a charge without affording the prosecution an opportunity to be heard. (See, Duckman, supra; Matter of More, 1996 Ann Report of NY Commn on Jud Conduct, at 99).

In addition, respondent's extremely vitriolic behavior toward Detectives Viohl and Soto in the stationhouse confrontation and in a vituperative and spurious letter to the town board is unbecoming a judge. (See, Matter of Cerbone, 61 NY2d 93). His profane and insulting language on the bench in Reynolds (Charge X) and Rastelli (Charge III) and his ill-placed humor in Folk (Charge VI) were also improper. (See, Matter of Mahon, 1997 Ann Report of NY Commn on Jud Conduct, at 104; Matter of Myers, 1985 Ann Report of NY Commn on Jud Conduct, at 203).

Respondent's failure to disqualify himself in Rastelli (Charge III) and his actions in connection with the Celentano dispute (Charge IV) represent an improper confusion of his roles as a judge and a practicing attorney, as well as the use of the prestige of his office on behalf of a client. (See, Matter of Cerbone, 1997 Ann Report of NY Commn on Jud Conduct, at 83; Matter of Watson, 1989 Ann Report of NY Commn on Jud Conduct, at 139).

Notwithstanding his long tenure on the bench and his reputation among some members of the legal community, this record demonstrates that respondent's retention in office would compromise the proper administration of justice. (See, Matter of Esworthy, 77 NY2d 280, 283; Matter of Shilling, 51 NY2d 397, 399).

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

Mr. Berger, Ms. Brown, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton, Judge Salisbury and Judge Thompson concur as to sanction.

Ms. Brown and Judge Newton dissent only as to Charge VII and vote that the charge be sustained.

Mr. Goldman dissents only as to Charges VIII, IX and X and votes that those charges be dismissed.

Mr. Coffey and Mr. Pope 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: August 7, 1998

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

SCHEDULE A

Respondent's letter of September 5, 1995, contained the following remarks:

a) the information in People v Steven Whitaker was "clearly defective on its face in that it contained nothing more than a vague allegation that the Defendant threatened the complainant";

b) the information in Whitaker was "totally devoid of any factual allegations whatsoever";

c) respondent had "advised the two detectives [Soto and Viohl] that the information was defective, and it would be subject to a motion to dismiss unless it were corrected, either by filing an amended information, or a deposition";

d) in People v Juan Espinal, the "charge was rather minor";

e) respondent "inquired of the two detectives [Soto and Viohl] why they saw fit, in this particular case, to pick up the Defendant, and bring him in, in handcuffs, when their usual practice was simply to make a telephone call from their office requesting the Defendant to come in on his own";

f) in "cases involving friends or relatives of the detectives, [they] simply...call and tell them to appear in Court";

g) respondent was "somewhat skeptical of [Detective Viohl's] explanation," that "he just happened to be out on patrol when he spotted Juan Espinal and recalled that he was wanted on a bench warrant";

h) "Detectives Soto and Viohl returned to the Police Station, and promptly proceeded to harass Police Officer John Salter, who they know to be a friend of [respondent]";

i) Detectives Soto and Viohl made "derogatory comments about a member of the judiciary [i.e. respondent], in violation of Department rules";

j) Detectives Soto and Viohl then sought to "hide behind these very same rules by claiming that their statements [to Officer Salter] consisted of confidential department business";

k) Detective Sergeant Rogers "of late has sought to establish himself within the Town of Haverstraw as a power answerable only unto himself";

l) Detective Sergeant Rogers "has apparently taken personal offense at the fact that [respondent] would dare to confront" Detectives Soto and Viohl;

m) Detectives Soto and Viohl are "defectives";

n) Detective Sergeant Rogers "has brazenly attacked the Town Board in the press";

o) Detective Sergeant Rogers has made it "known that he does not feel that he is answerable in any way to the Chief" of Police;

p) Detective Sergeant Rogers has "taken it upon himself to conduct his own personal investigation of [respondent] on Department time, using Town resources";

q) Detective Sergeant Rogers and Detectives Soto and Viohl "have contacted at least one client of [respondent's law practice], and possibly several others, making derogatory remarks";

r) Detective Sergeant Rogers and Detectives Soto and Viohl were "urging [a client of respondent's law practice] to go to the District Attorney's office and make a frivolous complaint against [respondent]";

s) Detective Sergeant Rogers improperly "engaged a client of [respondent] in ex-parte conversation while a prisoner in the Town of Haverstraw lock-up";

t) Detective Sergeant Rogers "encouraged the prisoner [respondent's client] to retain another attorney and discharge [respondent] as his counsel";

u) "a review of Departmental tapes of telephone calls, and a review of all phone calls made by Detective Sergeant Rogers on the Detectives' private lines" will verify respondent's allegations and "may even uncover various other misconduct, and possibly even criminal conduct," by the three detectives;

v) respondent is "absolutely shocked by the total lack of accountability on the part of your detective personnel";

w) Detective Sergeant Rogers and Detectives Soto and Viohl "seem to be completely outside of the chain of command, accountable to no one";

x) Detective Sergeant Rogers and Detectives Soto and Viohl "apparently come and go as they please, keeping no record of their activities, whatsoever";

y) Detective Sergeant Rogers and Detectives Soto and Viohl "do not work staggered shifts, which would afford better coverage and less overtime"; instead they "establish their own rules, including if and when they work overtime," particularly when they must be called out on a felony, "which is a convenient way for them to pick up an abundance of overtime";

z) Detective Sergeant Rogers and Detectives Soto and Viohl put "five or ten (5 - 10) minutes at the [felony] scene, and then charges the Police Department for a minimum of four (4) hours overtime";

aa) "even though they complain of being overworked, but hardly underpaid, they seem to have plenty of time to conduct their own private investigations";

bb) Detective Sergeant Rogers and Detectives Soto and Viohl "do not see fit to devote all of their time and effort to Department business [which] may, of course, account for the fact that their crime clearance rates are abysmal";

cc) Sergeant Rogers will "claim that he closed the only homicide we have had in the Town in decades, with an arrest. The truth of the matter is, however, that after working on the case for over a year, he got absolutely no results";

dd) Detective Sergeant Rogers and Detectives Soto and Viohl use "Department resources to conduct private investigations in accordance with their own personal agendas"; and,

ee) Detective Sergeant Rogers and Detectives Soto and Viohl engaged in "a blatant attempt...to intimidate and coerce the Judiciary, and subject it to their wishes," and their "conduct is clearly in violation of Department regulations, and may even be criminal in nature, and therefore should be thoroughly investigated...."

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DISSENTING OPINION BY MS. BROWN IN WHICH JUDGE NEWTON JOINS

I concur with the majority's findings of misconduct and agree that respondent should be removed from office. However, I would vote to sustain, in addition, Charge VII of the Supplemental Formal Written Complaint in which it was established that respondent made an inappropriate comment that further demonstrates his insensitivity in cases involving domestic violence and sexual abuse.

Kermit Morales was charged with the sexual abuse of a woman with whom he had had a prior relationship. The accusatory instrument described the abuse in the first person as though in the words of the victim, but it was signed by a male police officer. In open court, respondent read the complaint: "The said Defendant...did place his fingers into my vagina"; noted that the complaint had been signed by a male police officer; laughed, and said, "I would like to have seen that happen." Such a remark, in front of the defendant and others, is totally inappropriate and undermines the serious nature of such charges.

Charge VII should be sustained.

Dated: August 7, 1998

Jeremy Ann Brown, Member
New York State
Commission on Judicial Conduct

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DISSENTING OPINION BY MR. GOLDMAN

I respectfully dissent as to Charges VIII, IX and X and vote to dismiss those charges. Otherwise, I concur with the majority in its findings of misconduct and sanction of removal.

With respect to Charge VIII, I do not believe that off-the-bench discussions by a judge concerning his judicial philosophy, however politically incorrect or even bizarre, should be the basis for a finding of misconduct.

As to Charge IX, I do not believe that respondent's acceptance of the withdrawal of the charge by the complainant constitutes misconduct. In the lower criminal courts, withdrawals of charges, especially of minor charges[1] made by acquaintances, as in this case, are routinely granted. Respondent was not, in my view, required to explain to Ms. Ocasio the practical consequences of her recantation. As a practical matter, there are no consequences for recanting a complaint prior to arraignment. (See, Penal Law § 210.25

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[1] The charge was Harassment, Penal Law § 240.26(3), a violation. The complainant alleged that the defendant "did threaten [her] by stating if you don't get in the car I am going to beat your ass." As a matter of law, the factual allegations do not even make out the offense charged. (See, People v Dietze, 75 NY2d 47; People v Hogan, NYLJ, Apr. 22, 1997, p. 31, col. 3 [Crim Ct, Kings Co]).

[affirmative defense to perjury if one retracted false statement before it substantially affected proceeding]).

Further, it is not clear to me that, as the majority implies, the prosecutor must consent to a "dismissal" by reason of withdrawal of a complaint. Should the complainant decline to swear to the complaint, there may not even be a valid accusatory instrument upon which to arraign the defendant. (See, CPL 100.10, 170.10). In any case, even if respondent erred in dismissing the complaint in the absence of the prosecutor, I do not believe that this mistake in an unclear area of law constitutes judicial misconduct.

With respect to Charge X, I also do not find misconduct. The remark by the judge to Detective Viohl at the bench apparently was triggered by the apparent provocation of the officer approaching the bench after the judge had set a bail on the detective's friend in an amount higher than recommended by the prosecutor. Those present in the courtroom could undoubtedly sense that the detective was rearguing the court's decision. Under these circumstances, the loud and seemingly sarcastic remark by respondent was not clearly unjustified, and thus, in my opinion, does not rise to the level of judicial misconduct. Lastly, while I am somewhat troubled by the scatological disparagement of a litigant, I do not find misconduct since the remark was made by the judge in private to an acquaintance.

Dated: August 7, 1998

Lawrence S. Goldman, Esq., Member
New York State
Commission on Judicial Conduct